



STATE OF NEW JERSEY

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

In the Matter of M.R., Department of
Human Services

CSC Docket Nos. 2017-3726 and
2018-1832

Discrimination Appeals

ISSUED: OCTOBER 2, 2018 (CSM)

M.R., a Senior Quality Control Reviewer with the Department of Human Services (DHS), appeals the determinations of the Office of Legal Affairs, DHS, that the appellant did not present sufficient evidence to support a finding that she had been subjected to violations of the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy). These appeals have been consolidated due to common issues presented.

On February 22, 2017, the appellant, a female, filed a complaint alleging race discrimination and retaliation against R.B., Program Support Specialist 2, Assistance Programs. Specifically, the appellant alleged that R.B. told her that M.M., Assistant Director of Care, was “running a plantation in her unit because there were no Hispanics in her unit.” She also claimed that R.B. made the same comment to J.Z., Assistant Director, and that R.B. told the appellant that Puerto Ricans “were very upset when Jennifer Lopez was dating P. Diddy because he was black.” The Office of Equal Employment Opportunity (EEO) investigated the matter and could not substantiate a violation of the State Policy. Specifically, the investigation found that R.B. and J.Z. denied making/hearing the comment regarding running a plantation and that there were no other witnesses who could corroborate the allegation. The investigation also found that the comment regarding P. Diddy dating Jennifer Lopez did not rise to the level of a violation of the State Policy. The investigation also found that an allegation by R.B. that the appellant harassed and intimidated her based on age and disability was not substantiated.

On July 21, 2017, the appellant filed another complaint alleging gender discrimination against the Division of Family Development (DFD). Specifically, the appellant claimed that J.Z. awarded a promotion to S.A. rather than her because J.Z. “favors” S.A. Subsequently, the appellant alleged that the DFD discriminated against her based on her gender by allowing male employees with the same title more time to keep their State cars than she was when she was taken out of the field. The EEO investigated this matter and found that the appellant failed to allege discrimination or harassment based on a protected category with respect to the promotion of S.A. Regarding the State car matter, the investigation found that the DFD asserted a legitimate, non-discriminatory reason, namely, business necessity, for differences in the amount of time that different employees were given to turn in their State cars. Further, the United States Equal Employment Opportunity Commission (EEOC) issued a dismissal on this charge.

On appeal, the appellant states that the EEO did not substantiate a violation of R.B.’s comment that Puerto Ricans were upset because Jennifer Lopez was dating P. Diddy because he is black. However, the appellant claims that this implies that R.B. does not like African Americans. Further, the appellant states that she was not even aware of the fact that R.B. had filed a claim against her based on age or disability. As she was never interviewed on this matter, the appellant questions how the EEO could make a determination. In this regard, she states that R.B. filed a complaint against her shortly after she filed her complaint and the appellant questions the confidentiality of the investigation.

Regarding her complaint about the promotion, the appellant states that she advised the investigator that J.Z. awarded S.A. the promotion because he favors her due to her legal background, not her gender. Therefore, the appellant contends that the EEO’s determination that she filed a gender complaint is incorrect. With respect to the State car, the appellant states that two males were allowed to keep their State car due to business necessity, but she was not given the same opportunity even though they are all in the same title. The appellant questions why it is permissible for the males to keep their cars longer than the females.

In response, the EEO presents that it conducted three interviews and reviewed over one hundred relevant documents during its investigation of the “plantation” and “P. Diddy” comments. R.B. denied making the plantation comment and there were no witnesses to corroborate the allegation. As to the comment being repeated to J.Z., both R.B. and J.Z. denied that it occurred and there were no other witnesses who could corroborate the allegation. With respect to the “P. Diddy” comment, the EEO states that it cannot speculate why R.B. would make such a comment, what, if anything she implied with the comment, nor her level of agreement with the comment. However, the investigation determined that R.B. merely stated an opinion that is not her own. In response to her being notified of

R.B.'s complaint, as the allegation against the appellant was unsubstantiated, the EEO states that there was no need for the appellant to defend herself.

In response to the allegations regarding the promotion and allowing male employees in the same title to keep their State cars, the EEO presents that it conducted two interviews and reviewed 39 documents. The EEO explains that the appellant alleged that J.Z. favored S.A. because S.A. has a background that includes legal experience. Therefore, as legal experience, or the lack of it, is not a protected category, the allegation is not within the jurisdiction of the EEO to review. Regarding the allegation concerning return of the State car, the investigation found no employees were treated differently based on their gender. In this regard, the difference in the amount of time that an employee was given to turn in their State car was due to business necessity. In this case, the investigation found that DFD began to use a technological system called Document Imaging Management Systems (DIMS) that reduced paper as well as the time and cost previously expended traveling to counties. This resulted in seven to ten employees throughout the various units transitioning from working in the field to working in the office, which meant they no longer needed State cars. Specific to this case, two female employees in the appellant's unit, TANF, were required to turn in their State cars. At the same time TANF transitioned, the SNP unit transitioned to case banking, which also alleviated much of the dependence on State cars. However, there are differences between the TANF and SNAP units. The investigation found that the supervisor of the two males, who was not the appellant's supervisor, requested more time for them to clear up their case backlogs. The supervisor granted the request as the SNAP unit was moving from an individual case review to case banking, there was a transition period, and that the two male employees helped with that transition. Additionally, the investigation found that there were other examples of differing treatment that had nothing to do with gender but were based on legitimate business needs. For example, a female Senior Quality Control Reviewer in SNAP was permitted to keep her car based on her particular job responsibilities.

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. 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 has conducted a review of the record and finds that the appellant has not met her burden of proof. The investigations included interviewing multiple witnesses and the review of more than one hundred relevant documents and it could not substantiate a violation of the State Policy. While the appellant argues that R.B.'s comment regarding P. Diddy implies that she does not like African Americans, the investigation found that the comment did not rise to a violation of the State Policy as she merely stated an opinion that was not her own. Further, as R.B.'s allegation was found to be unsubstantiated, there was no need to interview the appellant. Regarding the promotion, as an individual's experience or credentials do not implicate the State Policy, the EEO properly found that it was not within its jurisdiction to investigate the matter concerning J.Z. alleged favoritism based on legal experience. Finally, the investigation found that because TANF and SNAP are different units with different supervisors, the duties associated with and the transition of the SNAP unit to case banking required some of its staff to retain their State cars for a longer period due to business necessity. There is nothing in the record or in her appeal submissions to suggest that the EEO's investigation on these matters was not thorough and impartial or that these actions were in violation of the State Policy.

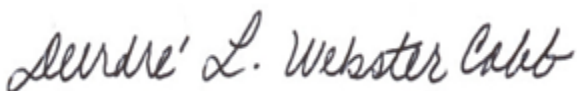
Accordingly, the Commission finds that the EEO's investigation was thorough and impartial, and the record supports a finding that there were violations of the New Jersey State Policy Prohibiting Discrimination in the Workplace.

ORDER

Therefore, it is ordered that these appeals 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 SEPTEMBER, 2018



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