



STATE OF NEW JERSEY

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

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

CSC Docket No. 2020-2711

Discrimination Appeal

ISSUED: NOVEMBER 6, 2020 (JET)

L.K., a Senior Clerk Transcriber with Vineland Developmental Center, Department of Human Services, represented by David M. Koller, Esq., appeals the determination of the Chief of Staff, Department of Human Services, which found that the appellant failed to support a finding that she had been subjected to a violation of the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy).

On March 8, 2020, the appellant filed a federal EEOC complaint alleging that she was subjected to discrimination based on her disability status, sexual harassment, and retaliation, and the Department of Human Services' Office of Equal Employment Opportunity (EEO) was notified of the appellant's EEOC complaint on April 20, 2020. Specifically, the appellant alleged that she reported sexual harassment allegations to M.T.,¹ a Supervisor of Professional Residential Services, Developmental Disabilities and D.T., a Supervisor of Professional Residential Services, Developmental Disabilities, and no action was taken in response. The appellant also alleged that B.E., the Affirmative Action Officer, attempted to protect management at the time her interviews were conducted, and her interview was interrupted on two occasions by W.K., a Manager 2, Human Resources. In this regard, the appellant alleged that W.K. interrupted the EEO interview in an attempt to prevent the appellant from reporting that the appointing authority failed to address the allegations. The appellant alleged that the appointing authority failed to terminate M.T. due to the alleged sexual harassment, as he had four prior sexual

¹ The EEO indicates in this matter that M.T. was removed from service. However, the Personnel Management Information System indicates that M.T. is still active in State service.

harassment complaints filed against him, and the appointing authority disciplined C.H., a Clerk Typist, because M.T. forced her to sit on his lap. The appellant alleged that the appointing authority planned to terminate her due to her involvement in C.H.'s separate EEO investigation. The appellant claimed that she was subjected to retaliation, as she was not promoted as a Technical Assistant as a result of her filing the instant EEO complaint. The appellant stated that D.T. reprimanded her as she reported to B.E. that M.T. possessed a naked picture of C.H. The appellant indicated that the appointing authority harassed her for requesting a leave of absence due to a medical condition, and she was forced to work in a small dusty room upon her return from leave.

After conducting an investigation, the EEO did not substantiate a violation of the State Policy. The EEO concluded that it previously substantiated in a separate matter that M.T. has sexually harassed C.H., and as a result, appropriate disciplinary action was issued against him. In this regard, nine out of 10 allegations were substantiated against M.T., and after a departmental hearing was conducted, he was terminated. The investigation concluded that during the appellant's January 16, 2019 interview, she denied that she had reported the sexual harassment allegations to anyone. The EEO found that the office where the appellant was interviewed is adjacent to W.K.'s office, and he interrupted the interview in order to notify the parties that they were too loud and he could hear what was being discussed in the interview. As such, the EEO found that the interview was interrupted for legitimate reasons in order to maintain the confidentiality status of the interview. Additionally, the EEO did not substantiate that four prior complaints of sexual harassment were filed against M.T. The EEO found that C.H. admitted that she voluntarily sat on M.T.'s lap, and she was disciplined for that action. There is no evidence that the appointing authority disciplined the appellant for filing the instant EEO complaint or subjected her to retaliation. The EEO confirmed that three applicants including the appellant were interviewed for the Technical Assistant position, and the appellant was not selected as she did not score as highly as the other candidates. The EEO found that the appellant did not answer any questions with respect to the allegations that D.T. reprimanded her for reporting that M.T. possessed a naked picture of C.H. The EEO found there was no evidence supporting that the appellant was harassed as a result of her disability status and accommodation requests. Rather, the EEO confirmed that the appellant's various requests for medical leave of absences were approved, her desk location upon her return to work did not change, and she requested the filing cabinets be moved into her office. Moreover, the EEO determined that the appellant failed to answer questions pertaining to the allegations concerning her work location.

On appeal, the appellant asserts that the EEO's investigation was improperly conducted, is biased and contains erroneous conclusions. The appellant maintains that the EEO's determination is an attempt to protect the appointing authority, and falsely concluded that the appellant failed to provide information at the time of the

investigation. In this regard, the appellant maintains that, although she participated in the investigation and provided relevant information, her interview with B.E. was interrupted prior to its conclusion. The appellant argues that the EEO determination evidences that she was subjected to retaliation. The appellant maintains that she was subjected to retaliation as she was not selected for the Technical Assistant position. Moreover, the appellant states that the EEO improperly relied on its own witnesses in order to confirm that she was not discriminated against with respect to her accommodation request and disability status.

In response, the EEO maintains that there was no violation of the State Policy. Specifically, the EEO asserts that it was notified that the appellant had filed a federal EEOC complaint on April 20, 2020. It explains that, at the time of the investigation, the appellant was authorized off duty. The EEO states that the investigator attempted to contact the appellant on April 24, 2020. The EEO contends that the investigator spoke to the appellant by telephone on April 28, 2020, and the investigator asked her to respond to his questions by April 29, 2020. The EEO explains that the appellant did not respond to the investigator's questions by the close of business on April 29, 2020. However, the investigation was continued without her response. As of September 2020, the EEO contends that the appellant did not respond to the EEO investigator's questions.

The EEO states that the appellant's allegation that M.T. sexually harassed C.H. was confirmed as a result of an investigation from a complaint in a separate matter. With respect to her allegation that M.T. and D.T. took no action regarding her sexual harassment allegations, the EEO states that B.E. interviewed the appellant and she denied at the time of the interview that she reported such allegations to anyone. Rather, the appellant stated that she spoke to D.T. about M.T.'s behavior towards C.H., and at that time she did so as the union shop steward, and both C.H. and the appellant requested the conversation remain confidential. Additionally, B.E. confirmed that W.K.'s office is adjacent to the office that the EEO used to conduct the appellant's interviews, and B.E. confirmed that W.K. interrupted one interview to inform them that the conversation was too loud. B.E.'s investigation substantiated nine allegations against M.T. Further, the EEO found that a departmental hearing was conducted and M.T. was terminated, however, M.T. has additional appeal rights. The EEO indicates that in 2011 there was one sexual harassment complaint substantiated against M.T., and C.H. admitted that she voluntarily sat on M.T.'s lap, and as a result, C.H. was disciplined. The EEO explains that there is no evidence that the appointing authority plans to terminate the appellant, or that she was subjected to any disciplinary action as a result of the EEOC complaint she filed. The EEO states that the appellant was interviewed for the Technical Assistant position, and she scored lower than the other candidates. As such, she was not selected for the position. The EEO states that D.T. denied that she reprimanded the appellant for reporting that M.T. possessed a naked picture of C.H., and the appellant did not provide any additional information to the investigator with

respect to that allegation. The EEO indicates that the appellant applied for a leave of absence which was granted, and there was no evidence that she was assigned to file documentation due to retaliation upon her return from such leave.² J.A., the appellant's supervisor, confirmed that filing documentation is a part of the appellant's job duties, and it was her idea to place the filing cabinets in the room that she alleged was dusty.

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)1 provides that sexual harassment, with or without sexual conduct, is defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature.

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). It is noted that the burden of proof is on the appellant to provide information in support of her case. *See N.J.S.A.* 11A:2-6(b) and *N.J.A.C.* 4A:2-1.4(c).

The Civil Service Commission has conducted a review of the record in this matter and finds that the appellant has not provided any substantive evidence in this matter to show that she was discriminated against on the basis of sexual harassment or disability, nor is there any information to show that she was subjected to retaliation in violation of the State Policy. The record reflects that the EEO conducted a proper investigation. It interviewed the relevant parties in this matter, including the appellant, and appropriately analyzed the available documents in investigating the appellant's complaint. The underlying determination was correct when it determined that there was no violation of the State Policy. The appellant's

² The EEO noted that the appellant's leave of absence requests were granted on multiple occasions, and she provided no further information regarding her assignments to the EEO Investigator.

arguments on appeal and the allegations of her complaint do not evidence that she was discriminated against or subjected to retaliation based on any of the above listed protected categories listed in the State Policy.

In this matter, the appellant has provided no substantive evidence in this matter to confirm that M.T. sexually harassed her. Further, the record reflects that M.T. was found guilty of sexual harassment in a separate matter, and he was disciplined as a result. As such, the appointing authority took appropriate remedial action with respect to that matter. Therefore, the appellant's claims with respect to M.T.'s sexual harassment of C.H. in another matter does not establish her claims in this matter. With respect to the appellant's claims pertaining to the witnesses, the EEO was only required to interview as few or as many witnesses to determine if there was a violation of the State Policy. In this matter, the witnesses did not substantiate a violation of the State Policy, and the appellant did not provide the names of any witnesses on appeal who would provide information that would somehow change the outcome of the case. Additionally, the EEO confirms and the appellant does not dispute that she was contacted and interviewed. In this regard, she did not substantially refute the EEO's allegations that the appellant did not provide additional information in response to the EEO's questions. Additionally, there is no substantive evidence in this matter to show that the appellant was subjected to retaliation. The fact that she was not selected for the Technical Assistant position does not, in and of itself, show that she was retaliated against. Rather, the record reflects that she did not score as high on the interview as the other candidates, and as such, the candidates with the higher scores were appointed. There is no evidence that the appointing authority planned to discipline or terminate the appellant for filing the instant complaint in this matter. Moreover, with respect to the appellant's claims pertaining to her work location, there is no evidence that her work location changed from the time she went out on a leave of absence to the time she returned to work. As such, there is no evidence that the appellant was singled out based on her disability status. Additionally, the record reflects that the appellant's EEO interview was interrupted in order to maintain the confidentiality status of the investigation, and was not an attempt to prevent her from reporting allegations of her complaint.

Other than the appellant's allegations in this matter, she has failed to provide any evidence that she was discriminated against or subjected to retaliation in violation of the State Policy. Accordingly, she has not satisfied her burden of proof in this matter.

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 4TH DAY OF NOVEMBER 2020

Deirdre' L. Webster Cobb

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