



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION OF THE CIVIL SERVICE COMMISSION

In the Matter of M.P., Department of Human Services

CSC Docket No. 2016-1868

Discrimination Appeal

ISSUED: NOV 30 2016 (CSM)

M.P., a Quality Assurance Coordinator with the Department of Human Services (Human Services), appeals the attached determination of the Assistant Commissioner of Human Resources, that the appellant did not present sufficient evidence to support a finding that she had been subjected to a violation of the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy).

On May 26, 2015, the appellant, an African-American female, filed a complaint with the Equal Employment Opportunity Office (EEO) alleging that Human Services' Office of Program Integrity and Accountability (OPIA) discriminated against her on the basis of race. Specifically, the appellant stated that she was the only African-American supervisor in her department who has not been assigned to an office or a supervisor cubicle. Subsequently, the appellant alleged that OPIA excluded her from a collection for a sick colleague and had management audit her and her staff's work time, case backlog, and quality, in retaliation for her filing a complaint. The EEO investigated the matter, which included interviewing witnesses and reviewing documentation, and found that the appellant and two female Caucasian OPIA supervisors are assigned 8X8 cubicles at Human Services' central office (CP1). The investigation also found that African-American and non-African-American employees received a message concerning the collection for a sick colleague, but many in the unit were omitted because the individual for whom the collection was for did not want her condition to be widely known. With respect to auditing her staff, the investigation found that this activity began prior to the appellant filing an EEO complaint. Therefore, the EEO was unable to substantiate a violation of the State Policy.

On appeal, the appellant states that she is the only OPIA supervisor whose official work location is CP1 that is not assigned an office or supervisor's cubicle. She also states that she was denied a supervisor's cubicle, even though two supervisor's cubicles directly behind her are vacant. Moreover, despite having more seniority than other "QAC/Supervisors" assigned to her work location, she is the only supervisor, who happens to be African-American, who does not have a comparable work space. The appellant also states that the EEO's assertion that all other OPIA supervisors have workspaces at institutions where they have subordinates is false. In this regard, she notes that four other OPIA supervisors work in various field offices, not institutions. Additionally, the appellant argues that allowing her to have work space at CP1 rather than requiring her to report to the New Lisbon Developmental Center, where she has subordinates, is not preferential treatment, but an agreed to accommodation based on her medical needs. The appellant also claims that the original investigator that interviewed her was "abruptly let go" because the EEO director was not in agreement with the finding related to her complaint. Thus, she questions why she had to go through the investigation process again with a new investigator when the original investigator inferred to her that he was finalizing his report.

In response, the EEO states that the OPIA organizational chart obtained during the investigation reveals that the appellant is one of nine supervisors in the OPIA Office of Investigations. As such, she is required to perform the same functions and be bound by the same standards as the other eight supervisors in the OPIA Office of Investigations. Therefore, the appellant is similarly situated to the other supervisors in the Office of Investigations, *not* to all of the OPIA supervisors whose official work location is CP1. Except for the appellant, the other eight supervisors have workspaces at, or in proximity to, the institutions where they have staff, which are their official work locations. However, the appellant is the only supervisor who does not maintain an office or workspace at her official work location, which is the New Lisbon Developmental Center (New Lisbon). In this regard, the investigation found that the appellant did not want to be permanently stationed at New Lisbon due to her personal travel needs. OPIA accommodated her by allowing her to use an 8x8 cubicle at CP1, and, she travels to New Lisbon on a weekly basis to meet with her staff. Nevertheless, the EEO maintains that OPIA's allowing her to use an 8x8 cubicle does not automatically change her official work location from NLDC to CP1. Additionally, the EEO notes that OPIA also assigned 8x8 cubicles to two other supervisors in the Office of Investigations at CP1 while those two employees maintained workspaces at their official work locations where they have staff. CP1 is the secondary work location for these employees, since they have offices at the institutions where they have staff, which are their official work locations. Thus, the appellant's 8x8 cubicle at CP1 is similarly a secondary work location, not her official work location. The appellant's official work location remains New Lisbon where she chooses not to maintain an office. Accordingly,

OPIA is not obligated to provide the appellant with an office or supervisor cubicle since her official work location is not CP1.

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(a)2 provides that the State Policy also applies to third party harassment. Third party harassment is unwelcome behavior involving any of the protected categories referred to in (a) above that is not directed at an individual but exists in the workplace and interferes with an individual's ability to do his or her job. Third party harassment based upon any of the aforementioned protected categories is prohibited by the policy. Additionally, 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 the appellant has not established that she was discriminated against on the basis of her race in violation of the State Policy. The investigation found that the appellant's official work location is New Lisbon but, as a personal accommodation, she is permitted to work from a secondary work location, CP1, and opted not to maintain a workspace at her official work location where she has staff. The investigation also determined that two other supervisors assigned to the Office of Investigations have 8x8 cubicles at CP1 because it is their secondary work location, but also maintained their workspaces at the official work locations where they have staff. Therefore, the record demonstrates that the appellant has been similarly treated like all of the other supervisors assigned to OPIA's Office of Investigations. Indeed, the fact that the appellant agreed not to maintain a workspace at her official work location where her subordinates are assigned does not mandate that she be provided with an office or supervisory cubicle at a secondary work location. The investigation also found that African-American and non-African-American employees received a message concerning the collection for a sick colleague, but many in the unit were omitted because the individual for whom the collection was for did not want her condition to be widely known. With respect to auditing her staff, the investigation found that this activity began prior to the appellant filing an EEO complaint. Finally, although the initial investigator in this matter resigned and the investigation had to be assumed by a new staff member, the appellant has not provided one scintilla of evidence to support her assertion that this was done because the EEO Director disagreed with his assessment of this matter. Therefore, the appellant has not sustained her burden of proof in this matter.

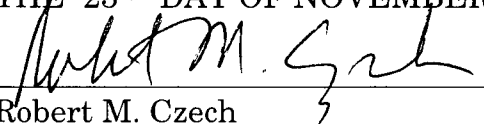
Accordingly, the Commission finds that the EEO's investigation was thorough and impartial, and the record does not support a finding that there was a violation of the New Jersey State Policy Prohibiting Discrimination in the Workplace.

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 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 Record Appeals Unit
P.O. Box 312
Trenton, New Jersey 08625-0312

Attachment

c: M.P.
Christina Mongon
Rachel L. Gervais
Mamta Patel
Records Center