

B-53

STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of J.W., Department of
Human Services

CSC Docket Nos. 2016-634

Discrimination Appeal

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

J.W., a Charge Nurse, 12 months¹ with the Department of Human Services, Ancora Psychiatric Hospital, appeals the attached decision of the Assistant Commissioner, Human Resources, 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 alleging sexual harassment against Y.A., a male Charge Nurse, 12 months. Specifically, the appellant alleged that Y.A. propositioned her after she put him on notice that she was not interested in a relationship with him and that he was asked to stop. The Office of Equal Employment Opportunity (EEO) conducted an investigation that consisted of eight interviews and examined five relevant documents. The investigation found that the witness accounts were contradictory, finding that it could not attest to the credibility of one witness because of a prior conflict between her and Y.A. The investigation also noted that the appellant filed her complaint against Y.A. one week after he filed a complaint against her. The EEO determined that there was an absence of credible evidence or witness testimony and it could not substantiate the allegations.

On appeal, the appellant maintains that she was unaware that one of the witnesses that she provided the EEO had a prior issue with Y.A., and in fact, she does not even know which witness the EEO is referencing. The appellant asserts

¹ Personnel records indicate that J.W.'s current title as of August 8, 2015 is Supervisor of Nursing Services.

that the fact that this witness also had a prior issue with Y.A. is evidence that corroborates her claim that Y.A. behaves in an inappropriate manner in the workplace. The appellant denies that she has ever been "written up" by Y.A. as she has not received any kind of discipline.

In response, the EEO presents that the appellant has failed to provide any evidence or documentation to refute its determination. The EEO states that the prior conflict between her witness and Y.A. was not based on sexual harassment. Therefore, the fact that this witness and Y.A. had a prior issue does not represent evidence to support the appellant's sexual harassment claim. The EEO reiterates that the appellant did in fact file her complaint one week after Y.A. filed a complaint against her and that its investigation was complete and thorough.

CONCLUSION

N.J.A.C. 4A:7-3.1(a) states, in pertinent part, that the State is committed to providing every State employee a work free environment free from prohibited 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, including hostile work environment harassment. Further, *N.J.A.C. 4A:7-3.1(c)1(iii)* states that for the purposes of this policy, sexual harassment is defined as unwelcome sexual advances. Moreover, *N.J.A.C. 4A:7-3.1(c)2(vii)* provides that continuing to engage in certain behaviors of a sexual nature after an objection has been raised by the target of such inappropriate behavior is an example of prohibited behavior that may constitute sexual harassment and constitute a violation of the State Policy.

N.J.A.C. 4A:7-3.2(i) provides that at the EEO's discretion, a prompt, thorough, and impartial investigation into the alleged harassment will take place.

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 Commission has conducted a review of the record and finds that the appellant has not established that Y.A. violated the State Policy. During the course of the investigation, the EEO interviewed eight witnesses and reviewed five documents. The investigation revealed that the witnesses' accounts were contradictory and that the investigator could not attest to one of the witness' credibility due to a prior conflict with Y.A. Consequently, the EEO could not substantiate the allegations. On appeal, the appellant does not provide any witnesses, documentation, or other evidence that could substantiate her allegations or refute the EEO's determination. Further, the mere fact that one of the witnesses that the appellant provided the EEO had a prior conflict with Y.A. is not evidence that Y.A. sexually harassed the appellant, especially since that prior conflict was not a sexual harassment allegation.

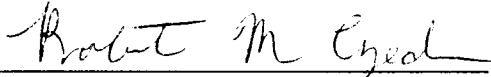
Accordingly, the Commission finds that the EEO's investigation was thorough and impartial. Therefore, the Commission finds that appellant failed to support her burden of proof and no basis exists to find a violation of the New Jersey State Policy Prohibiting Discrimination in the Workplace.

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 5th DAY OF NOVEMBER, 2015



Robert M. Czech
Chairperson
Civil Service Commission

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and
Correspondence

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Attachment

c: J.W.
Christina Mongon
Rachel Gervais
Mamta Patel
Joseph Gambino



State of New Jersey
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KIM GUADAGNO
Lt. Governor

ELIZABETH CONNOLLY
Acting Commissioner

CHRISTINA MONGON
*Assistant Commissioner
Human Resources*

July 14, 2015

J [REDACTED] W [REDACTED]
[REDACTED]
[REDACTED]

DHS File No. 5540-2015
CSC File No. 2015110

Dear Ms. W [REDACTED]

On March 3, 2015, you submitted a discrimination complaint alleging discrimination based upon sexual harassment against Y [REDACTED] A [REDACTED] a Charge Nurse (CN) at Ancora Psychiatric Hospital (APH). Specifically, you alleged that Mr. A [REDACTED] propositioned you after you put him on notice that you were not interested in a relationship with him and that he was to stop.

The Office of Equal Employment Opportunity (EEO) conducted a thorough investigation during which Affirmative Action Officer Bernice Eckerd conducted eight interviews and examined five relevant documents. Witness accounts were contradictory. Our investigator could not attest to the credibility of one witness because of prior conflict between her and Mr. A [REDACTED]. It is also noted that you filed your complaint against Mr. A [REDACTED] one week after he filed a complaint against you. In the absence of credible evidence or witness testimony, the Office of EEO could not substantiate your allegations. Accordingly, we will take no further action in this matter.

If you wish to appeal this determination, you must submit a written appeal to the New Jersey Civil Service Commission, Division of Appeals and Regulatory Affairs, Written Record Appeals Unit, P.O. Box 312, Trenton, N.J. 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 there is a \$20 fee for appeals. Please include a check or money order along with your appeal, payable to

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J [REDACTED]

NJCSC. Persons receiving public assistance and those qualifying for NJCSC Veterans Preference are exempt from this fee.

You are reminded 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.

Sincerely,



Christina Mongon
Assistant Commissioner
Human Resources

CM: em: tw

C: Office of EEO
Christopher Morrison, Acting CEO
Mamta Patel, CSC
Nereida Weisback, PA3

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