



STATE OF NEW JERSEY

**FINAL ADMINISTRATIVE
ACTION
OF THE
CIVIL SERVICE COMMISSION**

In the Matter of B.B., Motor Vehicle
Commission

CSC Docket No. 2017-2009

Discrimination Appeal

ISSUED: October 10, 2017 (CSM)

B.B., a Supervisor 2, MVC with the Motor Vehicle Commission (MVC), appeals the determination of the Chairman and Chief Administrator, MVC, which found sufficient evidence to support a finding that he had violated the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy).

By way of background, M.P., a Records Technician 3, MVC, alleged that the appellant failed to promote her despite being qualified for two higher titles because of her age. M.P. also claimed that on January 18, 2016, the appellant made a derogatory and demeaning comment via text message about her and D.S., a Records Technician 2, MVC. The Office of Equal Employment Opportunity (EEO) investigated the matter and was unable to substantiate the allegation that the appellant discriminated against M.P. by not promoting her to positions for which she applied. However, the appellant admitted that he received a text message from L. P-W., a Records Technician 3, MVC, on January 18, 2016 regarding D.S.'s retirement, but did not recall his response. As such, the EEO concluded that the preponderance of evidence established that the appellant violated the State Policy.

On appeal, the appellant states that M.P.'s allegations regarding his statement back to the text from L. P-W. about D.S.'s retirement are embellished. In this regard, he details the various conflicts he has had in the workplace with D.S. and M.P., such as them not providing him with the correct information to relay to customers and M.P. standing on the other side of the wall to his office listening to his phone calls and conversations with subordinates. The appellant asserts that

M.P. has made false accusations in attempts to have him removed from his position and he reiterates that she embellished her accusations.

In response, the EEO states that M.P. alleged that the appellant made a discriminatory comment about her age. Specifically, M.P. claimed that on January 18, 2016, L. P-W. sent the appellant an email informing him that D.S. “put in her retirement papers” and that the appellant replied back to the text by stating “good, now if we can just get rid of [M.P.]” M.P. also claimed that L. P-W. told her about the text message. During the investigatory interview, the EEO presents that L. P-W. stated that she did not recall the incident nor did she allow the EEO access to her personal cellular telephone. Further, during the appellant’s interview, he acknowledge receiving a text message from L. P-W. on January 18, 2016, but did not recall his response. Given that he did not deny that he responded back to the text message and never denied that he made the statement “good, now if we can just get rid of [M.P.]” and that M.P.’s and the appellant’s personalities often conflicted, the EEO did not find the appellant’s explanation that he did not recall his response back to L.P-W. credible. As such, the EEO determined that the appellant most likely did express his desire for M.P. to retire in his response to the text message. Given the fact that M.P. was 60 years old at the time, the EEO found that the text message response was a derogatory reference based on M.P.’s age in violation of 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. To achieve this goal of maintaining a work environment free from discrimination and harassment, the State of New Jersey strictly prohibits the conduct that is described under this policy. This is also a zero tolerance policy. This means that the State and its agencies reserve the right to take either disciplinary action, if appropriate, or other corrective action, to address the unacceptable conduct that violates this policy, regardless of whether the conduct satisfies the legal definition of discrimination or harassment.

N.J.A.C. 4A:7-3.1(a)2 provides that the State Policy also applies to third party harassment. Third party harassment is unwelcome behavior involving any of the protected categories referred to in (a) above that is not directed at an individual but exists in the workplace and interferes with an individual’s ability to do his or

her job. Third party harassment based upon any of the aforementioned protected categories is prohibited by the policy.

N.J.A.C. 4A:7-3.1(b) provides 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 which have the effect of harassing an employee or creating a hostile work environment. A violation of this policy can occur even if there was no intent on the part of an individual to harass or demean another. Additionally, the appellant shall have the burden of proof in all discrimination appeals. *See N.J.A.C.* 4A:7-3.2(m)(3).

The Civil Service Commission (Commission) has conducted a review of the record and finds that the determination of the appointing authority was improper. The investigation found that L. P-W did not recall the incident nor did she allow the EEO access to her personal cellular telephone. The investigation also found that the appellant did not recall his response back to L. P-W. As L. P-W. did not provide access to the EEO of her personal cellular telephone, there is no evidence in the record as to what was actually stated in the text by the appellant. Further, L. P-W. was unable to corroborate the M.P.'s allegations as she did not recall the incident. As such, there are no witnesses to corroborate M.P.'s allegations. Absent any corroborating evidence or witnesses, it cannot be established if the appellant expressed a desire for M.P. to retire in his response to the text. As there was no independent corroborating evidence or witnesses, the fact that he did not deny making the statement does not, in this case, establish that the appellant's inability to recall his response to the text was not credible. Additionally, even assuming *arguendo*, the text indicated what the appellant asserts, it does not implicate the State Policy. Therefore, based on the foregoing, the Commission finds that the appellant did not violate the State Policy.

ORDER

Therefore, it is ordered that this appeal be granted and the appellant's personnel record corrected to reflect a finding that the allegation that he violated the State Policy was not substantiated.

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 OCTOBER, 2017



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