



STATE OF NEW JERSEY

In the Matter of J.M., Department of
Health

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

CSC Docket No. 2022-3146

Discrimination Appeal

ISSUED: August 24, 2022 (SLK)

J.M., a Planner/Scheduler, Computerized Maintenance Management with the Greystone Park Psychiatric Hospital (GPPH), Department of Human Services, appeals the decision of a Director/Equal Employment Opportunity Officer, which determined that there was no nexus between his claims and the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy) and, therefore, there was no basis to investigate his allegations.

By way of background, J.M., who is male, sent emails to The Office of Diversity and Equity Services (ODES) documenting his allegations of a hostile work environment, harassment and retaliation, which he alleged resulted in him being placed on the “do not enter list” for GPPH and him being placed on leave with pay status since June 2021. The ODES indicated that a review of the emails revealed numerous work-related issues which culminated in an incident at a Quick Check he visited while on his break. J.M. reported seeing the same employees when he goes out on break and he reported seeing employees who were always by the doors at work when he was leaving for a break. The emails documented that he was sent for a Fitness for Duty Examination with a medical professional, where treatment was recommended, which he declined. The ODES indicated that although J.M. expressed frustration over his current employment status, and the narrative of his emails alleged that he was subjected to a hostile work environment, harassment, and retaliation, his issues were work-related. Therefore, the ODES found that there was no nexus to implicate the State Policy and his work-related issues did not warrant an

State Policy investigation. It did indicate that J.M.'s emails were referred to Employee Relations for further review and further action as it deemed appropriate.

On appeal, J.M. states that he disagrees with the determination that there was no nexus to implicate the State Policy and his work-related issues do not warrant an investigation by the ODES. He indicates that he expressed in his statements and emails that he was subject to retaliation, harassment, gender bashing, and slander/defamation of his name, which created a hostile work environment. J.M. indicates that there are witnesses to support his claims. He asserts that he was threatened by staff and their families on two separate occasions. J.M. states that he called the police and went to Human Resources for help, but was advised that there was nothing that could be done. He presents that he has been a State employee since 1987 and has never had any negative or derogatory statements against him.

J.M. submits an email from a Quick Check employee who indicates that he is a regular customer and very friendly. She indicates that on June 30, 2021, he was talking with him and some of J.M.'s female co-workers were also there, and after he left, J.M.'s co-workers asked her if she was okay, which she thought was strange, and she replied that she was fine. Later that day, J.M. came back in the store and asked her if he had offended her or anyone else in the store, if he was yelling, if he threw his hands up violently, or made her or anyone else feel threatened. She stated, of course not, and she advised him that his co-workers had earlier asked her if she was fine. J.M. advised the Quick Check employee that his co-workers made these allegations against him. The Quick Check employee's statement indicated that J.M. never bothered or disturbed her in any way or any other employee as he is always joyful and in good spirits when he comes in the store.

J.M. also submits a statement from Mi.R., a female Human Services Technician, who recounts an incident from three or four years ago, where a "young lady Indian looking lady" stuck her middle finger at a person sitting in a black truck. Mi.R. indicates that she then saw this lady do the same thing during a second incident. Mi.R. indicates that she advised the man that he should report the incident.

In reply, the appointing authority presents that J.M. sent a series of emails to the ODES that described on-going work-related issues and interpersonal conflict that he had with several employees at GPPH. It states that J.M. requested assistance because he was being labeled as "mental" and was required to "admit I need to be on subscribed (sic) medication before returning to work." J.M. indicated that after he attended an Independent Medical Examination (IME), he was recommended for treatment because he was responsible for the "situation" that occurred, and he was observed by others "talking to himself." However, it presents that J.M. was not interested in obtaining treatment and the entire situation caused him stress and other health problems. Therefore, since J.M. did not follow the recommendations of the IME, he has not been permitted back to work at GPPH.

The appointing authority states that J.M. alleged that he was threatened and harassed by certain female employees at GPPH who would just “show up” places he frequented while on break. He wrote that his reputation had been tarnished by co-workers including during the Quick Check incident. J.M. documented that he told the cashier that there were “some demonic souls that tried to tarnish my shine and character.” It presents that he indicated that the Director of Human Resources advised him that he was accused of being “loud and aggressive at Quick Check” which made GPPH staff at the store uncomfortable. The appointing authority indicates that J.M. wrote that on another occasion, he was escorted from GPPH by police because another employee reported that he had threatened him. It presents that J.M.’s emails described that he was in a perpetual state of conflict with employees.

The appointing authority presents that J.M. filed a June 2019 grievance requesting the “slandering of my name and rumors to stop.” He alleged that G.C., a female Therapy Program Assistant, was slandering his name and spreading lies and rumors, turning other employees against him, and stalking him. During J.M.’s grievance investigation, the respondents made counter complaints against him and a workplace violence investigation was initiated. It states that G.C. made a sexual harassment complaint against him on July 12, 2019, alleging that J.M. sent her a love letter and gifts in 2015. The ODES investigation found that J.M. wrote three love letters to G.C., but the letters were not sexually harassing in nature. Further, there was no evidence that J.M. continued to pursue G.C. after she allegedly told him that she was not interested. The appointing authority indicates that the workplace violence investigation had witnesses making allegations against J.M., including him slamming doors in employees’ faces, yelling vulgarities at employees, intimidating behavior, perceived threatening behavior and displays of anger. It states that J.M. was reported to be cursing at himself saying that he was going to call the police because someone threatened to scratch his car. The appointing authority indicates that witnesses said that J.M. had contentious relationships with some employees that included back and forth vulgarity and referred to him as a stalker due to his love letter and gifts to G.C. The investigation found no evidence that J.M. was harassed due to his gender as the contentious relations were the result of specific actions and not related to a protected category.

The appointing authority presents a February 18, 2020, incident where M.M, who is female Charge Nurse, 12 months, reported that when she was returning from her lunch break with her wife, J.M. proceeded into the building, “suddenly he stopped and bent over, looking directly in our direction, and yelled something towards my wife and me.” It indicates that when M.M. saw J.M. in the employee dining room and she reported that she asked him in a calm manner, “Is there a problem?” M.M. reported that J.M. became hostile, raised his voice and yelled at her while making aggressive hand gestures, “Do you have a problem?” Further, M.M. indicated that J.M. continued yelling at her, “I was on the phone so leave me alone. Bye. Bye. Get out of

here. Leave. Leave.” The appointing authority states that M.M. stated that J.M. had been previously been hostile to her wife and her as he makes comments under his breath when he passes them. M.M. reported that J.M. stated, “Oh, these bitches don’t know I’m about that life...” The appointing authority indicates that she concluded that J.M. is very loud, hostile and threatening in his tone of voice, clearly unpredictable and she feels unsafe in the work environment. M.M. believed that J.M. had an issue because they were a lesbian couple. It provides that J.M. also reported the February 18, 2020, incident where he stated that M.M. yelled at him, “Do you have a problem with me and my wife!” The appointing authority presents that J.M. indicated that he had been harassed for about a five-year period. It presents that the workplace violence investigation found that J.M. engaged in hostile behavior towards M.M. and J.M.’s gender played no role in this incident. The appointing authority states that M.M. declined to pursue a State Policy complaint against J.M.

Regarding the Quick Check incident, M.C., who is female Personnel Assistant 2, Employee Relations, reported that while J.M. was in the parking lot he said, “these people won’t leave me the fuck alone” and “these evil people keep following me everywhere and I’m fucking sick of it.” Further, Ma.R., who is a female Personnel Assistant 3, reported that while she was walking in the store she heard J.M. state, “they are fucking following me, why don’t these evil people leave me alone.” M.R. stated that J.M. stated the same thing in the store and then “proceeded to tell the cashier.” Additionally, the appointing authority states that M.R. stated that once they were back at GPPH, J.M. told another employee, “I’m fucking tired of these people following me around! I’m tired of the shit!” She also stated that another employee asked him to calm down, but he got louder and said, “I don’t give a fuck!” It presents that M.R. reported that patients heard J.M.’s outburst and she was afraid of his behavior. The appointing authority asserts that while the Quick Check employee’s statement denies that J.M. had an outburst in the store, even if true, the statement does not indicate any gender-based harassment by female GPPH employees.

Concerning the statement from M.R., the appointing authority notes that the statement does not indicate the man who received the unwanted gesture. Further, while the statement indicates that a GPPH employee made a vulgar gesture to another individual, there is no evidence that the incident was gender-based implicating the State Policy.

The appointing authority asserts that management had serious concerns about J.M.’s behavior and had a legitimate business reason to refer him for an IME. It emphasizes J.M.’s affectionate letters to G.C. and that multiple witnesses have documented his conflict with employees. The appointing authority asserts that J.M.’s emails indicated work-related issues that provided no nexus to the State Policy and, therefore, there was no basis to investigate. It notes that the alleged workplace threats are handled as workplace violence incidents. The appointing authority

asserts that while J.M. is a male and he has had conflicts with female employees, there is no evidence that his conflicts were based on his gender.

CONCLUSION

N.J.A.C. 4A:7-3.1(a) provides, in pertinent part, that the State is committed to providing every State employee and prospective State employee with a work environment free from prohibited discrimination or harassment. Under this policy, forms of employment discrimination or harassment based and upon gender will not be tolerated.

N.J.A.C. 4A:7-3.1(h)2 provides that 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 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 be the subject of other retaliation.

N.J.A.C. 4A:7-3.1(i) provides that the burden is on the complainant to articulate a sufficient nexus between the alleged conduct to a protected category pursuant to the State Policy.

N.J.A.C. 4A:7-3.2(i) provides that at the EEO/AA Officer's discretion, a prompt, thorough, and impartial investigation into the alleged harassment or discrimination will take place. In determining whether or not a thorough and impartial investigation is warranted, the EEO/AA Officer when reviewing complaints shall consider, but is not limited to considering, the following factors: the facts presented, whether the complainant articulated a sufficient nexus between the alleged conduct to a protected category as set forth in *N.J.A.C. 4A:7-3.1(a)*, the time the incident(s) occurred, the time the incident was reported, and whether the complainant and/or respondent is a current State employee (regardless of when the incident occurred).

N.J.A.C. 4A:7-3.2(m)4 provides that the appellant shall have the burden of proof in all discrimination appeals brought before the Civil Service Commission (Commission).

In this matter, under *N.J.A.C. 4A:7-3.2(i)*, the ODES had the discretion to determine whether an investigation was warranted. The record indicates that J.M. and his co-workers had conflicts. Further, the record indicates that there was confirming evidence and witnesses that J.M. engaged in inappropriate workplace behavior. Moreover, while J.M. submitted statements from witnesses which potentially indicate that female co-workers engaged in hostile behavior towards him,

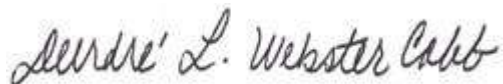
the record indicates that J.M. has not provided one scintilla of evidence, such as a witness statement or document, that confirms that any behavior towards him was based on him being male or being a member in a protected category. There mere fact that he is male and had conflicts with female co-workers is not sufficient, without confirming evidence, that the alleged hostile behavior towards him was because he was male. Mere speculation, without evidence, is insufficient to support a State Policy violation. *See In the Matter of T.J.* (CSC, decided December 7, 2016). Accordingly, as J.M. did not provide the ODES any evidence, or potential witnesses or evidence, that could confirm that the alleged hostility towards him was based on his membership in a protected class, it properly determined that there was no nexus between the alleged behavior and the State Policy and there was no need for a State Policy investigation.

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 24TH DAY OF AUGUST, 2022



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