



STATE OF NEW JERSEY

In the Matter of S.L., Department of
Children and Families

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

CSC Docket No. 2024-1009

Request for Reconsideration

ISSUED: January 17, 2024 (SLK)

S.L., a Family Service Specialist 2¹ with the Department of Children and Families (DCF), represented by Justin Schwam, Esq., requests reconsideration of *In the Matter of S.L.* (CSC, decided September 20, 2023), which found that he violated the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy).

By way of background, the DCF's Office of Equal Employment Opportunity/Affirmative Action (EEO) found that during the morning of an electioneering event, S.L. purposely misnamed the complainant, who began transitioning from male to female, on more than one occasion in violation of the State Policy by referring to her by her birth name and not her preferred name even after being advised of the complainant's preference. Thereafter, in *In the Matter of S.L.* (CSC, decided September 20, 2023) (the Decision), the Civil Service Commission (Commission) denied S.L.'s appeal as the record supported the EEO's finding that the complainant's version of events was more credible than S.L.'s version.

In his request, S.L. disputes the allegations that he engaged in the intentional act of discrimination and harassment and argues that the Commission erred by not referring this matter to a hearing. He presents case law where the Appellate Division vacated a Commission decision where the Commission found that an appellant

¹ S.L. is currently on union leave.

violated the State Policy without referring the matter to a hearing where the appellant denied the allegations and claimed that there were disputed material facts.

S.L. claims that the Commission identified that there was a material question of fact involving whether the complainant had misrepresented her signature gathering efforts for S.L.'s political opponent and concluded that S.L.'s failure to prove that threshold factual question meant that his "version of events" could not be "believed." Yet, despite conflicting statements by the parties, the Commission determined that the complainant did not engage in the conduct that S.L. asserted had caused him to go to the Department of Labor and Workforce Development (DOL) building in the first place. He argues that the Commission relied on its determination of that disputed question of material fact to conclude that he not only engaged in the alleged conduct, which he denied, but he had the purposeful intent to discriminate or harass. Therefore, as this is a question that the Commission deems to be material, which is disputed by the parties, S.L. believes that it was an error for the Commission to not refer the matter to a hearing.

S.L. presents that the Commission found that he did not meet his burden of proof, in part, because he did not provide any statements from the local union employees to support his claim that the complainant was "engaged in a scheme to obtain signatures for the election under false pretenses." Yet, he highlights that the Commission relied upon arguably self-serving text messages that the complainant allegedly sent to S.L.'s political opponent. S.L. notes that the EEO's investigator did not request witness statements from him, and the Decision excuses the investigator's abandonment to interview witnesses at the union's office regarding the alleged afternoon incident, even though DCF's determination about the morning incident was expressly based on its credibility determination about the afternoon incident. Instead, S.L. contends that the Commission found that the "he-said, she-said" allegations about the morning incident alone constitute "sufficient evidence to find that that Appellant violated the State Policy in the morning." He asserts that the bare record of what allegedly happened in the morning, and why, simply does not support the Commission's resolution of this material fact question.

S.L. states that in the case law that he presents on reconsideration, when the appellant there tried to support his appeal with self-gathered witness statements, "the Commission expressed 'serious concern' regarding [appellant's] solicitation of witness statements as part of his appeal, contending that it violated the confidentiality provision of *N.J.A.C. 4A:7-3.1(j)*." Regardless, he believes that the Commission's apparent face-turn on what an appellant can/should submit in support of an appeal supports his position that there must be a fact-finding hearing as this is a material fact. Further, S.L. asserts that there was no reason for him to have been at the DOL building that morning if not for the reason that he believed that the complainant was misrepresenting for who she was gathering signatures. Yet, the Decision implies that S.L. went there for the sole purpose to harass and discriminate

against the complainant based on her protected status. S.L. emphasizes his position that there is a material fact in dispute, and he should be afforded a fair and full opportunity to challenge the disputed allegations in a hearing, under oath, and with the requisite due process protections.

In response, DCF highlights that the case law that S.L. presents involved a major discipline where the Appellate Division correctly determined that the appellant did not receive his due process rights. However, this matter is distinguishable as S.L. did not receive, nor is DCF seeking, any discipline against him. Further, unlike the case law presented where the appellant in that matter did not have an opportunity to present witnesses, the EEO made multiple attempts to schedule interviews with persons closely aligned with S.L., but none of these potential witnesses made themselves available to the EEO. DCF describes in detail the attempts that it made to schedule interviews with identified union employees. However, DCF reiterates that since the union witnesses did not cooperate with the investigation, it made its determination based on the credibility of the parties. Additionally, DCF notes that S.L. had the opportunity to present evidence during the appeal process. Moreover, the Appellate Division in the case law presented indicated that the appointing authority decision was based on a larger record that was not presented to the Commission or the Appellate Division where in this matter, the entire record was shared with S.L. and the Commission. DCF also contends that S.L.'s request for reconsideration was untimely since the Commission's decision was on September 20, 2023, and 45 days was on November 6, 2023, but S.L.'s reconsideration request was not submitted until November 27, 2023.

In reply, S.L. presents that he submitted his request for reconsideration via email on November 2, 2023, and he attaches the email. Further, the mailed copy was stamped as received by this agency on November 6, 2023. Therefore, he states that his request for reconsideration was timely.

CONCLUSION

N.J.A.C. 4A:2-1.1(d) provides that except where a hearing is required by law, this chapter or *N.J.A.C.* 4A:8, or where the Commission finds that a material and controlling dispute of fact exists that can only be resolved by a hearing, an appeal will be reviewed on a written record.

N.J.A.C. 4A:2-1.6(a) provides within 45 days of receipt of a decision, a party to the appeal may petition the Commission for reconsideration.

N.J.A.C. 4A:2-1.6(b) provides that a petition for reconsideration shall be in writing signed by the petitioner or his or her representative and must show the following:

1. The new evidence or additional information not presented at the original proceeding, which would change the outcome and the reasons that such evidence was not presented at the original proceeding; or
2. That a clear material error has occurred.

*N.J.A.C. 4A:7.3-2(m)*⁴ states, in pertinent part, that the appellant shall have the burden of proof in all discrimination appeals.

Initially, it is noted that S.L.'s request for reconsideration was timely as it was received within 45 days by this agency by both email and mail.

Regarding the merits, S.L. has not met the standard for reconsideration. As indicated in the Decision, the complainant's account of the morning incident was consistent, credible and supported by video and text evidence. However, as stated in the Decision, S.L.'s version of events was less credible:

In other words, for S.L.'s version of events to be believed, first S.L. would have had to have proactively congratulated the complainant on her transitioning, but at no point at that time was he advised of her preferred name. Further, the complainant would have had to engage in a scheme to obtain signatures for the election under false pretenses. However, it is noted that S.L. has not provided any evidence, such as statements from any of the alleged union members who supposedly advised S.L. of the scheme, that confirms that the complainant engaged in such behavior. Thereafter, the complainant would have had to have continued her alleged wrongdoing by calling the police on S.L. when he was confronting her about her scheme. Finally, the complainant would have had to continue her alleged misconduct later in the day by sending a text falsely accusing S.L. of "blatantly misnaming" her.

Upon reconsideration, S.L.'s account of the incident is even more questionable because in his statement to the investigator, S.L. indicated that he started his interaction with the complainant by congratulating her on transitioning. However, now S.L. is stating that the reason he was at the DOL building on the morning of the incident was to confront the complainant regarding his allegation that the complainant had engaged in a scheme to obtain signatures for the election under false pretenses. If S.L. was at the DOL building solely for the purposes of confronting the complainant, it seems unlikely that he would have started his conversation with her by congratulating her.

Additionally, S.L.'s allegation that the complainant engaged in a scheme to obtain signatures for the election under false pretenses is, without supporting evidence, merely that, an allegation. Regardless, even if true, in and of itself, would

not necessarily excuse S.L.'s violation of the State Policy. In other words, his alleged reason for being at the DOL building is not fully dispositive as to his misnaming of the complainant but would only have served to bolster his overall credibility. Moreover, while S.L. states that the investigator did not ask him for witness statements, there was nothing preventing him from supplying such statements to the investigator to support his accusation about the complainant if he believed such statements would have been beneficial to his credibility. He could have solicited such statements *without* implicating the State Policy at all, or violating the confidentiality provisions, as his claims about the complainant do not touch the State Policy and were not germane to his violation. Also, he was specifically advised in the Decision that his failure to provide such supporting evidence impacted his credibility regarding his version of events. As S.L. has already had opportunities to provide such evidence, this request does not meet the standard for reconsideration.

Concerning the case law that S.L. presents on reconsideration, that matter is clearly distinguishable as that case involved major discipline, where no discipline is being sought in this matter. Therefore, the heightened due process concerns in that matter are not present in this case. It is noted that the Appellate Division has, in innumerable cases, found that Commission decisions, in non-discipline cases, can be determined based on the written record. Further, S.L., other than unsupported denials of the allegations against him, has not presented any preponderating evidence to meet his burden of proof. Therefore, to find that his mere denials are sufficient to find that there is a material fact in dispute that warrants a hearing would be to render *N.J.A.C.* 4A:2-1.1(d) meaningless.

ORDER

Therefore, it is ordered that this request 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 17TH DAY OF JANUARY, 2024

Dolores Gorczyca

Dolores Gorczyca
Presiding Member
Civil Service Commission

Inquiries
and
Correspondence

Nicholas F. Angiulo
Director
Division of Appeals and Regulatory Affairs
Civil Service Commission
Written Record Appeals Unit
P.O. Box 312
Trenton, New Jersey 08625-0312

c: S.L.
Justin Schwam, Esq.
Sybil R. Trotta, Esq.
Division of EEO/AA
Records Center