



STATE OF NEW JERSEY

In the Matter of A.Z.,
Department of Children and Families

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

CSC Docket No. 2018-2348

Discrimination Appeal

ISSUED: JUNE 22, 2018 (JET)

A.Z., a County Services Specialist with the Department of Children and Families, appeals the determination of the Director, Office of Administration, Department of Children and Families, which found that the appellant failed 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).

A.Z., a Caucasian female, filed a complaint on September 7, 2017 with the Equal Employment Opportunity/Affirmative Action Office (EEO/AA), alleging that she was subjected to discrimination on the basis of race by C.T., an Assistant Commissioner. Specifically, the appellant alleged that C.T. informed the appellant that she assigned another employee to participate at a conference for the Women of Color Network (WOCN). The appellant alleged that the employee, T.P., stated that she would feel uncomfortable if she was selected because she is Black. The appellant claimed that, on April 15, 2015, C.T. stated, "I consider [K.C.]¹ to be Black." The appellant alleged that C.T. treats Caucasian and Hispanic staff differently from African American staff. The appellant alleged that, on September 6, 2017, C.T. disclosed information about a worker who was on intermittent leave. Moreover, the appellant alleged that, in December 2016, C.T. questioned the appellant's medical illness, asked the reason why the appellant was out from work, and if she had been in the hospital. After an investigation was conducted, the EEO/AA did not substantiate a violation of the State Policy. Specifically, the investigation confirmed that, although the appellant received the initial notification

¹ K.C. is serving as a County Services Specialist.

of the WOCN conference, C.T. decided to send the appellant's co-worker, T.P., an African American female and a Program Specialist 3, Social/Human Services to the WOCN conference as the representative at the meeting. The investigation revealed that T.P. asked the appellant if she was assigned to the meeting because she is an African American woman. Further, the investigation found that C.T. determined T.P. was a good fit for the assignment based on her experience and technical expertise in the area of domestic violence services and her ability to provide feedback. C.T. explained that she did not assign the appellant as she was recently reassigned to perform domestic violence services and was still learning that work. Additionally, the EEO/AA did not corroborate that C.T. treats African American women better than non-African American employees. Further, the witnesses confirmed that C.T. did not disclose the reason for the employee's use of intermittent leave. The investigation revealed that there was no evidence that C.T. stated, "[K.C.]'s not White, she's Black." However, it was confirmed that C.T. made a similar statement regarding K.C.'s race at another time that was not derogatory.

On appeal, the appellant maintains that the EEO/AA's findings are incorrect and the investigation was improperly conducted. Specifically, the appellant asserts, among other things, that representatives from the WOCN invited her to participate in a three day "Action Meeting" that was scheduled in August 2016, and despite that she expected to participate at the Action Meeting based on her work experience in domestic violence services, C.T. improperly assigned T.P., a subordinate employee, to serve at the event. The appellant explains that, although C.T. stated that T.P. possessed sufficient experience to serve as representative at the event, the appellant maintains that T.P. possessed less experience in providing domestic violence services than the appellant. The appellant explains that she was T.P.'s supervisor and she assisted in training her to properly respond to questions at the event. Further, the appellant states that C.T. falsely stated that the appellant was not knowledgeable about domestic violence services and was recently assigned to perform such work. Rather, the appellant explains she possesses several years of experience in the field of domestic violence services. The appellant states that she was better suited to the assignment as she previously participated in two similar meetings. In addition, the appellant contends that C.T. did not notify the appellant that she was not selected to participate at the Action Meeting. Rather, C.T. only notified the appellant's supervisor, J.S.P., that the appellant was not selected. The appellant adds that two workers in her unit also inquired about why C.T. did not select them to serve as representatives at the Action Meeting, and if their non-selection was based on their race. Moreover, the appellant maintains that C.T. only selected T.P. because she is an African American female. The appellant claims that T.P. objected to the assignment on various occasions and inquired if the assignment was based on her race. The appellant states that she does not want C.T. to deny any future work opportunities for inappropriate reasons. As such, the appellant maintains that C.T.'s actions subjected her to discrimination on the basis of race in violation of the State Policy.

In support, the appellant submits T.P.'s progress report dated January 9, 2015 indicating an unsatisfactory Working Test Period (WTP), a draft of T.P.'s job expectations, and various copies of T.P.'s employee evaluations. She also submits copies of a chain of e-mails dated December 7, 2015 indicating that C.T. selected T.P. for the Action Meeting, and the appellant replied to J.S.P. that she was unaware that T.P. had been selected.

Additionally, the appellant maintains that C.T. improperly disclosed to the entire division that the Operations and Development Manager was using intermittent leave time, which is a violation of the State Policy. The appellant adds that in December 2016, C.T. discussed the appellant's specific illness in front of another employee, D.S., which was documented by J.S.P. Further, the appellant maintains that C.T. made the comment, "That's okay, I consider [K.C.] to be Black" in front of several employees, which is a derogatory comment based on race. The appellant adds that the EEO/AA determination acknowledged that C.T. made a similar inappropriate comment based on race, which should be sufficient to substantiate a violation of the State Policy. The appellant adds that J.S.P. was not interviewed at the time the investigation was conducted. As such, the appellant requests that J.S.P. should now be interviewed, as she can confirm many of the appellant's contentions in this matter. Moreover, the appellant states that, other than the witness who confirmed that C.T. did not improperly disclose information regarding the employee who was utilizing intermittent leave, there was no mention of any other witnesses in the EEO/AA's determination. Finally, the appellant requests the matter be remanded to another agency so that an impartial investigation can be conducted.

In response, the EEO/AA maintains that there was no violation of the State Policy. Specifically, the EEO/AA asserts that C.T. reviewed the appellant's and T.P.'s relative experience and made a legitimate business decision to send T.P. to the conference. The EEO/AA adds that it has discretion to interview any individuals who may have pertinent information regarding the appellant's allegations, and it is not required to interview all of the individuals named by the appellant. The EEO/AA explains that the parties in this matter do not have the authority to determine who should be interviewed. Further, the EEO/AA contends that the investigation did not reveal any evidence that C.T. made an inappropriate inquiry pertaining to the appellant's medical status in front of another employee. The EEO/AA states that the appellant's allegation that C.T. disclosed another employee's usage of intermittent leave does not invoke the State Policy. Moreover, the EEO/AA asserts that the appellant has failed to satisfy her burden of proof in this matter.

In response, the appellant reiterates many of the same arguments that she presented in her initial letter of appeal. Moreover, the appellant maintains that the

documentation she previously submitted in support of her appeal is sufficient to show that C.T.'s actions with respect to her allegations violated 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. The appellant shall have the burden of proof in all discrimination appeals. *See N.J.A.C.* 4A:7-3.2(m)(3).

N.J.A.C. 4A:7-3.1(e) indicates that supervisors shall make every effort to maintain a work environment that is free from any form of prohibited discrimination/harassment. Supervisors shall immediately refer allegations of prohibited discrimination/harassment to the State agency's Equal Employment Opportunity/Affirmative Action Officer, or any other individual designated by the State Agency to receive complaints of workplace discrimination/harassment. A supervisor's failure to comply with these requirements may result in administrative and/or disciplinary action up to and including termination of employment. For purposes of this section and *N.J.A.C.* 4A:7-3.2, a supervisor is broadly defined to include any manager or other individual who has authority to control the work environment of any other staff member (for example, a project leader). *N.J.A.C.* 4A:7-3.2(d) provides that supervisory employees shall immediately report all alleged violations of the State Policy to the EEO/AA Officer. Such a report shall include both alleged violations reported to a supervisor, and those alleged violations directly observed by the supervisor.

The Commission has conducted a review of the record in this matter and finds that the appellant has not established that C.T. discriminated against her in violation of the State Policy. The record shows that the EEO/AA conducted an adequate investigation. It interviewed the relevant parties in this matter and appropriately analyzed the available documents in investigating the appellant's complaint. Specifically, the EEO/AA concluded that the appellant was not discriminated against on the basis of race with respect to her non-selection as representative at the aforementioned Action Meeting. Although the WOCN invited the appellant to participate at the Action Meeting, such information does not automatically entitle her to act as representative at such meetings. Rather, it is at the appointing authority's discretion to assign the appellant to perform such duties based on the legitimate needs of the agency. In this matter, the EEO/AA substantiated that C.T. made the legitimate business decision to assign T.P. to the

meeting based on her qualifications. The appellant's non-selection to serve at the Action Meeting, in and of itself, does not substantiate that there was a violation of the State Policy. With respect to the appellant's claims that she was more qualified than T.P. to serve as representative, her submissions indicate that she was appointed to the Division of Women in April 2014. However, the primary focus of her duties prior to 2014 did not include providing domestic violence services. Additionally, as of August 2016, T.P. possessed five years of experience in providing domestic violence services as she had been employed with the Office of Domestic Violence Services/DOW since 2011. As such, the appellant has not provided any substantive information to show that she was the most qualified individual to serve as representative. Although the appellant states that she was T.P.'s supervisor and assisted with preparing T.P. for the Action meeting, such information does not establish her claims that she possessed more domestic violence services experience. Additionally, the description of duties the appellant provides on appeal pertaining to T.P.'s position is not applicable in this matter, as it is not an official job specification issued by this agency and such information only indicates examples of work that T.P. may have been performing at the time the appellant made the complaint. The fact that T.P.'s WTP was extended is of no moment. Moreover, there is no substantive information to show that the appellant was singled out by C.T., as the appellant admits in this matter that she served as a representative at two similar meetings.

Additionally, none of the witnesses confirmed that the appellant was singled out by C.T. on the basis of race. The appellant's contentions that C.T. did not notify her that she was not selected does not change the outcome of this case, as C.T., as an Assistant Commissioner was not required to directly notify the appellant of her non-selection. Rather, the appellant admits in this matter that she was notified by J.S.P. that she was not selected to serve as the representative, which does not substantiate a violation of the State Policy. Moreover, the Commission does not find it necessary for the EEO/AA to interview J.S.P., as the appellant has not established that the information J.S.P. would provide would change the outcome of the case. Further, the appellant did not name the workers in her unit who inquired if C.T. did not select them to serve at the Action meeting based on their race, and there is no evidence that they filed an EEO/AA complaint against C.T. based on race. There is also no evidence that T.P. filed a complaint against C.T. as a result of her selection to serve as representative. The appellant's other allegations pertaining to C.T.'s disclosure of intermittent leave pertaining to another employee does not implicate the State Policy. Moreover, there is no evidence to show that K.C. filed an EEO/AA complaint pertaining to any alleged statements made by C.T. Other than her mere allegations, the appellant did not provide any information to confirm that she was discriminated against in violation of the State Policy. Accordingly, the Commission is satisfied that C.T. made a legitimate work-related business decision when she selected T.P. as the representative for the Action Meeting.

Accordingly, the EEO/AA's investigation was thorough and impartial, and therefore, no basis exists to find a violation of the New Jersey State Policy Prohibiting Discrimination in the Workplace.

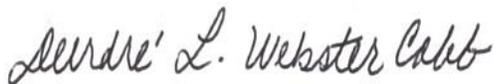
One final matter warrants comment. The Commission is concerned that the appellant did not report that two workers in her unit complained that they had been discriminated against for not being selected to serve at the Action Meeting. As a supervisor, the appellant is held to a higher standard under the State Policy and must report both alleged violations reported to her and directly observed by her. A supervisor's role under the State Policy is to make every effort to maintain a work environment that is free from any form of prohibited discrimination and harassment. *See In the Matter of Paul Grayson* (CSC, decided October 6, 2010) (Supervisor held to a higher standard under State Policy and must report both alleged violations reported to him and directly observed by him). Since the appellant alleges that both workers inquired why they were not selected based on their race, it is unclear why she did not immediately report the incidents when they occurred. Accordingly, the Commission warns the appellant that any future reports or observations of matters that may be violations of the State Policy that she receives must immediately be reported to EEO/AA.

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 20th DAY OF JUNE, 2018



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