



**STATE OF NEW JERSEY**

In the Matter of S.K.,  
Department of Human Services

**FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION**

CSC Docket No. 2017-1803

Discrimination Appeal

**ISSUED: APRIL 6, 2018 (JET)**

S.K., a Staff Psychologist 3, Division of Mental Health Services, Ann Klein Forensic Center, appeals the determination of the Assistant Commissioner, Office of Human Resources, Department of Human Services, which found sufficient evidence that she had violated the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy).

On August 16, 2016, the appellant submitted a complaint to the Office of Equal Employment Opportunity (EEO), alleging that E.C., an Assistant Social Work Supervisor, approached her to inquire if she filed a discrimination complaint against him alleging that he called her “Osana Bin Laden;” researched personal information about the appellant and her family, including private photographs, which he shared with her supervisor and co-workers because she is a Muslim; repeatedly breached confidentiality of his EEO complaints by telling employees that he was going to bring down the appellant’s supervisors; and said something to the effect of “I run this bitch” when referring to the appellant’s supervisor. The EEO conducted an investigation and 11 employees, including E.C., were interviewed. E.C. reported allegations against the appellant at the time he was interviewed, alleging that the appellant referred to her sister-in-law in offensive terms, and on another occasion the appellant commented, “When the white boy comes and shoots up the place, everyone is going to blame the Pakistani Muslim,” when referring to a former employee. Witnesses corroborated that the appellant used gender specific offensive terms in the workplace. Moreover, the witnesses confirmed that E.C. breached the confidentiality provisions of the State Policy and referred to the appellant as “Osana Bin Laden.” Accordingly, it was determined that the appellant

and E.C. violated the State Policy, and the matters were referred for appropriate administrative action.

On appeal, the appellant maintains that she did not make inappropriate gender-specific comments toward E.C. or anyone else in the workplace. Rather, the appellant asserts that E.C. made inappropriate comments about her religion and referred to her as “Osana Bin Laden.” The appellant contends that, since she is female, it is unlikely that she would make any comments discriminating against members of her own gender. The appellant states that since she previously filed an EEO complaint against E.C., she would not discuss work related topics or her family with him. Further, the appellant explains that E.C.’s complaint is fictitious and subjected her to retaliation, as he did not make any allegations against her until he was interviewed by the EEO. As such, E.C. did not properly follow the EEO’s guidelines for reporting his complaint. The appellant explains that the EEO confirmed that E.C. violated the confidentiality provisions of the State Policy, as he discussed the appellant’s prior EEO complaint with various witnesses. She asserts that, as a result, various witnesses were prepared to corroborate E.C.’s complaint against the appellant. Moreover, the appellant argues that, since it was substantiated that E.C. violated the confidentiality provisions of the State Policy, he should not have been permitted to file an EEO complaint against her.

Additionally, the appellant contends that the integrity of the investigation was compromised as the EEO investigator allowed E.C. to discuss issues outside of her complaint. The appellant alleges that E.C. maintains an ongoing relationship and regularly telephones the EEO investigator. She adds that the EEO investigator complained about E.C. at the time she was interviewed, and given the investigator’s prior involvement with E.C., it was inappropriate for the EEO investigator to be assigned to investigate her complaint. The appellant adds that her complaint should have been addressed as a separate matter from E.C.’s matter. Moreover, the appellant believes that her safety is compromised by E.C.’s continued inappropriate behavior toward her in the workplace.<sup>1</sup>

In response, the Office of Legal Affairs (OLA), Department of Human Services, maintains that the EEO appropriately conducted an investigation of the appellant’s and E.C.’s complaints. It adds that witnesses corroborated that the appellant made offensive statements about her family members, and that E.C. violated the confidentiality provisions of the State Policy and referred to the appellant as “Osana Bin Laden.” It explains that, at the time E.C. was interviewed in response to the appellant’s complaint, he reported allegations against the appellant. The OLA asserts that E.C. appropriately reported the allegations in accordance with the model procedures for reporting complaints under the State

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<sup>1</sup> The appellant contends that the appellant alleged that E.C. sat directly behind her on one occasion, violated her personal space on another occasion, made an inappropriate response to her e-mail to him, and smirked at her on another occasion.

Policy. The OLA acknowledges that, although E.C. breached the confidentiality provisions of the State Policy by discussing the appellant's complaint, it was obligated to investigate his complaint under the State Policy. It maintains that it is standard procedure for the EEO investigator to ask E.C. if he had anything else to add during his interview, and there is no indication that the EEO investigator maintained an inappropriate relationship with E.C. In addition, the OLA asserts that the appellant does not provide any information on appeal, including witness statements or supporting documentation, to refute the findings in her determination letter. As such, there is no evidence that the investigation was compromised and it was appropriate to combine the appellant's and E.C.'s matters since they concerned similar issues. Moreover, the OLA states that, if the appellant is concerned about E.C.'s behavior toward her, she should submit a complaint to the appropriate authorities at the appointing authority.

### 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. Additionally, retaliation against any employee who alleges that she or he was the victim of discrimination/harassment, provides information in the course of an investigation into claims of discrimination/harassment in the workplace, or opposes a discriminatory practice, is prohibited by the State Policy. Examples of such retaliatory actions include, but are not limited to, termination of an employee; failing to promote an employee; altering an employee's work assignment for reasons other than legitimate business reasons; imposing or threatening to impose disciplinary action on an employee for reasons other than legitimate business reasons; or ostracizing an employee (for example, excluding an employee from an activity or privilege offered or provided to all other employees). *See N.J.A.C.* 4A:7-3.1(h). The appellant shall have the burden of proof in all discrimination appeals. *See N.J.A.C.* 4A:7-3.2(m)(3).

*N.J.A.C.* 4A:7-3.1(j) establishes that all discrimination complaints and investigations shall be handled, to the extent possible, in a manner that will protect the privacy interests of those involved. To the extent practical and appropriate under the circumstances, confidentiality shall be maintained throughout the investigatory process. In the course of the investigation, it may be necessary to discuss the claims with the person(s) against whom the complaint was filed and other persons who may have relevant knowledge or who have a legitimate need to know about the matter. All persons interviewed, including witnesses, shall be

directed not to discuss any aspect of the investigation with others in light of the important privacy interests of all concerned. Failure to comply with this confidentiality directive may result in administrative and/or disciplinary action, up to and including termination of employment. A violation of this policy can occur even if there was no intent of the part of an individual to harass or demean another. *See N.J.A.C. 4A:7-3.1(b)*.

The Civil Service Commission (Commission) has conducted a review of the record in this matter and finds that the appellant has not established her contentions regarding the investigation. The record shows that the EEO conducted an adequate investigation. It interviewed the relevant parties in this matter, including 11 witnesses, and appropriately analyzed the available documents in investigating the appellant's complaint. Specifically, the witnesses confirmed that the appellant used offensive gender specific language in the workplace in violation of the State Policy, which she does not refute on appeal. The appellant does not present any substantive evidence to show that she did not use the offensive language. Although she argues that it is unlikely that she would engage in such behavior due to her prior EEO complaint and her gender, such arguments are of no moment. The fact that the appellant filed a prior EEO complaint does not establish that she did not engage in the inappropriate behavior. Such inappropriate comments in the workplace clearly evidences a violation of the State Policy and cannot be excused. The appellant has not presented any substantive information to show that the investigation was somehow deficient or that the EEO investigator was somehow biased against her. Even presuming the validity of the appellant's statement that the EEO investigator was previously assigned to conduct investigations for E.C.'s complaints, the appellant has not provided a scintilla of evidence in support of her claim of bias. Moreover, the appellant did not present a scintilla of evidence to show that E.C. retaliated against her. Other than the appellant's tenuous claims, she has not presented any information to show that she did not make the gender offensive statement in violation of the State Policy.

With respect the appellant's argument that E.C. should not have been permitted to make the allegations against her at the time he was interviewed, the Commission finds that the EEO properly investigated E.C.'s claims against the appellant pursuant to the State Policy. The fact that E.C. violated the State Policy does not overcome that the EEO was required to conduct an investigation of E.C.'s claims. Other than the appellant's claims, there is no substantive evidence to show that the confidentiality breach had an adverse effect on the investigation. As such, the appellant's contentions regarding the confidentiality breach do not change the outcome of this matter. Regardless, the Commission takes the State Policy seriously and, if it has not already done so, instructs the EEO to warn E.C. not to engage in such behavior again. Continued violations of the State Policy may result in recommendations of disciplinary action. Moreover, the EEO substantiated that E.C. referred to the appellant as "Osana Bin Laden." Finally, since the appellant

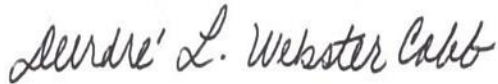
and E.C. violated the State Policy and their complaints involved similar issues, it was appropriate to consolidate their matters into one EEO determination. Accordingly, for the reasons set forth above, the Commission finds that there is sufficient evidence to show that the appellant violated the State Policy.

**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 4<sup>th</sup> DAY OF APRIL, 2018



Deidre L. Webster Cobb  
Acting Chairperson  
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