

B-28

STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of C.L., Department of
Human Services

CSC Docket Nos. 2017-1586

Discrimination Appeal

ISSUED: APR 21 2017 (SLK)

C.L., a Police Sergeant Human Services, appeals the decision of the Assistant Commissioner, Human Resources, Department of Human Services, which found sufficient evidence to support a finding that he violated the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy).

By way of background, S.E., a female Senior Police Officer Human Services, alleged that C.L., a male, subjected her to gender discrimination. Specifically, S.E. alleged that C.L. overreacted when she placed a psychiatric patient in the front seat of her patrol car and treated her differently than male officers regarding an incorrect patrol chart. She also alleged that C.L. told others that he would try to get her terminated and discussed displacing her from the women's locker room. The investigation substantiated the allegation that C.L. said he would try to get S.E. fired, at least in part, because she is female. The other allegations were not substantiated.

On appeal, C.L. presents that he had S.E. written up because her actions were in violation of standard operating procedures and that she was disciplined with written reprimands due to her actions. C.L. denies that he ever made the statement that he wanted to get S.E. fired because she is a woman. C.L. complains that the appointing authority's determination letter is not in compliance with the Model Procedures for Internal Complaints Alleging Discrimination in the Workplace as he asserts that the letter did not provide a brief summary of the facts developed during the investigation and therefore he cannot properly defend himself. C.L. believes that S.E.'s allegations were in retaliation for her being written up by him. He indicates that the Investigator informed him that a co-worker corroborated the allegation and D.F., Police Lieutenant Human Services, advised him that G.C.,

a Senior Police Officer Human Services, was called as a witness. C.L. assumes that G.C. was the corroborating witness. C.L. states that G.C. has a close personal relationship with S.E. that extends outside of the workplace and he submits screenshots from Facebook which show that G.C. has a relationship with S.E.'s son. As such, C.L. contends that G.C. lied to support his friend, S.E. Additionally, C.L. believes that G.C. lied in retaliation for C.L. having previously reprimanded him for failure to perform his duties and submits emails to show the prior discipline. Moreover, C.L. asserts that there was a prior incident where it was found that S.E. made false allegations of gender discrimination where her real motivation was that she wanted to be transferred to another location that was closer to her home and where G.C. was stationed. C.L. also states that the department bends the rules in S.E.'s favor. He indicates that S.E. previously worked for the department as a dispatcher, but had her driver's license suspended. Then, the department assigned an on-duty officer to transport her to work. Additionally, C.L. believes that the Investigator had a conflict of interest as he, S.E.'s ex-husband and S.E. previously worked together for the State Police.

In reply, the Equal Employment Opportunity Office (EEO) presents that S.E., C.L. and three potential witnesses were interviewed as part of its investigation. It states that a credible witness corroborated the allegation, but that witness was not G.C. as C.L. believes. The Investigator explains that he found this witness credible based on his experience, the high regard that this witness is held by his peers, and the witness' reluctance to provide a statement and a lack of desire to contribute to any corrective action against C.L. Further, since S.E. is not claiming that she directly heard the subject comment from C.L. and was only told about it by the witness, her veracity is not at issue. With respect to C.L.'s allegation that the Investigator had a conflict of interest, the Investigator presents that he had never previously met S.E., never knew she had an ex-husband and does not know the identity of her ex-husband, and his employment with the State Police ended 15 years ago. He indicates that he is regularly involved in matters with State Police personnel. The Investigator asserts that in order for C.L. to show that he has a conflict, he must present some articulable evidence demonstrating that he could not be impartial and simply being employed by the same agency is insufficient.

In response¹, C.L. questions how this witness could be deemed credible when he did not report the alleged discriminatory comment to his supervisor which is the proper code of conduct and what a credible person would do. C.L. states that he has a pristine employment record so he questions why this witness was more credible than him. He asks how the Investigator can claim that the witness is widely viewed as credible by his peers when only three witnesses besides himself and S.E. were

¹ It is noted that the Division of Appeals and Regulatory Affairs' (DARA) February 24, 2017 letter indicates that each party is to indicate in their cover letter that they have sent copies of all submitted materials to the other party. However, C.L.'s response to the EEO's March 3, 2017 reply does not indicate that he copied the EEO.

interviewed. C.L. indicates that D.F. informed him that D.C., a Police Sergeant Human Services, W.K., a Senior Police Officer Human Services, and G.C. were the other three individuals who were interviewed. He states that he was surprised that W.K. was interviewed because he was on leave and upon his return he did not return to the station as he was in training. C.L. asserts that none of those interviewed even work the shift that S.E. and he work. He asks who was he allegedly speaking with when he made these statements, where and when did this take place, and is the witness claiming that he made the statements directly to him or did this witness claim that he heard him make these statements to someone else. C.L. claims that the substantiation is based on a third-party hearsay statement.

CONCLUSION

N.J.A.C. 4A:7-3.1(a) states, in pertinent part, that employment discrimination or harassment based upon a protected category, such as 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 discrimination is prohibited and will not be tolerated. A violation of this policy can occur even if there was no intent on the part of an individual to harass or demean another.

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 harassment or discrimination will take place.

N.J.A.C. 4A:7-3.2(l)1(ii) provides that the State Agency head or designee will issue a final determination letter that shall include a brief summary of the facts developed during the investigation.

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 in this matter and finds that the appellant violated the State Policy. S.E. alleged that C.L. made a statement that said he would try to get her fired, at least in part, because she is female. The investigation revealed that a witness corroborated the statement and the Investigator found the witness credible based on his experience, the witness' reputation, and the witness' lack of desire to provide a statement that would subject C.L. to any corrective action. C.L.'s accusations that S.E. and G.C. are not credible witnesses are not relevant as they were not the witness on which the Investigator relied on. With respect to C.L.'s statement that he has a pristine employment record, the appellant's employment history is not

relevant as a credible witness corroborated the statement. Further, even a one-time action can violate the State Policy. In reference to C.L.'s comments that the witness cannot be credible since the witness did not report the discriminatory comments to his supervisor in violation of policy, the witness' failure to report the comment to his supervisor does not mean that the witness was not credible. In fact, the investigation revealed that the witness had no desire to make any statement that would subject C.L. to corrective action and the Investigator found the witness' reluctance as further evidence that the witness was credible. With regard to C.L.'s claim that the allegation was substantiated based on hearsay, this was not the case. Hearsay is a term applied to that type of testimony or evidence given by a witness who relates not what he knows personally, but what others have told him, or what he has heard said by others. However, in this matter, whether C.L. made the subject comment directly to the corroborating witness or the witness overheard C.L. say it to someone else, the witness' knowledge was not based on hearsay as he directly heard the comments and therefore he knew the information personally.

Some other matters need to be addressed. In reference to C.L.'s complaint that the appointing authority's determination letter was insufficient, whatever deficiencies that there may have been in the determination letter were cured by the EEO's March 3, 2017 response which explains that the corroborating witness directly heard the subject comments and why that witness was credible. The Commission also finds that C.L. has not provided any evidence that the Investigator had a conflict. The mere fact that the Investigator previously worked for the State Police, without more, is insufficient to find a conflict.

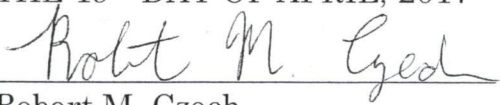
Thus, as a credible witness substantiated the allegations, the Commission finds that the investigation was thorough and impartial and the appellant has failed to meet his burden of proof.

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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