



STATE OF NEW JERSEY

In the Matter of C.T., Stockton
University

**FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION**

CSC Docket No. 2022-2860

Discrimination Appeal

ISSUED: March 20, 2024 (HS)

C.T., a Professional Services Specialist 4 Administrative Services (PSS4) with Stockton University (Stockton), appeals the determination of the Vice President for Personnel, Labor and Government Relations (VP), which found that the appellant failed to present sufficient evidence to support a finding that she had been subjected to a violation of the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy).

The appellant filed a complaint with the Office of Equal Opportunity and Institutional Compliance (OEOIC) against G.B., former Associate Director of Event Services and her then-supervisor, and L.F., former Director of Human Resources, alleging discrimination based on disability and retaliation. Specifically, the appellant alleged that the respondents failed to accommodate her disability by not allowing her to work without a face mask during Stockton’s COVID-19 restrictions and requiring her to use paid leave time if she did not comply with Stockton’s COVID-19 guidelines. The appellant also alleged that the respondents retaliated against her for opposing the requirement that she wear a face mask in the workplace based on her disability status. She alleged the following forms of retaliation:

- The respondents prevented her from being promoted from PSS4 to Professional Services Specialist 3 Administrative Services (PSS3).
- The respondents failed to provide back pay owed to her following her desk audit and her request to reclassify from PSS4 to PSS3.

- The respondents failed to reassign her from her position in Event Services and Campus Center Operations (ESCCO).
- The respondents imposed unfounded discipline on her for failing to report to a mandatory in-person Division of Student Affairs meeting.
- The respondents issued an unsatisfactory final Performance Assessment Review (PAR) evaluation for the October 1, 2020 to September 30, 2021 rating period.
- The respondents attempted to impose a performance improvement plan (PIP) in the proposed settlement of her PAR grievance without her input in violation of a union work agreement.
- The respondents attempted to have her waive her right to file discrimination claims against Stockton in the proposed settlement of her PAR grievance.

The OEOIC conducted an investigation, during which it interviewed relevant individuals and reviewed relevant documentation, and found no corroboration for the allegations. Specifically, the investigation revealed the following.

Disability Discrimination

In October 2020, Stockton's COVID-19 safety guidelines required that employees "wear [a face covering] in all public settings, including classrooms, hallways, public restrooms, common office areas, the Campus Center coffee house and food court, etc." The guidelines also specified that employees with underlying health conditions that prevented the wearing of face coverings should contact the Office of Human Resources (HR).

On October 20, 2020, the appellant wrote to HR in an email, "I am requesting to have reasonable accommodations . . . at this time as I was given a desk in a 'common area' and I am not able to comfortably wear a mask all day while sitting at my desk." The investigation found that the appellant did not specify a medical condition as the reason for her request at that time, although she provided medical documentation to HR later in October 2020.

On October 27, 2020, L.F. informed the appellant that if she could not comply with the COVID-19 guidelines, she would not be permitted to work on campus and would be required to use her accrued leave time. L.F. also acknowledged that the appellant had provided medical documentation that indicated she may need an accommodation, and he initiated the interactive process for an accommodation or work modification. He noted that the appellant could be eligible to have restored any leave time she used while Stockton made the determination on the accommodation request.

The appellant admitted that she did not submit a request for an ADA accommodation to the ADA coordinator until November 19, 2020. On December 2, 2020, the ADA coordinator received a note from the appellant's doctor describing her medical condition as a severe anxiety disorder that prevented her from wearing either a face mask or face shield. The ADA coordinator had determined that the essential functions of the appellant's position required her to interact in-person with students and employees at the ESCCO office and therefore denied the accommodation of working in a private office or working remotely. However, because of campus "de-densification," in which students were not on campus and some employees worked remotely, the ADA coordinator permitted the appellant to work at her desk without wearing a face covering through the end of December 2020. The ADA coordinator noted that she would revisit the interactive process in January 2021 when Stockton determined how or if the office de-densification would continue in the new year.

On January 20, 2021, after learning that office de-densification would end on January 25, 2021, the ADA coordinator informed the appellant that "[i]f you are not able to wear a face mask or a face shield in the office, whether or not you are sitting and working at your desk, then you will need to discuss leave options," with HR. Shortly thereafter, on February 9, 2021, the VP determined that because the appellant's desk was at least six feet from other desks; there was no heavy foot traffic near her desk; and she confirmed that she wore a mask when leaving her desk and when people approached her desk, she was not required to wear a mask while seated at her desk. The VP noted that this modification was not an ADA accommodation. The VP also arranged for Stockton to restore any paid leave time that the appellant had used in 2020 or 2021 during the periods when she was not permitted to work in the ESCCO office without wearing a face covering.

The investigation showed that L.F. did not allow the appellant to work on campus without wearing a face mask in public spaces, and he required her to use her paid leave pending the determination of her requested ADA accommodation to not wear a mask. However, the investigation found no evidence to support the allegation that L.F. discriminated against the appellant based on her medical condition. Rather, the investigation found that L.F., upon receipt of the appellant's medical information, referred the matter to the ADA coordinator to initiate the interactive process for an ADA accommodation and that his requirement that the appellant use paid leave pending Stockton's determination of her accommodation request was in accordance with Stockton's COVID-19 safety guidelines then in place. Further, Stockton restored to the appellant the paid leave that L.F. had required her to use.

Given that ADA accommodation requests are handled by the ADA coordinator and that the appellant provided no information on any actions by G.B. pertaining to her request for an ADA accommodation, the investigation found no evidence to support the allegation that G.B. discriminated against the appellant based on her medical condition.

Failure to Promote as Retaliation

Following a desk audit in February 2020, while the appellant worked at the Coastal Research Center in Hammonton, HR recommended her reclassification from PSS4 to PSS3 to the then-interim provost, noting that she, as the hiring manager, had the authority to either approve the appellant's reclassification to the higher title or to remove the higher-level duties the appellant was performing. On March 17, 2020, the Office of the Provost requested further information on the proposed reclassification from HR to aid their determination. On March 17, 2020, Stockton instructed employees to begin working from home because of the COVID-19 pandemic, and on March 26, 2020, the president issued a freeze in "non-critical hiring and non-salary expenditures as well as delaying capital projects." In June 2021, HR informed the appellant that because she was redeployed from Hammonton to the Galloway campus, and her former position at Hammonton no longer existed, her application for reclassification was no longer applicable. The appellant filed a grievance with her union regarding her reclassification request. The investigation found no evidence that G.B. had any part in determining the appellant's reclassification request or that L.F. failed to promote her as retaliation. Rather, the Office of the Provost did not move forward with the reclassification.

Failure to Provide Back Pay as Retaliation

The appellant believed she was owed back pay because the desk audit for her reclassification from PSS4 to PSS3 was completed in February 2020, and she continued to work in that position in Hammonton until her reassignment to the Galloway campus in September 2020. The appellant admitted she perceived no connection between her back pay issue and any actions by G.B., apart from her assertion that the unsatisfactory PAR rating she received from G.B. would prevent her from receiving the promotion. G.B., as noted above, was not involved in the appellant's job reclassification request. Therefore, the investigation did not find that he failed to provide back pay to the appellant as retaliation. The appellant alleged that L.F. retaliated against her by not responding to e-mails from her or her union representatives since July 2021, at which time it was her understanding that HR had agreed to issue the requested back pay. L.F. denied withholding back pay as retaliation. The investigation showed that HR had not agreed to issue the back pay in July 2021, and that L.F. was in discussions with the union regarding the back pay at the time of his departure from Stockton in December 2021. Given that negotiations between HR and the union were ongoing, the investigation did not find that L.F. had withheld back pay.

Failure to Reassign as Retaliation

The appellant alleged that G.B. retaliated against her by giving her an unsatisfactory PAR rating, which she asserted prevented her from getting a

reassignment and by not affirmatively seeking reassignment opportunities for her, such as asking other areas if they have a position for her. The appellant also asserted that G.B. wished to keep her in ESCCO because a colleague is on medical leave, and ESCCO needs her to perform the work. G.B. denied interfering in any way with the appellant's reassignment as retaliation. As the appellant's supervisor, G.B. had no obligation to affirmatively seek other positions for her, and the investigation confirmed that he had not done so. While G.B. denied interfering with the appellant's reassignment because she is needed to perform ESCCO's work, the appellant's assertion that the office is short-staffed, if true, would be a legitimate business reason, rather than a retaliatory one, for her supervisor to retain her in her position. The appellant alleged that L.F. retaliated against her by failing to acknowledge that she has made reassignment requests. L.F. denied blocking the appellant's attempts as retaliation. The investigation showed that while L.F. had not directly engaged with the appellant regarding her requests, HR managers, who reported to L.F., had engaged with the appellant on the matter beginning with her initial request to be reassigned in October 2020 through her subsequent inquiries in April 2021. The investigation revealed that the appellant had applied for 10 positions between February 2021 and November 2021 and had been interviewed for three positions, but she provided no information pertaining to any actions by L.F. regarding her applications for the positions.

Imposition of Unfounded Discipline as Retaliation

The appellant reported that on October 6, 2021, she received a Preliminary Notice of Disciplinary Action imposing an official written reprimand¹ for failing to report to a mandatory Division of Student Affairs kick-off meeting. Following a departmental hearing, the hearing officer determined that only counseling was warranted. The hearing officer found that the appellant's behavior warranted *some level* of action. Therefore, the investigation did not find that the disciplinary action requested by G.B. and imposed by L.F. was "unfounded." Rather, there were sufficient business-related reasons for requesting discipline.

Providing an Unsatisfactory PAR Evaluation as Retaliation

The investigation found no evidence that G.B. issued an unsatisfactory final PAR evaluation to the appellant in retaliation for her opposition to wearing a mask because of her medical condition. Rather, the investigation found that G.B. had sufficient cause based on legitimate business reasons to assign an unsatisfactory rating. L.F. was not involved in the appellant's PAR evaluations.

¹ An official written reprimand is considered minor discipline. See N.J.A.C. 4A:2-3.1(a).

Attempting to Impose a PIP Without the Appellant's Input as Retaliation

The investigation found no evidence that G.B. developed the PIP for the appellant in retaliation for her opposition to wearing a mask because of her medical condition. Rather, G.B. developed the PIP based on the appellant's failing her final PAR, per the guidance in Stockton's manager training. Contrary to the appellant's assertions, her union's master agreement did not specify that employees must have input to a PIP. The investigation found no evidence that L.F. proposed the PIP in retaliation for the appellant's opposition to wearing a mask because of her medical condition. Rather, the investigation showed that the appellant had grieved her failing final PAR evaluation and that L.F. had included the PIP as part of a proposed settlement of the grievance, based on input from G.B.

Attempting to Have the Appellant Waive Her Rights as Retaliation

The investigation confirmed that L.F. issued a proposed PAR grievance settlement agreement containing a waiver of the appellant's rights to pursue employment discrimination claims against Stockton under federal, State, or local laws. L.F. denied including the waiver in the proposed settlement in retaliation for the appellant's opposition to wearing a mask because of her medical condition. L.F. stated that the waiver language is standard boilerplate included in all proposed settlement agreements with employees. The investigation found that Stockton's *Grievance Settlement Agreement for Employees Template*, Section 3, contains the identical language on waiving rights to file claims under anti-discrimination and fair labor laws as that in the proposed settlement agreement for the appellant's PAR grievance. Therefore, the investigation found no evidence that L.F. included the waiver specifically for the appellant in the proposed settlement for her PAR grievance in retaliation for her opposition to wearing a mask because of her medical condition. Given that the appellant specified no alleged retaliatory actions by G.B., apart from issuing her an unsatisfactory PAR evaluation, and that the proposed settlement agreement was issued by HR, the investigator did not solicit information from G.B. on this allegation. Accordingly, the investigation found no evidence that G.B. attempted to have the appellant waive her rights to pursue employment discrimination claims against Stockton in retaliation for her opposition to wearing a mask because of her medical condition.

Based on the foregoing, the VP did not substantiate any violations of the State Policy based on disability or retaliation.

On appeal to the Civil Service Commission (Commission), the appellant initially alleges that the OEOIC was biased in favor of Stockton and the respondents because the then-Interim Director of Title IX and EEO, C.P., and the then-interim investigator, J.O., were seeking permanent employment with Stockton, although the appellant states that she "in no way, mean[s] to impugn their integrity." The

appellant also complains that C.P. should have undertaken interim corrective measures by removing her from G.B.'s supervision pending completion of the investigation. Turning more specifically to the allegations at hand, the appellant disputes the determination of her complaint as follows:

- Concerning the alleged disability discrimination, the determination glossed over the actions of the VP as his actions were not a special accommodation but rather his “correcting” the respondents and other managers for applying the State mask directive incorrectly. Having to be corrected by the VP on the appellant’s behalf made her a target of retaliation in all her interactions with the respondents that followed.
- Concerning the alleged failures to promote and provide back pay, these allegations were the subjects of a grievance. Also, the investigator did not speak to the then-interim provost to ascertain what discussions transpired between her and L.F., if indeed they did.
- Concerning the alleged failure to reassign, the appellant had made it clear to the respondents from the beginning that she wished to be reassigned as she did not believe ESCCO to be a good fit for her skills.
- Concerning the alleged imposition of a waiver of rights, the investigator should have investigated to see if there were other agreements under the same circumstances. The respondents wanted the agreement because they knew they discriminated against her.

In support, the appellant submits various exhibits.²

In response, Stockton, represented by Ellen D. Bailey, Deputy General Counsel, denies the appellant’s “vague, unsupported, and conclusory” allegations of bias on the part of C.P. and J.O. In response to the appellant’s complaint that C.P. should have undertaken interim corrective measures by removing her from G.B.’s supervision pending completion of the investigation, Stockton maintains that the appellant’s filing of a complaint did not entitle her to a job or supervisor reassignment of her choosing, and C.P. found no evidence that corrective measures were necessary to prevent any continued violations. Responding to the appellant’s allegation-specific arguments, Stockton contends as follows:

² *N.J.A.C.* 4A:7-3.2(m)1 provides that employees filing appeals that raise issues for which there is another specific appeal procedure must utilize those procedures. Therefore, the Commission will not address, in this decision, the appellant’s arguments pertaining to those allegations related to the imposition of discipline; her unsatisfactory PAR evaluation; and the attempt to impose a PIP because specific appeal procedures exist for each of those issues. See *N.J.A.C.* 4A:2-3.1 (minor discipline) and *N.J.A.C.* 4A:6-5.3 (PAR ratings and performance standards). Further, the record reflects that the appellant availed herself of those procedures.

- Concerning the alleged disability discrimination, the appellant misrepresents the contents of the determination. The determination is authored by the VP, and it does not state or imply that he was correcting the respondents and other managers for misapplying the State mask directive. The VP collaborated with L.F., the appellant's union representatives, and the Stockton payroll office to reinstate the accrued leave that the appellant used in 2020 and 2021 during the periods when she was not permitted to work in the office without wearing a mask.
- Concerning the alleged failure to promote, the appellant does not provide a statement or certification from the then-interim provost, or any information about what knowledge she would offer. Even if the appellant had provided information about the then-interim provost's role, if any, in the alleged failures to promote and provide back pay, there is no evidence of any involvement or retaliatory conduct or motive by the respondents.
- Concerning the alleged failure to provide back pay, failure to reassign, and waiver of rights, these allegations too were appropriately not substantiated.

In support, Stockton submits various exhibits.

In reply, the appellant reiterates her arguments and notes her disagreement with Stockton's response. Concerning the alleged failure to promote, the appellant contends:

J.O. should have discovered that I and another employee were [reassigned] from the Hammonton Office because of pandemic employee considerations. Prior to the [reassignment], I, and not the other employee, was recommended for a promotion. When employee movement was loosened, the other employee was returned to the Hammonton Office with the promotion, intended for me, by [L.F.]'s HR office.

In support, the appellant provides two exhibits: her October 27, 2020 e-mail exchange with L.F. and the proposed settlement for her PAR grievance.

CONCLUSION

It is a violation of the State Policy to engage in any employment practice or procedure that treats an individual less favorably based upon any of the protected categories. *See N.J.A.C. 4A:7-3.1(a)3*. The protected categories include race, creed, color, national origin, nationality, ancestry, age, sex/gender (including pregnancy), marital status, civil union status, domestic partnership status, familial status,

religion, affectional or sexual orientation, gender identity or expression, atypical hereditary cellular or blood trait, genetic information, liability for service in the Armed Forces of the United States, or disability. *See N.J.A.C. 4A:7-3.1(a)*. Additionally, retaliation against any employee who alleges that she or he was the victim of discrimination/harassment, provides information in the course of an investigation into claims of discrimination/harassment in the workplace, or opposes a discriminatory practice, is prohibited by this policy. No employee bringing a complaint, providing information for an investigation, or testifying in any proceeding under this policy shall be subjected to adverse employment consequences based upon such involvement or be the subject of other retaliation. *See N.J.A.C. 4A:7-3.1(h)*. The State Policy is a zero tolerance policy. *See N.J.A.C. 4A:7-3.1(a)*. The appellant shall have the burden of proof in all discrimination appeals. *See N.J.A.C. 4A:7-3.2(m)4*.

The Commission has conducted a review of the record in this matter and finds that an adequate investigation was conducted and that the investigation failed to establish that the appellant was discriminated against in violation of the State Policy. Documents were appropriately analyzed, and individuals were interviewed in investigating the allegations prior to concluding that there were no violations of the State Policy. Initially, the Commission agrees with Stockton that the appellant's allegations that C.P. and J.O. were biased in favor of Stockton are "vague, unsupported, and conclusory." Moreover, the appellant herself states that she "in no way, mean[s] to impugn their integrity." As such, the impartiality of the investigation is not in doubt. As to the appellant's contention that C.P. should have undertaken interim corrective measures by removing her from G.B.'s supervision pending completion of the investigation, the Commission observes that the State Policy leaves to the EEO/AA Officer or authorized designee the discretion to determine if interim corrective measures are necessary to prevent continued violations. *See N.J.A.C. 4A:7-3.2(h)*. The Commission declines to second guess C.P.'s chosen course of action at this juncture as there is no evidence that such was an abuse of the discretion the State Policy affords. The Commission below turns to the specific allegations at hand.

The investigation did not corroborate that the respondents discriminated against the appellant on the basis of disability. On appeal, the appellant proffers that the VP was acting to correct the respondents for misapplying the masking guidelines. The Commission is unpersuaded. The investigation revealed that the appellant requested reasonable accommodations on October 20, 2020 and later provided medical documentation to HR. On October 27, 2020, L.F. informed the appellant that if she could not comply with the masking guidelines, she would not be permitted to work on campus and would be required to use her accrued leave time. This requirement was in accordance with Stockton's COVID-19 safety guidelines then in place. However, L.F. also acknowledged that the appellant may need an accommodation, and he referred the matter to the ADA Coordinator to initiate the interactive process. L.F. noted that the appellant could be eligible to have restored any leave time she used while Stockton made the determination on the

accommodation request. Later, following the end of de-densification on January 25, 2021, the VP determined that because the appellant's desk was at least six feet from other desks; there was no heavy foot traffic near her desk; and she confirmed that she wore a mask when leaving her desk and when people approached her desk, she was not required to wear a mask while seated at her desk. The VP noted that this modification was not an ADA accommodation. The VP also arranged for Stockton to restore any paid leave time that the appellant had used in 2020 or 2021 during the periods when she was not permitted to work in the ESCCO office without wearing a face covering. Nothing in these findings would suggest that the VP was stepping in to correct the respondents' misapplication of policy, and the appellant has not presented any substantive evidence that such was the case. As such, the allegation of disability discrimination was appropriately not substantiated.

The investigation did not corroborate the allegation that the respondents engaged in a retaliatory failure to promote the appellant. Of particular note are the findings that the president had issued a freeze in non-critical hiring and that it was the Office of the Provost that did not move forward with the appellant's reclassification. On appeal, the appellant contends that the then-interim provost should have been interviewed. However, she has not presented any persuasive argument as to how an interview of the then-interim provost would have materially altered the outcome of the investigation. The appellant also adds:

J.O. should have discovered that I and another employee were [reassigned] from the Hammonton Office because of pandemic employee considerations. Prior to the [reassignment], I, and not the other employee, was recommended for a promotion. When employee movement was loosened, the other employee was returned to the Hammonton Office with the promotion, intended for me, by [L.F.]'s HR office.

Even assuming that this account of events is accurate, it is missing material information, *i.e.*, substantive evidence of a link between the appellant's opposition to masking based on her disability and L.F.'s returning "the other employee" to Hammonton with a promotion. As such, the allegation that the respondents engaged in a retaliatory failure to promote was appropriately not substantiated.

The investigation did not corroborate the allegations concerning the failure to provide back pay, the failure to reassign, and the waiver of rights. As the appellant did not provide any substantive arguments regarding these allegations on appeal, the allegations were appropriately not substantiated. The Commission adds only the following brief comments on the waiver of rights. The record reveals no reason to find that there was anything nefarious about the inclusion of the waiver language. Rather, it is apparent that this was language typically found in settlement agreements.

Accordingly, the investigation was thorough and impartial, and there is no basis to disturb the VP's determination.

ORDER

Therefore, it is ordered that this appeal be denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 20TH DAY OF MARCH, 2024



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