



**STATE OF NEW JERSEY**

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

In the Matter of T.C., Department of  
the Treasury

Discrimination Appeal

CSC Docket No. 2020-859

**ISSUED: MAY 22, 2020 (HS)**

T.C., an Investigator 2, Taxation with the Department of the Treasury, appeals the determination of the Deputy Director stating that the appellant violated the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy).

A.W., Investigator 1, Taxation, an African-American, filed a complaint with the Equal Employment Opportunity/Affirmative Action Office (EEO/AA) alleging discrimination based on race. Specifically, she reported that the appellant, a Caucasian, (1) stated “you look like Whoopi Goldberg” to A.W. when she had twists in her hair; (2) stated to A.W. that he could now like Bob Marley after finding out that his father is white; (3) asked A.W., “How does it feel to be the only black person in the office?” and (4) while in a car with A.W. and L.P., Investigator 3, Taxation, a Caucasian, made a joke about closing cases for more money than L.P., stating “maybe it’s your accent that they think you are part of the KGB.” In response, the EEO/AA conducted an investigation, during which the appellant, A.W., and other Division of Taxation employees were interviewed and pertinent documents were reviewed and analyzed. The investigation confirmed that the appellant made the alleged comments, excepting the Bob Marley comment. The EEO/AA found the appellant’s conduct to be inappropriate and a violation of the State Policy. As a result, the appellant received training on the State Policy but no discipline.

On appeal to the Civil Service Commission (Commission), the appellant denies that he ever discriminated against A.W. on the basis of race. He also denies ever saying anything about L.P. “having any association, affiliation or sounding like

a member of the KGB.” The appellant claims that A.W. and L.P. are great friends in and outside work. He asks that the Commission take the nature of this friendship into consideration and question the validity of their corroborating statements. In the appellant’s opinion, they conspired to create a false narrative to achieve their desired ends of release from their supervisor’s team and perhaps a monetary settlement. Additionally, the appellant states that he spearheaded an office fundraiser for A.W. and argues that is not something a person with a racial agenda does. He claims to have given A.W. numerous gifts and had her over to his house for meals. The appellant rhetorically asks why A.W. would come to his house or accept his gifts if he were such a racist. He maintains that A.W.’s allegations do not make sense. The appellant states that he is hurt by her actions, and he has never been anything but respectful and appreciative of their friendship. The appellant requests that the Commission reverse the EEO/AA’s determination and find that no State Policy training was required. Further, the appellant requests copies of all transcripts, documents and evidence from the investigation as “discovery” as he would like to provide these materials to his attorney to pursue legal options, with the possibility of filing suit.

In response, the EEO/AA acknowledges that the initial determination was not clear as to specifically which statements were deemed to be in violation of the State Policy. To that end, it clarifies that it is only those comments directed at L.P. that were found to be in violation of the State Policy. In that regard, two witnesses, in addition to A.W.,<sup>1</sup> confirmed that the appellant stated to L.P. “maybe it’s your accent that they think you are part of the KGB;” stated to her in a joking manner that her cases did not pay because they thought she was part of the Russian mafia; and asked her why she did not use her Russian accent to make taxpayers pay up better. According to the EEO/AA, it is common knowledge that the terms “KGB” and Russian “mafia” are affiliated with organized crime and are negative references based on an individual’s national origin. With respect to the appellant’s rhetorical question asking why A.W. would come to his house or accept his gifts if he were such a racist, the EEO/AA responds that a finding of discrimination based on national origin in violation of the State Policy does not imply that the employee is a “racist.” The EEO/AA explains that the State Policy aims to achieve a work environment that is free from discrimination and harassment by addressing conduct that violates the State Policy. In the EEO/AA’s view, nowhere in the State Policy’s language does it imply that parties found to violate the State Policy by engaging in an act of discrimination are considered to be “racist.”

## CONCLUSION

Initially, it is noted that the appellant has requested copies of all materials from the EEO/AA’s investigation. However, the State Policy provides for the confidentiality of these materials:

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<sup>1</sup> It is not entirely clear from the record whether L.P. herself was one of the two additional witnesses.

Each State agency shall maintain a written record of the discrimination/harassment complaints received. Written records, consisting of the investigative report and any attachments, including witness statements, shall be maintained as confidential records to the extent practicable and appropriate and will remain so indefinitely.

*N.J.A.C. 4A:7-3.1(g)4.* Moreover, in light of the submissions received from the parties, particularly the summary of the investigation provided by the EEO/AA, the Commission does not find it necessary to compel production of the materials in this matter. The Commission is satisfied that the appellant has had a full opportunity to present evidence and arguments on his behalf, and the Commission has a complete record before it upon which to render a fair decision on the merits of the appellant's appeal. *See In the Matter of Juliann LoStocco, Department of Law and Public Safety*, Docket No. A-0702-03T5 (App. Div. October 17, 2005); *In the Matter of Salvatore Maggio* (MSB, decided March 24, 2004). As such, in this case, the appellant is not entitled to the investigative materials as "discovery."<sup>2</sup>

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).* Additionally, 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. A violation of the State Policy can occur even if there was no intent on the part of an individual to harass or demean another. *See N.J.A.C. 4A:7-3.1(b).* Examples of behaviors that may constitute a violation of the State Policy include, but are not limited to, treating an individual differently because an individual has the physical, cultural, or linguistic characteristics of a racial, religious, or other protected category and telling jokes pertaining to one or more protected categories. *See N.J.A.C. 4A:7-3.1(b)1(ii) and (iv).* The State Policy is a zero tolerance policy. *See N.J.A.C. 4A:7-3.1(a).* Moreover, the appellant shall have the burden of proof in all discrimination appeals. *See N.J.A.C. 4A:7-3.2(m)4.*

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<sup>2</sup> The Commission will note, however, that where an appointing authority pursues disciplinary action based on a substantiated State Policy violation, any party charged who is in the career service may appeal using the procedures set forth in *N.J.A.C. 4A:2-2* and *3.* *See N.J.A.C. 4A:7-3.2(n)3.* Discovery may be formally provided for in those circumstances.

The Commission has conducted a review of the record in this matter and finds that an adequate investigation was conducted and that the investigation established that the appellant violated the State Policy. The EEO/AA appropriately analyzed the available documents and witness statements in investigating A.W.'s complaint and concluded that there was a violation of the State Policy based on L.P.'s national origin. Specifically, the appellant stated to L.P. "maybe it's your accent that they think you are part of the KGB;" stated to her in a joking manner that her cases did not pay because they thought she was part of the Russian mafia; and asked her why she did not use her Russian accent to make taxpayers pay up better. The Commission agrees with the EEO/AA that these are demeaning comments based on national origin. Notwithstanding the appellant's unsupported opinion that there was a conspiracy between A.W. and L.P. to create a false narrative, there were two witnesses other than A.W. who confirmed that the appellant made the comments. Even assuming that one of these two additional witnesses was L.P. herself, that would still leave one witness other than A.W. and L.P. who confirmed the comments. To be clear though, no substantive evidence has been proffered that would actually call the credibility of A.W. and L.P. into question. The appellant's argument that his asserted friendship with A.W. shows that he is not a racist does nothing to undermine the EEO/AA's quite distinct finding that specific comments he directed at L.P. constituted national origin-based discrimination under the State Policy. Accordingly, the investigation was thorough and impartial, and no substantive basis to disturb the EEO/AA's determination has been presented.

As to the administrative action that was taken as a result of the EEO/AA's determination, the State Policy provides that when a violation is found to have occurred, the State agency shall take prompt and appropriate remedial action to stop the behavior and deter its reoccurrence. *See N.J.A.C. 4A:7-3.1(g)2*. The remedial action taken may include counseling, training, intervention, mediation, and/or the initiation of disciplinary action up to and including termination of employment. *See N.J.A.C. 4A:7-3.1(g)3*. In other words, the State Policy is instructive in nature and remedial action can be taken against anyone who is found to have violated it. Thus, it was appropriate that the appellant received training on 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  
20<sup>TH</sup> DAY OF MAY, 2020

*Deirdre L. Webster Cobb*

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