



B-37

STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

In the Matter of S.L.-W., Department  
of Human Services

Discrimination Appeal

CSC Docket No. 2013-1902

ISSUED

MAR 26 2015

(EG)

S.L.-W., a former<sup>1</sup> Principal Occupational Therapist with New Lisbon Developmental Center, Department of Human Services (DHS), represented by Joshua Boyette, Esq., appeals the attached determination of the Assistant Commissioner of DHS stating that there was probable cause to substantiate a finding that she violated the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy).

In a letter dated December 26, 2012, DHS informed the appellant that its Office of Equal Employment Opportunity and Equity Services (EEO) had conducted an investigation into allegations of discrimination and harassment based on sex by the appellant against Occupational Therapy Assistant P.W. Specifically, P.W. alleged that the appellant retaliated against her by urinating on her chair and that the appellant sexually harassed the office staff by exposing her underwear and making inappropriate comments. In response to P.W.'s complaint, the EEO conducted an investigation into each of the P.W.'s allegations. Based on its investigation, it found that the allegations that the appellant urinated on a chair were not substantiated. Additionally, the investigation found six witnesses who corroborated allegations that the appellant sexually harassed the office staff by exposing her underwear. Further, two witnesses indicated that the appellant told a male employee that she had a sex dream about him. Moreover, the investigation found two witnesses that indicated that the appellant called another employee a "fuck stain." Based on these findings, the EEO determined that the appellant had

<sup>1</sup> Official records indicate that the appellant was resigned not in good standing effect April 17, 2009.

violated the State Policy and the matter was referred to the CEO of New Lisbon Developmental Center for inclusion in her permanent personnel file.

On appeal, the appellant initially argues that the determination was issued five years after the complaint was filed. She asserts that the State Policy indicates that an investigation into a complaint must be completed within 120 days and that the issuance of a determination letter may be extended for 60 days in cases involving exceptional circumstances and all parties are provided with a written notice of this extension explaining the circumstances. In this regard, the appellant claims that no extensions were given. She argues that the determination was untimely and she should have no record of this in her personnel file. Additionally, the appellant claims that the determination was vague and did not identify the witnesses that corroborated the allegations against her. In this regard, the appellant contends that she can surmise who these witnesses are and argues that they are not credible as they were involved in retaliatory actions against her at the time the complaint was filed. The appellant alleges that P.W. told her that their co-workers were watching the appellant and attempting to generate complaints against her to get her disciplined or terminated. Further, the appellant claims that another co-worker, K.L., prepared a false audit of her performance in 2007 and admitted that this audit was false in a sworn deposition. Another co-worker, R.B., indicated that he heard other employees refer to the appellant as an "n-word" lover. The appellant includes R.B.'s certification along with copies of the depositions of P.W. and K.L. with the present appeal. Moreover, the appellant asserts that DHS failed to consider other facts and circumstances surrounding her employment at the time and the retaliatory actions taken by her co-workers. The appellant denies making any of the alleged comments, telling anyone that they appeared in her dreams or exposing her underwear. The appellant explains that due to her medical condition, her weight fluctuated frequently and due to this a co-worker may have seen the top of her underwear. However, she states that if such an event occurred, it was due to her medical condition and not intentional.

In response, EEO indicates that it failed to complete the investigation in an acceptable time frame due to a high volume of cases and it had few investigators. Additionally, it states that the identities of the witnesses are confidential unless they are needed to testify at administrative or civil proceedings. Further, the EEO asserts that in June 2008, P.W. and J.H. filed discrimination complaints based on sexual harassment and retaliation against the appellant and R.B. Specifically, they complained that the appellant and R.B. placed urine on their chairs as an act of retaliation. P.W. suspected the appellant and R.B. had placed the urine on her chair because it occurred shortly after the appellant had been suspended and R.B. was terminated when his temporary services contract was not renewed. P.W. and J.H. also alleged that the appellant would wear short shirts and pants that were too big and lean back and stretch in her chair to intentionally expose her stomach and thong underwear. P.W. explained that she thought it was intentional because the appellant would look around to see who was looking at her and when she found

someone looking, she would laugh as she leaned back. Moreover, P.W. and J.H. indicated that they witnessed R.B. grab the appellant by the hips and pressed himself into her, and also heard the appellant call A.S. a "fuck stain." P.W. and T.H. asserted that they felt the appellant and R.B. retaliated against them for having provided written statements for the appellant's disciplinary hearing. P.W. also claimed the appellant and R.B. believed that she was spreading rumors about the appellant and R.B. The EEO also states that J.H. indicated that the appellant stated in front of several people that she had a sexual dream about T.F. J.H. only named herself and T.F. as witnesses to this statement.

The EEO states that it interviewed T.F. who indicated that he heard the appellant state she had a sex dream about him and confirmed that he witnessed the appellant bend forward to reveal her underwear. He did not corroborate any other allegations. It interviewed several other witnesses, many of whom corroborated several of the allegations. Additionally, the EEO indicates that R.B. is no longer an employee and attempts to interview him were unsuccessful. Further, A.S. had resigned and was unable to be interviewed. Based on this investigation, the EEO asserts that it properly found that the appellant had violated the State Policy.

### CONCLUSION

*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 United States, or disability. Further, *N.J.A.C. 4A:7-3.1(b)* states that it is a violation of this policy to use derogatory or demeaning references regarding a person's race, gender, age, religion, disability, affectional or sexual orientation, or ethnic background or any other protected category set forth in (a) above. A violation of this policy can occur even if there was no intent on the part of an individual to harass or demean another.

In the instant matter, the Civil Service Commission (Commission) has conducted a review of the record and finds that the EEO conducted an adequate, though untimely, investigation. Specifically, it interviewed numerous witnesses regarding the allegations against the appellant. The EEO found that the allegations that the appellant urinated on a chair were not substantiated. However, the investigation found six witnesses who corroborated allegations that the appellant sexually harassed the office staff by exposing her underwear, two witnesses who indicated that the appellant told a male employee that she had a sex dream about him, and two witnesses who indicated that the appellant called

another employee a "fuck stain." Based on these findings, the EEO determined that the appellant violated the State policy.

On appeal, the appellant initially argues that the determination was untimely as it was issued five years after the complaint was filed. Additionally, the appellant claims that the witnesses who corroborated the allegations against her were not identified. The appellant alleges that P.W. told her that their co-workers were watching the appellant and attempting to generate complaints against her to get her disciplined or terminated. In support of this contention, the appellant submitted a deposition of P.W. However, a review of this deposition does not confirm any such statement. Similarly, the appellant alleges that K.L. prepared a false audit of her performance in 2007 and admitted that this audit was false in a sworn deposition. A review of K.L.'s deposition does not indicate that K.L. acknowledged preparing a false audit. In fact, K.L. indicated that her report was accurate at the time using the documents available to her. The appellant also submitted a certification from R.B. indicating that he heard other employees refer to the appellant as an "n-word" lover. However, the Commission notes that R.B. was also alleged to have committed discriminatory acts along with the appellant. Additionally, R.B. was not available to be interviewed by the EEO. Moreover, even if R.B.'s statements were taken as true, his statements do not absolve the appellant of her actions. Finally, given the witness statements indicating the appellant showed her underwear intentionally and while laughing, the appellant's explanation for these incidents is not persuasive. Accordingly, based on the foregoing, the Commission finds that the EEO's investigation was thorough and impartial, and a sufficient basis exists to find that the appellant violated the New Jersey State Policy Prohibiting Discrimination in the Workplace.

The matter of the delay in the investigation and the issuance of a determination must be addressed. *N.J.A.C. 4A:7:3.2(1)* states, in pertinent part, that the investigation of a complaint shall be completed and a final determination shall be issued not later than 120 days after the initial intake of the complaint. The time 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. Additionally, *N.J.A.C. 4A:10-2.1*, states, in pertinent part, that where there is evidence of a violation of or noncompliance with Title 11A, New Jersey Statutes, or Title 4A, *N.J.A.C.*, the Commission may assess costs, charges and fines not to exceed \$10,000. In the instant matter, there is nothing in the record to explain, other than the EEO's general and conclusory statements about backlog and minimal staff as to why the EEO's determination was issued approximately four and half years after the complaint was filed. DHS' reasoning for issuing such an untimely determination is unacceptable. The Commission has previously reviewed DHS' more detailed explanation of the issues that the EEO had between 2007 and 2009 in handling its case load that it had previously provided. See *In the Matter of Sonia Smith*, Department of Human Services, (CSC Decided, September 19, 2012). The Commission notes that the time

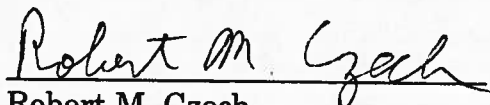
frame set forth in *N.J.A.C. 4A:7:3.2(1)* is not for the administrative convenience for the appointing authority. Rather, this time frame is an important part of the State Policy. By requiring determinations to be issued, at most, within 180 days of a complaint, if a violation is found, action can be taken relatively quickly to help prevent future violations. Otherwise, an individual could be a repeat offender of the State Policy for years before any action is taken. Additionally, investigations can become compromised if not completed timely as witnesses may retire or be otherwise difficult to locate, memories fade, and evidence disappears with the passage of time. Further, it is unfair to the accused to have allegations hanging over their head for years and it is unfair to the accuser to have to wait years for a resolution. Moreover, as noted in *Sonia Smith, supra*, the Commission has warned DHS numerous times about strictly complying with the time frames set forth in *N.J.A.C. 4A:7:3.2(1)*. In *Smith*, the Commission stated, "Therefore, having reviewed this matter thoroughly and finding that the reason for the delay to be unacceptable and the DHS having been warned repeatedly to no avail, the Commission issues a **final warning** that, pursuant to *N.J.A.C. 4A:10-2.1(a)2* future, egregious, violations may result in fines up to \$10,000." (emphasis added) Accordingly, the Commission finds DHS' actions unacceptable in light of the State Policy and the Commission's past warnings. Therefore, DHS shall be assessed a fine of \$1,000 for its violation of *N.J.A.C. 4A:7:3.2(1)*. See e.g., *In the Matter of S.J., Department of Human Services* (CSC, decided April 9, 2014). The Commission restates that continued violations may result in fines up to \$10,000.

#### ORDER

Therefore, it is ordered that this appeal be denied. Further, the appointing authority is fined \$1,000 for its untimely investigation to be remitted within 30 days of the issuance of this decision.

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 4TH DAY OF MARCH, 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, New Jersey 08625-0312**

**Attachment**

**c: Joshua Boyette, Esq.  
S.L.-W.  
Edward M. McCabe  
Mamta Patel  
Joseph Gambino  
Beth Wood**



CHRIS CHRISTIE  
Governor

KIM GUADAGNO  
Lt. Governor

**State of New Jersey**  
DEPARTMENT OF HUMAN SERVICES  
PO Box 700  
TRENTON NJ 08625-0700

JENNIFER VELEZ  
Commissioner

December 26, 2012

S [REDACTED]  
[REDACTED]  
[REDACTED]

Dear Ms. L [REDACTED]:

On or about June 9, 2008, P [REDACTED] W [REDACTED] Occupational Therapist Assistant, New Lisbon Developmental Center (NLDC), filed a discrimination complaint based on sexual harassment and retaliation against you. Specifically, she alleged that you retaliated against her by urinating on her chair and that you sexually harassed office staff by exposing your underwear and making inappropriate comments.

The Department of Human Services (DHS) neither condones nor tolerates any form of discriminatory behavior in the workplace. Therefore, the Office of Equal Employment Opportunity (EEO) conducted an investigation of the complaint. The DHS Office of EEO and my office reviewed the findings of this investigation.

The allegations of retaliation and urinating on a chair were not substantiated. It was corroborated by six witnesses that you sexually harassed office staff by exposing your underwear. It was corroborated by two witnesses that you told a male employee that you had a sex dream about him and it was corroborated by two witnesses that you called another employee a "fuck stain."

Based on the results of the investigation, it has been determined that you violated the New Jersey State Policy Prohibiting Discrimination in the Workplace. Consequently, this matter is being referred to Patricia Merk, CEO of New Lisbon Developmental Center, for inclusion in your permanent personnel file.

If you disagree with this determination, you have the right to file an appeal with the Merit System Board 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 and a copy of this determination letter with your appeal. The appeal should be submitted to the Merit System Board, P.O. Box 312, Trenton, N.J. 08625-0312.

**Advisory, Consultative, Deliberative and Confidential Communication**

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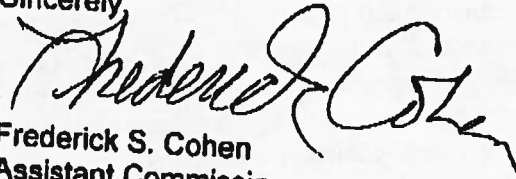
[REDACTED]  
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Please be advised that pursuant to P.L. 2010, c.26, effective July 1, 2010, there shall be a \$20 fee for appeals. Please include the required \$20 fee with your appeal. Payment must be made by check or money order only, payable to the 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.

At this time, I would like to remind you 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,



Frederick S. Cohen  
Assistant Commissioner

FSC: EM

C: Office of EEO  
Patricia Merk, CEO  
Mamta Patel, Treasury

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