



STATE OF NEW JERSEY

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

In the Matter of A.J-S., Department
of Health

CSC Docket No. 2019-1751

Discrimination Appeal

ISSUED: JUNE 14, 2019

(SLK)

A.J-S., a Community Service Officer 3, Addictions with the Department of Health (DOH), appeals the decision of the Chief of Staff, which did not substantiate her allegations to support a finding that she had been subject to a violation of the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy).

By way of background, A.J-S., an African-American, filed complaints with the appointing authority alleging that B.B-M., a Caucasian Quality Assurance Coordinator, and J.D., a Caucasian Government Representative 1 (respondents), engaged in disparate treatment against A.J-S. due to her race. Specifically, A.J-S. alleged that the respondents punished her for not using her personal vehicle to travel to a facility to conduct an inspection when she was not provided a State vehicle and she received harassing e-mails from them in response to her decision, assigned her to write the entire deficiency report for a joint site inspection that she conducted with L.F., a Caucasian Quality Assurance Coordinator¹, indicated that they did not want her to have contact with L.F. after A.J-S. did not perform the site inspection with L.F., threatened to have her removed from an office building, paid her less than K.J., a Caucasian Quality Assurance Specialist Health Services, and asked her to perform job duties that were not in her job scope for site inspections.

¹ At the time of the incident in February 2018, L.F. was a Quality Assurance Specialist Health Services.

The investigation revealed that employees are required to travel to facilities to conduct investigations even if State vehicles were not available and employees would be reimbursed for their traveling expenses. B.B-M. also offered to fast track A.J-S.'s reimbursement and a review of the respondents' e-mails in response to A.J-S.'s actions indicated that they were non-harassing, work-related e-mails. Further, the respondents explained that it was standard procedure for the Team Leader, which in this case was A.J-S., to be responsible for writing the deficiency report after conducting a joint site inspection. A witness also confirmed that this was policy. With respect to communicating with L.F., as L.F. was upset that she had to conduct the joint site visit by herself since A.J-S. refused to go, B.B-M. asked that all communication between the two of them be conducted through B.B-M. to avoid conflict and J.D. was aware of this request. However, B.B-M. denied that she requested that A.J-S. not have contact with L.F. Concerning A.J-S.'s and K.J.'s salary, it was discovered that they had the same salaries. Finally, the respondents indicated that counting medications and similar duties at the facilities during site surveys were duties to ensure that a facility's inventory matched its log and was not the same as administering medications and other duties performed by a nurse and were duties consistent with A.J-S.'s job title. Accordingly, the investigation was unable to substantiate that A.J-S. had been subject to a State Policy violation as there was no evidence that any actions taken by them were based on her race or in retaliation for her complaints. Instead, the respondents' actions were based on legitimate business reasons.

In response, A.J-S. claims that the respondents repeated e-mails that indicated that she would need to travel to facilities to conduct inspections even if a State vehicle was not provided and her failure to do so may lead to discipline was harassment as there is no requirement that an employee is required to use their own vehicle to conduct State business. A.J-S. indicates that her personal vehicle is not insured for commercial usage. A.J-S. presents the departments' Standard Operating Procedures (SOP), which states that the Team Leader reviews all team members' reports and enters any questions, corrections or comments on the report, as well as e-mails from personnel who had written their portions of the deficiency reports for past reports, to support her claim that it was not her responsibility to write the entire deficiency report. She complains that L.F. sent her a summary of her findings and not her portion of the deficiency reports and her e-mail, which started out by stating, "Good Morning, [A.J-S.], since you choose not to attend the visit yesterday," was antagonistic. A.J-S. asserts that she performed her duties in compliance with the SOPs. A.J-S. believes that since L.F. was upset that A.J-S. did not attend the joint site visit, she was subjected to disparate treatment. She claims that B.B-M.'s requirement that A.J-S. had to communicate to L.F. through B.B-M. is evidence of her disparate treatment. A.J-S. contends that B.B-M.'s asking her if she thinks that there are any sections that L.F. can write for the deficiency report is a contradiction of B.B-M.'s claim that it was the Team Leader's responsibility to write the entire report. A.J-S. states that B.B-M.'s assertion that she threatened to

remove A.J-S. from the building due to her behavior and not her race is not accurate. She presents a witness, A.B., a Caucasian Quality Assurance Coordinator. A.B. told the investigator that B.B-M. stated to A.J-S. that she should not be talking to her “that way” and if she continued she would call security. In response, A.J-S. stated that she was “just talking” and her right to do so is guaranteed by the “First Amendment.” Concerning her salary, she presents that at the time she filed her complaint in April 2018, K..J.’s salary was \$92,011.89 and her salary was \$88,974.69. With respect to her retaliation claim, A.J-S. presents a Preliminary Notice of Disciplinary Action (PNDA) she received in July 2018 for conduct unbecoming a public employee, insubordination, neglect of duty and other sufficient cause for failure to follow policies and procedures as evidence. A.J-S. requests that B.B-M. and J.D. should be demoted to non-supervisory positions as she claims that their actions have caused her to be diagnosed with major depressive disorder and generalized anxiety. She also requests disability retirement benefits.

In response, the Office of Diversity and Equity Services (ODES) indicates that it received A.J-S.’s complaint on March 7, 2018 after A.J-S. received oral counseling for failing to conduct a joint site survey at a DOH facility on February 6, 2018. A.J-S. was the Team Leader for a joint survey with L.F. A.J-S. had gone to the facility on February 5, 2018 using her own vehicle, but she indicated that she did not perform the survey on February 6, 2018 because she was not provided a State vehicle, which she claimed was a financial burden to her. The ODES presents that A.J-S.’s job duties consist of traveling to facilities to conduct surveys to ensure compliance with State and federal regulations. Employees can use State vehicles, when available, and if not, they use their own vehicles and then get reimbursed by the State for their mileage and total expenses. Further, as the Team Leader, A.J-S. was responsible for preparing the deficiency report for the facility. L.F. forwarded her the deficiencies that she spotted, including deficiencies she noted while conducting the survey on the 6th when A.J-S. was not present. A.J-S. believed that it was improper for her to be assigned to complete the deficiency report. She alleged that B.B-M. was “catering to the needs and wants of your Caucasian employee (L.F.) while treating your African-American employee (A.J-S.) as if she is in servitude.”

Concerning A.J-S.’s allegation that she received harassing e-mails, the respondents advised A.J-S. on multiple occasions that she is not guaranteed a State vehicle for every site survey and she would be reimbursed for her expenses for using her own vehicle. B.B-M. even offered to fast-track the reimbursement. A.J-S. acknowledged that other employees use their personal vehicles to travel to inspections and she used her personal vehicle in the past. These e-mails are consistent with DOH’s Fleet Management Circular, 16-07. Further, the respondents’ e-mails indicating that A.J-S.’s refusal to perform a site survey because she was not provided a State vehicle which may lead to disciplinary action

were not harassment, but were the respondents performing their supervisory duties.

With respect to A.J-S. being a Team Leader, B.B-M. stated that since 2004, the unit has not followed the SOPs as A.J-S. describes, and instead, the Team Leader writes the deficiency report. The ODES states that the SOPs indicate that it can be modified with approval from the Director and Chiefs. B.B-M. noted that she could not recall A.J-S. previously being assigned as the Team Leader for a joint site survey. L.F. indicated that when she is the Team Leader for a joint site survey, she completes the deficiency report by herself, which is standard procedure. Regarding why the respondents wanted communication between A.J-S and L.F. to go through B.B-M., the respondents indicate that there were tensions between A.J-S. and L.F. and they thought this approach would lessen the chance for conflict. Additionally, B.B-M. did not want A.J-S. to direct L.F. to complete the deficiency report when it was A.J-S.'s responsibility as the Team Leader. In reference to A.J-S.'s claim about her First Amendment rights, the investigation revealed that A.J-S. said to B.B-M., "You two are a trip (referring to B.B-M. and J.D.)." Further, A.J-S. was following her around the office. In addition to A.B.'s statement, one witness indicated that A.J-S. stated that "You'll are trip" twice, in a condescending tone twice and another witness indicated that A.J-S. said several times, "I can say whatever I want to you, is my First Amendment right" and then followed B.B-M., which caused her to ask A.J-S. to please leave or she would have to call security. With respect to salary, A.J-S. and K.J. served in different titles and had different anniversary dates. At the time A.J-S. filed her complaint, K.J. was on Step 10 and A.J-S. was on Step 9, which is why K.J. made \$2,000 more at that time. Accordingly, the ODES was unable to substantiate A.J-S.'s allegations that she was subjected to disparate treatment based on race and retaliation.

CONCLUSION

N.J.A.C. 4A:7-3.1(a) states, in pertinent part, that employment discrimination or harassment based upon a protected category, such as race is prohibited. *N.J.A.C.* 4A:7-3.1(h) provides, in pertinent part, the retaliation against any employee who files a State Policy complaint is prohibited. *N.J.A.C.* 4A:7.3-2(m)4 states, in pertinent part, that the appellant shall have the burden of proof in all discrimination appeals.

In this matter, A.J-S. has not provided once scintilla of evidence to show that any actions taken by the respondents were based on A.J-S.'s race or in retaliation for her filing discrimination complaints and mere speculation, without evidence, is insufficient to substantiate a violation of the State Policy. *See In the Matter of T.J.* (CSC, decided December 7, 2016). The investigation revealed that employees were not guaranteed a State vehicle to travel to a DOH facility to perform site surveys, which was part of A.J-S.'s job duties. Instead, the respondents advised A.J-S. that

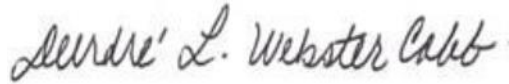
when a State vehicle was not available, she needed to use her own vehicle or make other transportation arrangements, and she would be reimbursed for her travel expenses, which is consistent with DOH policy. Further, when A.J-S. complained, B.B-M. even offered to have A.J-S.'s travel expenses' reimbursement expedited. However, A.J-S. has not presented one witness to corroborate her claim that she was treated differently than anyone else concerning this policy and any treatment she received was based on her race. Additionally, the respondents' communication to A.J-S. informing her that if she fails to perform a site inspection that she may be subject to discipline is not harassment, but was her superiors performing their jobs. Similarly, the respondents indicated that since 2004, it has been the policy for the Team Leader to be solely responsible for writing the deficiency report after a site survey was conducted by more than one person. A.J-S. has not presented one witness who could corroborate her claim that the Team Leader is not solely responsible writing the deficiency report after a joint site inspection and that any treatment that she received regarding this responsibility was based on race. Further, the respondents gave a legitimate business reason why they wanted B.B-M. to be the go-between for communications between A.J-S. and L.F. as they were trying to reduce conflict since there was tension between them. Additionally, A.J-S. misinterprets the First Amendment. The First Amendment limits the government's ability to pass laws that lead to incarceration based on Freedom of Speech. The First Amendment does not give a subordinate employee the right to say whatever that employee wants to one's superiors without consequences in the workplace. The investigation revealed that A.J-S. was acting in a confrontational, non-professional manner and, therefore, B.B-M.'s response that if A.J-S. continued to act in this manner she would call security was not based on A.J-S.' race, but based on A.J-S.'s behavior. Moreover, the investigation revealed that the reason that A.J-S.' salary previously differed from K.J.'s was based on their different titles, anniversary dates, and salary steps and not their races. Finally, why A.J-S. may not have liked the way the respondents treated her, 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). Therefore, the Commission finds that the ODES' investigation was prompt, thorough and impartial and A.J-S. has not met her burden of proof.

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 12th DAY OF JUNE, 2019



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