



STATE OF NEW JERSEY

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

In the Matter of G.F., Department of
Corrections

Discrimination Appeal

CSC Docket No. 2022-478

ISSUED: JANUARY 21, 2022 (EG)

G.F., a Senior Correctional Police Officer with the Department of Corrections (DOC) appeals the determinations of the Director of the Equal Employment Division (EED), stating that the appellant failed to present sufficient evidence to support findings that she had been subjected to violations of the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy).

The appellant filed several complaints with the EED since June 2020. The first complaint was filed on June 6, 2020, in which the appellant alleged that Correctional Police Lieutenant G.B. retaliated against her for having previously filed a Conscientious Employee Protection Act (CEPA) complaint and an ethics complaint against the Central Reception and Acceptance Facility (CRAF); and having filed two grievances. The appellant alleged that G.B. had removed leave time from her leave balances. Thereafter, on July 20, 2021, the appellant filed a complaint alleging retaliation, and discrimination on the basis of race and color. The appellant alleged G.B. retaliated against her by making false statements in a complaint against her which led to the appellant receiving disciplinary action. Further, the record indicates that the appellant filed additional complaints with the EED after March 2021.¹

In response to the appellant’s complaints, the EED issued determination letters dated August 4, 2021 and August 12, 2021, indicating that the complaints filed by the appellant did not provide a nexus between the alleged conduct and membership in a protected category under the State Policy. Specifically, the EED

¹ Although the submissions from both parties indicate that additional complaints were filed, copies of these complaints were not provided on appeal.

stated that since receiving discovery for an Ethics charge that the appellant was served, in or around March 2021, she filed three separate EED complaints against individuals who participated in the Ethics investigation and did not provide sufficient nexus in any of the matters.² It added that “Should you file another complaint against an individual who participated in said Ethics investigation without articulating a sufficient nexus between the alleged conduct to a protected category, as required by the Policy, it could be considered frivolous and subject you to disciplinary review and/or sanctions.”

On appeal, the appellant argues that during the investigation into G.B. removing her leave time he divulged, to mitigate his liability in the matter being investigated, that it was common knowledge that the appellant and Correctional Police Lieutenant B.D. were a couple.³ Additionally, the appellant asserts that Correctional Police Lieutenant N.C. improperly shared a confidential email submitted by the appellant with Senior Correctional Police Officer S.W. and claims that sharing this email was a violation of the State Policy. Moreover, the appellant asserts that the EED failed to properly investigate her allegations of retaliation against G.B. and that it has failed to provide her with all the documents the EED provided the Ethics Commission in its investigation. The appellant adds that she believes the EED is retaliating against her.

Further, the appellant alleges that the EED purposefully delayed her complaint with multiple extension requests in an attempt to exhaust the statute of limitations she must adhere to when pursuing any legal redress. The claims that the EED has purposely failed to provide her with a determination letter regarding her June 6, 2020 complaint against G.B. The appellant also claims that the EED has threatened her with discipline following her filing complaints which has intimidated her to report any wrongdoings or any State Policy violations. The appellant adds that one of the complaints she had filed was against Special Investigation Division (SID) for inconsistencies regarding witness testimonies and the violation of her constitutional rights. In addition, the appellant argues that N.C. colluded with S.W. to retaliate against the appellant when N.C. disclosed to S.W. the content of a December 3, 2020 email the appellant had submitted regarding the disparate treatment of officers based on race. In this regard, the appellant alleges that N.C., by providing S.W. with information that misrepresented the facts, caused S.W. to retaliate against the appellant by emailing the EED about an alleged breach of confidentiality. Moreover, the remedies sought by the appellant include determination letters for the EED and CEPA complaints she has filed, having her complaints against G.B. and N.C. upheld, having the disciplinary charges against her

² There is no determination letter in the record regarding the June 6, 2020 complaint.

³ The appellant’s relationship with B.D. was found to have violated State Ethics rules and the appellant received a 60-day suspension for this infraction.

dismissed, and having the EED and SID staff sanctioned for failing to conduct due diligence.⁴

In response, the EED asserts the appellant's first CEPA complaint was opened in November 2019 and her first EED complaint was opened in February 2021. In this regard, it contends that due to the COVID-19 pandemic and the resulting Executive Orders the way in which its investigations were conducted were dramatically altered. Additionally, it indicates that on April 9, 2020, the Civil Service Commission (Commission) relaxed the regulatory mandated timeframes to complete investigations of alleged State Policy violations if good cause could be shown. It argues that social distancing mandates, staffing shortages and an initial inability to conduct interviews provide good cause for the delay in its investigations. The EED adds that there are not specified timeframe for CEPA complaint investigations. Further, the EED states that the appellant received a major disciplinary action due to a substantiated Ethics violation. Upon receipt of the SID report regarding the Ethics violation the appellant filed three EED complaints against three witnesses identified in the report without providing a nexus between the alleged actions and a protected category under the State Policy. In response to these complaints, the EED determination letter to the appellant included language regarding the filing of further complaints against individuals who participated in the Ethics investigation without providing a sufficient nexus between the alleged conduct to a protected category could be considered frivolous and subject the appellant to disciplinary review and/or sanctions.

Moreover, the EED asserts there was a determination issued for the appellant's October 2019 Ethics complaint. Furthermore, it states that statements to the EED are confidential unless there is a legitimate business purpose for them to be shared, which is typically reserved for an appeal hearing when an employee is being disciplined. In the present matter, the appellant was disciplined as a result of a SID investigation, not an EED investigation. Finally, the alleged confidential information shared by N.C. with S.W. involved an SID matter and was outside the purview of the EED.

In reply, the appellant argues that it was the appointing authority's responsibility to properly classify her complaint against G.B. as an EED or CEPA complaint. Additionally, she claims that the SID did not provide a finding of any proof of wrongdoing and merely forwarded a confidential report for review and any action deemed necessary. Further, the appellant states that the State Ethics Commission authorized disciplinary action against her after the discipline had been

⁴ The appellant also objected to the EED requesting an extension to file its response to the present appeal. The appellant incorrectly argues that the timeframe to respond to a written record appeal is statutory and cannot be relaxed. There is no statute regarding appeal response timeframes in written record appeal matters. In the instant matter, the EED requested a reasonable extension to file a response and that extension of time was granted.

imposed and only supported such an action if the statements by the appointing authority were accurate and true. Moreover, the appellant argues that the nexus for her complaints was that Caucasian officers received benefits that did not extend to their black/African American counterparts. The appellant also contends that the Ethics and EED complaints were not fully investigated as B.D. was not interviewed regarding an alleged accommodation received by an officer that was not approved for African American officers.

CONCLUSION

Initially, the Commission notes that no determination letter regarding the appellant's June 6, 2020 EED complaint has been provided. Further, the EED has not provided a clear answer regarding this complaint nor given an explanation as why a determination letter has not been issued on this matter. Therefore, the Commission orders a determination letter of the appellant's June 6, 2020 EED complaint be issued or an explanation as why an EED determination letter is not appropriate in this matter be issued to the appellant within 60 days of the issuance of this decision.

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. *N.J.A.C.* 4A:7-3.1(c) provides that it is a violation of this 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.

In addition, retaliation against any employee who alleges that he or she 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 this policy. No employee bringing a complaint, providing information for an investigation, or testifying in any proceeding under this policy shall be subjected to adverse employment consequences based upon such involvement or the subject of other retaliation. *See N.J.A.C.* 4A:7-3.1(h). 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).

In the instant matter, the appellant filed several discrimination complaints with the EED. The EED determined that the complaints filed by the appellant did not provide a nexus between the alleged conduct and membership in a protected category under the State Policy. Specifically, the EED stated that since receiving discovery for an Ethics charge, the appellant filed three separate EED complaints against individuals who participated in the Ethics investigation and did not provide sufficient nexus in any of the complaints. On appeal, the appellant has also failed to connect how any of her complaints relate to her being a member of a protected class under the State Policy. Although she mentions race in a few limited instances, she provides no explanation as to how or why the actions she alleges were taken against her were due to her race. Similarly, the appellant fails to provide any basis for retaliation due to her having filed a previous discrimination complaint. Rather, it appears that the appellant filed complaints with the EED against individuals that provided statements during the investigation concerning an Ethics violation which ultimately led to her receiving a major disciplinary action.⁵ Furthermore, the EED's statement that any future complaints against individuals who participated in the Ethics investigation, without articulating a sufficient nexus to the State Policy, could be considered frivolous and subject her to disciplinary review and/or sanctions, was issued after three such complaints were filed. Thus, such a statement is not a threat as the appellant contends, but rather a warning to the appellant to ensure that any future filings meet the required standards.

The determinations made by the EED were well reasoned. Moreover, the appellant has not provided any dispositive evidence in support of her contentions that she was subjected to a violation of the State Policy. Therefore, the appellant has not sustained her burden of proof in this matter. Accordingly, based on the foregoing, no basis exists to find a violation of the New Jersey State Policy Prohibiting Discrimination in the Workplace.

ORDER

Therefore, it is ordered that this appeal be denied.

It is further ordered that a determination letter of the appellant's June 6, 2020 EED complaint be issued within 60 days of the issuance of this decision.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

⁵ The appellant's appeal of this disciplinary action is currently pending at the Office of Administrative Law.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 19TH DAY OF JANUARY, 2022

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