

opportunities as a result of a classification reevaluation until T.M. was reassigned from the unit. However, once T.M. was reassigned, the appellant and other workers applied for such opportunities. Additionally, the appellant states that, although her employee evaluations reflect satisfactory ratings, she was reassigned to another unit after she returned from sick leave without any notice from T.D. The appellant adds that she does not understand the reason for the reassignment as she is a good worker. The appellant explains that as a result of her reassignment, the classification reevaluation that she filed was closed by this agency, and as such, she could not be promoted. Moreover, the appellant confirms on appeal that she does not have any additional proof to show that T.D. referred to T.M. as the “N-Word” in her presence. In support of her claims, the appellant provides copies of her employee evaluations, a copy of a Classification Questionnaire, various customer service letters she received, and a doctor’s note from her personal physician to show that she was authorized off duty.

In response, the ODES maintains that there was no violation of the State Policy. Specifically, the ODES asserts that the appellant did not provide any substantive evidence or additional information on appeal in support of her claims. Moreover, the ODES asserts that, out of an abundance of caution, it conducted a one-on-one training with T.D. regarding the State Policy.

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). The appellant shall have the burden of proof in all discrimination appeals. *See N.J.A.C.* 4A:7-3.2(m)(3).

N.J.A.C. 4A:7-3.1(a)2 specifically provides that third party harassment is unwelcome behavior of a sexual, racial or derogatory nature regarding any protected category, that is not directed at an individual but is a part of that individual's work environment. Third party harassment based upon any of the aforementioned protected categories is prohibited by this policy.

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 ODES 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 confirms on appeal that there were no witnesses at the time of the incident, and that there is no substantive evidence to show that T.D. referred to T.M. as the "N-word," nor is there any evidence to substantiate third party harassment. The appellant has not provided any information in this matter to refute the underlying ODES determination. As such, the underlying determination was correct when it determined that there was no violation of the State Policy.

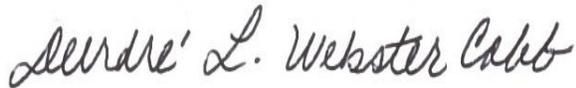
Additionally, the allegations the appellant now provides on appeal do not evidence that she was discriminated against based on any of the above listed protected categories listed in the State Policy. Although the appellant states that she and T.M. were reassigned from her unit, such allegations, in and of themselves, do not implicate the State Policy, and regardless, the appellant has not provided a nexus between such allegations and any of the protected categories of the State Policy to show that a violation occurred. It is at the appointing authority's discretion to reassign employees based upon the business needs of the agency. Although the appellant submitted a classification evaluation to this agency, it was properly closed at the time she was reassigned. Regardless, the appellant's submission of a classification request does not give her a vested interest in the requested title change. Moreover, there is no evidence to show that the appellant was singled out or that she was subjected to retaliation as described above. Additionally, the appellant's employee evaluations, in and of themselves, are not sufficient to show that she was discriminated against. Other than the appellant's tenuous claims, there is no information to show that T.D.'s actions as alleged by the appellant were anything other than her exerting her supervisory authority. Even if the appellant disagreed with T.D.'s style of management, 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). Moreover, management or supervisory style is not reviewable under the State Policy unless that style evidences some form of discriminatory conduct under the Policy. 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. Accordingly, she has not satisfied her burden of proof in this matter.

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 DAY 3RD OF JUNE, 2020



Deirdre L. Webster Cobb
Chairperson
Civil Service Commission

Civil Service Commission

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