



STATE OF NEW JERSEY

In the Matter of C.B.,
Department of Health

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

CSC Docket No. 2019-1487

Discrimination Appeal

ISSUED: MAY 13, 2019 (JET)

C.B., a Social Worker 2 with Trenton Psychiatric Hospital, Department of Health (DOH), appeals the determination of the Chief of Staff, DOH, 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).

C.B., an African American female, filed a complaint with the Office of Diversity and Equity Services (ODES) on January 18, 2018, alleging that she was subjected to discrimination based on race and gender, and that she was subjected to retaliation in violation of the State Policy. Specifically, the appellant alleged that in 2016 and 2017, B.N., a Caucasian female and a Social Worker Supervisor 2, Psychiatric, stated during a meeting that, "Blacks in the South named their children rich/fancy names, but they do not know how to spell or pronounce the names properly, so they call them by their initials." The appellant also alleged that at some point B.N. stated, "White woman were treated like gold because they had to be protected from black men;" "The new drug policy is in place to save white people, let's face it, black people have been dying on the streets for years, we're used to it;" and "I can be a real bitch." The appellant alleged that she was subjected to retaliation due to work-related issues, including being excluded from training, meetings and discussions. She also alleged that her supervisor's management style was counterproductive to promoting teamwork and unity.

After an investigation was conducted, the appellant's claims were not substantiated. Specifically, the November 9, 2018 ODES determination found that,

with respect to the conversation during the meeting, B.N. did not recall any of the allegations against her. Rather, B.N. stated that the conversation during the meeting was about a client and his birth certificate. Further, B.N. stated that, with respect to the comment that white women are treated like gold, the appellant took her statement out of context. Rather, B.N. denied the allegation and stated that it was a general conversation pertaining to black and white women who are at risk because men have the power. B.N. added that she stated, as a result of the politics in the South at the time, black men could not protect their wives and sisters and white women were placed on a pedestal. The investigation revealed that the appellant and B.N. had a conversation about the drug Narcan, and the appellant stated that drugs have been a problem for a long time, and B.N. stated, "let's just call it for what it is – people are dying now and we have to take action." B.N. also denied that she stated she could be a "real bitch." Moreover, the investigation did not find that the appellant was subjected to retaliation. As such, and the investigation did not substantiate a violation of the State Policy. However, B.N. was referred for training regarding the State Policy.

On appeal, the appellant asserts that there has been no change in B.N.'s behavior. Further, the appellant states that B.N. is now directing her abusive language to another worker. The appellant explains that B.N. is using passive-aggressive behavior, as she uses the same terminology towards her co-worker which was previously directed toward the appellant. The appellant states that B.N. is constantly attempting to intimidate her by pacing back and forth by her desk, and she frequently states that the appellant is incompetent. In this regard, the appellant explains that B.N. contacts her co-workers by telephone and e-mail and advises them to work with people other than the appellant. The appellant adds that B.N. shows no interest in discussing work-related issues with her. Moreover, the appellant contends that B.N. purposely causes friction and poor working relationships in the office without fear of accountability for promoting favoritism, sexism and racism.

In response, the ODES maintains that there was no violation of the State Policy. Specifically, the ODES asserts that the appellant did not provide any substantive evidence in this matter to show that she was subjected to any alleged derogatory racial comments. Further, the ODES states that the allegations were not corroborated by the witnesses. The ODES adds that, although the appellant alleged that the incidents occurred in 2016 and 2017, she did not report the incidents until B.N. gave her a low employee evaluation. The ODES explains that the appellant and B.N. have a contentious relationship, and B.N. reported that the appellant made it difficult to learn certain things. Moreover, the ODES asserts that, out of an abundance of caution, it conducted a one-on-one training with B.N. regarding 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). Additionally, retaliation against any employee who alleges that she or he 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 the State Policy. 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). See *N.J.A.C.* 4A:7-3.1(h). 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 (Commission) has conducted a review of the record in this matter and finds that the appellant has not established that she was subjected to discrimination in violation of the State Policy. The record reflects that the ODES conducted a proper investigation. It interviewed the relevant parties in this matter and appropriately analyzed the available documents in investigating the appellant's complaint. However, none of the witnesses identified by the appellant could corroborate her allegations. The underlying determination was correct when it determined that there was no violation of the State Policy. The appellant's arguments on appeal and the allegations of her complaint do not evidence that she was discriminated against based on any of the above listed protected categories listed in the State Policy. The appellant has not provided any information in this matter to refute the witnesses. Although the appellant states that her co-worker is experiencing the same alleged behavior from B.N., the appellant did not name her co-worker and there is no evidence that the co-worker filed a discrimination complaint against B.N. Moreover, there is no evidence to show that the appellant was singled out or that she was subjected to retaliation as described above. Other than the appellant's tenuous claims, there is no information to show that B.N.'s actions as alleged by the appellant were anything other than her exerting her supervisory authority at the time of the incident. Even if the appellant disagreed with B.N.'s style of management, the Commission has consistently found that disagreements between co-workers cannot sustain a violation of the State

Policy. See *In the Matter of Aundrea Mason* (MSB, decided June 8, 2005) and *In the Matter of Bobbie Hodges* (MSB, decided February 26, 2003). Moreover, management or supervisory style is not reviewable under the State Policy unless that style evidences some form of discriminatory conduct under the Policy. However, other than the appellant's allegations in this matter, she has failed to provide any evidence that she was discriminated or retaliated against in violation of the State Policy. Accordingly, she has not satisfied her burden of proof in this matter.

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 9th DAY OF MAY, 2019



Deirdre L. Webster Cobb
Chairperson
Civil Service Commission

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