



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of M.H., Department of
the Treasury

Minor Discipline Appeal

CSC Docket No. 2018-3748

ISSUED: February 14, 2020 (SLD)

M.H., an Assistant Division Director,¹ with the Department of the Treasury, appeals a three working day suspension.²

The record indicates that the appellant was served with notification of a three working-day suspension on charges of conduct unbecoming a public employee, discrimination that affects equal employment opportunity and violation of the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy). Specifically, the appointing authority indicated that the Office of Equal Employment Opportunity/Affirmative Action and Diversity Programs (EEO/AADP) had investigated a complaint against the appellant in which it was alleged that he made several discriminatory remarks, including “[w]hy do you get so upset . . . [y]ou know how this country treats your people . . . [y]ou should be used to it.” The EEO/AADP noted in the determination letter³ that the appellant “denied making the comment,” but that the appellant indicated that the complainant had taken the “conversation out of context.” The EEO/AADP noted that the complainant immediately reported the incident to his supervisor and the appellant and another witness confirmed that several political and societal conversations occurred in the

¹ Agency records indicate the appellant was appointed to the title of Chief, Bureau of Risk Management effective June 25, 2016. He was then appointed to the unclassified title of Assistant Division Director, effective January 5, 2019.

² The record indicates that although the appellant was initially represented by an attorney in this matter, he no longer is represented.

³ The determination letter was co-signed by Deirdre L. Webster Cobb, Esq., who was the EEO/AA Officer for the Department of Treasury at that time.

workplace with the complainant. The EEO/AADP found that as the State Policy is a zero tolerance policy, even if there was no intent on the part of an individual to harass or demean another, a violation can still occur. Therefore, it substantiated this allegation. Following a departmental hearing, the Hearing Officer found that the appellant had been trained on the State Policy on at least four occasions and received individualized training on November 7, 2014, and that the appellant had been issued a final warning on October 22, 2014 for a substantiated violation of the State Policy. The Hearing Officer also found that the appellant had made a race-related statement to a subordinate-level employee that the employee reported as offensive on November 15, 2017. The Hearing Officer noted that although the appellant denied making the above-claimed statement, he admitted that he stated “[t]his is going to spread and we need to be prepared,” which can also be perceived as offensive. The Hearing Officer determined that as a manager, the appellant was responsible for ensuring that all employees are not subject to comments that may offend. The Hearing Officer noted that although the appellant indicated that the complainant never stated that he was offended, there is no such requirement in the State Policy to find a violation of the State Policy. Accordingly, the Hearing Officer found that the appointing authority had met its burden of proof and upheld the three working day suspension.

On appeal to the Civil Service Commission (Commission), the appellant contends that three errors were made that involve issues of general applicability in the interpretation of Civil Service law, rule or policy. First, the appellant argues that the advance notice of the evidence supporting the charges was deficient. Specifically, he maintains that although the determination letter stated that he denied making the alleged statement, at the departmental hearing management stated that he never denied making the statement. Moreover, the appellant notes that at the departmental hearing the EEO/AADP investigator testified that the appellant did not deny making the statement during his interview and that the statement in the determination letter that he did was simply a typographical error.⁴ The appellant maintains that the change to management’s position violated his due process rights by not providing advance notice of a material change to a witness’s testimony.

The appellant also maintains that there was no residuum of legally competent evidence to support the hearsay evidence relied upon by the Hearing Officer to conclude that the appellant made the alleged statement as the complainant did not testify. The appellant argues that basing a finding that he violated the State Policy solely on the unsupported hearsay evidence was an error of fundamental fairness.

⁴ During the departmental hearing, the appellant denied making the alleged statement. Rather, he testified that he “did not say what is alleged that he said.”

Finally, the appellant argues that the comment he made was “we have to be prepared for that kind of thing to spread,” which fails to provide a basis to find that he violated the State Policy. The appellant argues that the statement he did make can have positive connotations, such as mutual bonding and support between minority groups and is therefore not a *per se* violation of that State policy.

Despite an opportunity to do so, no response was received from the appointing authority.

CONCLUSION

N.J.A.C. 4A:2-3.7(a) provides that the minor discipline of State employees may be appealed to the Commission. The rule further provides:

1. The [Commission] shall review the appeal upon a written record or such other proceeding . . . and determine if the appeal presents issues of general applicability in the interpretation of law, rule or policy. If such issues or evidence are not fully presented, the appeal may be dismissed and the [Commission’s] decision will be a final administrative decision.
2. Where such issues or evidence under (a)1 above are presented, the [Commission] will render a final administrative decision upon a written record or such other proceeding as the [Commission] directs.

This standard is in keeping with the established grievance and minor disciplinary procedure that such actions should ordinarily terminate at the departmental level.

Moreover, in considering minor discipline actions, the Commission generally defers to the judgment of the appointing authority as the responsibility for the development and implementation of performance standards, policies and procedures is entrusted by statute to the appointing authority. The Commission will also not disturb hearing officer credibility judgments in minor discipline proceedings unless there is substantial credible evidence that such judgments and conclusions were motivated by invidious considerations such as age, race or gender bias or were in violation of Civil Service rules. *See e.g., In the Matter of Oveston Cox* (CSC, decided February 24, 2010). A review of the record evidences no showing that either factor, which would warrant further Commission review, is present in this case.

With regard to the appellant’s claim that the advance notice of the evidence supporting the charges against him was deficient since, at the hearing, management’s position changed from “he denied making the statement” to “he did not deny making the statement.” However, there is no Civil Service law or rule that

requires the appellant to be provided with notice of all changes to “witness testimony” prior to a hearing in a minor discipline matter. Rather, *N.J.A.C. 4A:2-3.6(c)* provides, in pertinent part, that for a hearing on a minor discipline matter at the departmental level, an employee may be represented, may call a reasonable number of relevant witnesses, and has the right to present evidence and examine witnesses. Accordingly, as there is no evidence that he was denied any of the above, his due process rights were not violated.

Additionally, the appellant argues that the findings of the Hearing Officer were improper as they violated the hearsay rule. However, there is no indication in the record that the Hearing Officer based her decision on a hearsay statement. Rather, the Hearing Officer noted that, although the appellant denied making claimed statement, he admitted that he stated “[t]his is going to spread and we need to be prepared,” which can also be perceived as offensive. As such, this claim does not present any issues of general applicability, nor does the appellant claim that the Hearing Officer’s decision was the result of invidious motivation. Other than the appellant’s mere allegations, and blanket denials, he has presented no evidence to dispute the Hearing Officer’s findings. In this regard, in reviewing these matters, this agency must rely on the experience and judgment of hearing officers to adequately summarize testimony and make reasonable and rational conclusions. Based on this record, the appellant has not established an abuse by the appointing authority of its discretion in this minor disciplinary case. Therefore, there is no basis to disturb the Hearing Officer’s conclusion and no further review will be conducted by the Commission.

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 12TH DAY OF FEBRUARY, 2020


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