



**STATE OF NEW JERSEY**

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

In the Matter of D.M., Office of  
Information Technology

CSC Docket No. 2020-1831

Discrimination Appeal

**ISSUED: JUNE 19, 2020 (SLK)**

D.M., a former Personnel Assistant 2 with the Office of Information Technology<sup>1</sup>, appeals the decision of the Special Assistant to the State Chief Technology Officer (Special Assistant) which determined that she violated the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy).

By way of background, D.M., a female, was alleged to have sexually harassed B.B., a male Technical Support Specialist, when she touched his body against his will and when she made comments to him that he interpreted as her indicating that she wanted to have sex with him. The Equal Employment Office (EEO) investigated the matter and found that D.M. violated the State Policy. Consequently, she was referred for administrative action which included completing the module on the State Policy on the State's Learning Management System and individualized training/counseling with the EEO/AA Officer on the State Policy.

On appeal, D.M. denies the allegations. She attaches an e-mail from B.B. to the Special Assistant where B.B. states that this matter was blown out of proportion and he never wanted any action taken against D.M. He indicated that he was never asked if he felt that he was sexually harassed and he said that he was

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<sup>1</sup> D.M. no longer works for the Office of Information Technology and is now employed by the Department of Law and Public Safety, Division of Criminal Justice.

not. B.B. indicated that he would like to resume a peaceful work environment going forward with D.M. without her being disciplined.

On appeal, D.M. presents that she has 20 years of service with the State and she had never been disciplined nor been involved in anything of this nature. She states that this matter has become one of the worst issues in her life and she asks to be unburdened of this ordeal.

In response, the EEO presents that B.B. indicated that he felt that he had been sexually harassed and threatened by D.M. for an eight-month period and he wanted it to stop. In his complaint, B.B. indicated that he was friends with D.M. for a while and then she started coming to his work area more often and looking at him in a lustful way. He stated that D.M. made several sexual advances to him after he told her to stop. B.B. described one incident where he told D.M. to stop and she replied, "Do you know how many people want this?" When B.B. responded that he is not like other people, she stated, "I know that's why I want you!"

B.B. requested that this matter be kept in "monitoring status" as he did not have a current issue with D.M., but was informed that this was not permitted under the State Policy. Consequently, the EEO conducted an investigation. Among other allegations, B.B.'s alleged that D.M. made sexual advances to him consisting of hugging, kissing, touching of arms, chest, hand and leg, and compliments on his looks after he told her to stop. D.M. responded that this "never happened except a few times during lunch where we mutually held hands and kissed," while B.B. denied that they ever held hands or kissed. In response to B.B.'s allegation that she yelled at him for acting different and did not care if her boyfriend called B.B.'s wife and ruined his household, D.M.'s position was that she did this because she was frustrated about B.B. continually asking about her boyfriend threatening to call B.B.'s wife. B.B. alleged that D.M. said to him, "How are you just going to leave and not f\*\*\*ing say anything to me – you have me messed up?" B.B. indicated that D.M. told him she was getting a hotel room. In response to the EEO, D.M. stated that her air conditioning was broken and B.B. was invited over to swim and not for sex. She stated that she would have invited anyone who called her and B.B. never came to the hotel. The EEO concluded that D.M.'s response did not make sense as it questioned why if D.M.'s air conditioning was broken she was inviting B.B. to the hotel to swim as there was no indication that B.B.'s air conditioning was broken. B.B. stated that D.M.'s boyfriend called him at work and D.M. acknowledged this. B.B. indicated that he received numerous anonymous phone calls during the early morning one day and D.M. acknowledged that she called him several times on a certain date and she apologized for the prior day's phone call. B.B. alleged that he gave D.M. numerous warnings about him being married and her inappropriate comments including that D.M. said concerning B.B.'s wife, "She is not invited when we have sex." D.M. acknowledged that B.B. told him that he was married, but denied the sex comment. Based on the totality of the interviews, the EEO found

B.B. more credible than D.M.<sup>2</sup> and, therefore, found that she violated the State Policy by subjecting him to sexual harassment.

### CONCLUSION

*N.J.A.C.* 4A:7-3.1(c) states, in pertinent part, that it is a violation of the State Policy to engage in sexual harassment of any kind. *N.J.A.C.* 4A:7-3.1(g)1 provides that the investigation shall be conducted in a prompt, thorough, and impartial manner. *N.J.A.C.* 4A:7.3-2(m)4 states, in pertinent part, that the appellant shall have the burden of proof in all discrimination appeals.

A review of the record indicates that D.M. acknowledged that she “mutually” held hands and kissed with B.B. a couple of times during lunch. Additionally, D.M. acknowledged that she called B.B. stating, among other things, that she did not care if her boyfriend called B.B.’s wife and ruined his household. Further, D.M. acknowledged yelling and cursing at B.B. in a stairwell stating, “How are you just going to leave and not f\*\*\*ing say anything to me - you have messed me up?” Moreover, there was a mutual phone call with B.B. where D.M. mentioned getting a hotel room, which was recorded. Additionally, D.M. acknowledged inviting B.B. to come over to a hotel, although she claimed that she only invited him to swim. Moreover, D.M.’s boyfriend did call B.B. D.M. also acknowledged that she called B.B. several times one day to apologize for the prior day’s phone call. She also acknowledged that B.B. advised her that he was married. Therefore, even though there are no corroborating witnesses, it is clear, based on D.M.’s acknowledgments, that B.B.’s accounts of the incidents are more credible than D.M.’s. As such, she engaged in sexually harassing behavior towards B.B. It is irrelevant that B.B. did not want D.M. to get disciplined and that B.B. did not think that D.M.’s behavior rose to the level of sexual harassment and only wanted her to be monitored. As the State Policy is a zero tolerance policy, there is no “monitoring only” status and it was appropriate for the appointing authority to conduct an investigation, to find that D.M. violated the State Policy and to have taken corrective action. *See In the Matter of George Mladenetz* (MSB, decided February 27, 2008). Accordingly, the Commission finds that the appointing authority’s investigation was a prompt, thorough, and impartial and D.M. has failed to meet her burden of proof.

### ORDER

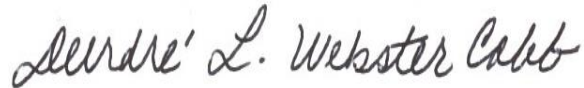
Therefore, it is ordered that this appeal be denied.

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<sup>2</sup> Although, the EEO had some concerns about B.B.’s credibility as he accepted lunch invitations from D.M. during the eight-month time period where he alleged he was being sexually harassed by her, which is not normal behavior by someone who is being sexually harassed. Further, there were no other corroborating witnesses.

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  
17<sup>TH</sup> DAY OF JUNE, 2020



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