



STATE OF NEW JERSEY

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

In the Matter of T.W., Department of Health

CSC Docket No. 2019-2611

Discrimination Appeal

ISSUED: NOVEMBER 20, 2019

T.W., a former Clinical Psychiatrist¹ with the Department of Health (DOH), appeals the determination of the Chief of Staff, DOH, which found that the appellant violated the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy).

By way of background, D. Y., a female Clinical Psychiatrist 2, and T. F., a female Social Worker, filed a complaint with the Office of Diversity and Equity Services (ODES), alleging that the appellant made derogatory and/or demeaning comments related to race, national origin, religion, sexual orientation, sexual harassment, and that he breached confidentiality related to an EEO investigation. Specifically, the complainants alleged that the appellant made demeaning comments towards African-American members of the treatment team, referred to a patient as a “Black Nazi,” referred to an African-American employee as a “Gorilla,” and told O.N., a Nurse, that she talked funny due to her accent, that she should speak English and that he could not understand her. The complainants also claimed that the appellant joked about patients being “Hebrewphrenic” as opposed to schizophrenic, and made Jewish jokes. Additionally, it was alleged that the appellant made derogatory/demeaning comments about homosexuals and inappropriate comments based on sexual harassment when he talked about a soap dispenser with a hose attached to it when squeezed resembled a sexual act. Finally, the complainants asserted that the appellant breached confidentiality when he mentioned a prior EEO investigation to the treatment team.

¹ The appellant’s unclassified appointment was discontinued on April 22, 2019.

The ODES investigated the complaints and found that several witnesses corroborated that the appellant made demeaning remarks regarding African-American attitudes due to their history of slavery, that he addressed the treatment team as “chatty” and “cliquish”, and that one witness corroborated that he referred to a patient as a “Black Nazi.” However, no witnesses corroborated that he called an African-American employee a “Gorilla.” The investigation also found that several witnesses corroborated that the appellant said to O.N., “You speak funny” and “Speak English” and he admitted to using the term “Hebrewphrenic” and making a joke about a soap dispenser resembling a sexual act. However, the investigation did not substantiate that the appellant made derogatory or demeaning comments based on sexual orientation. Finally, the investigation found that witnesses corroborated that the appellant addressed treatment team members regarding a prior EEO complaint and stated on several occasions “I have to watch what I say, or I will get reported” Therefore, the investigation substantiated violations of the State Policy based on race, national origin, religion, sexual harassment and breach of confidentiality.

On appeal, the appellant states that he never heard or said the term “Black Nazi” and “Gorilla” or that he made derogatory and demeaning remarks about homosexuals. He also states that he joked with O.N. about her accent, but does not recall her being offended. The appellant also admits to making the comment about the soap dispenser, and states that he now regrets making the remark, and concedes that he breached the confidentiality policy, but apologizes for not containing his anger and embarrassment about the prior investigation. Additionally, the appellant states that during the investigation, he presented his analysis of his problems with the team. Specifically, he noted that he was the only Caucasian on the team, the only psychiatrist, the only Jewish staff member, the only octogenarian, and the newest member of the team. The appellant also states that the team he worked on did not have a psychiatrist for over four years. In a supplemental submission, the appellant states that this matter might have been avoided if he and the complainants had a polite and reasonable conversation. He also states that he will be working on his personal issues that require change and that he desires to contribute to the team.

In response, the ODES states that the appellants submission provide no evidence to refute the substantiated allegations. It also states that the investigation substantiated violations of the State Policy based on sexual harassment, derogatory comments based on race, demeaning comments based on national origin and religion, and improperly referencing a prior EEO investigation. ODES also notes that this matter was referred to the Office of Employee Relations for further action and the appellant’s unclassified appointment was discontinued on April 22, 2019.

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(b) states that it is a violation of the State Policy to use derogatory or demeaning references regarding a person's race, gender, age, religion, disability, affectual or sexual orientation, ethnic background, or any other protected category set for in (a) above. A violation of this policy can occur even if there was no intent on the part of an individual to harass or demean another. Additionally, the appellant shall have the burden of proof in all discrimination appeals. *See N.J.A.C.* 4A:7-3.2(m)(3).

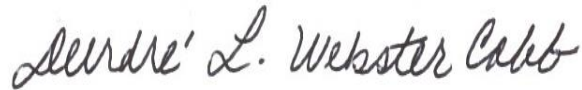
The Civil Service Commission has conducted a review of the record and finds that the appellant has not met his burden of proof. The investigation included interviewing witnesses who corroborated that the appellant made demeaning remarks regarding African-American attitudes due to their history of slavery, that he addressed the treatment team as "chatty" and "cliquish", and that one witness corroborated that he referred to a patient as a "Black Nazi." The investigation also found that several witnesses corroborated that the appellant said to O.N., "You speak funny" and "Speak English." Both during the investigation and in his appeal submissions, the appellant admitted to using the term "Hebrewphrenic," making a joke about a soap dispenser resembling a sexual act, and speaking about the prior EEO investigation. Although the appellant indicates in his appeal that he never heard of or spoke the word "Gorilla" or making derogatory/demeaning remarks about homosexuals, the ODES investigation could not corroborate these allegations. While the Commission commends the appellant for taking responsibility for his actions by indicating that he will be working on his personal issues that require change, as indicated in *N.J.A.C.* 4A:7-3.1(b), a violation of the State Policy can occur even if there was no intent on the part of an individual to harass or demean another. The State Policy is a zero-tolerance policy and prohibited conduct includes, but is not limited to using derogatory references with regard to any of the protected categories in any communication. Accordingly, the appellant has not demonstrated that the ODESs investigation on this matter was not thorough and impartial or that the actions which were corroborated by witnesses or admitted to by the appellant were not in violation of the State Policy.

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
19TH DAY OF NOVEMBER, 2019



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