



B-24

STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of P.O.,
Department of Community Affairs

CSC Docket No. 2015-1865

Discrimination Appeal

ISSUED: NOV 09 2015 (DASV)

P.O., an Inspector 3, Multiple Dwellings, appeals the attached determination of the Commissioner of the Department of Community Affairs, stating that the appellant failed to present sufficient evidence to support a finding that he had been subjected to a violation of the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy).

The appellant, a 68 year old Caucasian male, filed a discrimination complaint, using the intake questionnaire of the Equal Employment Opportunity Commission (EEOC) alleging discrimination based on race and sex. Specifically, the appellant stated that a constituent complaint was lodged against his co-worker, V.W., an African-American female Inspector 3, Multiple Dwellings, by a Caucasian female property owner. The complaint was received by the Bureau Chief, and V.W. was ordered to respond to the complaint. The appellant claimed that V.W. refused and did not answer her work and personal cell phones and home telephone for days. V.W. eventually agreed to meet with the team's senior inspector, but she filed a complaint against her supervisor. The appellant indicated that V.W. was repeatedly insubordinate and did not appear before any authority to answer for her behavior. However, several years prior to V.W.'s complaint, the appellant stated that he had a complaint lodged against him, where he was accused of "saying something hurtful about someone" during one of his inspections. The appellant was ordered to respond in writing, which he did, and appear before his supervisor and Bureau Chief. He then met with the Director and Personnel Chief. While no charges were sustained against him, the appellant was required to take a remedial class. By contrast, the appellant alleged that V.W. has had numerous complaints

filed against her, but management has treated her differently because of her race and gender. The appellant maintained that his issue was not with V.W., but rather with the State which has "a different set of rules for people of different races or genders." In response, the appointing authority conducted an investigation, which included interviewing the appellant and witnesses. However, the investigation did not substantiate that the appellant was treated differently on the basis of his race. The appointing authority indicated that the appellant was not aware of all of the facts regarding V.W. and it reserved the right to handle employee matters in a manner it deemed appropriate based on the circumstances.

On appeal to the Civil Service Commission (Commission), the appellant initially complains that he also alleged gender discrimination, which was not addressed. He also claims that he only spoke with the Equal Employment Opportunity/Affirmative Action (EEO/AA) Officer twice and was not actually interviewed. The appellant takes issue with the timelines of the investigation of his complaint and when he was served with the determination. It is noted that the appellant's complaint was dated June 2, 2013. The appellant states that the Office of EEO/AA did not initially act on his complaint because it "assumed" that he filed with the EEOC. It is noted that the appellant submits copies of e-mails, including an e-mail dated February 26, 2014 from the EEO/AA Officer, who indicates that an internal investigation of his complaint will be conducted "right away." The appellant recounts the reason for his discrimination complaint and states that as V.W.'s "situation continued and, allegations by her, refusals to cooperate and a myriad of other insubordinations continued, the difference became glaringly obvious, not only to [him] but to everyone in [their] team." The appellant claims that no investigation was conducted regarding V.W. until she "blamed everything on everybody else." Furthermore, the appellant requests "the time, date, and place, the written discussion, questions and answers and all notes from [his] interview." He contends that he has a right to know information regarding the interview of which he has no recollection of ever attending. As for his relief, the appellant requests that the Commission review the investigative materials regarding his interview. He also asks for "equality, evenhandedness, and fairness!"

In response, the appointing authority, represented by Debra A. Allen, Deputy Attorney General, initially states that it commenced an investigation after the appellant's complaint was received, since he had originally completed EEOC forms. Once it was determined to conduct an internal investigation, the appellant, his supervisor, an Assistant Director, and V.W. were interviewed. The interviews revealed that the respective complaints against the appellant and V.W. were handled similarly. Both of them were counseled by management representatives and were not disciplined. The appellant was counseled by the Human Resources Employee Relations Officer, while V.W. was counseled by the Assistant Director and EEO/AA Officer. The appointing authority asserts that the choice of who was to counsel the appellant and V.W. was not motivated by race, nor is there evidence of

disparate treatment. Therefore, the appointing authority maintains that there was no State Policy violation.

In reply, the appellant reiterates that when the Bureau of Housing Inspection received a similar complaint pertaining to him, "everything was different." He complied with management's directives to respond to the complaint, met with management representatives, and attended a "Producing Customer Service" class. The appellant maintains that attendance at the class was punitive. In V.W.'s case, she refused to respond and failed to present herself to management, answer calls, and attend a weekly meeting. The appellant emphasizes that the handling of the complaint against him "closed in ten days," whereas V.W.'s case lasted five months. The appellant indicates that, contrary to the appointing authority's response, he did not complain about who counseled V.W. He did not know if V.W. even spoke with anyone or took a class. However, it was apparent to him that his case was handled very differently. Additionally, the appellant indicates that his complaint, regardless of whether it was on EEOC forms, was forwarded to State officials and he believed that "the State would handle it." He notes that he watched a video presentation regarding the State Policy and the State is supposed to take complaints of discrimination very seriously and act on them swiftly. Further, the appellant indicates that his "window to do anything closed." In that regard, the appellant states that if he was not satisfied with the State's decision, he could have appealed to the EEOC, but the time period lapsed waiting for the appointing authority to issue its determination. He notes that he does not want the State to breach confidentiality, but questions why he was treated differently and V.W. "virtually" received "a pass."

It is noted that the appointing authority subsequently provided the appellant with the investigative report of his complaint. The report includes a summary of the information given by the appellant to the EEO/AA Officer and a summary of witness interviews. Of note, the investigative report states that the appellant's supervisor "reached out" to V.W. after he received the constituent complaint. The supervisor sent e-mails to V.W. in all capital letters. The EEO/AA Officer stated that the e-mails "can be best described as harsh, if not directly rude." V.W. was interviewed and stated that she was offended by the e-mails, which is why she did not respond to them, and wondered if the e-mails were motivated by her race. Since V.W. raised claims which implicated the State Policy, an investigation was conducted, but did not substantiate a violation. However, the Office of EEO/AA counseled the appellant's supervisor that he should not send e-mails in all capital letters as they are commonly deemed as "shouty caps" and can be interpreted as "overly aggressive." V.W. was counseled that if she was offended by an e-mail, she should report it to the Assistant Director, but that she should still respond to her supervisor. V.W. agreed and she was counseled by the Assistant Director regarding the constituent complaint. The foregoing was a result of informal mediation.

In response, the appellant reiterates his arguments and clarifies that he did not "hear" that a constituent complaint was to be lodged against V.W. Rather, he "knew it was coming!" He also did not "hear" that V.W. refused to take her supervisor's call. She refused to answer the complaint. The appellant was also present when inspectors attempted to contact V.W. by phone. Additionally, the appellant saw an e-mail, ordering V.W. to present herself at the office. The appellant notes that he never considered what he heard as hearsay since he was present when at least one attempt to contact V.W. occurred. Moreover, he questions how the appointing authority could have "believed" that he filed with the EEOC. He states that "[h]ow this belief came to be, [he] cannot even speculate." The appellant explains the events preceding the filing of his complaint and to whom he gave a copy. Furthermore, the appellant claims that V.W. blamed him "for stimulating the complaint against her!" He was never contacted to respond to V.W.'s allegations against him.

Additionally, the appellant disputes that the supervisor "reached out," but rather, he ordered V.W. to respond to the constituent complaint. The appellant also states that an order was given during a team meeting for V.W. to respond, and the order was not "spoken in capital letters" nor harsh or rude. He asserts that V.W.'s refusal created a hostile work environment because "every team member, to varying degrees became uncomfortable with what had taken place." Furthermore, the appellant contends that V.W.'s allegations that her supervisor was "running a good ole boys club" was "by default" accusing other members of the team of being "complicit." Additionally, the appellant maintains that he was not similarly counseled. Moreover, the appellant emphasizes that he made no complaint against any named person because he states that "I blamed the State." He notes that, as he watched the video presentation regarding the State Policy, the "disparities stunned [his] intellect and common sense, in relation to real life encounters and experiences that [he has] witnessed and endured." The appellant states that the video presentation was what caused him to file his discrimination complaint. Further, the appellant questions the thoroughness of the investigation, given that he was not interviewed. He also notes that he never heard what happened to the constituent complaint against V.W. Lastly, the appellant requests an "open hearing with open dialogue" to settle this matter, as he "see[s] no end to this."

CONCLUSION

Initially, the appellant complains that the appointing authority did not issue its determination in a timely manner. In this regard, *N.J.A.C. 4A:7-3.2(l)2* provides that the investigation of a complaint shall be completed and a final letter of determination shall be issued no later than 120 days after the initial intake of the complaint. Additionally, *N.J.A.C. 4A:7-3.2(l)3* states that the time for completion of the investigation and issuance of the final letter of determination may be extended by the State agency head for up to 60 additional days in cases involving exceptional

circumstances. The State agency head shall provide the Division of EEO/AA and all parties with written notice of any extension and shall include in the notice an explanation of the exceptional circumstances supporting the extension. In the instant matter, the appellant's complaint was dated June 2, 2013. There was confusion as to whether the appellant was filing a complaint under the State Policy or with the EEOC.¹ As set forth in the record, the Office of EEO acknowledged the appellant's complaint and indicated on February 26, 2014 that it would conduct an internal investigation "right away." The appointing authority's determination was not issued until December 5, 2014, which is beyond the regulatory time frame. The record is unclear as to the reason for the delay even after the confusion was resolved. However, there is no provision in the State Policy mandating that the appellant's complaint be upheld if procedural requirements are not fulfilled. See *e.g.*, *In the Matter of Karen Kritz* (MSB, decided January 25, 2006). Further, the record does not indicate that the appellant suffered any harm due to the delay. He also has had the opportunity to file an appeal. Nonetheless, the Commission reminds the appointing authority that it must comply with the regulations, and if it fails to do so in the future and egregious violations occur, it may be subject to fines and penalties pursuant to *N.J.A.C.* 4A:10-2.1(a)2.

Additionally, the appellant requests a hearing in this matter. However, discrimination appeals are treated as reviews of the written record. See *N.J.S.A.* 11A:2-6(b) and *N.J.A.C.* 4A:7-3.2(m)2. Hearings are granted in those limited instances where the Commission determines that a material and controlling dispute of fact exists which can only be resolved through a hearing. See *N.J.A.C.* 4A:2-1.1(d). No material issue of disputed fact has been presented which would require a hearing. See *Belleville v. Department of Civil Service*, 155 *N.J. Super.* 517 (App. Div. 1978).

Regarding the merits of the case, *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

¹ The appellant states that if he was not satisfied with the State's decision, he could have appealed to the EEOC, but the time period lapsed waiting for the appointing authority to issue its determination. This is inaccurate. *N.J.A.C.* 4A:7-3.2(p) provides in relevant part that any employee can file a complaint directly with external agencies that investigate discrimination/harassment charges in addition to utilizing the internal procedure. Complaints may be filed with the following external agencies: Division on Civil Rights (within 180 days of the alleged discriminatory act) and the EEOC (within 300 days of the alleged discriminatory act).

United States, or disability. Moreover, the appellant shall have the burden of proof in all discrimination appeals. *See N.J.A.C. 4A:7-3.2(m)4.*

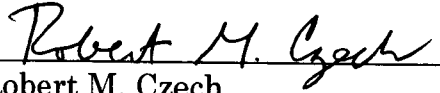
The Commission has conducted a review of the record, and although the appellant disputes the thoroughness of the investigation, the Commission finds that an adequate investigation of the appellant's discrimination complaint was conducted and no State Policy violation was found. While the appellant indicates that he was not interviewed, it appears that the appellant's contact with the EEO/AA Officer was deemed his interview and pertinent information about his complaint was obtained. In addition, there is absolutely no evidence that the appellant was discriminated against based on his race. Further, despite that the appointing authority did not specifically address the appellant's gender (sex) claim, the appellant has not presented a scintilla of evidence that he was discriminated against based on his gender. The appointing authority indicates that the constituent complaints against the appellant and V.W. were treated similarly, since they were both counseled. The appellant disputes this and raises distinct differences in the handling of the cases. However, there is no evidence, other than the appellant's base assumptions and assertions, that these differences were due to race or any identifiable protected category. The facts of each case were simply different and needed to be addressed accordingly. In other words, the fact that the constituent complaint against the appellant only took 10 days to be resolved and he was required to attend a class does not mean that V.W. was treated more favorably due to her race or gender. There were clearly other factors in V.W.'s case, such as a strained relationship with her supervisor, which prolonged the resolution and involved mediation of the dispute. The mere fact that the appellant does not agree with the manner in which a personnel issue is handled cannot sustain a violation of the State Policy. Therefore, under these circumstances, the appellant has failed to meet his burden of proof. *See N.J.A.C. 4A:7-3.2(m)4.*

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 5TH DAY OF NOVEMBER, 2015



Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Henry Maurer
Director
Division of Appeals
and Regulatory Affairs
Civil Service Commission
Written Record Appeals Unit
P.O. Box 312
Trenton, New Jersey 08625-0312

Attachment

c: P.O.
Debra A. Allen, Deputy Attorney General
Gabrielle Gallagher
Mamta Patel
Joseph Gambino



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
PO Box 800
TRENTON, NJ 08625-0806
(609) 292-6420

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

RICHARD E. CONSTABLE, III
Acting Commissioner

December 5, 2014

Via Email
P O [REDACTED]

Re: *Discrimination Complaint*
File No. 2014-1

Dear Mr. O [REDACTED]:

This is in further reference to the Complaint you filed against DCA Management alleging that they violated the *New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy)* by discriminating treating employees differently on the basis of race.

You specifically alleged that employees in the same position, were treated differently on the basis of race. The Office of EEO AA conducted a thorough investigation during which you, the Respondents and one witness were interviewed. You are not aware of all of the facts of the situation you allege in your complaint and management, as always, reserves the right to handle employee matters in whatever fashion they deem appropriate under the specific facts and circumstances as they arise. Based on the results of the investigation, it could not be determined that there was a violation the *State Policy* as the actions taken with respect to the employee were appropriate management decisions.

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.

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

Very truly yours,

RICHARD E. CONSTABLE, III
COMMISSIONER

cc: Gabrielle N. Gallagher EEO/AA Officer
Director, Division of LLO/AA

