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STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

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

Discrimination Appeal

CSC Docket No. 2016-3394

ISSUED: **JAN 20 2017** (ABR)

J.F., a former Personnel Assistant 1¹ with the Department of Human Services (DHS), appeals the determination of the Assistant Commissioner of Human Resources, DHS, which found that the appellant violated the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy).

D.M., a Manager of Human Resources, Division of Aging, filed a discrimination complaint with the Office of Equal Employment Opportunity (EEO) against the appellant on November 20, 2015, alleging that the appellant made discriminatory statements to W.V., Chief Financial Officer for Aging Services on the basis of W.V.'s ethnic background. Specifically, D.M. alleged that the appellant told W.V. that her family was comprised of "upper class" Italians after W.V. stated that he was Sicilian. D.M. also alleged that the appellant gestured that her grandmother would have spit on W.V. because of his Sicilian heritage.

In response to the complaint, the EEO conducted an investigation which consisted of seven interviews and the review of seven related documents. Among the witnesses the EEO interviewed was S.C., a Personnel Assistant 1, who testified that he overheard the appellant's remarks and found them to be offensive in light of his own Italian heritage. As a result, the EEO found that the appellant violated the State Policy by making derogatory remarks about W.V.'s ancestry.²

¹ Agency records indicate that the appellant received a disability retirement effective May 1, 2016.

² The EEO also investigated the appellant's allegations that D.M. discriminated against her on the basis of age and disability. The EEO found no evidence to corroborate the appellant's allegations. It is noted that the appellant is not challenging that determination on appeal.

On appeal to the Civil Service Commission (Commission), the appellant contends that DHS's determination omitted pertinent facts. She claims that W.V. stopped by her cubicle after walking out of a meeting with D.M. and asked her if she wanted to see a picture of his new grandchild. The appellant states that she was on break at the time and invited only W.V. into her cubicle. She contends that the conversation was a "personal and private discussion" about her and W.V.'s shared Italian heritage. The appellant states that the discussion was precipitated by an email announcement from W.V. about the birth of W.V.'s grandchild, through which she learned of W.V.'s Italian ancestry, as it contained text written in Italian. She maintains that she and W.V. discussed how the culture "used" to be in Italy, where each region thought it was better than the others. The appellant claims that she did not invite D.M. to participate in the conversation and stresses that she could not prevent D.M. "from listening/eavesdropping" and could not be rude by asking D.M. to go away. The appellant also questions the accuracy of DHS's factual determinations because it quotes her as referring to her "nana" during her conversation with W.V. when she had been discussing her "nonna."

In response, DHS argues that it conducted a proper investigation and appropriately determined that the appellant violated the State Policy by making derogatory comments about Sicilians. DHS maintains that W.V. testified that the appellant congratulated him on the birth of his grandchild and commented that she did not know that W.V. was Italian. It notes that W.V. indicated that he responded by stating "I'm better than Italian, I'm Sicilian," in a joking manner and that the appellant thereafter stated that her Roman grandmother looked down on Sicilians and would have spit on him. DHS adds that W.V. also verified that the appellant made a spitting gesture. Furthermore, DHS states that S.C. corroborated D.M.'s account of the incident and indicated that he was offended by the appellant's remarks because of his own Italian heritage. DHS submits that regardless of whether the appellant believed she was having a private conversation, what ultimately matters is that other individuals overheard the derogatory comments. DHS claims that W.V. and S.C. corroborated D.M.'s allegations. DHS stresses that the appellant does not deny making the comments on appeal. DHS contends that the foregoing demonstrates that it made a proper finding of discrimination based on its investigation of the appellant's conduct.

CONCLUSION

It is a violation of the 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)*. It is a violation of the State Policy to use derogatory or demeaning references regarding a person's race, gender, age, religion, disability, affectional or sexual orientation, ethnic background or any other protected category. A violation of this policy can occur even if there was no intent on the part of an individual to harass or demean another. See *N.J.A.C. 4A:7-3.1(b)*. The State Policy is a zero tolerance policy. See *N.J.A.C. 4A:7-3.1(a)*. *N.J.A.C. 4A:7-3.1(a)* provides that the State Policy applies to both conduct that occurs in the workplace and conduct that occurs at any location which can reasonably be regarded as an extension of the workplace.

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 established that the appellant violated the State Policy. The appellant claims that the determination omits pertinent facts about the circumstances surrounding the conversation at issue and contends that the determination erroneously quotes her as referring to her grandmother as "nana," instead of "nonna." However, the appellant does not deny that she told W.V. that her family was comprised of "upper class" Italians after W.V. told her he was Sicilian or that she suggested that her grandmother would have spit on W.V. because of his Sicilian heritage. Moreover, multiple witnesses corroborated D.M.'s account of appellant's remarks. While the appellant argues that the conversation was a private one that occurred with W.V. while she was on break, she acknowledges that it occurred in her workplace cubicle. Clearly, the appellant's comments were derogatory remarks based on W.V.'s ethnicity that occurred in the workplace. Accordingly, the foregoing demonstrates that the investigation was thorough and impartial, and there is no basis to disturb DHS's determination. Given that the appellant is now retired, the only proper action at this time is to place the determination in the appellant's personnel file.

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 18TH DAY OF JANUARY, 2017

Robert M. Czech

Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

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

c: J.F.
Edward McCabe
Mamta Patel ✓
Records Center