



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of K.W.,
Motor Vehicle Commission

CSC Docket No. 2016-1844

Discrimination Appeal

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

K.W., a Driver Improvement Analyst 3 with the Motor Vehicle Commission (MVC), appeals the determination of the Chairman and Administrator, which determined that she violated the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy).

On April 22, 2015, H.F., a Senior Lane Technician employed by Parsons, a private company, filed a discrimination complaint against the appellant based upon race. Specifically, H.F. alleged that the appellant called him and other Senior Lane Technicians "broke ass niggas" and the only job they could get was "inspecting cars." He also alleged that the appellant used foul language, including the term "bitch" in the office and break room of the Newark Inspections Facility. H.F. further alleged that the appellant and E.R., a Parsons manager, dated and referred to each other as "baby daddy" and "baby mamma." Finally, H.F. alleged that the appellant spoke about her sexual activities and what she did after work and on the weekends. Upon receipt of the complaint, MVC conducted an investigation which included interviewing the appellant and other witnesses and reviewing relevant information. Although the investigation found that the appellant violated the State Policy by using derogatory language regarding race and gender, the appellant received no disciplinary action. It is noted that the investigation found that the appellant talked about her actions outside of work, but this was found not to have violated the State Policy. The investigation also revealed that the appellant and E.R. had a "friendly relationship," but was unable to corroborate that they were dating. It is further noted that during the investigation, the appellant alleged, and

the investigation corroborated, that H.F. violated the State Policy by calling other employees "pussies," "faggots" and using the "n-word."

On appeal to the Civil Service Commission (Commission), the appellant repeats her allegations that H.F. used derogatory language. She denies having ever used the "n-word" towards H.F. or anybody else. She explains that she was quoting her ex-husband who said that she and her coworkers could not get employment better than working at the "DMV." Additionally, the appellant claims that H.F. overheard another employee H.D. use the "n-word," but did not file a discrimination complaint against him.¹ The appellant explains that she was "close friends" with H.F. until he and E.R. "had a situation," whereafter H.F., H.D. and L.W., a union representative, "began an allegiance against [E.R.] for whatever reason" and attacked her because she was his friend. In this regard, she asserts that they labeled her and E.R. as boyfriend and girlfriend, an allegation that the appellant denies. She states that she did not call E.R. a "baby daddy," but rather it was those three that did, but they did so in a teasing manner. Nevertheless, the appellant complains that she was not given the opportunity to defend herself against this allegation during the investigation.

After the complaint was filed, the appellant claims that H.F. "felt really bad" about filing it. She claims H.F. told a mutual friend O.R. that he filed the complaint because E.R. was "out to get him" and he wanted to "bring down" E.R. by any means necessary, which the appellant believes meant going after her by filing this complaint. The appellant requests a hearing in this matter.

In response, MVC reiterates the findings of the investigation, chiefly that the appellant violated the State Policy by using derogatory language that invoked race and gender. Specifically, it states that three witnesses, M.S., S.A. and J.R., said that they heard the appellant call the Senior Lane Technicians "broke ass niggas" whose only job they can get is "inspecting cars." It also states that the appellant admitted and the three witnesses confirmed that the appellant said "bitch." Accordingly, the appointing authority argues that whether or not the appellant was friends with H.F. and other employees, her use of those words alone violated the State Policy. Furthermore, it argues that even if H.F. and others used language that violated the State Policy, that does not absolve her own inappropriate use of language. With respect to her friendship with E.R., the appointing authority reiterates that it found that the appellant did not violate the State Policy, but states that it cautioned her that her friendship created an impression of an improper relationship. Regarding the appellant's allegations against H.F., the appointing authority states that it requested that Parsons train and correct H.F. on his violation of the State Policy.

¹ The appointing authority indicates that this is the first time the appellant has made these allegations, which it states it will investigate.

CONCLUSION

Initially, the appellant requests a hearing in the matter. However, discrimination appeals are generally treated as reviews of the written record. See *N.J.S.A.* 11A:2-6(b). Hearings are granted in those limited instances where the Commission determines that a material and controlling dispute of fact exists which can only be resolved through a hearing. See *N.J.A.C.* 4A:2-1.1(d). No material issue of disputed fact has been presented which would require a hearing. See *Belleville v. Department of Civil Service*, 155 *N.J. Super.* 517 (App. Div. 1978).

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

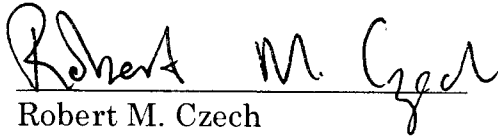
In the instant matter, MVC conducted a thorough investigation and concluded that the appellant violated the State Policy. The appellant's use of the "n-word" and "bitch" refer to race and gender, respectively, and plainly violate the State Policy. As noted above, it is a violation of the State Policy to use derogatory or demeaning language in reference to a person's race or gender. Three witnesses corroborated H.F.'s allegation that the appellant used those words and the appellant admitted to using the word "bitch." Although the appellant denies using such language, she submits no evidence in support of her claim. The appellant submits no evidence to the contrary. As such, there is sufficient evidence in the record to support MVC's finding that the appellant's comments violated the State Policy. Accordingly, the appellant has failed to meet her 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



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