



**STATE OF NEW JERSEY**

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

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

CSC Docket No. 2020-2026

Discrimination Appeal

**ISSUED: OCTOBER 23, 2020 (JET)**

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S.H., a Program Specialist 1 with the Department of Labor and Workforce Development, appeals the determination of the Assistant Commissioner, Department of Labor and Workforce Development, 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).

The appellant, an African American female, filed a complaint with the Office of Diversity and Compliance (ODC) alleging that she was subjected to discrimination on the basis of sex/gender, race, and color in violation of the State Policy. Specifically, the appellant alleged that J.J., an Employment and Training Specialist 1, referred to her and another employee, D.B., a Program Specialist 1, as “the help” and as Cheech and Chong. The appellant alleged that J.J. has a disdain for women of color, and he yelled and kicked the appellant out of his cubicle on February 14, 2019. The appellant alleged that S.N., an Administrator, Employee Relations, exhibited behavior including prejudice, overt bias, and stereotyping, which was a form of racism. The appellant alleged that S.N. rolled her eyes, was accusatory in nature, failed to let the appellant speak, and displayed unprofessional body language because the appellant is an African American woman. The appellant alleged that D.L., a Supervisor, Employment and Training Programs, required African American employees, including the appellant, to use a sign in sheet. The appellant also alleged that D.L. subjected her to retaliation as she provided derogatory comments in the appellant’s employee evaluation.

The ODC conducted an investigation and determined that there was no violation of the State Policy. Specifically, the ODC determined that J.J. denied the

allegations, and acknowledged that he asked the appellant to leave his cubicle and denied that he yelled at the appellant. The ODC confirmed that a witness indicated that he overheard J.J. ask the appellant to leave and did not hear him yell at the appellant. Additionally, the ODC determined that J.J.'s alleged comments did not violate the State Policy on the basis of sex/gender, as such comments were also made to D.B. As such, there was no nexus between the alleged comments to substantiate a violation of the State Policy. With respect to J.J.'s comment pertaining to "the help," the ODC determined that he made such comments at the time the appellant and D.B. were trainees. However, the ODC clarifies that he stated "In the beginning, it was my understanding that you guys were just the help." As such, the ODC determined the statement J.J. made to the appellant and D.B. was not race related. The ODC determined that the alleged reference to "Cheech and Chong" referred to a comedy duo known for counterculture references, and as such, the comment did not reference race. Additionally, S.N. denied that her actions were outside of her normal work duties and the ODC determined that there was no nexus between any of the protected categories and S.N.'s alleged behavior to substantiate a violation of the State Policy. With respect to the sign in sheets, the investigation determined that, with the exception of J.J, the employees supervised by D.L. were African American, and such employees were required to use the sign in sheet due to time use issues. The ODC found that J.J. and an African American female employee were not required to use the sign in sheets as they were assigned to field work. Additionally, the ODC explains that the time sheet issue was remedied by the former director. The ODC stated that, although African American employees were required to use the sign in sheet, there was no nexus between the time sheets and the protected categories of the State Policy to substantiate a violation. Moreover, the ODC indicated that there was no evidence that D.L. subjected to the appellant to retaliation, as the language in her employee evaluation was changed for legitimate business purposes as a result of a classification evaluation. Moreover, the ODC found that there was no evidence that D.L. was aware that the appellant filed a prior ODC complaint,<sup>1</sup> and the e-mails provided by the appellant did not implicate the State Policy.

On appeal, the appellant maintains that the investigation was not properly conducted and, as such, the ODC's determination was flawed. Specifically, the appellant asserts that the ODC improperly selected witness statements and evidence that influenced the outcome of the investigation. In this regard, the appellant states that the ODC improperly accepted inconsistent evidence including witness statements, e-mails, derogatory statements, and audio recordings in order to make its determination. The appellant explains that she reported additional information in her initial ODC complaint which was not investigated. The appellant adds that she continues to experience an ongoing campaign of bullying, intimidation, harassment, and retaliation, as she failed several employee evaluations, received termination threats, the appointing authority removed several slanderous reports from her personnel file, and work was reassigned to her from higher level employees.

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<sup>1</sup> The ODC indicates that the appellant filed a prior complaint in 2016.

Further, the appellant asserts that the confidentiality provisions of the State Policy were violated, as individuals in the workplace were aware of her EEO complaints and separate grievance matters. The appellant claims that there was collusion amongst witnesses, as S.N. filed a false workplace violence complaint against her. Moreover, the appellant contends that D.L. criticized her as being a highly ambitious employee. As such, the appellant asserts that it appears that the ODC is condoning the alleged behavior.

In support, the appellant submits various e-mails and a timeline of events of incidents that occurred that resulted in her filing of the EEO complaint that is the subject of this matter.

In response, the ODC maintains that there was no violation of the State Policy. Specifically, the ODC asserts that the appellant's complaint contained allegations of racial discrimination, bullying, harassment, as well as corruption in the Office of Labor Relations, that did not implicate the State Policy. The ODC states that five witnesses were interviewed and a violation was not substantiated. The ODC contends that, with respect to the appellant's retaliation claim, the appellant reported that she was subjected to discrimination in 2016 due to a classification evaluation request she submitted, and after an investigation was conducted, a violation of the State Policy was not confirmed. The ODC adds that there was no evidence that the appellant filed a discrimination complaint against S.N., J.J., and D.L. in 2016. Further, the ODC states that, with respect to statements contained in the appellant's employee evaluation, a review of the employee evaluation did not reveal any language that constituted a violation of the State Policy. In this regard, the ODC confirms that the statement in the employee evaluation indicated, "[d]ue to a previous desk audit filed by [S.H.] regarding her job duties, Labor Relations, Human Resources reviewed and approved the revised Job expectations/PAR provided to Ms. H[.]," which does not implicate the State Policy. The ODC adds that D.L. made comments in the appellant's employee evaluation indicating that she was uncomfortable completing the employee evaluation as she had been out of work on leave for some time. The ODC adds that, with respect to S.N.'s unit, except for two employees, the employees serving in the unit were African American, and the use of the sign in sheet was not race related. The ODC reiterates that the term "Cheech and Chong" does not implicate the State Policy, and the "help" was not a reference to her race. The ODC adds that the voice recordings provided by the appellant did not contain derogatory comments in violation of the State Policy. The ODC adds that a separate EEO Officer served as a contact for a separate workplace violence matter and did not implicate this matter, as the instant ODC complaint was investigated by a different EEO Officer. The EEO contends that the appellant's concerns regarding her work assignments and inadequate training should be properly addressed in her grievance matter, and the comments in her probationary reports are now irrelevant as the appellant is now a permanent employee. As such, the ODC contends that the appellant did not provide any substantive evidence in support of her claims on appeal.

## 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).

*N.J.A.C.* 4A:7-3.1(j) states 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. In order to protect the integrity of the investigation, minimize the risk of retaliation against the individuals participating in the investigative process, and protect the important privacy interests of all concerned, the EEO/AA Officer/investigator shall request that all persons interviewed, including witnesses, not discuss any aspect of the investigation with others, unless there is a legitimate business reason to disclose such information

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 ODC conducted a proper investigation. It interviewed the relevant parties in this matter and appropriately analyzed the available documents in investigating the appellant's complaint. The appellant did not provide any witnesses or substantive evidence to show that she was subjected to sex/gender, race or color discrimination, and S.N., D.L., and J.J. denied the allegations. Although the appellant states that

the ODC interviewed select witnesses, the ODC was authorized to interview as few or as many witnesses as necessary to substantiate a violation of the State Policy, and as noted above, the witnesses did not substantiate a violation. The appointing authority was not required to interview the appellant's witnesses, and regardless, the appellant does not provide names of any witnesses in this matter who could provide information that would somehow change the outcome of the case.

With respect to the time sheet issues, the witnesses confirmed that the time sheets were used as a result of inappropriate time use by employees in the appellant's unit. The ODC indicated that employees who were assigned to field work were not required to use the time sheets, and the time sheet issue was later discontinued by the appointing authority. As such, there is no evidence to show that the appellant was singled out with respect to her use of the time sheets. Additionally, there is no evidence to show that J.J. singled the appellant out, and none of the alleged comments attributed to him implicate the State Policy. Further, there is no substantive evidence to show that the appellant was subjected to retaliation. With respect to the appellant's allegations pertaining to the workplace violence complaint, workplace violence complaints are outside the scope of this matter and, as such, will not be addressed. However, it appears that the appointing authority conducted an investigation into a separate workplace violence matter, and there was no substantive evidence that would establish that the workplace violence complaint was a form of retaliation.

Moreover, the appellant's contentions pertaining to her assignments are without merit. The assignments, in and of themselves, are insufficient to substantiate a violation of the State Policy. Moreover, it is not uncommon for an employee to perform some duties which are above or below the level of work which is ordinarily performed. With respect to the appellant's employee evaluations, the ODC confirmed that the appellant's employee evaluations were changed as a result of a classification evaluation. With respect to the grievance matters, the appellant did not provide copies of such matters for review in this matter, and even if she had, such matters are outside the scope of this appeal and there is no record that the appellant filed separate appeals for the grievance matters. As such, the appellant has not provided any information in this matter to refute the underlying ODC determination.

Additionally, the allegations the appellant now provides on appeal do not evidence that she was discriminated against based on any of the above listed protected categories in the State Policy. The appellant has not provided a nexus between such allegations and any of the above noted protected categories of the State Policy to show that a violation occurred. Further, there is no evidence to show that the appellant was singled out or that she was subjected to retaliation as described above. Moreover, 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*

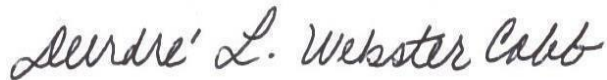
(MSB, decided February 26, 2003). Accordingly, other than the appellant's allegations in this matter, she has failed to provide any evidence that she was discriminated or retaliated against in violation of the State Policy, and thus, she has not satisfied her burden of proof.

**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 21<sup>ST</sup> DAY OF OCTOBER 2020



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