



STATE OF NEW JERSEY

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

In the Matter of J.I, Department of
Labor and Workforce Development

CSC Docket No. 2021-1537

Discrimination Appeal

ISSUED: DECEMBER 21, 2020 (SLK)

J.I., a former Claims Examiner, Unemployment and Disability Insurance with the Department of Labor and Workforce Development,¹ appeals the Assistant Commissioner's determination that she violated the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy).

By way of background, J.H., a Claims Examiner, Unemployment and Disability Insurance, alleged that in May 2018, J.I. asked her why she did not take off her hijab like another employee did. Although J.I. denied making the statement, the investigation found sufficient credible evidence to corroborate this allegation. Further, during the investigation, J.I. stated that J.H. said that she was going to take off her hijab one hot summer day and J.I. asked why she wore a hijab and J.H. responded that the hijab was to remind her of her religion, which J.I. responded that was "pretty cool." It was determined that J.I.'s repeatedly making comments about J.H.'s hijab and other clothing that could be related to her religion was inappropriate and in violation of the State Policy.

On appeal, J.I. denies that she ever asked J.H. why she does not remove her hijab like the other employee did. She presents that she worked with J.H. for over three years and developed a friendship with her. She states that J.H. would often speak of her religion and initiate conversation about her hijab. J.I. acknowledges

¹ Personnel records indicate that J.I. retired effective August 31, 2020.

that she did ask J.H. what her hijab meant, but asserts that she only did so because J.I. said that she was going to take it off and would often speak of removing her hijab. Additionally, J.I. believed that her question would not offend J.H. because they communicated daily since they were friends. J.I. provides text messages and a card to show that they communicated with each other as friends.

In response, the Department of Labor and Workforce Development's Equal Employment Opportunity Officer (EEO) indicates that J.H. made complaints against several employees including J.I. Specifically, she alleged that since she publicly announced her conversion to Islam in March 2017, she received a "barrage of negative and invasive comments" from coworkers and supervisors. She complained that in May 2018, J.I. asked her why she did not take off her hijab like another employee who practices Islam and identifies as Muslim. J.H. alleged that in June 2018, when she wore an all-black abaya J.I. commented that she "looked like a ghoul." J.H. also alleged that in September 2018, J.I., while speaking to another respondent in her cubicle, asked the name of the "towelhead," referring to J.H.

The EEO presents that seven witnesses were interviewed concerning the allegations that J.H. made against the respondents. Regarding J.I., in her signed interview statement, she admitted that she asked J.H. why she wore her hijab, to which J.H. explained that it had been to remind her of her religion and J.I. responded that "it was pretty cool." Further, a witness indicated that J.I. initially asked J.H. why she did not remove her hijab like another employee, and then J.H. explained what her hijab represented. The EEO notes that witnesses also corroborated some of J.H.'s other allegations against J.I.; however, as these witnesses did not have a firsthand account of observing these alleged incidents, it was unable to substantiate those allegations. Additionally, the investigation revealed that J.I.'s actual question to J.H. had been, "Why are you still wearing that? [Another employee] took it off, why don't you?" The EEO indicates that it was determined that this questioning amounted to more than simply a curious question to learn more about J.H.'s religion. Further, a violation of the State Policy can occur even if there was no intent. Moreover, even if J.I. and J.H. were friends at the time of the incident, friendship is not a defense to a finding that a violation of the State Policy occurred.

CONCLUSION

N.J.A.C. 4A:7-3.1(a) states, in pertinent part, that the State of New Jersey is committed to providing every State employee and prospective State employee with a work environment free from prohibited discrimination or harassment. Under this policy, employment discrimination or harassment based upon religion is prohibited.

N.J.A.C. 4A:7.3-2(m) states, in pertinent part, that the appellant shall have the burden of proof in all discrimination appeals.

Initially, it is noted that a question or a comment that references religion is not a per se violation of the State Policy. *See In the Matter of Louise Scrutchins* (CSC, decided February 16, 2011). *See also In the Matter of Alexandra Musson* (CSC, decided August 27, 2008). Further, potential State Policy allegations are to be evaluated based on the context of the situation. *See In the Matter of S.C.* (CSC, decided July 17, 2013).

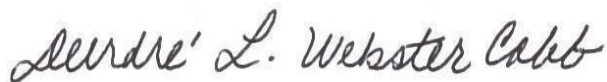
In this matter, J.I. states that J.H. and she were friends, J.H. would often speak of her religion and initiate conversation about her hijab, and would often speak of removing her hijab. Therefore, J.I. did not believe her questions and/or comments about her hijab would offend. However, the investigation revealed that J.I.'s actual comments were, "Why are you still wearing that? [Another employee] took it off, why don't you?" Therefore, regardless of J.I.'s and J.H.'s friendship, J.H.'s potential prior initiating discussion about her hijab² and J.I.'s intent, the words and tone in which J.I. asked her questions to J.H. clearly referenced her wearing a hijab, which is a religious garment, in a negative manner in violation of the State Policy.

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 16TH DAY OF DECEMBER 2020



Deirdre L. Webster Cobb
Chairperson
Civil Service Commission

² The determination does not address J.I.'s assertion that J.H. would initiate conversation about her hijab.

Inquiries
and
Correspondence

Christopher S. Myers
Director
Division of Appeals
and Regulatory Affairs
Civil Service Commission
Written Record Appeals Unit
P.O. Box 312
Trenton, New Jersey 08625-0312

c: J.I.
K.K.
Division of EEO/AA
Records Center