

B-35



STATE OF NEW JERSEY

In the Matter of G.W.,  
Department of Corrections

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

CSC Docket No. 2015-1996

Discrimination Appeal

ISSUED: **AUG 21 2015** (JET)

G.W., a Plumber and Steamfitter with Albert C. Wagner Youth Correctional Facility, Department of Corrections, appeals the attached determination of the Equal Employment Division (EED), which found that the appellant failed to support a finding that he had been subjected to a violation of the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy).

The appellant filed an EED complaint alleging that J.N., a Repairer, discriminated against him on the basis of race, religion, and gender identity and subjected him to sexual harassment and retaliation. Specifically, the appellant alleged that he found papers, drawings, and magazines that displayed sexually graphic images that referred to him and he found a piece of paper on a bulletin board that displayed several drawings of penises. The appellant stated that when he turned same paper over, it displayed an altered photocopy of a male model with hand drawn eyebrows and lips, a swastika drawn on the model's shirt collar, and the words "We love G." written across the model's forehead. The photocopy also indicated the handwritten words "dildo gel" on a bottle of cologne. After an investigation was conducted, which included interviewing witnesses and reviewing the available documentation, the EED was unable to substantiate a violation of the State Policy. The EED also found that there was no evidence of retaliation because it did not have a record of any prior EED matters involving the appellant and J.N. However, the EED referred the matter for administrative review.

On appeal, the appellant maintains that the writing on the magazine, inappropriate drawings, and messages contained on the poster are sufficient to

show that J.N. subjected him to discrimination and retaliation. The appellant adds that it is his "understanding" that J.N. admitted to the incidents that were the subject of his complaint. Further, the appellant explains that he actually knows J.N. since they used to be assigned to the same unit, and he requested that J.N. be removed from that unit based on his prior complaints. The appellant adds that such "disciplinary action" against J.N. was "definitely" related to the incidents that occurred in this matter. In addition, the appellant contends that the images on the poster are an inappropriate reference to his sexual orientation, and J.N.'s speculation about his sexual orientation should be sufficient to establish a violation of the State Policy. The appellant also questions if the swastika on the poster is a reference to his beliefs, since he is Caucasian and he supervises minority employees. Moreover, the appellant asserts that he could now be faced with safety concerns in the workplace if the inmates were made aware of the inappropriate messages and drawings on the poster.

In response, the EED states that the investigation was properly conducted and it could not substantiate a violation of the State Policy. The EED emphasizes that the appellant's mere disagreement with the determination is not a sufficient basis to show that he was subjected to discrimination and retaliation in violation of the State Policy. In this regard, the appellant has not provided any evidence to show that the determination was incorrect and the investigation was unable to identify the individual who was responsible for creating the sexually graphic images. The EED adds that J.N. did not admit to drawing the sexually-graphic images. The EED adds that while J.N. admitted to drawing non-sexual, non-EED related caricatures in the magazine, he did not admit to drawing the sexually graphic and offensive images. However, in an abundance of caution, the EED referred the matter for administrative action as it pertained to J.N.'s admitted actions.

## 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 heredity 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, *N.J.A.C.* 4A:7-3.1(c) provides that it is a violation of the State Policy to engage in sexual (or gender-based) harassment of any kind, including hostile work environment harassment, quid pro quo harassment, or same-sex harassment. Further, *N.J.A.C.* 4A:7-3.1(c)1 provides that sexual harassment is defined as unwelcome advances, requests for sexual favors, and other verbal or physical

conduct of a sexual nature. Examples of prohibited behaviors that may constitute sexual harassment and are therefore a violation of this policy include, but are not limited to, inappropriate touching, generalized gender-based remarks and comments and verbal, written or electronic sexually suggestive or obscene comments, jokes or propositions including letters, notes, e-mail, text messages, invitations, gestures or inappropriate comments about a person's clothing. See *N.J.A.C. 4A:7-3.1(c)2i and ii*.

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. See *N.J.A.C. 4A:7-3.1(h)*. For example, it is prohibited to impose or threaten to impose disciplinary action on an employee for reasons other than legitimate business reasons. See *N.J.A.C. 4A:7-3.1(h)4*.

The Commission has conducted a review of the record in this matter and finds that the appellant has not established that J.N. engaged in conduct in violation of the State Policy. The record shows that the EED conducted an adequate investigation. It interviewed the relevant parties in this matter and appropriately analyzed the available documents in investigating the appellant's complaint. Specifically, the EED was unable to identify the individual responsible for creating the sexually graphic images. Further, J.N. denied the allegations that he was responsible for the sexually graphic materials that were found. Although the appellant argues that the EED determination is incorrect, he does not provide any substantive evidence demonstrating that J.N. created the offensive materials. While the Commission is concerned that the appellant found such inappropriate materials in the workplace, he has not provided any information, such as witnesses, to establish who was responsible for bringing the materials into the workplace. Moreover, J.N.'s admission that he created the non-sexual/non-EED related drawings does not establish that he also drew the sexually graphic and inappropriate images. In regard to the allegations of retaliation, the EED properly determined that the appellant did not provide any evidence to show that he was retaliated against by J.N. because there was no record of them being involved in a prior EED complaint.

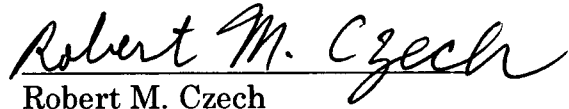
Accordingly, the record establishes that the EED's investigation was thorough and impartial, and therefore, no basis exists to find a violation of the New Jersey State Policy Prohibiting Discrimination in the Workplace.

### **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 19<sup>th</sup> DAY OF AUGUST, 2015



Robert M. Czech  
Chairperson  
Civil Service Commission

Inquiries	Henry Maurer
and	Director
Correspondence	Division of Appeals & Regulatory Affairs Civil Service Commission Written Record Appeals Unit P.O. Box 312 Trenton, New Jersey 08625-0312

Attachment

c: G.W.  
Leila Lawrence  
Mamta Patel  
Joseph Gambino



State of New Jersey  
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TRENTON NJ 08625-0863

CHRIS CHRISTIE  
Governor

KIM GUADAGNO  
Lt. Governor

GARY M. LANIGAN  
Commissioner

December 15, 2014

Mr. G [REDACTED] W [REDACTED]  
[Mailed to Home Address]

Dear Mr. W [REDACTED]:

The Equal Employment Division (hereinafter "EED") has completed its review of your formal complaint wherein you allege that you have been subjected to discrimination/harassment based on race, religion, gender identity and sexual harassment, and retaliation by Repairer J [REDACTED] N [REDACTED] (hereinafter "Mr. N [REDACTED]"). Specifically, you provided that you are a Plumber/Steamfitter at Albert C. Wagner Youth Correctional Facility (hereinafter "WYCF"). You allege that when you reported to work on November 11, 2014, you found posted on the area bulletin board a piece of paper which displayed several drawings of penises. Also, you allege that the other side of this paper displayed a photocopy of a male model from a magazine holding a bottle of cologne on which someone had written the words "dildo gel." The rendering also included, altered eyebrows and lips, a swastika on his shirt collar, and the words "We love G [REDACTED]" written across the forehead. Further, during the investigation, you turned over a work-related magazine on which an unidentified individual had written your name in marker on every page of said magazine. In response to your formal complaint, the EED opened an investigation. Kindly note that in order to establish the claim of retaliation there must be an EED history between you and Mr. N [REDACTED]. A review of the EED records determined that there is no EED history involving both of you, and as such, retaliation was not established. Please be advised that the investigation included only those allegations which touched the *Policy*. Please be further advised that the Department of Corrections takes all allegations of discrimination/harassment seriously and such conduct will not be tolerated by the Department. Following the investigation which included witness interviews and a review of the pertinent evidence, the EED was unable to substantiate a violation of the *Policy Prohibiting Discrimination in the Workplace* by Mr. N [REDACTED]. However, this matter is being returned to the administration at WYCF for review.

If you wish to appeal this determination, you must submit a written appeal to the New Jersey Civil Service Commission, Division of Merit System Practices & Labor

Relations, Written Record Appeals Unit, P.O. Box 312, Trenton, New Jersey 08625-0312, postmarked or delivered within twenty (20) days of your receipt of this determination. The burden of proof is on the Appellant. Your appeal must include a copy of this determination, the reason for the appeal and the specific relief requested. Please be advised that pursuant to P.L. 2010, c. 26, effective July 1, 2010, there shall be 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.

At this time, the EED also reminds you that the *Policy Prohibiting Discrimination in the Workplace* prohibits retaliation against any employee who files a discrimination complaint or participates in a complaint investigation or opposes a discriminatory practice. Furthermore, this matter remains confidential and the results of the investigation must not be discussed with others.

Sincerely,



Leila Lawrence, Esq., Assistant Director  
Office of Legal and Regulatory Affairs  
Equal Employment Division

APPROVED:



Gary M. Lanigan  
Commissioner

c: James Stigliano, Assistant Superintendent/ASL

WYCF|14:11.001