



**STATE OF NEW JERSEY**

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

In the Matter of M.V., Department of  
Labor and Workforce Development

Discrimination Appeal

CSC Docket No. 2020-1725

**ISSUED: JULY 2, 2020 (HS)**

M.V., a Data Entry Operator 1 with the Department of Labor and Workforce Development, appeals the determination of the Assistant Commissioner, which found that the appellant failed to present sufficient evidence to support a finding that she had been subjected to a violation of the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy).

The appellant, a female, filed a complaint with the Office of Diversity and Compliance (ODC) against M.W., Chief Mechanical Inspection Bureau Boiler and Pressure, a male. Specifically, the appellant alleged, among other things, the following:

- she was moved from customer service to case management in her unit because she did not want to date M.W.;
- M.W. used the excuse of being her direct supervisor as a means to constantly have meetings with her;
- M.W. would stand around and listen to conversations in the office; and
- she and her co-workers did not wear certain clothes because M.W. would stop and stare.

The ODC conducted an investigation, during which it interviewed the appellant and M.W. along with eight witnesses, six of which were on the list provided by the

appellant. The ODC also reviewed numerous emails and a couple of text messages. It analyzed the appellant's allegations under the category of sexual harassment.

In its determination, the appointing authority indicated that M.W. stated that after assisting the appellant outside of work with personal errands, the appellant asked him on a date. The appellant alleged that it was M.W. who began to talk about dating. M.W. also stated that the appellant was moved to case management because of the backlog there. The appellant's work ethic and behavior also impacted this decision in an attempt to find a position better suited to her. Further, G.S., Data Entry Operator 4, needed help in customer service and another employee was moved there to help because that employee was more customer service-oriented. The appointing authority noted that it does not prohibit employees from dating; however, there are certain guidelines that must be followed. In this case, the appellant's relationship with M.W. outside of work may have contributed to her permanent status as she was in temporary status at the time they went on their lone date. M.W. admitted that he had texted the appellant on her personal phone, but contacts stopped. The appointing authority stated that it appeared that others in the unit texted each other on their personal mobile phones as well, usually about arrival and delayed openings at work. The appointing authority further stated that M.W. denied eavesdropping and said that he supervises by walking around and observing. He denied staring at any co-workers, including the appellant. The investigation did not find sufficient credible evidence to substantiate the appellant's allegations that M.W. was "eavesdropping," staring and following women into the breakroom. The appointing authority did not substantiate any violation of the State Policy.

On appeal to the Civil Service Commission (Commission), the appellant states that she finds the result of the investigation insulting and unacceptable. She argues that even in M.W.'s version of events, he is still behaving unethically and unprofessionally.

In response, the ODC provides additional discussion of the appellant's allegation that M.W. used the fact that he became her direct supervisor as an excuse to constantly have meetings with her. In this regard, the appellant had alleged that once she asked that someone else, either another supervisor or M.W.'s Administrative Assistant, be present in the meetings, the meeting requests stopped. In an e-mail provided by the appellant, she requested to have two supervisors, along with M.W.'s Administrative Assistant and a union representative, present in the meeting. The investigation found that M.W. did not deny the appellant's request to have others present and agreed that the two supervisors she previously met with should attend. M.W. only told her that since the meeting could not result in disciplinary action, no union representative was necessary. Regarding the allegations that M.W. stood around and listened to conversations in the office, five witnesses who worked in or around that area all indicated that M.W. does not eavesdrop in the office but monitors the office by walking around and observing. Witnesses two and four admitted they

have seen M.W. staring at everyone in the office while he is observing, and witnesses three and seven stated they had heard about M.W. staring but had not witnessed anything themselves. While witness one indicated the only thing she heard regarding M.W. staring is that someone told her the appellant would go around the office and ask if M.W. made them uncomfortable when he stood near them and did not say anything. M.W. himself indicated that he manages by walking around and reading body language to verify they are working as opposed to watching videos on their phones. As to the allegation that M.W. would follow women into the breakroom, witnesses one, two, three, five, six and seven all indicated that they had not witnessed M.W. follow any women into the breakroom. Witness four did indicate that the appellant told her she feels like every time she gets up to go to the break room, M.W. gets up to go to the breakroom as well. However, witness four indicated that she had not witnessed this herself.

The ODC states that the text messages provided by the appellant were not indicative of any harassment. The text contained messages between M.W. and witness four regarding a delayed opening for all State employees. In the text, after asking if she knew about the delay, M.W. asked for the appellant's number to which witness four replied that another co-worker already texted her; M.W. then responded with "Ok."

In reply, the appellant maintains that she was not moved to case management due to her work ethic and behavior. The appellant also states that she had advised the ODC about certain meetings that occurred in the mornings when she showed up for work. M.W. would not give the appellant time to set her things down and would call her into a private meeting off of the floor and into a conference room. The appellant states that in these meetings, M.W. would advise how worried he was about her because her mother was sick at the time. After about a half dozen of these, according to the appellant, it became a joke in the department on those mornings. The appellant states that she advised M.W. that she would no longer attend these meetings without someone else present, and the meetings stopped.

In addition, the appellant states that she advised the ODC that M.W. would stand directly in front of her until she was forced to look up and ask him if he needed her to do anything for him. M.W.'s reply was always no. M.W. would continue to stand there and then eventually walk away. If the appellant did not look up in time, he would wave his hand directly in her face until she did. She states that several times, M.W. would advise that he was looking for her while she was in the restroom or breakroom. When she asked what he needed, he would just advise he was wondering where she was. The appellant maintains that no one else was scrutinized like this. She also maintains that M.W. would follow her into the breakroom and onto the elevators.

The appellant further argues that M.W. used tactics unbecoming a supervisor by allowing her to change a few minutes of her schedule regarding leaving and arriving and then reprimanding her for it. She also claims that M.W. advised her to see him directly for anything she needed and not use e-mail but then chastised her in an e-mail and asked her to use e-mail instead.

The appellant also emphasizes that M.W. specifically asked for only *her* number from a co-worker on a snow day even though M.W. was well aware that she and her co-workers are participants in State communication and that another employee always communicates with them as well. The appellant maintains that there was no need for M.W. to ask for her number directly.

## 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 engage in sexual (or gender-based) harassment of any kind, including hostile work environment harassment, quid pro quo harassment, or same-sex harassment. *See N.J.A.C. 4A:7-3.1(c)*. 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*.

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 the appellant was discriminated against in violation of the State Policy. The ODC appropriately analyzed the available documents and witness interviews in investigating the appellant's complaint and concluded that there was no violation of the State Policy. Specifically, M.W. indicated that his management style was to walk around and read body language to verify employees are working. Multiple witnesses indicated that M.W. does not eavesdrop in the office but rather monitors the office by walking around and observing. Multiple witnesses indicated that they had not observed M.W. follow any women into the breakroom. Text messages provided by the appellant were also not indicative of any State Policy violation. These involved messages between M.W. and one of the witnesses regarding a delayed opening. After asking if she knew about the delayed opening, M.W. apparently asked for the appellant's number. The witness replied that another co-worker had already texted her, and M.W. responded with "Ok." On appeal, the appellant reiterates that M.W. engaged in a host of inappropriate behaviors, several of which the ODC did not

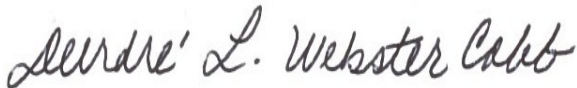
substantiate as State Policy violations, as noted. The Commission is not in fact persuaded that any of the alleged behaviors raised on appeal, whether or not explicitly discussed by the ODC in this appeal, may fairly be characterized as sexual harassment or other State Policy violation. Some of the behavior alleged, such as allowing a schedule change and then reprimanding the appellant for that change, would appear unprofessional. However, unprofessional behavior between co-workers cannot sustain a State Policy violation. *See In the Matter of Bobbie Hodges* (MSB, decided February 26, 2003). Accordingly, the investigation was thorough and impartial, and no substantive basis to disturb the appointing authority's determination has been presented.

### 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 1<sup>ST</sup> DAY OF JULY, 2020




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