

B-46

STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

In the Matter of C.G., Department of  
Transportation

CSC Docket No. 2015-3229

Discrimination Appeal

ISSUED: ~~NOV~~ 06 2015 (SLK)

C.G., a Secretarial Assistant 1 (Non-Stenographic) with the Department of Transportation, appeals the attached decision of the Deputy Commissioner, which found that the appellant did not present sufficient evidence 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).

By way of background, the appellant, a female, filed a complaint in a separate matter with the Division of Civil Rights and Affirmative Action (DCR/AA) alleging that she was discriminated against by her former supervisor, D.M.,<sup>1</sup> based on familial status and a hostile work environment when she was reassigned which resulted in her losing a promotional opportunity. The appellant also complained that she did not receive a prior promotional opportunity because she claimed D.M. said that M.G.'s, a male who is an Administrative Analyst 2, promotion was the priority. During her interview in that investigation, the appellant alleged that D.M. did not report her allegation that M.G. sexually harassed her to the DCR/AA. In the present matter, the appellant filed a complaint alleging that she was sexually harassed by M.G. Specifically, the appellant asserted that M.G. hugged and touched her, that he took pictures of her, and that he made inappropriate remarks such as that the two of them should get together to have some fun while his wife is away. The DCR/AA conducted an investigation including interviewing of witnesses and was unable to substantiate her allegations. In this regard, the investigation found that the majority of witnesses stated that M.G. treated her in the same manner as he did other employees, describing his behavior as normal and nothing out of the

<sup>1</sup> Personnel records indicate that D.M., a former Assistant Commissioner, retired on January 1, 2015. That complaint is being addressed in a separate decision.

ordinary. However, it did make recommendations for management's consideration based on workplace matters that were raised during the investigation.

On appeal, the appellant states that it is not surprising that there are not many witnesses to M.G.'s harassing behavior as he would typically wait until she was alone before sexually harassing her. However, she asserts that one witness should be enough to substantiate her allegations. The appellant acknowledges that she did not have an issue with M.G. calling her "dear" or "honey;" but she did have a problem with his inappropriate comments and touching. In this regard, she states that as M.G. is a married man, he should have never put his hands on her, kissed her neck, or made sexual comments to her. The appellant claims that on March 11, 2013, M.G. asked her if she wanted to have an affair with him and kissed her neck. Further, she states that M.G. would tell her how she turns him on, that he had dreams about the two of them, and how he excited her. She explains that she was not trying to ruin his life by speaking to D.M. about M.G.'s behavior and that she only wanted him to stop. Instead, after D.M. spoke with him, the appellant claims that M.G. became more private in his harassing behavior towards her to ensure that there were no witnesses. Additionally, the appellant states that she presented her allegations to the County Prosecutor's Office.

In response, the DCR/AA states that M.G. denied the allegations and maintained that the appellant filed the complaint in retaliation for her reassignment. The DCR/AA also interviewed ten witnesses as part of its investigation. The investigation revealed that M.G. was described as cordial and professional, while two witnesses noted that he was a "hugger." Most witnesses thought that M.G. treated the appellant in the same manner as he treated other co-workers. Two witnesses described M.G. as flirtatious with the appellant and other employees and one witness thought he joked with all employees. Seven witnesses indicated that they did not see M.G. touch or hug the appellant, while three witnesses indicated that she had told them that he had done so including one witness who said that the appellant described him as "touchy-feely." One witness confirmed that M.G. gave the appellant a backrub, but did not think it was inappropriate as the appellant was working on the computer while M.G. stood behind and looked at what she was doing. Another witness stated that he saw M.G. pat the appellant on the back, but did not think it was inappropriate. It presents that one witness perceived the backrub as being inappropriate and that same witness indicated that M.G. told the appellant that if she wanted to collect money for the office's water club to come to his house for the weekend. However, the investigation determined that there were credibility concerns because this witness was involved in a personal relationship with the appellant. The DCR/AA reiterates that the appellant did not complain about M.G. offering her money or to buy her a dress in her interview statement, but one witness indicated that the appellant mentioned the incident while a second witness encouraged her to return the two hundred dollars that M.G. had given her. Based on the interviews, the DCR/AA

was unable to substantiate the appellant's allegations of sexual harassment. Instead, the investigation determined that the appellant felt that she was cheated out of a promotional opportunity and was upset that D.M. asked why she wanted the promotional title as it only represented a two thousand dollar increase. Further, the appellant felt cheated that D.M.'s primary concern was promoting M.G. while manipulating the system so that others would not be promoted. However, it did determine that M.G.'s behavior was inappropriate in the workplace and that he should receive individual counseling on the State Policy.

## CONCLUSION

*N.J.A.C.* 4A:7-3.1(a) states, in pertinent part, that the State of New Jersey is committed to providing every State employee and prospective State employee with a work environment free from prohibited discrimination or harassment. *N.J.A.C.* 4A:7-3.1(c) provides that it is a violation of this policy to engage in sexual harassment of any kind.

*N.J.A.C.* 4A:7-3.1(c)1 states that for the purposes of this policy, sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct a sexual nature when, for example:

(iii) Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.

*N.J.A.C.* 4A:7-3.1(c)2 provides that examples of prohibited behaviors that may constitute sexual harassment and are therefore a violation of this policy include, but are not limited to:

(ii): Unwanted physical contact such as intentional touching;

(iii): Verbal sexually suggestive propositions or invitations.

*N.J.A.C.* 4A:7.3-2(m)4 states, in pertinent part, that the appellant shall have the burden of proof in all discrimination appeals.

The Civil Service Commission (Commission) has conducted a review of the record in this matter and finds that the appellant has not established that M.G. has violated the State Policy. As part of the investigation, the appellant provided a signed statement in reference to M.G. indicating that:

He hugged me, gave me backrubs and took pictures of me in the office.  
At the time I didn't think anything of it. Then he made some

inappropriate comments such as getting together to have some fun now that his wife was gone for a month.

At the end of the interview the appellant was asked if there was anything else she wanted to add and she stated that, because she did not want to risk having to ride alone with M.G., she began asking a co-worker to escort her out of the building at the end of the day. In the context of this situation, there is no evidence that M.G.'s behavior violated the State Policy. Although the investigation revealed that M.G. was a "hugger" and "touchy-feely" and that he was the "unofficial" office photographer, there was no evidence that his behavior was targeted specifically toward the appellant or that it was sexual in nature. Further, M.G. claimed that it was the appellant who initiated the request for backrubs in order to cool down and the appellant acknowledged in her interview statement regarding the backrubs, as well as the hugs and photographs, that "At the time I didn't think anything of it." Given the credibility concerns on this issue regarding the one witness who was in a personal relationship with the appellant, the investigation was unable to substantiate the appellant's allegation that the backrubs were not consensual. While M.G.'s backrubs were inappropriate for the workplace and would typically be considered a violation of State Policy, the weight of the evidence suggested that the backrubs were consensual. *See In the Matter of S.C.* (CSC, decided July 17, 2013) (Commission reversed finding of a violation of the State Policy where the appellant gave an individual a congratulatory kiss after she was married who complained about the incident more than three years after it occurred when the appellant pursued disciplinary charges against the individual for performance issues). Therefore, there is no evidence that M.G. subjected the appellant to unwelcome sexual advances, conduct that created an offensive work environment for her, or unwanted physical touching.

In regard to the appellant's allegation in her interview statement that M.G. commented that he wanted to have an affair with her as well as her other allegations that were not part of her interview statement, including that he made other sexually suggestive comments to her and kissed her and put her hands on her, as there are no witnesses or other evidence to corroborate these claims, they cannot be substantiated. With respect to the dress incident, the appellant did not bring up this incident in her initial interview statement nor did she mention it on appeal. Further, the investigation revealed that the appellant acknowledged during her meeting with M.G. and D.M. that she misunderstood M.G.'s gesture. Similarly, the appellant did not state in her interview statement or on appeal that M.G. said to her that if she wanted to collect money for the office's water club to come to his house this weekend. Additionally, the investigation determined that the one witness who recalled M.G. making this statement had a credibility concern because this witness was involved in a personal relationship with the appellant.

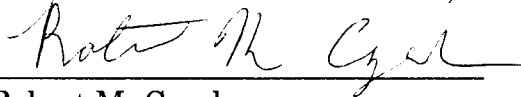
Accordingly, the Commission finds that the DCR/AA investigation was thorough and impartial. Therefore, the Commission finds that appellant failed to support her burden of proof and no basis exists to find a violation of the New Jersey State Policy Prohibiting Discrimination in the Workplace.

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 5<sup>th</sup> DAY OF NOVEMBER, 2015



Robert M. Czech  
Chairperson  
Civil Service Commission

Inquiries  
and  
Correspondence

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

Attachment

c: C.G.  
Linda Legge  
Mamta Patel  
Joseph Gambino



## State of New Jersey

DEPARTMENT OF TRANSPORTATION  
P.O. BOX 600  
TRENTON, NJ 08625-0600

CHRIS CHRISTIE  
*Governor*  
KIM GUADAGNO  
*Lt. Governor*

JAMIE FOX  
*Commissioner*

May 26, 2015

Via Certified and Regular Mail

██████████  
██████████  
██████████

Re: EEO Discrimination Complaint

Dear Ms. G ██████████

The Department of Transportation's Division of Civil Rights and Affirmative Action investigated your allegations that Mr. G ██████████ Administrative Analyst 2, subjected you to sexual harassment in violation of the New Jersey State Policy Prohibiting Discrimination in the Workplace ("State Policy").

In your complaint you alleged Mr. G ██████████ hugged and touched you, that he took pictures of you and made inappropriate remarks, such as commenting that the two of you should get together to have some fun while his wife was away. The Division of Civil Rights and Affirmative Action conducted a thorough investigation during which Mr. G ██████████ the Respondent and many other individuals were interviewed.

It is a violation of the State Policy to engage in sexual (or gender-based) harassment of any kind, including hostile work environment harassment, quid pro quo harassment, or same-sex harassment. Sexual harassment as defined in the Equal Employment Opportunity Commission Guidelines is unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when, for example, submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.

"IMPROVING LIVES BY IMPROVING TRANSPORTATION"  
New Jersey Is An Equal Opportunity Employer • Printed on Recycled and Recyclable Paper

Ms. G [REDACTED]  
May 26, 2015  
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Based on the interviews conducted, this office was unable to substantiate your allegations of sexual harassment. The majority of witnesses stated Mr. G [REDACTED] treated you the same as he did other employees, describing it as normal and nothing out of the ordinary. Witnesses confirmed Mr. G [REDACTED] was the unofficial photographer for the office and recalled him being asked to take pictures at office parties and events. Witnesses related that he took group photographs and did not take pictures of individuals or single you out.

Several witnesses thought Mr. G [REDACTED] joked with co-workers but they did not identify any specific statements. One witness thought Mr. G [REDACTED] made an inappropriate remark at an office celebration, but it was addressed to another employee and not at you. One witness noted Mr. G [REDACTED] called women "dear" and "honey." The use of nicknames and terms of endearment, although inappropriate, does not, by itself implicate the State Policy.

Most witnesses did not hear Mr. G [REDACTED] make any inappropriate statements directed to you; however, one individual indicated Mr. G [REDACTED] made a remark about you coming to his house for the weekend if you wanted to collect money for the water club.

The majority of witnesses interviewed did not see Mr. G [REDACTED] hug or touch you, while two individuals recalled seeing him give you a back rub and one witness described the contact as a pat on the back. Two witnesses did not think the behavior was inappropriate but the third believed it was inappropriate. Other witnesses described Mr. G [REDACTED] as a "hugger" and "touchy-feely," and noted he behaved similarly with other employees.

While the investigation did not uncover sexual harassment as defined in the State Policy, this office made recommendations for management's consideration; and will be directly addressing other workplace matters raised during this examination.

If you disagree with this determination, you have the right to appeal this decision. If you wish to appeal this decision, however you must submit a written appeal to the New Jersey Civil Service Commission, Division of Appeals and Regulatory Affairs, 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 the burden of proof is on the Appellant. Also, effective July 1, 2010, there is a \$20 fee for appeals. Please include a check or money order along with your appeal, payable to "NJCSA." Persons receiving public assistance pursuant to P.L. 1997, c.38 (C.44:10-55 et seq.) and individuals with established veterans preference as defined by N.J.S.A. 11A:5-1 et seq. are exempt from these fees.

Please be advised that the State Policy prohibits retaliation against any employee who alleges that she or he was the victim of discrimination or harassment, provides any information in the course of an investigation into claims of discrimination or harassment in

Ms. G. [REDACTED]

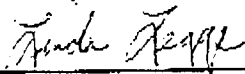
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the workplace or opposes a discriminatory practice. Please immediately contact the Division of Civil Rights and Affirmative Action at 609-530-3009, if you believe that you have been the victim of retaliation for having complained about discrimination or if you have any future complaints of discrimination or harassment. Finally, we remind you that all aspects of EEO complaints, investigations, and determinations are considered highly sensitive and must be kept confidential. Consequently, you should not discuss this matter, including its outcome, with anyone who does not have a business reason to be involved in this matter. Persons who violate the confidentiality provision of the State Policy may be subject to discipline.

If you have any questions or concerns, please do not hesitate to contact the Division of Civil Rights and Affirmative Action at 609-530-3009.

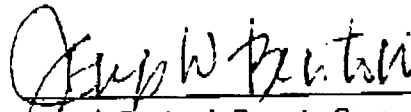
Sincerely,



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Linda Legge, Executive Director  
Division of Civil Rights and Affirmative Action

In Concurrence,



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Joseph Bertoni, Deputy Commissioner

c: Mamta Patel, Director, Division of EEO/AA - Civil Service Commission  
C. William Kingsland, Assistant Commissioner