

B-59

STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of L.D., Department of
Human Services

CSC Docket Nos. 2016-2273

Discrimination Appeal

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

L.D., an Institutional Telephone Operator with Ancora Psychiatric Hospital, appeals the 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 that F.G., a former¹ Supervising Telephone Operator, discriminated against her on the basis of familial status and gender. Specifically, the appellant indicated that F.G. spoke to her in a demeaning manner compared to male staff.² The Office of Equal Employment Opportunity (EEO) conducted an investigation which consisted of 7 interviews and reviewing 13 documents. It indicated that the investigation did not reveal corroborating evidence that F.G. spoke to her in a demeaning matter because she was female. Additionally, after she filed her complaint and was interviewed, she alleged that F.G. called the Division of Child Protection and Permanency (CP&P) to initiate a complaint against her as a joke.

On appeal, the appellant submits a statement from B.B., an Institutional Telephone Operator, who described an incident on June 29, 2015, where she indicated that F.G. said to the appellant, "Look at me when I speak to you. You

¹ Personnel records indicate that F.G. resigned on February 29, 2016.

² The appellant made other allegations against F.G. in her complaint. However, the Division of Appeals and Regulatory Affairs advised the appellant, in its March 29, 2016 letter, that her other allegations would not be addressed in this matter as they either did not follow the proper appeal procedure, were untimely, or could not be substantiated based on the evidence presented.

need to learn to look at me while I'm talking." B.B. stated that F.G. spoke to the appellant like she was a child, disrupted her work, pointed his finger in her face, and spoke to her inches away from her face.

The appellant states that she complained in September 2015 after F.G. called CP&P to make an allegation against her, questioned her children on the phone in front of her coworkers as a joke, and stated that he would forward phone calls from her children to the police and suggested that her coworkers do the same. She submits a statement from F.L., Jr., a former Institutional Telephone Operator, who confirms that F.G. made threats that he would call CP&P to make allegations against the appellant since her children would call during the day and he advised coworkers to forward calls from her children to him so that he could forward the calls to the police.

Additionally, the appellant submits a statement from S.G., a former Institutional Telephone Operator, who indicates that she witnessed F.G. forward phone calls from the appellant's children to the police for no reason and asked her children questions such as "Are you home alone?" and "Is your mother at work?" before forwarding these calls. S.G. states that F.G. made threats against the appellant for no reason other than he personally did not like her and thought she was "greasy." S.G. indicates that F.G. often mentioned the appellant's children and stated that he did not think that she was a good mother because she ordered food over the phone for her children one day. Further, F.G. commented that the appellant was keeping her children home from school one day for no reason. Moreover, F.G. told S.G. and a coworker that he called the appellant's children to verify that they had off from school because the appellant called out since she did not have a sitter.

The appellant asserts that F.L. Jr., S.G., B.B., E.M., an Institutional Telephone Operator, and J.S., an Institutional Telephone Operator, were witnesses who should have been interviewed, but were not.

In response, the EEO comments that F.L., Jr.'s and S.G.'s letters do not address the allegation that F.G. spoke to the appellant in a demeaning manner as compared to male staff. Additionally, it indicates that eight female employees who were interviewed testified that F.G. spoke to them in a demeaning manner, but could not corroborate that F.G. spoke to the appellant in a demeaning manner compared to male staff. The EEO highlights that the appellant did not mention that F.G. made a complaint against her to CP&P during her interview in August 2015 which meant that it did not have the opportunity to investigate this allegation and CP&P's letter does not identify the complainant. Consequently, it asserts that its investigation was complete and thorough and the appellant failed to meet her burden of proof.

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 environment free from prohibited discrimination based on gender and familial status.

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 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 and finds that the appellant has not established that F.G. violated the State Policy. With respect to the allegation that F.G. spoke to the appellant in a demeaning manner compared to male staff, the appellant submits a statement from B.B. which describes that F.G. spoke to her in a demeaning manner. However, the statement does not indicate that he spoke to her in this manner because she was female. Additionally, the EEO presents that it interviewed eight female employees and while they all confirmed that F.G. spoke to them in a demeaning manner, they could not corroborate that the F.G. spoke to the appellant in a demeaning manner because she was female. Further, F.L. Jr.'s and S.G.'s statements do not address this issue. Consequently, while F.G. may have spoken to the appellant and others in a demeaning manner, there has been no evidence presented that the reason that F.G. spoke to the appellant in this manner was because she was female.

In reference to the allegation that the F.G. made an allegation to CP&P against the appellant that violated the State Policy, the appellant states that she made this allegation in September 2015. This confirms the EEO's statement that the appellant did not bring up this allegation on her initial complaint or during her August 2015 interview. Consequently, the EEO did not get an opportunity to investigate this allegation. Further, as F.G., along with some of the other potential witnesses, are no longer employed by the appointing authority, a proper investigation of this allegation cannot currently take place. Additionally, CP&P's letter in response to the abuse allegation does not identify the complainant. Further, S.G.'s statement indicates that the reason F.G. allegedly contacted CP&P was because he did not like her personally and thought she was "greasy." However, S.G. did not allege that F.G. made this complaint because she was a member of a protected class.

Accordingly, the Commission finds that the EEO's investigation was thorough and impartial. Therefore, the Commission finds that appellant failed to

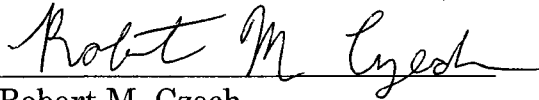
support her burden of proof and no basis exists to find a violation of the New Jersey State Policy Prohibiting Discrimination in the Workplace.

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 18th DAY OF JANUARY, 2017



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: L.D.
Christina Mongon
Rachel Gervais
Mamta Patel
Records Center