



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE  
ACTION  
OF THE  
CIVIL SERVICE COMMISSION

In the Matter of C.E., Department of  
Corrections

CSC Docket No. 2016-2333

Discrimination Appeal

ISSUED SEP 22 2017 (EG)

C.E., a Communications Operator, Secured Facilities with the Central Reception and Assignment Facility (CRAF), Department of Corrections (DOC), appeals the determination of DOC's Director of the Equal Employment Division (EED), stating that the appellant failed to present sufficient evidence to support a finding that she had been subjected to violations of the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy).

The appellant filed a complaint on September 9, 2015, alleging that she had been subjected to sexual/gender harassment and discrimination by Correction Lieutenant P.T. Specifically, the appellant alleged that on the morning of September 7, 2015, she reported to work and as she used the secure scan, the officer on duty, Senior Correction Officer A.M., called for a female officer to pat frisk the appellant. The appellant claimed that the next person at the scan behind her was P.T. She contended that as she was waiting, she felt, from behind, hands on her hips, waist and thighs. The appellant asserted that she turned around to discover P.T. with his hands on her body. She stated that she was in shock and did not say anything to P.T. or anyone else at that time. Additionally, she alleged that P.T. approached her in her office and stated:

"You know I only patted you down to get you through quicker. You better not tell anyone. Only three of us know. You better not say anything. If it gets out I know it was you because SCO M. won't say anything."

The appellant contended that P.T.'s statement was meant as a threat to dissuade her from reporting the incident to EED.

In response to the appellant's complaint, the EED conducted an investigation. It interviewed the only witnesses to the allegations, the appellant, P.T. and A.M. Additionally, the EED reviewed the video tape of the incident. When interviewed, P.T. asserted that while on line he jokingly asked the appellant if she wanted to be pat frisked to enter the secure area sooner and the appellant responded in the affirmative, turned around and raised her hands. P.T. then conducted a quick pat frisk of the appellant. The videotape confirmed P.T.'s assertions. Further, P.T. denied threatening the appellant. He states that he did speak to the appellant later in the day to apologize if he had offended her earlier in the day and indicated that the two of them were only kidding around. He stated that the appellant replied, "Oh, I know." Based on the evidence it reviewed, the EED could not substantiate the appellant's claims of a violation of the State Policy. However, the EED found that P.T.'s actions did constitute a violation of CRAF's administrative policies and that he would be disciplined accordingly.

On appeal, the appellant argues that while the videotape confirms that P.T. pat frisked her it does not prove that she gave her permission for P.T. to do so. In this regard, the appellant claims that the EED improperly gave more credibility to P.T.'s assertion that she granted consent to the pat frisk than to her contention that P.T. touched her without her consent. Additionally, she states that the policy concerning pat frisks indicates that unless there is an emergent situation, pat frisks are to be conducted by members of the same gender. The appellant argues that based on his position, P.T. was very aware of CRAF's policies concerning pat frisks.

In response, the EED states that its investigation included witness interviews, and a review of a videotape of the alleged incident. It asserts that a review of the videotape reveals that the appellant was seen smiling and chatting with P.T. while waiting online. Then the videotape shows P.T. saying something to the appellant, and the appellant immediately turning around with her back to P.T. and raising her arms at her sides, which was the proper position to be pat frisked. P.T. was then seen quickly pat frisking the appellant. Following the pat frisk, the appellant and P.T. are seen continuing to smile and chat with each other. The EED argues that the videotape confirms P.T.'s account of the events, not the appellant's allegations. Additionally, the EED found that P.T.'s apology was not a confirmation of a violation of the State Policy. Finally, it states that while not a violation of the State Policy, P.T.'s actions did violate CRAF's policy concerning pat frisks and that he received a five-day suspension for his transgression.

## 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(c)* provides that it is a violation of this policy to engage in sexual (or gender-based) harassment of any kind, including hostile work environment harassment, quid pro quo harassment, or same-sex harassment.


In the instant matter, the Commission has conducted a review of the record and finds that an adequate investigation was conducted. Specifically, the relevant parties were interviewed in this matter and the appropriate evidence was reviewed. Specifically, the EED interviewed the appellant, A.M. and P.T. Additionally, the videotape of the incident was reviewed. The EED investigation found that P.T. assertions that he received permission from the appellant to pat frisk her was supported by the videotape. Further, P.T. denied threatening the appellant later the same day and there was no substantive evidence to support a threat was made. On appeal, the appellant argues that the videotape does not prove that she gave consent. However, she does not address the EED's account of the incident where she was seen turning around, raising her arms for a pat frisk, and then smiling and chatting with P.T. after the pat frisk. Therefore, the appellant has not sustained her burden of proof in this matter. Accordingly, based on the foregoing, 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 20TH DAY OF SEPTEMBER, 2017

A handwritten signature in black ink, appearing to read 'R. Czedo', is written over a horizontal line.

Robert M. Czedo, Chairperson  
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