

B-25

STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of H.F., Department of
Human Services

CSC Docket No. 2017-1277

Discrimination Appeal

ISSUED: APR 21 2017 (SLK)

H.F., a contractor with the Department of Human Services (Human Services), appeals the decision of the Assistant Commissioner, Human Resources, Human Services, which found that the appellant did not 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).

By way of background, the appellant, a homosexual male, filed a complaint alleging that M.T., Program Specialist 4, P.R., Senior Executive Service, A.C., Government Representative 1, and the Division of Family Development (DFD) did not appoint him as Child Support Specialist 1 because of his sexual orientation. He also alleged that T.G., Child Support Specialist 3, discriminated against him by using the term "Man-Cave" in an email and "Manly Men" in a meeting and not referencing him with these terms while naming other male coworkers. The appointing authority's Office of Equal Employment Opportunity's (EEO) investigation consisted of interviewing 7 employees and reviewing 19 documents. The investigation was unable to substantiate the appellant's claims that he was denied an appointment due to his sexual orientation. Specifically, the investigation revealed that M.T. was not involved in the interview and was not a decision maker; P.R. did not participate in the interview although she did authorize the selection of candidates based on the panel's selections; A.C. was not involved in the interview and was not aware that the appellant previously complained in 2014 about the use of the term "Manly Men" although he did assist with the selection process; and the appellant did not provide any evidence that the DFD retaliated against him by not appointing him to the subject position because of the 2014 incident.

With regard to T.G., there was a prior email exchange in 2014 regarding suggestions for a mural. T.G. said in that email that she really liked the Barbie mansion theme for the mural but wondered where she would put other specifically named males on the mural. She then wondered if the basement could be turned into a "Man-Cave" in the Barbie mansion. However, the appellant and another male worker were not mentioned to be put in the "Man-Cave." T.G. later apologized to the appellant in the email exchange stating she apologizes if she offended him and she honestly forgot about him and the other male coworker. Subsequently, there was a meeting where T.G. identified specific male co-workers as "Manly Men," but did not reference the appellant with this term. The appointing authority determined that the "Manly Men" comment did not rise to the level of a State Policy violation and the comments were not directed at the appellant and there was no evidence that the comments were made to disparage him.

On appeal, the appellant questions why M.T. requested a copy of his resume if she was not involved in the selection process. He states that although P.R. may not have been involved in the interview, as the Director, the appointment was made with her consent. The appellant disagrees that A.C. was not involved in the interview process as he oversaw the written essay portion of the interview. Regarding the DFD, he presents that the new Office Manager took his resume at the behest of others and made changes to it that impacted his candidacy when applying for the position.

In response, the appointing authority presents that the appellant does not claim that M.T. requested his resume that was sent to the Civil Service Commission for an examination for Child Support Specialist 1 for discriminatory reasons. The new Office Manager informed the appellant that she made changes to his resume and resubmitted it. However, the investigation revealed that M.T. was not involved in the interview or selection process. The investigation revealed that the appellant was not the most qualified candidate. It reiterates that P.R. was not involved in the interview process although she did authorize the selections after the panel made its choice. The appointing authority repeats that the investigation did not reveal that A.C. was involved in the interview or selection process. It asserts that the appellant's claim that the DFD changed his resume in retaliation for his keeping track of the activities of the employees he complained about does not meet the State Policy definition of retaliation as the alleged retaliation was not in response to his filing a discrimination complaint, participating in a complaint investigation, or for opposing a discriminatory practice. The appointing authority explains that the investigation did not find that comments regarding the "Man-Cave" and "Manly Men" rose to the level of a State Policy violation and he has not submitted any evidence to indicate that these comments were directed toward him or meant to disparage him because of his sexual orientation.

In reply, the appellant states that the investigation did not say why M.T. requested his resume if she did not have any influence on the hiring process and he disagrees that the most qualified candidates were appointed. He re-emphasizes that although P.R. did not participate in the interview process, she authorized the selection. The appellant stands by his claim that A.C. oversaw the written essay portion of the interview. He asserts that the DFD retaliated against him by scheduling meetings where he has not been invited, by calling him into Human Resources about his tracking of people's comings and goings, and by having his resume changed to make him appear unworthy and not the best candidate. The appellant contends that it is unacceptable that T.G. had previously sent an offensive email when she did not ask if he should go in the "Man-Cave" like other specifically named males in the department and used the term "Manly Men" at a meeting and his name was not included as she surveyed the room and stated the other men's names while he was the only openly homosexual male there. He believes that "Manly Men" is an offensive term.

In further response, the appointing authority states that the appellant cannot have it both ways by stating that the term "Manly Men" is a slur with respect to his sexual orientation and then be offended when he is not being referenced with this term.

CONCLUSION

N.J.A.C. 4A:7-3.1(a) states, in pertinent part, that the State is committed to providing every State employee and prospective State employee a work environment free from prohibited discrimination based on sexual orientation.

N.J.A.C. 4A:7-3.2(i) provides that at the EEO's discretion, a prompt, thorough, and impartial investigation into the alleged discrimination will take place.

N.J.A.C. 4A:7.3-2(m)4 states, in pertinent part, that the appellant shall have the burden of proof in all discrimination appeals.

The Civil Service Commission (Commission) has conducted a review of the record and finds that the appellant has not established that he was subjected to a State Policy violation. With regard to his claims that M.T., P.R., A.C. and/or the DFD discriminated or retaliated against him by not appointing him to a Child Support Specialist 1 position, the investigation did not substantiate any of his allegations and revealed that he was not the most qualified candidate. Regardless, the appellant has not provided any evidence that the reason he was not appointed or that any action taken during the hiring process by any of the accused was because of his sexual orientation and mere speculation, without evidence, is insufficient to substantiate a violation of the State Policy. *See In the Matter of T.J.*

(CSC, decided December 7, 2016). Specifically, in regard to his claim that A.C. was involved in the interview process as the overseer of the essay portion, even if true, the appellant has not shown how A.C. discriminated against the appellant in any way. Further, while P.R. authorized the appointment of another candidate, that in no way establishes that the appellant's non-selection was for impermissible reasons.

In reference to T.G.'s comments, according to Merriam-Webster's dictionary, "Manly" is defined as:

Having or denoting those good qualities traditionally associated with men, such as courage and strength.

As such, the use of the term "Manly Man" can have a positive connotation and therefore is not a per se violation of the State Policy. The investigation revealed that the appellant was not targeted or disparaged when he was not referenced as a someone who was not specifically identified to be in the "Man-Cave" in an email or specifically identified as being a "Manly Man" when other men were referenced with this term at a meeting. While it is true that under *N.J.A.C. 4A:7-3.1(b)* that a violation can occur even if there was no intent on the part of an individual to harass or demean another, when terms or actions that are not per se violations of the State Policy are involved, these terms or actions must be evaluated in the context of the situation. See *In the Matter of S.C.* (CSC, decided July 17, 2013). In this matter, the mere fact that the appellant is an openly homosexual man does not automatically mean that T.G. was implying that the appellant was not "Manly" when he was not specifically identified with this term as an act of omission requires corroborating evidence that such action was a violation of the State Policy in the context of the situation. However, the appellant has not offered any evidence other than his own opinion.

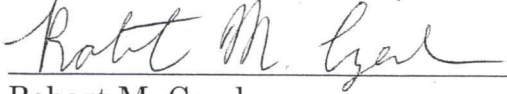
Accordingly, the Commission finds that the EEO's investigation was thorough and impartial. Therefore, the Commission finds that appellant failed to support his burden of proof and no basis exists to find a violation of the New Jersey State Policy Prohibiting Discrimination in the Workplace.

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 19th DAY OF APRIL, 2017



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