STATE OF NEW JERSEY

In the Matter of C.M.

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC Docket No. 2017-2881

Discrimination Appeal

ISSUED:

AUG 0 1 2017

(SLK)

C.M., an Assistant Chief Forensic Scientist with the Division of State Police, Department of Law and Public Safety, appeals the decision of the Executive Director, Division of Civil Rights and Affirmative Action (Civil Rights), Department of Transportation, which did not substantiate one of her allegations to support a finding that she had been subject to a violation of the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy).

By way of background, while C.M. is employed by the Department of Law and Public Safety, she participated in the Department of Transportation's snow removal program that is available to State employees. In that regard, C.M, a female, alleged that R.G., a male Crew Supervisor, told her that the men do not respect her because she is a woman and then subsequently reassigned assigned her to the Paterson Yard from the Fort Lee Yard. Civil Rights interviewed many individuals and substantiated her allegations in part. The investigation revealed that R.G. denied the comment and no witnesses directly heard the comment, although several witnesses indicated that they heard that R.G. made the comment from other employees. Therefore, due to the absence of independent corroborating witnesses, the investigation was unable to substantiate that R.G. made the statement. However, C.M.'s allegation of retaliation was substantiated. Specifically, it was determined that C.M.'s transfer was predicated on R.G.'s misrepresentation of her request for portal time as padding the books and his unfounded complaint regarding her work performance. Additionally, it was found that R.G. made inappropriate and derogatory comments about his staff. Consequently, the appointing authority disciplined R.G. with a three-day suspension for his State Policy violation. Further, the determination found that Regional Maintenance Supervisor K.M. violated the State Policy when he attempted to minimize C.M.'s complaint and failed to report her complaint to Civil Rights.

On appeal, C.M. states that while she understands that the investigation did not reveal that an independent corroborating witness heard R.G. say the alleged statement, she asserts that he did in fact say it. Specifically, she states that R.G. made the statement in front of a now retired employee, H. C.M. additionally alleges that H. told her that R.G. made inappropriate comments about her gender. C.M. asserts that Civil Rights informed her that it was precluded from interviewing H. during the course of the investigation while he was employed because his attorney would not permit it. However, now that H. is retired, C.M. requests that Civil Rights be required to interview H. C.M. also seeks financial compensation for the money lost due to R.G.'s fabrications and her transfer to the Paterson Yard. She requests that she be paid for all of the hours the Fort Lee contractors worked, as she did not receive work after the unfounded transfer to Paterson Yard.

Civil Rights confirms that although C.M. was a State Police employee, she was in fact working for the Department of Transportation as part of its snow removal program and that this matter arose out of her work in that program. It also confirms that she initially worked in Fort Lee Yard and then was placed in Paterson Yard. However, although given the opportunity, it did not provide any other information for the Civil Service Commission (Commission) to consider.

CONCLUSION

- *N.J.A.C.* 4A:7-3.1(a) states, in pertinent part, that employment discrimination or harassment based upon a protected category, such as gender, is prohibited and will not be tolerated.
- *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 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 Commission has conducted a review of the record in this matter and finds that R.G.'s alleged comment to C.M. that the men do not respect her because she is a woman cannot be substantiated. The investigation was thorough as Civil Rights interviewed many witnesses and these witnesses were unable to independently corroborate that R.G. made the comment. Further, C.M.'s statements indicate that Civil Rights made a good faith effort to interview H.; however, it was unable to do so while H. was employed. Moreover, the Commission finds no persuasive evidence that would now require that H. be interviewed. In this

regard, as R.G. has already been found to have multiple violations of the State Policy and has already received discipline because of this complaint, the Commission finds that even if R.G. made the alleged statement, additional discipline against R.G. is unwarranted. With respect to C.M.'s request for lost wages due to her transfer to Paterson Yard, this is not a matter within the Commission's jurisdiction. In this regard, it cannot be assumed that C.M.'s assignments, regardless of her location, would have been any different or that she would have received any additional monies or actually performed any additional work. Accordingly, the Commission finds that Civil Rights' investigation was prompt, thorough and impartial and C.M. has not met her burden of proof.

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 26th DAY OF JULY, 2017

> Robert M. Czech, Chairperson Civil Service Commission

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