



**STATE OF NEW JERSEY**

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

In the Matter of D.M.,  
Department of Health

CSC Docket No. 2019-579

Discrimination Appeal

**ISSUED      November 13, 2019      (EG)**

D.M., a Program Support Specialist 3, Assistance Programs,<sup>1</sup> with the Department of Health (DOH) appeals the determination of the Director/EEO Officer, DOH, stating that the appellant failed to present sufficient evidence to support a finding that he had been subjected to violations of the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy).

The Office of Diversity and Equity Services (ODES) received a referral on October 31, 2017 regarding the appellant, an Asian Indian male, complaint that his supervisor, the Director of Community Health and Wellness, M.J., an African-American female, had subjected him to discrimination/harassment on the basis of race/color, nationality, national origin and retaliation. Specifically, the appellant alleged that on October 30, 2017 he knocked and entered M.J.’s office after she responded with “come in.” When he entered, the appellant indicated that M.J. said “You don’t come into my office unless I call you and I need to fix you” as she walked aggressively towards him. The appellant asserted that he started to shake and feel faint, and believed that she would have hit him had he not left the room. Due to this traumatic event the appellant went to the emergency room due to his extreme dizziness, numbness and uncontrolled shaking. The appellant filed a workplace violence complaint about this incident. Additionally, on November 17, 2017, he filed another complaint alleging the M.J. had relocated him within the unit as retaliation for his having filed a workplace violence complaint. The appellant submitted an e-mail chain noting his relocation. The appellant asserted that M.J. made statements

<sup>1</sup> At the time the appellant filed his complaint, he was serving as a provisional Coordinator Primary and Preventative Health with DOH.

to other employees that the appellant's relocation was in retaliation for the workplace violence complaint and that they should keep an eye on the appellant. Further, during his ODES intake interview, the appellant indicated that his working relationship with M.J. was not professional, and that he had been advised by M.J. that she had the power to fire employees. He also stated that everyone had issues working with M.J. and that she was scary to work with. The appellant also indicated that M.J. was targeting Asian Indians as there were three Asian Indians in the unit that were relocated.

Based on the aforementioned allegations, ODES conducted an investigation into the appellant's complaints. It found that while the appellant claimed discrimination and harassment on the basis of his race/color, nationality and national origin, he was unable to provide information which implicated that State Policy. In addition, ODES found that the appellant's issues with M.J. were work-related issues that did not implicate the State Policy. It added that a witness had indicated that the appellant's issues with M.J. stemmed from performance issues with the appellant's work product, thoroughness and failure to meet deadlines. With regard to the appellant's allegations of retaliation, ODES interviewed the appellant's witness who indicated that M.J. had planned on moving individuals in the appellant's unit so that they could all be together. Further, he stated that she had indicated a desire to make such a move ever since the division was transferred to DOH from the Department of Human Services (DHS). Finally, the witness stated that he had told the appellant he was moving next to him to keep an eye on him as a joke. M.J. never asked him to keep an eye on the appellant. Based on the foregoing, ODES was unable to substantiate the appellant's allegations that M.J. violated the State Policy.

On appeal, the appellant contends that he did not have any work performance issues. He states that he had no issues with timeliness and the M.J. praised his work in front of other employees. With regard to his retaliation claim, the appellant asserts that the move was not done to put his unit together as the move made it more inconvenient for workers in the unit. The appellant argues that the move was to target Asian Indian employees as another Asian Indian employee, A.F., was also moved. The appellant asserts that A.F. was then fired for complaining about the move and supporting the appellant's discrimination complaint that the move was only done to Asian Indian employees.

In reply, ODES argues that the appellant's appeal only delineated work-related issues with M.J. which do not implicate the State Policy. It argues that the appellant failed to address M.J.'s behavior in the meeting in question and how her actions implicated the State Policy. With regard to the alleged retaliation, it reiterates that a witness indicated that the move had been contemplated since the unit had been transferred from DHS, which occurred before the October 30, 2017 meeting the appellant complains of. Additionally, ODES adds that the appellant suffered no adverse employment consequences for filing his workplace violence

complaint. It concludes that while M.J.'s actions on October 30, 2017, as alleged by the appellant were not professional and caused him to suffer a medical episode, there was no information provided that her actions were due to the appellant's inclusion in a protected category that would implicate 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. *N.J.A.C.* 4A:7-3.1(c) provides that it is a violation of this policy to engage in sexual (or gender-based) harassment of any kind, including hostile work environment harassment, quid pro quo harassment, or same-sex harassment.

In addition, retaliation against any employee who alleges that he or she was the victim of discrimination/harassment, provides information in the course of an investigation into claims of discrimination/harassment in the workplace, or opposes a discriminatory practice, is prohibited by this policy. No employee bringing a complaint, providing information for an investigation, or testifying in any proceeding under this policy shall be subjected to adverse employment consequences based upon such involvement or the subject of other retaliation. *See N.J.A.C.* 4A:7-3.1(h). Examples of such retaliatory actions include, but are not limited to, termination of an employee; failing to promote an employee; altering an employee's work assignment for reasons other than legitimate business reasons; imposing or threatening to impose disciplinary action on an employee for reasons other than legitimate business reasons; or ostracizing an employee (for example, excluding an employee from an activity or privilege offered or provided to all other employees).

In the instant matter, the Commission has conducted a review of the record and finds that an adequate investigation was conducted. Specifically, the relevant parties were interviewed and the appropriate records were reviewed. The ODES interviewed the witness identified by the appellant and it found no evidence that M.J. had retaliated against the appellant. The witness indicated that the alleged retaliatory actions moving the appellant's unit had been contemplated since the unit had been transferred to DOH from DHS. Additionally, the witness stated that he was joking with the appellant when he told him that he was seated next to the appellant to watch his work. The witness also asserted that he was never told by M.J. to watch the appellant. Further, the ODES investigation determined that the appellant's issues with M.J. were work-related issues that did not implicate the State Policy.

The determinations made by the ODES were well reasoned, fully explained, and based on a thorough investigation. Moreover, the appellant has not provided any dispositive evidence in support of his contentions that he was subjected to a violation of the State Policy. Therefore, the appellant has not sustained his burden of proof in this matter. Accordingly, based on the foregoing, no basis exists to find a violation of the New Jersey State Policy Prohibiting Discrimination in the Workplace.

### 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 6TH DAY OF NOVEMBER, 2019

*Deirdre' L. Webster Cobb*

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Chairperson  
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