



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

In the Matter of D.W., Department of  
Banking and Insurance

Discrimination Appeal

CSC Docket No. 2015-2784

ISSUED: ~~NOV 29 2015~~ (HS)

D.W., an Investigator 1 with the Department of Banking and Insurance, appeals the attached determination of the Commissioner, which found that the appellant failed to present sufficient evidence 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 a complaint with the Equal Employment Opportunity/Affirmative Action Office (EEO) against C.C., a Financial Examiner 3, alleging discrimination on the basis of race. Specifically, the appellant, an African American, reported that C.C., a Caucasian, had made an alleged racist remark during an incident at the water cooler. The appellant explained that when he went to the water cooler to get water, he saw that the water bottle needed changing. As he reached for the bottle, a co-worker, a Financial Examiner 4, walked by and the appellant began to converse with her as C.C. came up to the water cooler. The co-worker asked, "How many persons does it take to screw in a light bulb?" C.C. replied, "Two supervisors and a laborer." The appellant stated that he felt insulted and degraded by C.C.'s remarks. In response, the EEO conducted an investigation during which it interviewed the appellant; C.C.; a Financial Examiner 4; the Chief Examiner; and a Secretary. The appellant, the Financial Examiner 4 and the Chief Examiner held supervisory positions, while C.C. and the Secretary were not supervisors. After its investigation, the EEO did not substantiate the allegation of discrimination based on race. The EEO noted that C.C., and other individuals interviewed, indicated that the question, "How many persons does it take to screw in a light bulb?" was a joke. C.C. stated that when he responded, "Two supervisors

and a laborer," he was referring to himself as the laborer. C.C. also recalled that he was the one who actually changed the water bottle. Therefore, the EEO determined that the State Policy had not been violated.

On appeal to the Civil Service Commission (Commission), the appellant avers that C.C.'s remark was clearly racial discrimination and that he was the only African American involved in the incident. The appellant argues that C.C.'s remark implicated the protected categories of race, color, creed, national origin and ancestry and created a hostile work environment. He adds that C.C.'s remark subjected him to public ridicule as people laughed in response. The appellant states that he is a well-accomplished individual, having held several professional and executive level positions domestically and abroad and having earned advanced degrees, and thus, C.C. had unreasonably labeled him a laborer. However, he denies that he recommends the hiring, firing or disciplining of employees or that he directs the day-to-day activities of other employees. Additionally, the appellant objects to the inclusion of the Chief Examiner and the Secretary as witnesses in the EEO's investigation. He argues that the investigation did not establish the significance of these two individuals; that the inclusion of non-participants in the incident implies that the EEO did not understand the nature and gravity of the offense; and that they were only called as character witnesses for C.C. to provide a pretext to hide his discriminatory animus. According to the appellant, the Chief Examiner and the Secretary added nothing to the case and were called only to "show some strength in numbers." Their testimony "lack[ed] the gravitas to speak cogently to the issue at hand." Thus, the investigation was not conducted with reasonable care.

In response, the EEO submits that it interviewed all individuals who may have had knowledge of the incident. The five individuals interviewed were selected because their work locations were in the vicinity of the water cooler and because they were in attendance during the incident. Individuals who were identified as present and those who may have been within "earshot distance" when the comment was made were interviewed. Inquiries were made concerning actual events and/or remarks heard first-hand. The EEO denies that anyone interviewed was a character witness or was asked to provide information concerning the character of either C.C. or the appellant. When interviewed, the Financial Examiner 4 stated that "one of the managers joined us, and another coworker was at her desk close by." When asked about the incident, the Secretary did not remember the conversation but observed that people were talking and joking around the water cooler. The Secretary did not remember anything serious happening. The Chief Examiner stated that although he could not speak for C.C., he did not think that C.C. would be insensitive. The Chief Examiner proffered that given C.C.'s background as a shop steward, he may have intended to imply that supervisors do not work. The Chief Examiner also did not find what was said to be notable. The EEO maintains that even under a zero tolerance policy, like the State Policy, no reasonable person could find C.C.'s comment to be race-based. In this regard, the

EEO maintains that the comment contained no reference to race or racial language and implicated no protected category under the State Policy.

### 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 hereditary 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)*. It is a violation of the State 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. A violation of this policy can occur even if there was no intent on the part of an individual to harass or demean another. *See N.J.A.C. 4A:7-3.1(b)*. Examples of behaviors that may constitute a violation of this policy include calling an individual by an unwanted nickname that refers to one or more of the protected categories; telling jokes pertaining to one or more protected categories; and engaging in threatening, intimidating or hostile acts toward another individual in the workplace because that individual belongs to, or is associated with, any of the protected categories. *See N.J.A.C. 4A:7-3.1(b)1iv and N.J.A.C. 4A:7-3.1(b)1vi*. The State Policy is a zero tolerance policy. *See N.J.A.C. 4A:7-3.1(a)*. Moreover, the appellant shall have the burden of proof in all discrimination appeals. *See N.J.A.C. 4A:7-3.2(m)4*.

The Commission has conducted a review of the record in this matter and finds that an adequate investigation was conducted, that the relevant parties in this matter were interviewed and that the investigation failed to establish that the appellant was discriminated against or harassed in violation of the State Policy. The EEO appropriately analyzed the available documents and interviewed several witnesses in investigating the appellant's complaint and concluded that there was no violation of the State Policy based on the appellant's race or any other protected category. Contrary to the appellant's assertion, C.C.'s remark, "Two supervisors and a laborer," was not racially discriminatory in nature and had no connection to any protected category under the State Policy. While the appellant may have felt insulted because he believed that C.C. had referred to him as a "laborer," this does not render the remark discriminatory. In this regard, it must be noted that the term "laborer," on its face, does not implicate any of the protected categories.

Additionally, the Commission does not find that the inclusion of the Secretary and the Chief Examiner as witnesses in the investigation was improper. While the appellant claims that the EEO called these individuals to favor C.C.,

there is no substantive evidence in the record to support such a claim. Rather, the record reflects that the EEO called all individuals who may have had knowledge of the incident and that the Secretary and the Chief Examiner were among these individuals since they were identified as being present for the incident or having a nearby work location. The record further reflects that these individuals were called upon to share their respective accounts of the incident. The appellant's assessment that their testimony added nothing to the case and failed to "speak cogently" to the matter is not evidence that it was improper for the EEO to interview these individuals in the first place. The State Policy permits the EEO to discuss claims with persons who may have relevant knowledge, in the course of an investigation. See *N.J.A.C. 4A:7-3.1(j)*. Nevertheless, even assuming that the Secretary and the Chief Examiner should be disregarded as witnesses, it is not apparent that the result of the investigation would change since, as already noted, C.C.'s remark was unconnected to any protected category under the State Policy and the offense taken by the appellant did not render the remark discriminatory. Accordingly, the investigation was thorough and impartial, and there is no basis to disturb the EEO's determination.

### 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 23<sup>RD</sup> DAY OF NOVEMBER, 2016

*Robert M. Czech*

Robert M. Czech  
Chairperson  
Civil Service Commission

Inquiries  
and  
Correspondence

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

Attachment

- c. D.W.  
Linda Boone  
Mamta Patel  
Records Center



**State of New Jersey**  
 DEPARTMENT OF BANKING AND INSURANCE  
 OFFICE OF THE COMMISSIONER  
 PO Box 325  
 TRENTON, NJ 08625-0325

CHRIS CHRISTIE  
 Governor

KIM GUADAGNO  
 Lt. Governor

TEL (609) 292-7272

KENNETH E. KOBYLOWSKI  
 Commissioner

**CONFIDENTIAL AND DELIBERATIVE**

March 26, 2015

Mr. D. [REDACTED] W. [REDACTED]  
 [REDACTED]  
 [REDACTED]

Re: Discrimination Complaint  
 Division of EEO/AA File No.: [REDACTED]

Dear Mr. W. [REDACTED]

The New Jersey Department of Banking and Insurance Equal Employment Opportunity/Affirmative Action Office ("EEO/AA Office") investigated your complaint dated September 26, 2014, alleging discrimination based on your race, against Mr. C. [REDACTED] C. [REDACTED], Financial Examiner III.

The EEO/AA Office conducted a thorough investigation pursuant to the New Jersey State Policy Prohibiting Discrimination in the Workplace ("State Policy"), during which a total of five (5) individuals were interviewed and relevant documentation was reviewed and analyzed.

I have reviewed the EEO/AA's investigative report and adopt the findings and recommendations as discussed below.

Pursuant to the acknowledgement letter sent to you dated November 6, 2014, the following allegation in your complaint dated September 26, 2014 was investigated: Mr. C. [REDACTED] C. [REDACTED] made an alleged racist remark towards you during an incident at the water cooler on September 23, 2014. You stated that you felt insulted and degraded by the remarks made by Mr. C. [REDACTED]. You reported that you went to get water from the water cooler and saw that the water bottle needed changing. As you reached for the bottle, a fellow employee walked by and you began to converse with her. At the same time, Mr. C. [REDACTED] came over to the water cooler. The other employee asked, "How many persons does it take to screw in a light bulb?" Mr. C. [REDACTED] replied "Two (2) supervisors and a laborer." You stated that you did not respond to the remark, but just went directly back to your desk and wrote to the Director of Banking regarding the incident.

During the investigation conducted by the EEO/AA Office, it was revealed that there were five people present either directly or indirectly involved in the incident; all five were interviewed. There were three

individuals in supervisory positions, you, another Financial Examiner 4, and the Chief Examiner. The Chief Examiner was not involved directly in the incident. The other two individuals, that included the respondent, are not supervisors. According to the respondent and other individuals who were interviewed, the statement made during the incident was a joke, specifically, "How many people does it take to change a light bulb?" Mr. C [REDACTED] said that when he responded, "Two supervisors and a laborer," he was referring to himself as the laborer. Mr. C [REDACTED] stated that he recalled he was the one that actually changed the water bottle.

We recognize that due to the diverse ethnic and cultural backgrounds of the individuals involved in this incident, each person may have interpreted the statement differently. However, the investigation failed to reveal any evidence that Mr. C [REDACTED] remarks to you during this incident were in violation of the State Policy.

It is recommended, however, that the Department of Banking and Insurance include in its future training package for all employees "Diversity Training," which should promote better understanding among the diverse individuals employed by this agency, and minimize negative incidents that can be created because of miscommunication.

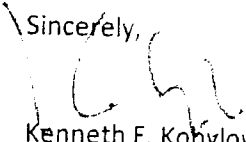
Based upon the above, the EEO/AA Office's investigation did not substantiate a violation of the State Policy Prohibiting Discrimination and Retaliation in the Workplace.

If you disagree with this determination, you have the right to file an appeal with 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 these fees.

Please be reminded that the State Policy prohibits retaliation against any employee who files a discrimination complaint, participates in a complaint investigation or opposes a discriminatory practice. Furthermore, this matter remains confidential and the results of the investigation should not be discussed with others.

If you have questions, please contact the Office of EEO/AA at (609) 777-0558, extension 50215.

Sincerely,

  
Kenneth E. Kobylowski  
Commissioner

Cc: Mamta Patel, Esq., Director, Division of EEO/AA  
John J. Walton, Assistant Commissioner, Administration  
EEO Officer, New Jersey Department of Banking & Insurance

