



B-48

STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of P.F., Department of
Human Services

Discrimination Appeal

CSC Docket No. 2015-2571

ISSUED: **NOV 09 2015** (HS)

P.F., a management-level employee with Greystone Park Psychiatric Hospital (Greystone), Department of Human Services, appeals the attached determination of the Equal Employment Opportunity (EEO) Director, which did not substantiate the appellant's allegation of retaliation.

The appellant filed a complaint with the Office of EEO against E.G., an Administrative Analyst 1, initially alleging discrimination on the basis of national origin. Specifically, the appellant reported that E.G. had told two of the appellant's employees that he was going to meet with the appellant and teach the appellant how to speak English. During the course of the investigation, the appellant also alleged retaliation. Specifically, the appellant reported that R.F., a management-level employee,¹ allowed retaliatory actions to be conducted through E.G. against the appellant for filing prior EEO and Public Employees Occupational Safety and Health (PEOSH) complaints. After investigation, the EEO substantiated the allegation of national origin discrimination against E.G. but did not substantiate the allegation of retaliation. The EEO noted that the investigation produced no witnesses or evidence to substantiate the retaliation allegation, and the appellant declined to produce evidence he stated was in his attorney's possession. The EEO further noted that it had no jurisdiction over the appellant's PEOSH complaint and, therefore, no determination was made in that regard.

¹ The appellant's and R.F.'s exact titles are not being used to preserve confidentiality. See N.J.A.C. 4A:7-3.1(g)1.

On appeal to the Civil Service Commission (Commission), the appellant states that he has solid evidence demonstrating that Greystone officials have retaliated against him on several occasions through E.G. He argues that the EEO had all documents necessary to properly conclude that he has been retaliated against.

In response, the EEO states that it interviewed five employees and reviewed more than 10 documents. The appellant was asked during the investigation if there were any witnesses or documentation to support his retaliation allegation. The appellant referred to an eight-page document entitled, "Discriminatory and Retaliatory Actions by the Greystone Administration Against [the appellant] Through [E.G.]," which was reviewed during the investigation but did not support the retaliation allegation. Later in the investigation, the EEO again requested evidence from the appellant to support the retaliation allegation, but the appellant responded that his attorney had the evidence and that the evidence would be provided in the proper forum. The EEO maintains that the appellant's assertions on appeal are unsupported by any evidence of retaliation and do not rise to the level of retaliation.

In reply, the appellant claims that, in response to a complaint he filed, PEOSH issued Greystone a "Notice to Comply" on July 21, 2014, and shortly thereafter, E.G. was assigned to Plant Services by R.F. in retaliation for the complaint. According to the appellant, prior to his complaint, no employee from the Business Office was ever assigned to any other department at Greystone. Moreover, the appellant asserts that E.G. wandered freely through the different divisions in Plant Services and disrupted employees' work activities. The appellant also contends that E.G. falsely claimed that the appellant had a financial interest in a vendor when there was no evidence to support that allegation, and Greystone never provided the appellant with the investigation report that concluded the charges were unfounded.

In support, the appellant submits several emails. For example, in an email dated December 18, 2014, R.F. explained that E.G. was working on items related to purchasing as part of an internal control action plan in response to findings by the Office of Legislative Services (OLS);² that E.G. should only focus on items related to purchasing and education of staff regarding purchasing requirements to adhere to Treasury Circulars; that he believed E.G. had already helped to ensure Treasury Circulars were adhered to within Plant Services; that E.G. had researched compliance with Treasury Circulars related to mop heads, assisted with bid solicitation to correct the mop head issue, and developed a plan on purchases for dishwashers and laundry washers and dryers; and that once E.G. was done at Plant Services, he would move on to another division. In an email to R.F. dated December

² OLS issued an audit report of Greystone on September 26, 2013 for the period July 1, 2010 to April 30, 2013. The report included findings and recommendations regarding purchasing and fixed assets.

28, 2014, the appellant summarized E.G.'s "[q]uestionable" activities, which included: deviating from his assignment of monitoring vendor contracts and constantly entering various Plant Services shops without the appellant's knowledge and without explaining to the appellant the reasons for doing so; engaging in direct conversations with mechanics and shop supervisors that are unrelated to his assignment and that violate "Chain of Command" policies; creating a level of discomfort and confusion such that several supervisors complained to the appellant; generating lengthy emails and copying engineering shop foremen, distracting them from their responsibilities; and interacting with housekeeping staff members without the housekeeping director's knowledge, obstructing the efficient functioning of the housekeeping section. In an email to the appellant dated January 8, 2015, another employee complained about an incident where E.G. acted rudely and snatched papers from the employee's hand following miscommunication regarding an order. In another email to R.F. dated January 9, 2015, the appellant complained that E.G. was retaliating against him by purposely wasting his time and labor and creating a tense and confusing atmosphere that would reflect negatively upon the appellant's performance. In an email dated March 11, 2015, the appellant requested from R.F. the results of an investigation into the allegation that the appellant had a personal interest in a vendor. Other emails relate to issues with washers and dryers, mop heads and thermal management equipment.

The appellant asserts that there are disputed factual issues over the nature and thoroughness of the EEO investigation; the intent behind the assignment of E.G. and whether it was retaliatory for the PEOSH complaint; the specific instructions given to E.G.; and whether E.G. engaged in the disruptive activities, including the allegation that the appellant had a financial interest in a vendor, based on instructions to retaliate against the appellant and disrupt the many divisions in Plant Services supervised by the appellant. Thus, the appellant requests a hearing.

CONCLUSION

Initially, the appellant requests a hearing in this matter. However, discrimination appeals are generally treated as reviews of the written record. See *N.J.S.A.* 11A:2-6b and *N.J.A.C.* 4A:7-3.2(m)3. 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). For the reasons explained below, 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).

It is a violation of the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy) to engage in any employment practice or procedure that treats an individual less favorably based upon any of the protected categories.

See N.J.A.C. 4A:7-3.1(a)3. The protected categories include 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. *See N.J.A.C. 4A:7-3.1(a).* 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 this policy. No employee bringing a complaint, providing information for an investigation, or testifying in any proceeding under this policy shall be subjected to adverse employment consequences based upon such involvement or be the subject of other retaliation. *See N.J.A.C. 4A:7-3.1(h).* Moreover, the appellant shall have the burden of proof in all discrimination appeals. *See N.J.A.C. 4A:7-3.2(m)4.*

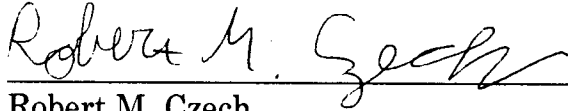
The Commission has conducted a review of the record in this matter and finds that an adequate investigation was conducted, that the relevant parties in this matter were interviewed and that the investigation failed to establish that the appellant was retaliated against. The EEO appropriately analyzed the available documents and interviewed several witnesses in investigating the appellant's complaint and concluded that the appellant's allegation of retaliation could not be substantiated. In this regard, the State Policy prohibits retaliation against any employee who alleges that she or he was the victim of discrimination/harassment and provides, in part, that no employee bringing a complaint under this policy shall be subjected to adverse employment consequences based upon such involvement or be the subject of other retaliation. *See N.J.A.C. 4A:7-3.1(h).* However, the appellant maintains on appeal that E.G.'s assignment to Plant Services and his subsequent actions were in retaliation for a prior PEOSH complaint. Therefore, since a PEOSH complaint does not implicate the State Policy, E.G.'s assignment and subsequent actions are not considered to be retaliation in violation of the State Policy. Regardless, the record does not establish that E.G.'s assignment and his subsequent actions were caused by a prior PEOSH complaint. Other than his assertions, the appellant provides no substantive evidence in that regard. Rather, the information provided by the appellant indicates that E.G.'s assignment was in response to an OLS audit report. Accordingly, the investigation was thorough and impartial, and there is no basis to disturb the EEO's determination.

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
Written Record Appeals Unit
Civil Service Commission
P.O. Box 312
Trenton, NJ 08625-0312

Attachment

- c. P.F.
Edward McCabe
Mamta Patel
Joseph Gambino



State of New Jersey

DEPARTMENT OF HUMAN SERVICES

PO Box 700

TRENTON NJ 08625-0700

February 25, 2015

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

JENNIFER VELEZ
Commissioner

F [REDACTED] F [REDACTED]
[REDACTED]

[REDACTED]

Dear Mr. F [REDACTED]:

On January 26, 2015, you filed a discrimination complaint alleging national origin discrimination against E [REDACTED] G [REDACTED], Administrative Analyst 1, Greystone Park Psychiatric Hospital. Specifically, you reported that on January 16, 2015, you learned that in July 2014 E [REDACTED] G [REDACTED] told two of your employees that he was going to meet with you and teach you how to speak English.

On February 9, 2015, in the course of the investigation of your national origin discrimination complaint against E [REDACTED] G [REDACTED], you alleged retaliation against the Greystone Park Psychiatric Administration ("GPPH"). Specifically, you reported that R [REDACTED] F [REDACTED] allowed GPPH's retaliatory actions to be conducted through E [REDACTED] G [REDACTED] against you for filing prior EEO and PEOSH complaints.

The Department of Human Services (DHS) neither condones nor tolerates any form of discriminatory behavior in the workplace. Accordingly, the Office of EEO assigned this matter to R [REDACTED] G [REDACTED] for investigation.

The Office of EEO substantiated your allegation of national origin discrimination against E [REDACTED] G [REDACTED] and did not substantiate your allegation of retaliation. The investigation produced no witnesses or evidence to support your allegation that GPPH retaliated against you and you declined to produce evidence that you stated was in your attorney's possession.

In addition, the EEO Office has no jurisdiction over your PEOSH complaint and, therefore, no determination was made in this matter.

If you disagree with this determination, you have the right to file an appeal with the Civil Service Commission within twenty (20) days of your receipt of this letter. The appeal must be in writing, state the reason(s) for the appeal, and specify the relief requested. Please include all materials presented at the department level

Advisory, Consultative, Deliberative and Confidential Communication

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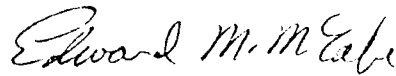
and a copy of this determination letter with your appeal. The appeal should be submitted to the Division of Appeals and Regulatory Affairs, P.O. Box 312, Trenton, N.J. 08625-0312.

Please be advised that pursuant to P.L. 2010, c.26, effective July 1, 2010, there shall be a \$20 fee for appeals. Please include the required \$20 fee with your appeal. Payment must be made by check or money order only, payable to the NJ CSC. Persons receiving public assistance pursuant to P.L. 1947, c. 156 (C.44:8-107 et seq.), P.L. 1973, c.256 (C.44:7-85 et seq.), or 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.

You are reminded that the State Policy prohibits retaliation against any employee who files a discrimination complaint or participates in a complaint investigation. Furthermore, this matter remains confidential and the results of the investigation should not be discussed with others.

Should you have any questions, please contact the DHS Office of EEO at (609) 292-2816 or 292-5807.

Sincerely,



Edward M. McCabe
EEO Director

EMM: tw

C: Chris Mongon, Assistant Commissioner, HR
Janet Monroe, CEO
Mamta Patel, CSC

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