

STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of J.B.,
Department of Human Services

CSC Docket No. 2016-850

Discrimination Appeal

ISSUED: **NOV 23 2016** (WR)

J.B., a Clinical Psychologist 2, Division of Mental Health Services with Ancora Psychiatric Hospital (Ancora), Department of Human Services (DHS), appeals the determination of the Assistant Commissioner, DHS, which determined that the appellant violated the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy).

On December 4, 2014, D.R., a female Medical Director at Ancora, filed a discrimination complaint against the appellant, a male, alleging that the appellant exhibited condescending and disrespectful behavior towards female staff. Upon receipt of the complaint, DHS conducted an investigation, which corroborated D.R.'s complaint. Specifically, four women and two men stated that the appellant exhibited condescending and disrespectful behavior to female staff, but not towards male staff. For instance, the investigation found that the appellant entered the offices of two female coworkers without knocking on the door and yelled at them and called a third female coworker a "crackhead." Consequently, the appellant received a written warning.¹

On appeal to the Civil Service Commission (Commission), the appellant contends that several witnesses he identified, including several women, were not interviewed as part of the investigation. Accordingly, the appellant requests that these witnesses be interviewed and the determination be reviewed in light of their testimony.

¹ Pursuant to *N.J.A.C.* 4A:7-3.2(n), a written warning is not considered a disciplinary action.

In response, DHS indicated its desire to stand by its original determination. DHS states that ten individuals, four females and six males, including the appellant, were interviewed and six documents were reviewed as part of the investigation. DHS contends that it did interview one individual listed by the appellant as a witness as part of the investigation. However, it observes that whereas this individual was a part of the appellant's treatment team, the other witnesses he identified were not. Thus, DHS asserts that it was not necessary to interview these other individuals, as they "did not work on the treatment team with him, and had no knowledge of the relevant incidents that gave rise to the complaint against him." Finally, DHS provides a detailed summary of the witnesses' testimony.

The appellant replies that the accounts of the witnesses DHS describes in its summary of the testimony are false and contends that he "could refute every single one of them." He further reiterates that the basis for his appeal is that DHS did not interview three witnesses he identified. In this regard, he states that two of the witnesses he named are female nurses that he worked with for several years. The other witness was the Psychology Department Director, a male, who had worked with J.W., a charge nurse that the appellant identifies as one of his accusers. The appellant states that the latter witness could relate how J.W. "had targeted [the appellant] the way she had targeted other psychologists on other wards." The appellant further states that J.W. "is well known [by DHS] for behavior problems."

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. Moreover, *N.J.A.C.* 4A:7-3.1(b) states that it is a violation of this policy to use derogatory or demeaning references regarding a person's race, gender, age, religion, disability, affectional or sexual orientation, ethnic background or any other protected category set forth in (a) above. A violation of this policy can occur even if there was no intent on the part of an individual to harass or demean another.

Additionally, the State Policy is a zero tolerance policy. This means that the State and its agencies reserve the right to take either disciplinary action, if appropriate, or other corrective action, to address any unacceptable conduct that violates this policy, regardless of whether the conduct satisfies the definitions under State or federal statutes of discrimination or harassment. See *In the Matter of G.M.*

(MSB, decided February 27, 2008). Moreover, the appellant shall have the burden of proof in all discrimination appeals. *See N.J.A.C. 4A:7-3.2(m)3.*

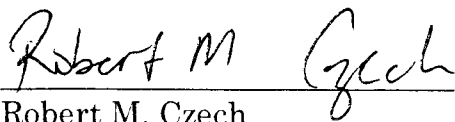
In the instant matter, DHS conducted an adequate investigation, which included interviewing numerous witnesses and reviewing documents, and concluded that the appellant violated the State Policy by exhibiting condescending and disrespectful behavior towards female staff. While the appellant complains that several witnesses he identified were not interviewed, he fails to demonstrate that their testimony would impact the determination in his favor. Similarly, the appellant fails to rebut DHS's assertion that the witnesses he identified would not have offered relevant testimony, as DHS contends that they had no knowledge of the relevant incidents that gave rise to the complaint. Finally, it is noted that *N.J.A.C. 4A:7-3.2(i)*, gives the appointing authority the discretion to conduct an investigation in the manner it deems appropriate. As such, sufficient evidence in the record exists to support DHS's finding that the appellant's actions violated the State Policy. Accordingly, the appellant has failed to meet his burden of proof in this matter. *See N.J.A.C. 4A:7-3.2(m)3.*

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 23rd DAY OF NOVEMBER, 2016



Robert M. Czech

Chairperson

Civil Service Commission

Inquiries
and
Correspondence

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

c. J.B.
Christina Mongon
Mamta Patel
Record Center