

B-26



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of G.N.,
Department of Labor and Workforce
Development

Discrimination Appeal

CSC Docket No. 2014-2502

ISSUED: OCT 06 2014 (WR)

G.N., a Senior Examiner, Unemployment Tax with the Department of the Labor and Workforce Development,¹ appeals the attached determination of the Office of Diversity and Compliance (ODC), Department of Labor and Workforce Development, which determined that D.W. did not falsely allege that the appellant violated the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy).

By way of background, on September 28, 2012, the ODC sustained the complaint of D.W., a female Examiner, Unemployment Tax, which alleged that the appellant, a male, sexually harassed her.² The appellant appealed and a disciplinary hearing was held on August 15, 2013, where the appellant testified on his behalf and denied harassing D.W. The ODC presented the testimony of its investigator as its only witness. Without D.W.'s testimony, the hearing officer deemed the investigator's testimony as unreliable hearsay evidence and therefore did not sustain the charges against the appellant. Thereafter, the appellant alleged that D.W. filed a false discrimination complaint against him and filed a complaint against her. However, the ODC found D.W.'s complaint to be credible, and determined that D.W. did not file a false complaint against the appellant.

¹ Agency records indicate that the appellant retired from State service, effective July 1, 2014.

² The appellant initially appealed the determination to the Civil Service Commission, which did not have jurisdiction to address his appeal pursuant to *N.J.A.C. 4A:7-3.2(n)*, since disciplinary action had been recommended.

On appeal to the Civil Service Commission (Commission), the appellant contends that D.W. filed a false complaint against him because he did not harass her. In support of this contention, the appellant refers to his disciplinary hearing which did not sustain the charges against him and argues that there is no evidence to support the ODC's finding that he harassed D.W. other than her "extreme emotion." He also claims that there were two witnesses in the room when the harassment allegedly occurred. Additionally, the appellant states that D.W.'s complaint was filed two and one half months after the alleged incident occurred. Finally, the appellant contends that he was burdened by the complaint and states that he was "subject to three work re-locations and one unit re-assignment." As such, the appellant requests that D.W. be sanctioned for filing the complaint.

In response, the ODC contends that it treated the appellant's allegation as an initial complaint of a violation of the State Policy. The ODC states that pursuant to *N.J.A.C. 4A:7-3.2(i)*, which gives an investigator the discretion to conduct an investigation, the investigator relied upon her previous investigation which determined that D.W. was a credible witness and substantiated D.W.'s allegations against the appellant. Thus, the ODC asserts that despite the hearing officer's finding that D.W.'s complaint was unsubstantiated, its determination should be upheld. In this regard, the ODC argues that the issue before the hearing officer was "whether the limited evidence presented at the hearing was sufficient to uphold [the discipline] imposed by management." The ODC states that the hearing officer's determination was based on the fact that only the appellant provided direct testimony at the hearing. The ODC contends that because D.W. did not testify, the hearing officer did not have the opportunity to assess her credibility or the veracity of her complaint. Thus, it claims that the hearing officer's decision did not address the merits of the case, but rather only a technicality. Moreover, it notes that the appellant did not argue at his hearing that D.W. filed a false complaint against him. The ODC further argues that its determination should not be disturbed for public policy reasons. First, it asserts that because employees seek relief from discrimination or harassment by reporting misconduct to their managers, employees who fear reprisal or counter charges may be less likely to report misconduct. This, it argues, will have a chilling effect on the State Policy's purpose of identifying and eradicating harassment and discrimination in the workplace. Second, it states that "delayed or underreported" discrimination or harassment claims "will invariably increase the State's legal exposure if employees assert that they are dissuaded from filing complaints because of the fear of reprisal, and the discovery process reveals that a significant number of false allegation complaints have been brought against complainants."

The appellant responds by reiterating that D.W. filed a false complaint against him because he did not sexually harass her. He claims that the ODC does not specify what "evidence" it has in the determination letter and posits that it "may be nothing more than emotional presentation by the complainant." He also

claims that an incident which occurred five days before the alleged sexual harassment, where he confronted D.W. after witnessing her engage in unethical behavior, motivated her to file the complaint against him. Finally, the appellant complains that the ODC "reviewed the appeal of its own determination."

CONCLUSION

N.J.A.C. 4A:7-3.1(i) provides that an employee who knowingly makes a false accusation of prohibited discrimination/harassment or knowingly provides false information in the course of an investigation of a complaint, may be subjected to administrative and/or disciplinary action, up to and including termination of employment. Complaints made in good faith, however, even if found to be unsubstantiated, shall not be considered a false accusation. Moreover, the appellant shall have the burden of proof in all discrimination appeals. See *N.J.A.C.* 4A:7-3.2(m)3.

In the instant matter, the ODC investigated D.W.'s complaint, determined that she was a credible witness, and therefore found that the appellant violated the State Policy. At the appellant's subsequent departmental hearing, the hearing officer found that because D.W. did not testify, the ODC investigator's testimony, which was based upon D.W.'s statements in the investigation, was hearsay. As the appellant himself testified that he did not sexually harass D.W., the hearing officer did not sustain the charges against the appellant. The appellant thereafter filed a complaint which alleged that D.W. filed a false discrimination complaint against him. However, the ODC reviewed its prior investigation and determined that she did not file a false complaint against the appellant because she was a credible witness. On appeal, the appellant contends that he did not harass D.W. and therefore her complaint was filed falsely. In support of this contention, the appellant first argues that the dismissal of the disciplinary charges brought against him at his departmental hearing prove that he did not harass D.W. However, the hearing officer dismissed the charges against the appellant not because D.W. filed a false complaint against him, but rather because the ODC did not meet its burden of proof. In this regard, unsubstantiated discrimination complaints made in good faith are not necessarily false accusations. See *N.J.A.C.* 4A:7-3.1(i). The appellant appears to argue that D.W.'s complaint was not made in good faith because the incident at issue occurred five days after he confronted D.W. about what he perceived as her unethical behavior. Apart from this bare assertion, however, the appellant does not offer any evidence that his confrontation with D.W. motivated her to file the complaint or that his confrontation with D.W. is even linked to her filing of the complaint. Likewise, the appellant's argument that D.W. filed her complaint some two and one half months after the alleged incident is unsupported by any indication that her complaint was false. While appellant argues that, apart from D.W.'s "extreme emotion" no evidence supports the ODC's determination, he offers no evidence to rebut the ODC's finding that D.W. was a credible witness.

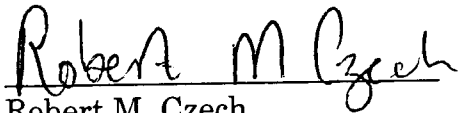
Finally, regarding his contention that two witnesses were present when he allegedly harassed D.W., he does not provide their statements. Accordingly, under these circumstances, no basis exists to find a violation of the State Policy. Finally, the Commission agrees with the ODC that bringing false accusation charges against a claimant whose claim was unsubstantiated could discourage employees with a valid claim from filing that claim.

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 1st DAY OF OCTOBER, 2014



Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Henry Maurer
Director
Division of Appeals
and Regulatory Affairs
Civil Service Commission
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P.O. Box 312
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Attachment

c: G.N.
Caroline Clarke
Joseph Gambino



State of New Jersey

DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT

PO BOX 110

TRENTON, NEW JERSEY 08625-0110

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lieutenant Governor

HAROLD J. WIRTHS
Commissioner

February 10, 2014

Via Certified and Regular Mail

G. N. [REDACTED]
[REDACTED]
[REDACTED]

Re: Filing of False Sexual Harassment Complaint

Dear Mr. N. [REDACTED]:

In September 2013, you requested that the Office of Diversity & Compliance apply a full measure of sanctions against Ms. D. [REDACTED] W. [REDACTED] for filing a false sexual harassment complaint against you. However, your request must be denied.

Ms. W. [REDACTED] filed a sexual harassment complaint against you on March 16, 2012; and on September 21, 2012, the Office of Diversity & Compliance concluded that there was sufficient evidence to substantiate her claim and therefore determined that you violated the New Jersey State Policy Prohibiting Discrimination in the Workplace.

The State Policy Prohibiting Discrimination states that "an employee who knowingly makes a false accusation of prohibited discrimination/harassment or knowingly provide false information in the course of an investigation of a complaint, may be subjected to administrative or disciplinary action." The Policy further states that "Complaints made in good faith however, even if found to be unsubstantiated shall not be considered a false accusation."

Before imposing sanctions for filing a false complaint claim, an initial assessment must be made as to whether the complaint was indeed false. In this instance, the investigation found that Ms. W. [REDACTED] provided credible evidence upon which the OD&C relied to reach a conclusion that you violated the State Policy Prohibiting Discrimination. As such, her complaint cannot be deemed false, and consequently, your request for imposition of sanctions for filing a false complaint must be denied.

It should be noted that discipline meted out for violations of the Policy is solely within the purview of the Department's Division of Human Resources and Labor Relations, and may include or consider factors outside the scope of the discrimination complaint investigated by the Office of Diversity & Compliance.

At this time, I would like to remind you that the *State Policy* prohibits retaliation against any employee who files a discrimination complaint, participates in a complaint investigation or opposes a

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OFFICE OF DIVERSITY AND COMPLIANCE
1000 BANKERS BUILDING, FLOOR 1000, TRENTON, NJ 08625-0110

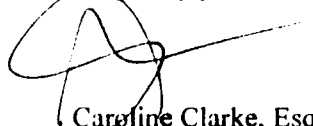
WVD

Attch 1

discriminatory practice. Furthermore, this matter remains confidential and the results of the investigation should not be discussed with others.

"If you wish to appeal this determination, you must submit a written appeal to the New Jersey Civil Service Commission, Division of Merit System Practices and Labor Relations, Written Record Appeals Unit, P. O. Box 312, Trenton, NJ 08625-0312, postmarked or delivered within 20 days of your receipt of this determination. Your appeal must include a copy of this determination, the reason for the appeal and the specific relief requested. Be advised that effective July 1, 2010, there is a \$20 fee for appeals. Please include a check or money order along with your appeal, payable to NJCSC. Persons receiving public assistance and those qualifying for NJCSC Veterans Preference are exempt from this fee."

Very truly yours,



Caroline Clarke, Esq.
Executive Administrator
Office of Diversity & Compliance

cc: Manta Patel, Director
Division of EEO/AA

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