

**STATE OF NEW JERSEY**

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

In the Matter of L.N., Department of  
Corrections

CSC Docket No. 2018-856

Discrimination Appeal

**ISSUED: APRIL 2, 2018 (SLK)**

L.N., a Senior Correction Officer with East Jersey State Prison, Department of Corrections (Corrections), appeals the decision of the Director, Equal Employment Division (EED), which did not substantiate 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, L.N., a female, filed a complaint with the EED alleging that J.M., a male Correction Sergeant, and J.B., a male Senior Correction Officer, subjected her to discrimination/harassment based on sex/gender, sexual harassment and retaliation. Specifically, among other allegations, L.N. alleged that J.B. suggested that she was having a sexual relationship with a male Senior Correction Officer and, after being upset with that officer, J.B. remarked to him, "Bros before hos," referring to L.N. as the "ho." Additionally, L.N. asserted that J.B. yelled towards her the acronym, "THOT," which L.N. indicated meant "That Ho Over There." Additionally, L.N. made various allegations against J.M. including that he made improper assignments for her, retaliated against her for her prior EED complaints at another facility where his brother worked, and was "creepy," particularly because there was one occasion where J.M. waited outside for her in order to speak with her. The investigation included interviews with L.N., J.B., J.M., other witnesses, and a review of pertinent documents. The investigation revealed that relating to L.N.'s alleged romantic relationship with another officer, J.B. made the "Bros before hos" comment in a text message exchange outside of the workplace. However, the EED found that since the text was not sent to L.N. and the exchange was outside of the workplace, the allegation did not fall within its

jurisdiction. Additionally, the investigation found that J.B. confirmed that he used the “THOT” acronym, but that he was “joking” and its use was not directed at L.N. While it did not indicate that it was a violation of the State Policy, the EED determined that this phrase was offensive and not appropriate for the workplace and referred J.B. for corrective action. With respect to J.M., the investigation did not find that any of his actions were an attempt to sexually harass L.N. or a violation of the State Policy and there was no evidence that he retaliated against her for a prior EED complaint. However, in an abundance of caution, it referred the matter to its administration for corrective action.

On appeal, L.N. requests that the investigation be reopened. However, she does not submit any additional argument or documentation in support of her appeal.

In response, the EED states that since L.N. did not make any arguments or attach any documents in support of her appeal, it relies on its determination letter. It contends that its decision was not arbitrary, capricious or unreasonable and was supported by the evidence.

## 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 sex/gender, is prohibited and will not be tolerated. Further, *N.J.A.C.* 4A:7-3.1(b) provides that it is a violation of the State Policy to use derogatory or demeaning references to one’s gender. A violation of this policy can occur even if there was no intent on the part of an individual to harass or demean another. *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.

At the outset, *N.J.A.C.* 4A:7-3.2(m) states, in pertinent part, a complainant who disagrees with the determination of the State Agency head or designee may submit a written appeal within 20 days of the receipt of the final letter of determination and include all material presented by the complainant at the State Agency level, the final letter of determination, the reason for the appeal, and the specific relief requested. The appellant’s appeal to the Commission does not challenge any specific finding in the EED’s August 31, 2017 determination letter. Rather, the appellant’s September 15, 2017 appeal of the EED’s determination simply states “[p]lease reopen the investigation on the complainant.” Although provided the opportunity by a letter dated October 6, 2017 to provide additional information or argument, the appellant did not submit any additional information for the Civil Service Commission (Commission) to review in this matter. While it is evident that the appellant disagrees with the EED’s determination, the burden of proof is on the appellant in discrimination appeals brought before the Commission

and she has failed to even initially point any area of the EED's August 31, 2017 determination to suggest that its investigation was not thorough and impartial, or that the record supported a finding that there was a violation of the State Policy. *See N.J.A.C. 4A:7-3.2(m)4*. Therefore, on these grounds alone, there would normally be a basis on which to dismiss the appellant's appeal. However, based on its review of the determination letter, the Commission disagrees with the EED's conclusions regarding the text message "Bros before hos" and jokingly using the acronym "THOT."

The Commission has conducted a review of the record in this matter and finds that J.B.'s actions are clearly a violation of the State Policy. The EED's determination indicates that, in reference to L.N.'s alleged sexual relationship with another officer, J.B. sent a text message stating "Bros before hos." As the term "ho" is a derogatory term in reference to a female's sexual activity, J.B.'s use of this term is clearly a violation of the State Policy. Further, it is irrelevant that the text exchange took place outside of work. *See In the Matter of K.S.* (CSC, decided February 4, 2015) and *In the Matter of M.W.* (CSC, decided February 4, 2015) (A violation of the State Policy can occur even if these actions take place outside the workplace but involve work-related issues). Additionally, it does not matter that the text was not sent to L.N. as the comment was meant to disparage her based on her gender, which is a protected class. Similarly, J.B.'s use of the acronym "THOT" in the workplace is a violation of the State Policy as he confirmed that he used the term and did not deny that the "H" stands for "Ho." Instead, he claimed he was "joking." However, even if J.B. did not specifically direct the use of this phrase towards L.N. or any other coworker, the use of a derogatory reference regarding gender in the workplace is a violation of the State Policy. Moreover, even if J.B. was "joking" when using this term, jokes pertaining to one or more protected categories is a violation of the State Policy. *See N.J.A.C. 4A:7-3.1(b)iv*. As the EED indicated that J.B. has already been referred for corrective action, the Commission finds that no further action is required.

With respect to J.M., as the investigation did not reveal any violations of the State Policy, the determination letter does not indicate any "per se" violations, and L.N. has not submitted any argument or evidence to support her allegations against him, the Commission finds that there is no evidence to support a finding that he violated the State Policy. Further, as L.N. has not identified any witnesses that were not interviewed or any evidence that was not considered by the EED, the Commission finds that the investigation into this matter was thorough and impartial.

### **ORDER**

Therefore, it is ordered that this appeal be granted in part and it be noted that J.B. violated the State Policy.

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 27<sup>th</sup> DAY OF MARCH, 2018



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