

In response, the appointing authority conducted an investigation, which included interviewing many witnesses, but did not substantiate the appellant's discrimination and retaliation claims. Specifically, it found that D.P. and C.K. were not involved with the assignment of the appellant's daily work or equipment and they did not determine if the equipment assigned to her was deemed safe. The investigation found that the appellant's safety concerns were timely addressed and treated the same as those of male employees. The investigation also determined that the written reprimand the appellant received was consistent and comparable to actions taken against other employees. The investigation further found that the EAS referral was not mandatory, as no action would have been taken against her if she did not attend, and she was not threatened with disciplinary action if she did not attend. Rather, the investigation revealed that the appellant was advised that she could face discipline if her behavior continued. The investigation determined that the appellant was not the only employee to file grievances against F.S., and that any action by the appointing authority was not solely a result of her previous discrimination complaints. Thus, the investigation did not find that adverse action was taken against the appellant because of her complaints. Finally, the investigation did not find that D.P. had knowledge of the appellant's complaint regarding sexually derogatory language or that he had failed to act on her complaint.

On appeal to the Civil Service Commission (Commission), the appellant disagrees with the outcome of the investigation. She asserts that the investigation did not address other people named in her complaint and did not interview the witnesses she identified. She also accuses the investigator of not having listened to what she said. In particular, she states that C.K. did threaten to fire her, that her concerns with the safety of the equipment assigned to her were not adequately investigated and that her prior complaints against F.S. were not properly addressed. She also complains that the witnesses she identified were not interviewed. The appellant states that she has emails that prove her allegations, but has not submitted them on appeal.

In response, DCR/AA reiterates in fine detail the allegations from the appellant's complaint and states that its subsequent investigation was unable to substantiate the appellant's claims of gender discrimination or retaliation. The DCR/AA notes that its investigation did not try and determine whether the equipment assigned to the appellant was in fact safe. Rather, it investigated whether or not her complaints were handled appropriately. In that regard, it noted that the investigation revealed that neither D.P. nor C.K. had any involvement with the equipment assignments or the determination of whether the equipment was safe. Rather, it was V.B., a Crew Supervisor and the appellant's immediate supervisor, who investigated all of the reports of unsafe equipment. The witnesses

noted that the appellant's complaints of unsafe equipment were timely addressed and were not treated differently than complaints made by male employees.

Regarding the appellant's written reprimand, DCR/AA asserts that witnesses confirmed the appellant's insubordinate behavior toward a supervisor, *e.g.* raising her voice and using profanity. The investigation found that the actions taken against the appellant were similar to those taken against male employees who received discipline under similar circumstances. Moreover, the investigation found that the appellant sent long, rambling and accusatory emails to high ranking departmental employees. The appellant was referred to EAS to learn how to better conduct herself. The investigation did not find any indication that the referral to EAS was retaliatory. Moreover, a witness stated that C.K. did not threaten the appellant with discipline for failing to attend an EAS referral, but instead told her that if her behavior continued, she could face discipline.

Regarding the appellant's allegations concerning sexual harassment, DCR/AA states that the appellant filed discrimination complaints against F.S. in October 2011 and February 2012. Many witnesses who were interviewed as part of an investigation into the October 2011 complaint alleged similar treatment by F.S., but did not substantiate that such treatment was on the basis of race, gender, or retaliation. However, an investigation into the February 2012 complaint did find a violation of the State Policy and the matter was referred to Human Resources for consideration of disciplinary action. F.S. was also transferred to another work location and ceased supervising the appellant. DCR/AA notes that the investigation for the instant matter found that in the intake interviews for her prior discrimination complaints, the appellant never raised allegations that F.S. referred to her in a derogatory manner based on her gender and/or sex, nor did she indicate that she complained about the harassment to D.P. Moreover, DCR/AA states that the investigation revealed that there was no evidence that D.P. was aware of the appellant's allegations or failed to appropriately respond.

Additionally, DCR/AA states that the appellant alleged that C.K. and J.S., a female Administrative Analyst 2, refused her requests for a union representative during her meetings with them and spoke to her in a condescending manner. The appellant further alleged that J.S. criticized her and returned paperwork she submitted. DCR/AA states that its investigation found that male and female employees had similar concerns and determined that the matter was an administrative issue, and not one of gender discrimination and retaliation. Thus, these matters were referred to the Department of Transportation's Employee Advocate for review.

DCR/AA responds to the appellant's accusation that it did not interview her witnesses by stating that the appellant identified four female witnesses at her intake interview. However, the investigation found that these women did not work

in the same yard as the appellant, were not present when she approached D.P. regarding the safety of the equipment assigned to her and had no involvement in her work assignments. The investigation also found that D.P. did not supervise two of the witnesses and one, although supervised by D.P., had been out on medical leave since March 2014.

CONCLUSION

N.J.A.C. 4A:7-3.1(a) provides that under the State Policy, discrimination or harassment based upon the following protected categories are prohibited and will not be tolerated: 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. *N.J.A.C. 4A:7-3.1(b)* states in part a violation of this policy can occur even if there was no intent on the part of an individual to harass or demean another. Further, 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)*. Moreover, the appellant shall have the burden of proof in all discrimination appeals. *See N.J.A.C. 4A:7-3.2(m)3*.

The Commission has conducted a review of the record and finds that a thorough investigation was conducted. DCR/AA interviewed many witnesses and did not substantiate the appellant's allegations of gender discrimination and retaliation for filing previous discrimination complaints. In particular, the investigation concluded that there was no indication that D.P. or C.K. were involved in the assignment of equipment to the appellant, and it found that the appellant's safety concerns were addressed in a timely manner and no differently than similar concerns from male employees. The investigation found that the actions taken against the appellant, namely the written reprimand, were similar to those taken against male employees who were disciplined for insubordination. Additionally, the investigation determined that the appellant's referral to EAS was not retaliatory. Rather, DCR/AA indicated that the appellant was referred to EAS for sending inappropriate emails to high ranking Department of Transportation employees. The investigation also determined that the appellant was not the only employee to file a complaint against F.S. and that any action taken against him was not solely because of her complaints. Thus, it concluded that any adverse action taken against her was not due to her prior complaints. Finally, the investigation found that there was no indication that D.P. was aware of the appellant's complaint regarding F.S.'s

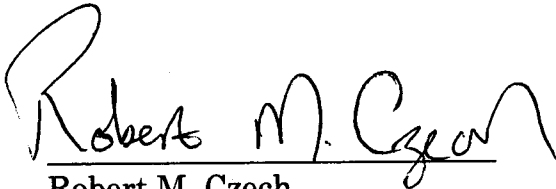
sexually derogatory language or failed to respond appropriately. On appeal, the appellant complains that her complaints, including prior complaints, were not addressed or adequately investigated and the witnesses she identified were not interviewed. However, apart from her bare assertions, the appellant offers no evidence to support her allegations. Therefore, the appellant has failed to meet her burden of proof in this matter. *See N.J.A.C. 4A:7-3.2(m)3*. Accordingly, under these circumstances, no basis exists to find a violation of the State Policy.

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 19th DAY OF AUGUST, 2015



Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Henry Maurer
Director
Division of Appeals
and Regulatory Affairs
Civil Service Commission
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Attachment

c: J.L.
Linda Legge
Mamta Patel
Joseph Gambino



State of New Jersey

DEPARTMENT OF TRANSPORTATION

P.O. BOX 600

TRENTON, NJ 08625-0600

CHRIS CHRISTIE

Governor

KIM GUADAGNO

Lt. Governor

JAMIE FOX

Commissioner

November 10, 2014

Via Certified and Regular Mail

J L
[REDACTED]

Re: Discrimination Complaint

Dear Ms. L [REDACTED]:

The Department of Transportation's Division of Civil Rights and Affirmative Action investigated your allegations that D [REDACTED] P [REDACTED] former Area Supervisor, subjected you to gender discrimination and retaliation in violation of the New Jersey State Policy Prohibiting Discrimination in the Workplace ("State Policy").

In your complaint you alleged Mr. P [REDACTED] subjected you to disparate treatment based on your gender and in retaliation of your previous complaints. Specifically, you alleged you were always assigned older, unsafe equipment and in particular, after breaking down repeatedly during a four day period you believed the tractor should have been flagged but Mr. P [REDACTED] ignored your complaints. You indicated Mr. P [REDACTED] did not take your concerns seriously. You alleged being treated differently and stated that if a male employee complained about a vehicle, it was immediately flagged. You also alleged you complained to Mr. P [REDACTED] in 2011 that a former Assistant Supervisor used sexually derogatory language toward you, including calling you a "dyke" and "carpet muncher," but Mr. P [REDACTED] failed to report your complaint or address the matter.

In addition, you alleged being subjected to disparate treatment and retaliation because you received a letter of reprimand for insubordination while male employees are not treated in the same manner for similar behavior. You stated in a June 6, 2014, meeting to address your safety concerns, C. [REDACTED] K [REDACTED], Regional Director, threatened you with discipline if you did not go out on the equipment, if you did not attend an Employee Advisory Service

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(EAS) meeting and if you continued to call or e-mail senior staffers with your concerns.

The Division of Civil Rights and Affirmative Action conducted a thorough investigation during which many individuals were interviewed. The investigation did not attempt to determine if the equipment was safe or not, but looked into only your assignments and how your complaints were handled. The investigation was unable to substantiate your allegations of gender discrimination and retaliation.

Witnesses confirmed Mr. F [REDACTED] and Mr. K [REDACTED] had no involvement in your daily work or equipment assignments and played no role in determining if equipment was deemed safe or not. Additionally, witnesses confirmed your safety concerns were addressed in a timely manner and your complaints were treated no differently than safety concerns raised by male employees.

Witnesses confirmed the actions taken against you, specifically the written reprimand, were consistent and comparable to actions taken with other employees. Witnesses identified male employees who have also received written reprimands and suspensions for insubordination. There was nothing to indicate the referral to EAS was retaliatory. Witnesses confirmed the EAS referral was not mandatory and no adverse action would be taken against you if you did not attend the appointment, nor were you threatened with discipline. Witnesses indicated you were advised that you could potentially face discipline if your behavior continued.

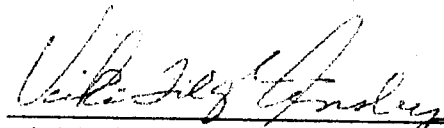
Although you filed complaints and grievances against a former Assistant Supervisor, you were not the only employee to do so and any action the Department took was not solely a result of your complaints. There is nothing to indicate any adverse action was taken against you as a result of these complaints. In addition, the investigation failed to reveal any evidence that Mr. P [REDACTED] had knowledge of your complaint regarding sexually derogatory language or failed to act on it.

If you disagree with this determination, pursuant to N.J.A.C. 4A:7-3.2, you have the right to appeal this decision. You must submit a written appeal to the New Jersey Civil Service Commission, Division of Merit System Practices and Labor Relations, Written Record Appeals Unit, P. O. Box 312, Trenton, NJ 08625-0312, postmarked or delivered within 20 days of your receipt of this determination. Your appeal must include a copy of this determination, the reason for the appeal and the specific relief requested. Be advised that effective July 1, 2010, there is a \$20 fee for appeals. Please include a check or money order along with your appeal, payable to NJCSC. Persons receiving public assistance and those qualifying for NJCSC Veterans Preference are exempt from this fee.

Please be advised that the State Anti-Discrimination Policy prohibits retaliation against any employee who alleges that she or he was the victim of discrimination or harassment, provides information in the course of an investigation into claims of discrimination or harassment in the workplace or opposes a discriminatory practice. Please immediately contact the Division of Civil Rights and Affirmative Action at 609-530-3009, if you feel that you have been the victim of retaliation or if you have any future complaints of discrimination or harassment. Lastly, we remind you that all aspects of EEO complaints are considered highly sensitive and must be kept confidential. Therefore, you should not discuss this matter with anyone else. Persons who violate the confidentiality provision of the State Policy may be subject to discipline.

If you have any questions or concerns, please do not hesitate to contact the Division of Civil Rights and Affirmative Action at 609-530-3009.

Sincerely,



Vicki Tilghman-Ansley, Executive Assistant
Division of Civil Rights and Affirmative Action

c: Mamta Patel, Director of EEO/AA, NJ Civil Service Commission
Andrew Tunnard, Assistant Commissioner