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STATE OF NEW JERSEY

FINAL ADMINISTRATIVE
ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of C.S., Department of
Law and Public Safety

CSC Docket No. 2016-3377

Discrimination Appeal

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

C.S., a Sergeant with the Division of State Police, Department of Law and Public Safety, appeals the decision of the Director, Office of Equal Employment Opportunity (EEO), which found that the appellant did not present sufficient evidence to support a finding that he 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 Hispanic male, filed a complaint alleging that he was subject to retaliation for making an allegation that a co-worker was discriminated against by another employee. Specifically, on July 16, 2015, R.H., a Caucasian male who is an Administrative Analyst 3, Information Systems, advised the appellant that C.C.'s plan, a Caucasian male who is a Sergeant First Class, was to get rid of N.C, an Asian male who is a Sergeant, and the appellant in order to appoint D.O., a Caucasian male who is a Trooper 1, and who the appellant states is C.C.'s friend, as the new Assistant Unit Head. Thereafter, on July 23, 2015, the appellant met with D.P., a Caucasian male who is a Lieutenant, to tell him that J.R.-V., a Hispanic female who is an Information Technology Specialist, was being discriminated against by C.C. and C.C. was acting in an unprofessional manner toward him. D.P., instead of referring the allegation of discrimination to the EEO, told the appellant that he would conduct the investigation and make a determination.¹ During a meeting on August 4, 2015, D.P. and C.C. presented the appellant with negative performance evaluations. On August 17, 2015, S.G., a Caucasian male who is a Captain, advised the appellant he was being transferred due to a personality conflict. On August 18, 2015 and August 27, 2015, the

¹ In its determination letter, the EEO stated that it would take appropriate action with D.P. for not referring the matter to it.

appellant met with D.C., a Sergeant from the EEO Intake and Training Unit, regarding his workplace concerns. During the intake meeting, the appellant alleged that the documents used to support his negative evaluations were backdated and claimed that he was never told that he had work performance issues prior to meeting with D.P. and making his allegations against C.C. D.C. advised the appellant he was being transferred due to the poor evaluations.

In its determination, the EEO noted that the appellant's July 8, 2015 performance evaluations indicated that he failed to follow the chain of command when inquiring about the loss of J.R.-V.'s State vehicle. Therefore, it concluded that his negative performance evaluations could not have been in retaliation for the appellant bringing his discrimination allegations against C.C. to D.P. on July 23, 2015 since the allegations were made after he received the negative performance evaluations. Additionally, it stated that there was no evidence that the performance evaluations were backdated and it does not decide if performance evaluations/notifications were warranted. It presented that the appellant's allegation that D.P. passed him over for a promotion because he does not like him does not fall under a protected category under the State Policy. It also commented that the appellant was promoted to Sergeant in February 2015. Therefore, it determined that it was unnecessary to conduct a formal investigation.

On appeal, the appellant states that C.C. lacks the ability to control prejudices towards minorities and civilians. He believes that C.C. retaliates against anyone who challenges him or questions him as demonstrated by threats made to N.C., fabricated complaints by C.C. against him and retaliation against J.R.-V. because she is a non-Caucasian. He represents that D.O. and others who are friends with C.C. never follow the chain of command and have never been disciplined for it. The appellant indicates that he always has to work Saturday nights or double shifts while others with less seniority are given better schedules. A.C., a Hispanic male who is a Lieutenant and the scheduler, claimed that the schedule was based on geographic reasons. However, if this is so, the appellant questions why he was scheduled to work in Jersey City on Thanksgiving and the following morning when D.O. and other troopers who live significantly closer to Jersey City did not have to work on those days. The appellant claims that C.C. attempted to sabotage his career by advising junior officers to not listen to him, by refusing to train him, and by spreading rumors about him. The appellant represents that the Labor Unit had concerns about his backdated performance documents, C.C.'s conduct, and sexual pictures/texts that D.O. was sending and spoke with D.P., S.G., and A.C. about it. He indicates that C.C. and D.O. were sent for EEO training after he filed his EEO complaint and he believes this means that the EEO knows that they violated the State Policy. The appellant states that C.C.'s harassment towards him continued after the EEO training and therefore the appellant contends he was transferred for his protection. He argues that C.C. filed a false complaint against him when he stated that he did not know the appellant's

whereabouts on November 23, 2015. However, he presents that C.C. knew his location as he texted him his location that morning, D.O. saw him that day, and N.C. informed C.C. that the appellant was at Headquarters and showed C.C. a photo of the appellant and Ms. C.C., a Caucasian female who is an Administrative Analyst 4, Information Systems, at Headquarters that day. The appellant asserts that because of C.C.'s false complaint, he cannot get promoted or transferred to his desired location. Additionally, the appellant alleges that C.C. discriminated against N.C. by attempting to transfer him after claiming that there was a language barrier between N.C. and his troopers. However, the appellant emphasizes that N.C.'s accent is slight and does not interfere with communication.

Additionally, the appellant presents that on October 30, 2015, N.C. told J.R.-V. that he believes that C.C. has a personal issue against the appellant and J. R.-V. since C.C. only wants to transfer those two out of the unit. The appellant states that on December 28, 2015, A.E., a Caucasian male who is a Trooper, advised him that anyone that C.C. does not like he immediately transfers and D.P. and S.G. back him up. The appellant indicates that on January 11, 2016, D.P. acknowledged to certain personnel that he should have taken the appellant's allegations more seriously, transferred the appellant sooner, and was aware that C.C. had issues. On February 1, 2016, A.E. advised the appellant that C.C.'s complaints against N.C., J.R.-V., and the appellant were retaliatory. On March 31, 2016, N.C. advised the appellant that C.C.'s complaint that he did not know the appellant's whereabouts on November 23, 2015 was "shady" since he had advised C.C. of the appellant's location that day. On April 8, 2016, A.E. advised the appellant that after C.C. falsified his complaint against the appellant, he told command staff including A.E. "to write something down just in case people start asking questions." However, A.E. refused to do so because he did not want to put his career in jeopardy by writing a false statement to aid C.C. The appellant asserts that Ms. C.C., J.R.-V., A.E., and N.C. can verify his statements.

In response, the EEO presents that it did not perform a formal investigation because the appellant's allegations did not touch the State Policy as he did not provide a nexus between his report of C.C.'s alleged discrimination against co-workers and C.C. retaliating against the appellant for reporting it. It asserts that in this appeal, the appellant, for the first time, said that C.C. lacks the ability to control his prejudice towards minorities, but he did not provide any evidence to support this statement. The EEO states that the appellant did not mention that C.C. fabricated complaints against him or threatened N.C. in his initial EEO complaint and did not elaborate upon these allegations on appeal. Additionally, it states that the appellant alleged that C.C. retaliated against him for complaining to D.P. that C.C. was engaging in unprofessional conduct and not for a complaint that J.R.-V. was being discriminated against due to her race and gender. Consequently, the appellant's retaliation complaint did not involve a protected class and therefore did not touch the State Policy. It provides that C.C.'s and D.O.'s EEO training was

conducted as a precautionary measure and does not imply any wrongdoing on their part. The EEO states that the appellant stated in his original complaint that he was told in August that he was being transferred due to poor performance so it does not follow that when he was transferred in November 2015 on an "emergency basis" it was to be protected from C.C. It emphasizes that A.C. and not C.C. was the shift scheduler and he has not provided any evidence that his schedule was based on discriminatory reasons. It highlights that the appellant stated that he had issues with D.P. and C.C. relating back to a January 2014 incident, which is before he spoke with D.P. about J.R.-V. being discriminated against. As such, while the appellant may have had workplace issues with them, these issues are not related to the State Policy.

CONCLUSION

N.J.A.C. 4A:7-3.1 states, in pertinent part, that employment discrimination or harassment based upon a protected category, such as race and gender, is prohibited and will not be tolerated.

N.J.A.C. 4A:7-3.1(h) states, in pertinent part, that retaliation against any employee who alleges that he or she 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. 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 subjected to other retaliation.

N.J.A.C. 4A:7-3.2(i) provides that at the EEO/AA Officer's discretion, a prompt, thorough, and impartial investigation into the alleged harassment or discrimination 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 Civil Service Commission (Commission) has conducted a review of the record in this matter and finds that the appellant has not established that C.C. violated the State Policy. The record reveals that on July 8, 2015, the appellant received documents indicating that he failed to follow the chain of command when inquiring about the loss of J.R.-V.'s State vehicle. On July 23, 2015, the appellant met with D.P. to allege that J.R.-V. was being discriminated against by C.C. due to her gender and race and to complain that C.C. was acting in an unprofessional manner toward him. On August 4, 2015, D.P. and C.C. presented the appellant with negative performance evaluations. On August 18, 2015 and August 27, 2015, the appellant met with an EEO Intake and Training Unit employee to file his claim

of retaliation against C.C. for making a claim that C.C. discriminated against J.R.-V. and that C.C. acted in an unprofessional manner. In other words, although the appellant received a negative performance evaluation after he complained about C.C.'s alleged discrimination against J.R.-V., since the basis for the negative evaluation was documented poor performance before he complained to D.P., the evidence does not indicate that his negative performance evaluation was based on retaliation. Further, although the appellant alleges that documents were "back-dated" in order to hide the real reason for his negative performance evaluation, he has not provided any evidence to support this claim. Accordingly, the EEO correctly determined that the appellant's claims did not implicate the State Policy.

One other issue needs to be addressed. After meeting with the EEO Intake Unit and filing his complaint in August 2015, the appellant alleged that he was still being harassed by C.C. and that he witnessed others being discriminated against by C.C. Consequently, if the appellant believes that he was either retaliated against by C.C. or he and/or others have been discriminated against by C.C. after filing his August 2015 EEO complaint, the appellant may file an additional complaint with the EEO for it to determine if these subsequent allegations need to be investigated as these subsequent allegations were not part of its initial determination. However, the Commission notes that if he is going to present subsequent allegations to the EEO, he must present specific witnesses and/or other evidence to the EEO that can be investigated that can confirm his allegation that the reason C.C. is harassing him is due to his filing an EEO complaint or specific witnesses or evidence that can corroborate that the reason either the appellant or others are being subjected to certain treatment by C.C. is because they are a member of a protected class.

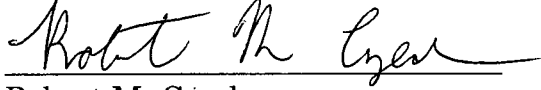
Accordingly, the Commission finds that the EEO's review was thorough and impartial. Therefore, the Commission finds that appellant failed to support his burden of proof and no basis exists to find a violation of the New Jersey State Policy Prohibiting Discrimination in the Workplace.

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 18th DAY OF JANUARY, 2017



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