

COMMONWEALTH OF PENNSYLVANIA

Carmen M. Santiago : State Civil Service Commission

v. :

State Correctional Institution at :
Camp Hill, Department of Corrections : Appeal No. 30710

Carmen M. Santiago
Pro Se

Joseph M. Gavazzi
Attorney for Appointing Authority

ADJUDICATION

This is an appeal by Carmen M. Santiago challenging her non-selection for appointment to Corrections Officer Trainee with the State Correctional Institution at Camp Hill, Department of Corrections. A hearing was held on November 30, 2021, via video, before Commissioner Gregory M. Lane.

The Commissioners have reviewed the Notes of Testimony, the exhibits introduced at the hearing, and the closing oral arguments of the parties. The issue before the Commission is whether the appointing authority did not select appellant for the position of Corrections Officer Trainee for reasons motivated by discrimination.

FINDINGS OF FACT

1. By email dated April 1, 2021, appellant was informed she was not selected for the position of Corrections Officer Trainee (hereinafter, “COT”) with State Correctional Institution (hereinafter “SCI”) at Camp Hill, Department of Corrections (hereinafter, “appointing authority”). N.T. p. 29; Comm. Ex. A.
2. The appeal was properly raised before this Commission and was heard under Section 3003(7)(ii) of the Civil Service Act of 2018.
3. On July 31, 2017, appellant began employment with the appointing authority as a COT, probationary status. N.T. p. 53; AA Ex. 1.
4. On July 31, 2018, appellant successfully completed her probationary training program and transitioned to the position of Corrections Officer 1 (hereinafter, “CO1”), regular status. N.T. p. 53.
5. On November 17, 2019, appellant voluntarily agreed to a transfer and demotion from her position as a CO1 with the appointing authority to the position of Institutional Parole Assistant with the

Pennsylvania Board of Probation and Parole,
Central Institutional Region at SCI Camp Hill. N.T.
p. 54; AA Ex. 2.

6. In January 2021, appellant sought reinstatement as a CO1 with the appointing authority and her request was subsequently denied.¹ N.T. pp. 38-41.
7. In early February 2021, appellant took the civil service COT exam, and received a score of 100. N.T. pp. 41-42; Ap. Ex. 1².
8. After receiving her COT test score, appellant applied for a COT position with the appointing authority. N.T. p. 24.
9. On March 3, 2021, appellant had a phone interview for the COT position with the appointing authority. N.T. pp. 24, 29.

¹ The parties agreed to stipulate to this finding of fact. N.T. pp. 39-41.

² Appellant's Exhibit 1 was the appellant's Corrections Officer Trainee examination results. The transcript's "Index to Exhibits" erroneously states Appellant's Exhibit 1 was an e-mail, but the actual transcription of the proceedings clearly indicates Appellant's Exhibit 1 was her "Test Results." N.T. pp. 49-50.

10. Appellant was interviewed by Corrections Unit Manager Jeffrey Witherite and Training Coordinator Corrine Burr. N.T. p. 24.
11. Appellant contacted Human Resource Analyst Kevin Cocklin via email inquiring as to the status of her pending application for employment as a COT with the appointing authority. N.T. p. 29.
12. By email dated April 1, 2021, Cocklin notified appellant she was not selected for the COT position. Specifically, the email stated, “[u]nfortunately, from the interview results I received; you are not a selection for SCI Camp Hill at this time.” N.T. p. 32; Comm. Ex. A.
13. On April 5, 2021, appellant filed a timely appeal with the Commission alleging her non-selection for the COT position with the appointing authority was motivated by discrimination. Comm. Ex. B.
14. On April 14, 2021, Human Resource Analyst II Natasha Cressler contacted appellant, and informed her that the appointing authority selected her for the COT position. N.T. p. 73.

15. On June 23, 2021, appellant received an email from Cocklin confirming she had successfully completed all requirements for employment as a COT with the appointing authority, and her first day of employment would be Monday, July 19, 2021. AA Ex. 8.
16. Appellant was not the last candidate for the COT positions to get a conditional offer to start processing, and other candidates were granted conditional offers after appellant. N.T. p. 76.
17. On June 29, 2021, appellant emailed the appointing authority requesting her start date be pushed back to August 2021. N.T. p. 58; AA Ex. 8.
18. The appointing authority agreed to push back appellant's start date to August 7, 2021. N.T. p. 58; AA Ex. 3.
19. Appellant is currently employed at the appointing authority as a COT, probationary status, effective August 7, 2021. N.T. p. 54; AA Ex. 3.

DISCUSSION

The issue before the Commission is whether appellant presented sufficient evidence to prove her non-selection for the position of Corrections Officer Trainee (hereinafter “COT”) was for reasons motivated by discrimination. Specifically, appellant alleges she was discriminated in retaliation for speaking to a supervisor regarding possible reinstatement prior to applying for the COT position. Comm Ex. A. Appellant could only bring this challenge through Section 3003(7)(ii) of Act 71 of 2018³ (hereinafter “the Act”) based upon an allegation that the appointing authority’s decision not to select her was motivated by discrimination in violation of Section 2704 of the Act. 71 Pa.C.S.A. §§ 2704, 3003(7)(ii).

In an appeal alleging discrimination, the burden of presenting evidence in support of all allegations of discrimination lies with the appellant. *Nosko v. Somerset State Hospital*, 139 Pa. Commw. 367, 370-371, 590 A.2d. 844, 846 (1991). Accordingly, the sole question for determination by this Commission is whether appellant has presented evidence sufficient to establish her claim of discrimination. Section 2704 of the Act provides:

An officer or employee of the Commonwealth may not discriminate against an individual in recruitment, examination, appointment, training, promotion, retention or any other personnel action with respect to the classified service because of race, gender, religion, disability or political, partisan or labor union affiliation or other nonmerit factors.

³ Act of June 28, 2018, P.L. 460, No. 71, § 1.

71 Pa.C.S.A. § 2704. The prohibitions set forth in this section encompasses two general types of discrimination - “traditional discrimination,” which encompasses claims of discrimination based on labor union affiliation, race, sex, national origin or other non-merit factors; and “technical discrimination,” which involves a violation of procedures required pursuant to the Act or related Rules. *Price v. Luzerne/Wyoming Counties Area Agency on Aging*, 672 A.2d 409, 411 n. 4 (Pa. Commw. Ct. 1996), citing *Pronko v. Department of Revenue*, 114 Pa. Commw. 428, 539 A.2d 462 (1988). Here, appellant has alleged traditional discrimination claims based on retaliation. N.T. pp. 37-38; Comm Ex. A.

With respect to a claim of traditional discrimination, an employee must initially present a *prima facie* case by producing sufficient evidence that, if believed, indicates more likely than not that discrimination has occurred. *Moore v. State Civil Service Commission*, 922 A.2d 80, 85 (Pa. Commw. 2007) (citations omitted). It is well established that the *prima facie* burden of proof cannot be an onerous one “[g]iven the critical role of circumstantial evidence in discrimination proceedings.” *Id.*; see also *Department of Health v. Nwogwugwu*, 594 A.2d 847, 850 (Pa. Commw. 1991). However, mere general and conclusory allegations of discrimination are not adequate and traditional discrimination may not be inferred; rather, the employee must demonstrate affirmative, factual support for the alleged discrimination. See *Allen v. State Civil Service Commission*, 992 A.2d 924, 929 (Pa. Cmwlth. 2010); *Price v. Luzerne/Wyoming Counties Area Agency on Aging*, 672 A.2d 409, 412 (Pa. Commw. 1996), appeal denied, 688 A.2d 174 (Pa. 1997). A presumption of discrimination arises from the employee's *prima facie* case which, if not rebutted by the employer, becomes determinative of the factual issue. *Moore*,

922 A.2d at 85; *Nwogwugwu*, 594 A.2d at 850. However, if the employer presents a legitimate, non-discriminatory explanation for the employment action, the presumption drops from the case and the employee must demonstrate, by a preponderance of the evidence, that the proffered reason is merely a pretext for discrimination. *Nwogwugwu*, 594 A.2d at 850 (citation omitted).

Appellant testified on her own behalf and did not present any additional witnesses. The appointing authority cross examined appellant and presented the testimony of Human Resource Analyst II Natasha Cressler.

Appellant testified that on January 27, 2021, she emailed the Superintendent and requested a reinstatement. N.T. p. 39. Appellant did not receive a response from the Superintendent regarding her request. N.T. p. 39. On February 3, 2021, appellant spoke directly with the Superintendent at her office, and discussed her reinstatement request. N.T. p. 39. Appellant's reinstatement request was denied. N.T. 39-41.

According to appellant, she took the COT examination on February 7, 2021. N.T. 24. Appellant interviewed for the position of COT on March 3, 2021. N.T. 24. On March 31, 2021, appellant contacted Human Resource Analyst Kevin Cocklin about her interview results since she had not heard anything after her interview. N.T. p. 29. Appellant received an email from Cocklin stating due to her interview results she was not selected for the COT position. N.T. p. 29. On April 5, 2021, appellant appealed her non-selection for the COT position. N.T. p. 30.

On April 14, 2021, appellant received an email from Human Resource Analyst II Natasha Cressler that she was being given a conditional offer for the COT position, and appellant accepted the offer. N.T. p. 30. Initially, appellant was offered a start date of July 19, 2021, however, the start date was pushed back to August 7, 2021, at appellant's request. N.T. pp. 54-55, 56-58. On August 7, 2021, appellant began her employment as a COT, and was employed in that capacity at the appointing authority at the time of the hearing in this matter. N.T. p. 54.

Human Resource Analyst II Natasha Cressler provided testimony on behalf of the appointing authority. N.T. p. 67. Cressler could not definitively answer why appellant was initially not selected for the COT position and then later selected for the position. N.T. pp. 73-74, 77-78. Cressler testified that appellant was not the last person from the pool of candidates to receive a conditional offer of employment for the open COT positions. N.T. pp. 75-76. Additionally, the start dates for those candidates who were selected for the COT positions ranged from May 2021 to August 2021. N.T. p. 76.

After appellant presented her case, the appointing authority made a Motion to Dismiss for failure to establish a *prima facie* case of discrimination. N.T. pp. 144-145. The presiding Commissioner deferred the Motion to Dismiss for consideration by the full Commission. N.T. pp. 59-60. At the conclusion of the hearing, the parties elected to make oral closing arguments to the Commission. N.T. p. 94. In her closing arguments, appellant argued "if I was not selected due to the interview results, why was I selected later after filing the appeal without another interview? So again, that raises red flags." N.T. 99.

Appellant asserts her non-selection for the COT position was due to retaliation for speaking to a superior regarding reinstatement. Appellant asserts the fact the appointing authority only extended her a conditional offer after she filed this appeal is evidence of the appointing authority's discriminatory motive for her non-selection.⁴ Appellant claimed she spoke with the Superintendent regarding reinstatement, and appellant's reinstatement request was denied. However, appellant fails to present any evidence that would connect her reinstatement request to her subsequent non-selection. Appellant did not provide, either through testimony or exhibits, the contents of the communications she had with the Superintendent. Consequently, appellant's case consists of general and conclusory allegations of discrimination bereft of any facts supporting a discriminatory motive by the appointing authority as to her non-selection. Thus, appellant has not presented sufficient evidence of discrimination based upon retaliation which indicates it is more likely than not discrimination has occurred. *Henderson, supra.*⁵ The appointing authority's Motion to Dismiss is therefore granted. Accordingly, we enter the following:

⁴ Appellant advances this basis for retaliation despite presenting no evidence the appointing authority had notice of or was even aware that appellant had appealed her non-selection of the COT position.

⁵ The Commission notes if the burden of proof had shifted, the appointing authority has presented sufficient evidence of a legitimate, non-discriminatory reason for appellant's initial non-selection. Specifically, Human Resource Analyst II Natasha Cressler credibly testified, not all the candidates for the COT positions were extended conditional offers at the same time. Further, Cressler credibly testified, appellant was not the last candidate for the COT positions to get a conditional offer to start processing, and other candidates were granted conditional offers after appellant. Finally, Cressler credibly testified and appellant agrees, appellant requested her start date be pushed back from July 2021 to August 2021. Thus, had the burden shifted, the Commission finds the appointing authority presented legitimate, non-discriminatory reasons for appellant's initial non-selection. *Henderson, supra; Nwogwugwu, supra.* Appellant has not presented any evidence indicating the appointing authority's rationale was merely a pretext to discriminate against her. *Nwogwugwu, supra.*

CONCLUSION OF LAW

Appellant has failed to present evidence establishing discrimination violative of Section 2704 of Act 71 of 2018.

ORDER

AND NOW, the State Civil Service Commission, by agreement of its members, dismisses the appeal of Carmen M. Santiago challenging her non-selection for appointment to Corrections Officer Trainee with the State Correctional Institution at Camp Hill, Department of Corrections and sustains the action of the State Correctional Institution at Camp Hill, Department of Corrections in the non-selection for appointment of Carmen M. Santiago to Corrections Officer Trainee.

State Civil Service Commission

Maria P. Donatucci
Chairwoman

Gregory M. Lane
Commissioner

Bryan R. Lentz
Commissioner

Mailed: April 22, 2022