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STATE OF NEW JERSEY

In the Matter of J.M.O.,
Department of Human Services

DECISION OF THE
CIVIL SERVICE COMMISSION

CSC Docket No. 2015-2414

Discrimination Appeal

ISSUED: JUL 17 2015 (JET)

J.M.O., a former Instructor Counselor,¹ with the Department of Human Services, represented by Jessica Shaw, Staff Representative, CWA Local 1040, appeals the attached determination of the Director of the Equal Employment Office (EEO), which found sufficient evidence that the appellant had violated the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy).

On September 2, 2014, L.R., an Instructor Counselor, filed a discrimination complaint alleging that the appellant called her a "bitch" in June 2014. The EEO conducted an investigation, including interviewing three witnesses and reviewing relevant documentation, and it was determined that the appellant violated the State Policy.² The determination indicated that the appellant's statement was corroborated by a witness. It is noted that the determination did not specify that the appellant had the right to appeal the determination to the Civil Service Commission (Commission) in accordance with *N.J.A.C. 4A:7-3.2(l)* and *N.J.A.C. 4A:7-3.2(m)*. It is also noted that the appellant previously filed an EEO complaint on June 6, 2014 against E.G., a former Supervisor of Recreation,³ and a violation of the State Policy was substantiated.⁴

On appeal, the appellant initially states that the EEO's determination letter failed to advise her how she could begin the appeal process and that she had to seek

¹ The appellant was subjected to a layoff from her position on January 9, 2015.

² The EEO determination in this matter was issued on January 9, 2015.

³ E.G. is no longer employed in State service.

⁴ It is noted that the appellant's prior EEO determination was issued on August 25, 2014.

this information on her own. Regarding the merits of her case, the appellant maintains that she never called L.R. a bitch. Further, the appellant asserts L.R. retaliated against her because she had previously filed an EEO complaint against her immediate supervisor, E.G., who is L.R.'s sister. The appellant states that in her EEO complaint against E.G., she explained that L.R. serves as a union representative and since E.G. and L.R. work in the same department, it made it difficult to report inappropriate supervisory behavior to the union representative. The appellant underscores that the EEO failed to address those concerns. Further, the appellant questions the timing of L.R.'s EEO complaint since it was filed at nearly the same time that her EEO complaint against E.G. was being investigated. Additionally, the appellant asserts that the EEO's witness, S.I., may have fabricated testimony in support of L.R.'s complaint. In this regard, she avers that L.R. and S.I. maintain a long term friendship that extends outside of the workplace. In addition, the appellant describes her relationship with S.I. as combative and she names several witnesses, including W.F., G.B., C.P., M.H., and M.E.S.,⁵ who can confirm that S.I. fabricated information in support of L.R.'s complaint. Moreover, the appellant requests that her retaliation concerns in this matter should now be investigated.

In response, the EEO maintains that there was a violation of the State Policy. Specifically, the EEO asserts that its investigator reviewed the relevant documentation and interviewed three witnesses, including the appellant, S.I. and W.F., and the allegations were substantiated. Further, the EEO contends that the appellant is no longer a State employee and, therefore, she is not entitled to appeal this matter pursuant to *N.J.A.C. 4A:7-3.2*. As such, her appeal should be dismissed. Additionally, the appointing authority acknowledges that while the appellant filed a prior EEO complaint against E.G., there was no nexus between the appellant's prior EEO complaint and the EEO complaint in this matter to substantiate a finding that the appellant was subjected to retaliation. The appointing authority adds that the appellant's claims of retaliation are unsupported by the evidence and do not rise to the level of retaliation pursuant to *N.J.A.C. 4A:7-3.1(h)*. Moreover, the appellant has not shown that any of the witnesses provided false information during the investigation. Accordingly, the EEO's determination should be upheld since the appellant has not met her burden of proof in this matter.

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,

⁵ Official personnel records indicate that these individuals are currently employed by the appointing authority.

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. 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 the State Policy. Examples of such retaliatory actions include, but are not limited to, termination of an employee; failing to promote an employee; altering an employee's work assignment for reasons other than legitimate business reasons; imposing or threatening to impose disciplinary action on an employee for reasons other than legitimate business reasons; or ostracizing an employee (for example, excluding an employee from an activity or privilege offered or provided to all other employees). See *N.J.A.C. 4A:7-3.1(h)*. The appellant shall have the burden of proof in all discrimination appeals. See *N.J.A.C. 4A:7-3.2(m)(3)*.

The EEO argues that the appellant's appeal should be dismissed since she is not currently a State employee. The Commission disagrees. The record reflects that the EEO determination was issued on January 9, 2015, which is the effective date of her layoff, and the appellant timely filed an appeal in February 2015. Thus, the record reflects that the appellant was the subject of an EEO complaint prior to her layoff and was a State employee at the time L.R. filed the complaint. Contrary to the appointing authority's assertions, *N.J.A.C. 4A:7-3.2* does not bar the appellant from filing an EEO complaint or an appeal of an EEO determination simply because she was subjected to a layoff. Given that the appellant was a State employee at the time the incidents occurred, and the fact that the EEO determination was issued on the same date she was subjected to the layoff, the determination letter issued to the appellant should have advised her of the right to appeal in accordance with *N.J.A.C. 4A:7-3.2(l)* and *N.J.A.C. 4A:7-3.2(m)*. Moreover, since the appellant was a State employee at the time of the incidents, it would now be inequitable to dismiss the appeal, as it would ultimately deny the appellant the opportunity to have her concerns in this matter addressed in accordance with the provisions of the State Policy. See *N.J.A.C. 4A:7-3.1(a)* and *N.J.A.C. 4A:7-3.1(h)*. Therefore, the appointing authority's argument that this matter should be dismissed is without merit and the Commission will address the appellant's appeal.

The Commission has conducted a review of the record in the instant matter and is unable to determine if there was a violation of the State Policy. Although the EEO argues that a witness corroborated L.R.'s allegations, the appellant maintains that she did not at any time refer to L.R. as a "bitch." Further, it appears that the EEO failed to interview all of the relevant witnesses who could rebut the credibility of S.I.'s statement, G.B., C.P., M.H., and M.E.S. In this regard, the appellant vehemently argues that one witness, S.I., who was relied upon by the EEO to substantiate the allegations, is untruthful. Moreover, the EEO does not dispute the

appellant's arguments that S.I. has been friends with L.R. for many years and that the appellant's relationship with that witness is combative.

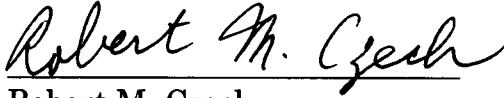
Additionally, the appellant argues that L.R. filed an EEO complaint against her in retaliation for the prior EEO complaint that the appellant filed against E.G. The appellant argues that L.R.'s EEO complaint is questionable since it was filed within the same timeframe the prior EEO investigation was pending. The appellant also states that L.R. and E.G. are sisters, that E.G. was her supervisor, that L.R. is a union representative, and she claimed in her EEO complaint that their working in the same department made it difficult to report asserted inappropriate supervisory behavior to the union representative. The EEO does not rebut these assertions but simply concludes that there is no nexus to connect L.R.'s complaint in this matter to the appellant's prior complaint against her sister, without explaining how it came to that conclusion. Given the circumstances presented in this matter, including L.R.'s relationship with E.G., L.R.'s status as a union representative, the fact that the appellant specified four individuals who could possibly rebut the statements of the only witness who corroborated the allegation, and the timeframe the separate EEO complaints were filed, it is plausible that the appellant could have been subjected to retaliation by L.R.

Therefore, the Commission remands the matter to the EEO so that it can interview G.B., C.P., M.H., and M.E.S. Furthermore, after interviewing these witnesses, the Commission orders that the agency head or the appropriate designee issue a final letter of determination (as required by *N.J.A.C.* 4A:7-2.3(b)9), within 60 days from the issuance of this decision. If the agency head or appropriate designee issues a determination that substantiates the allegations and finds that the appellant did violate the State Policy, the appellant shall be provided with appeal rights to the Commission.

ORDER

Therefore, it is ordered that this matter be remanded to the EEO in order for it to interview G.B., C.P., M.H., and M.E.S. After conducting these interviews, it is ordered that the agency head or appropriate designee issue a final letter of determination consistent with this decision within 60 days from the issuance of this decision.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 15th DAY OF JULY, 2015



Robert M. Czech
Chairperson
Civil Service Commission

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

Attachment

c: J.M.O.
Jessica Shaw
Edward McCabe
Mamta Patel
Joseph Gambino



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

HRIS CHRISTIE
Governor

IM GUADAGNO
Lt. Governor

JENNIFER VELEZ
Commissioner

January 9, 2015

J [REDACTED] M [REDACTED] O [REDACTED]
[REDACTED]
[REDACTED]

Dear Ms. O [REDACTED]:

On September 2, 2014, L [REDACTED] R [REDACTED], Instructor Counselor of the Rehab Unit, Ann Klein Forensic Center Special Treatment Unit (STU) in Woodbridge, filed a discrimination complaint alleging gender discrimination by you. Specifically, she alleged that you called her a bitch.

The Department of Human Services (DHS) neither condones nor tolerates any form of discriminatory behavior in the workplace. Therefore, the Department's Office of Equal Employment Opportunity (EEO) conducted an investigation of the complaint. The allegation was corroborated by a witness.

Based on the results of the investigation, the Office of EEO determined that you violated the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy). Consequently, we are referring the matter to Glenn Ferguson, CEO of Ann Klein forensic Center, for inclusion in your permanent personnel file. It is noted that you are no longer an employee of the State of New Jersey.

Should you have any questions, please 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
Glenn Ferguson, CEO
Mamta Patel, CSC

Advisory, Consultative, Deliberative and Confidential Communication

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