



STATE OF NEW JERSEY

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

In the Matter of G.H., Department of
Labor and Workforce Development

Discrimination Appeal

CSC Docket No. 2018-1500

ISSUED: January 31, 2020 (SLD)

G.H., a Vocational Rehabilitation Counselor 2, Department of Labor and Workforce Development (DOL), appeals the determination of the Commissioner, DOL, stating that the appellant violated the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy).

On July 17, 2017 the Office of Diversity and Compliance (ODC) was made aware of several allegations from a former employee that the manager of the Newark office, E.D., had violated the State Policy. As a result, the ODC determined that it was necessary to interview 12 of the complainant’s former colleagues. As a result, on August 10, 2017, the appellant was interviewed. Thereafter, the Commissioner, DOL issued a determination letter to G.H. finding that he had violated the State Policy’s confidentiality requirement by “reveal[ing] details of the investigation.”

On appeal, the appellant maintains that he did not reveal details of the investigation. Therefore, he requests that the determination that he did so be reversed and a copy be placed in his personnel file.

In response, the Assistant Commissioner, Division of Human Capital Strategies, DOL argues that the appellant’s appeal should be summarily dismissed as he failed to meet his burden of proof. Specifically, it asserts that the State Policy is a zero tolerance policy and therefore, the determination that the appellant violated the State Policy should be upheld. The appointing authority argues that the appellant had received training on June 22, 2017 on the State Policy and that

prior to his interview on August 10, 2017, he was counseled about the State Policy and acknowledged the confidentiality requirements of the State Policy. The appointing authority asserts that less than two weeks after the appellant's interview with OD&C, another witness stated that the appellant "mentioned to me that he was called but only because I talked to him about how I was called and he told me that he was too and not to worry about it."¹ The appointing authority maintains that it found the appellant's violation "particularly problematic" because he was trained on the State Policy, is a 30-year employee and is a lead worker. The appointing authority maintains that as a lead worker, "in the eyes of the State Policy," he is considered a supervisor and must be held to a higher standard.

CONCLUSION

N.J.A.C. 4A:7-3.1(j) provides that all complaints and investigations shall be handled, to the extent possible, in a manner that will protect the privacy interests of those involved. To the extent practical and appropriate under the circumstances, confidentiality shall be maintained throughout the investigative process. In the course of an investigation, it may be necessary to discuss the claims with the person(s) against whom the complaint was filed and other persons who may have relevant knowledge or who have a legitimate need to know about the matter. All persons interviewed, including witnesses, shall be directed not to discuss any aspect of the investigation with others in light of the important privacy interests of all concerned. Failure to comply with this confidentiality directive may result in administrative and/or disciplinary action, up to and including termination of employment.

Initially, the Civil Service Commission (Commission) is troubled by the appointing authority's decision to find that only G.H. had violated the State Policy because he had been trained in the State Policy, and was a lead worker with 30 years of employment with the State. In this regard, the appointing authority argues that G.H. should be held to a higher standard because as a lead worker, "in the eyes of the State Policy," he is considered a supervisor. However, the Commission does not agree. The Commission has consistently found that taking the lead is not considered a supervisory responsibility. An incumbent in a leadership role refers to persons whose titles are non-supervisory in nature, but are required to act as a leader of a group of employees in titles at the same or lower level than themselves and perform the same kind of work as that performed by the group being led. *See In the Matter of Catherine Santangelo* (Commissioner of Personnel, decided December 5, 2005). Moreover, a leadership role refers to those persons whose titles are non-supervisory in nature, but are required to act as a leader of a group of employees in titles at the same or a lower level than themselves. Duties and responsibilities would include training, assigning and reviewing work of other employees on a regular and recurring basis, such that the lead worker has

¹ It is noted that the witness was not found to have violated the State Policy.

contact with other employees in an advisory position. However, such duties are considered *non-supervisory since they do not include the responsibility for the preparation of performance evaluations*. See *In the Matter of Henry Li* (CSC, decided March 26, 2014). Therefore, there was no basis to hold G.H. to higher standard than the witness who initiated the conversation.

Moreover, the Commission does not agree that G.H. violated the confidentiality provisions of the State Policy. In this regard, the purpose of the confidentiality directive was to protect the privacy interests of those involved, protect the integrity of investigations of discrimination and harassment complaints and reduce the risk of retaliation against individuals participating in the investigative process. In this matter, G.H. is alleged to have *responded* to a co-worker's statement that the co-worker had been called for an interview by indicating that G.H. had also been called and not to worry about it. There is no allegation that G.H. made any statements that violated the privacy interests of those involved, that his statement divulged any specifics of the investigation or the investigatory process, or that his statement was in any way evidence of retaliation against any individual involved in this matter. Therefore, the Commission does not agree that the mere statement, as described, establishes that the State Policy was violated.

ORDER

Therefore, it is ordered that this appeal be granted and the appellant's personnel record be corrected to reflect the Commission's finding that the allegations that he violated the State Policy were not substantiated.

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 29TH DAY OF JANUARY 2020



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