



STATE OF NEW JERSEY

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

In the Matter of S.R., Department of
the Treasury

Discrimination Appeal

CSC Docket No. 2020-1535

ISSUED: NOVEMBER 6, 2020 (ABR)

S.R., a Data Entry Operator 4 with the Department of the Treasury (Treasury), appeals the determination of the Treasury’s Equal Employment Opportunity/Affirmative Action (EEO/AA) Officer, which found that he failed to present sufficient evidence to support a finding that he had been subjected to a violation of the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy).

By way of background, on May 20, 2019, the appellant, a male, filed a complaint with the Treasury’s Office of EEO/AA, alleging that C.G., a female Data Entry Operator 4, and L.L. a female Data Entry Operator 3, subjected him to sexual harassment. Specifically, the appellant alleged that on May 8, 2019, I.W., a Data Entry Operator 2, requested a small batch of work from L.L. and that C.G. responded “what do you mean [I.W.], you want a small one, you don’t want a big one?” The appellant further alleged that L.L. responded “what do you want [I.W.], you want a small one or a big one?” The appellant asserted that L.L. and C.G. were referencing male genitalia and that it constituted sexual harassment, as he was the only male in the room. In response, the EEO/AA conducted an investigation which consisted of the review of pertinent documents and interviews of the appellant, the respondents, I.W. and two other witnesses. The EEO/AA indicated that the witnesses who observed the conversation between L.L., C.G. and I.W., stated that they believed the respondents were referencing a batch of work, not male anatomy. Moreover, the respondents denied that they targeted the appellant for adverse treatment on the basis of his membership in a protected class. Accordingly, the EEO/AA was unable to substantiate the appellant’s claim that he was subjected to a violation of the State Policy.

On appeal, the appellant maintains that the EEO/AA erred in concluding that C.G. and L.L. were referring to a batch of work rather than male genitalia. He asserts that the witnesses were not honest in their testimony during the EEO/AA's investigation. As such, he requests that polygraph tests be administered in order to evaluate the truth of their testimony. He further avers that if the roles were reversed in this situation, the EEO/AA would have substantiated a violation of the State Policy. In this regard, he submits that he asked the Treasury's EEO/AA Officer what would have happened if C.G. and L.L. had accused him of similar conduct and was told that he would have been "crucified."

In response, the EEO/AA contends that the appellant's appeal should be denied, as he has failed to offer any proof that C.G. and/or L.L. were referencing male genitalia. It avers that it conducted a thorough investigation in which the witnesses it interviewed denied that the alleged comments were inappropriate. Specifically, it submits that these witnesses stated that they believed that the C.G. and L.L. were talking about a "batch of work," and not insinuating anything inappropriate. It also states that that C.G. and L.L. confirmed that they were referring to a "batch of work" and not male anatomy. Furthermore, it contends that the phrases "a big one" and "a small one" are not known to be references of a sexual nature and therefore, the utterance of those remarks did not automatically violate the State Policy. Accordingly, it submits that the record did not substantiate that the appellant was subject to a State Policy violation. As to the appellant's claim that Treasury's EEO/AA Officer told him that he would have been "crucified" if C.G. or L.L. had brought a similar complaint against him, the EEO/AA Officer states that she was not present when the appellant was interviewed and she denies that she otherwise had any communication with the appellant. The EEO/AA states that one of its investigators conducted an intake interview with the appellant on June 4, 2019 and that the same investigator conducted a formal interview with him on July 11, 2019. The EEO/AA proffers that the notes and written statements from these interviews do not show that the appellant asked about what would have occurred if C.G. or L.L. had brought a similar complaint against him. Finally, the EEO/AA proffers that its investigator denied that she was asked about such a scenario and stated that she did not tell the appellant that he would have been "crucified" if a similar complaint had been lodged against him.

CONCLUSION

It is a violation of the State Policy to engage in any employment practice or procedure that treats an individual less favorably based upon any of the protected categories. *See N.J.A.C. 4A:7-3.1(a)3*. The protected categories include 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. *See N.J.A.C. 4A:7-3.1(a)*. It is a violation of the State Policy to use derogatory or demeaning references regarding a person's race, gender, age, religion, disability, affectional or sexual orientation, ethnic background or any other protected category. *See N.J.A.C. 4A:7-3.1(b)*. The appellant has the burden of proof in all discrimination appeals. *See N.J.A.C. 4A:7- 3.2(m)4*.

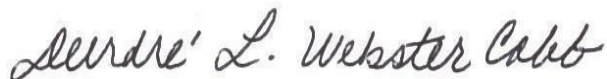
The Commission has conducted a review of the record in this matter and finds that an adequate investigation was conducted and that the investigation failed to establish that C.G. or L.L. made comments which violated the State Policy. At the outset, the appellant disputes the EEO/AA's findings and maintains that the witnesses were untruthful in denying that the remarks at issue referred to male genitalia, but he does not provide any evidence to support his claims. Notably, the appellant fails to provide any evidence that the witnesses were not credible. Moreover, the appellant has not addressed the Treasury's EEO/AA Officer's assertion that she did not have any communication with the appellant or the EEO/AA interviewer's statement that when she interviewed the appellant, they did not discuss the subject of what would have happened if the respondents had lodged a similar complaint against the appellant. Accordingly, the appellant has failed to sustain his burden of proof and there is no basis to disturb the determination of Treasury's EEO/AA Officer.

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 4TH DAY OF NOVEMBER 2020



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