STATE OF NEW JERSEY

In the Matter of S.S., Motor Vehicle Commission	:	**FINAL ADMINISTRATIVE ACTION OF THE CIVIL SERVICE COMMISSION**
CSC Docket No. 2023-131	:	Discrimination Appeal

ISSUED: October 12, 2022 **(SLK)**

S.S., a former Agent MVC, appeals the decision of the Deputy Director of Legal Affairs[1], which substantiated that she violated the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy).

By way of background, S.S., who is African-American, began employment with the appointing authority as a Manager of the Newark Agency on June 19, 2021, and was separated from her position, which was an unclassified appointment, on December 2, 2021. In this position, she oversaw two Supervisors and four Senior Technicians. On August 18, 2021, the Equal Employment Opportunity (EEO) office informed S.S. that while there were no investigations against her at that time, there were concerns that her actions could fall under the State Policy, where she was advised of the importance of not appearing overly friendly with any employee or group of employees and to be cognizant of perceived favoritism. Thereafter, S.S. had meetings with staff where concerns about the behavior of I.J., an African-American Senior Technician MVC, and the treatment of G.T., a Hispanic Supervisor 2 MVC, as being too harsh, were expressed. Subsequently, S.S. decided to mentor I.J.

The appointing authority presents that complaints against S.S. alleged that she treated African-American employees better than Hispanic employees, played

[1] Personnel records indicate that the Deputy Director of Legal Affairs retired, effective August 31, 2022.

music with explicit and gender-based offensive lyrics in the agency, and used gender and racially inappropriate language and references.[2]

The investigation revealed that S.S. admitted that she used "n**ga" in the break room when others were at the table and may have done so a couple of times. Also, I.J. said "n**ga" in front of S.S. in the break room and S.S. did not correct her. Additionally, the appointing authority presents that an employee played a Meek Mill song, "Dreams and Nightmare" during a staff "huddle" and S.S. knew that the song used the n-word throughout, "b**ches," which is derogatory towards women, and other derogatory words. It substantiated that S.S. violated the State Policy as it indicated that all forms of the use of the n-word violated the State Policy. The appointing authority also found that her permissive use of a song that she knew contained the n-word and "b**tch" was a violation. It also found that S.S. failed to maintain a work environment that was free of discrimination or harassment by failing to correct I.J.'s use of the n-word. Additionally, it found that S.S. failed her supervisor responsibility under the State Policy by failing to report I.J.'s use of the n-word and by allowing a song that had language that she knew violated the State Policy to be played.

On appeal, S.S. presents that in December 2021 she was dismissed without warning. She was also advised that there was a discrimination complaint against her. S.S. asserts that she was shocked by this because the substantiated claims were based on personal conversations that were heard by someone eavesdropping. She believes that the complaints were filed against her in retaliation for her identifying poor employee performance, an unwillingness of employees to relinquish control of the agency, and after she notified the appointing authority that employees were engaging in suspicious activity. S.S. claims that there is a bias by some Hispanic employees towards African-American employees. She states that she was wrongfully accused, which led to her removal, and the environment was already hostile when she arrived. S.S. indicates that she has witnesses, who are African-American and East and West Indian, that will testify on her behalf that the investigator did not

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[2] Allegations against S.S. that were unsubstantiated are not being addressed. Additionally, there was an allegation that was substantiated that indicated that S.S. created a hostile work environment by having lunch and otherwise being friendly with two African-Americans in the unit while not having lunch or otherwise treating the Hispanic employees the same. The complaint indicated that the Hispanic employees perceived that S.S. favored the African-American employees by giving them certain assignments and excluding the Hispanic employees. Further, the investigation revealed that S.S. did not meet regularly meet with a Hispanic employee to address deficiencies that were found during this employee's Working Test Period while S.S. mentored I.J. Therefore, the investigation found that S.S. violated the State Policy because there was a perception that she favored the African-American employees. S.S. did not specifically address this allegation. However, while S.S. may have engaged in poor management practices by creating a perception that she favored African-American employees over Hispanic employees, a "perception" is insufficient to find a violation of the State Policy. It is noted that no evidence had been presented that S.S. specifically excluded Hispanics from joining her for lunch or other socializing. Mere speculation, without evidence, is insufficient to support a State Policy violation. *See In the Matter of T.J.* (CSC, decided December 7, 2016).

interview and, instead, the investigator only spoke to a small group of employees who conspired against her. She presents that she was not advised that she should have counsel present when interviewed by the investigator and she was never trained on public sector ways nor was she offered even a warning or a potential suspension instead of having her unclassified appointment discontinued. S.S. requests that she be returned to her position or, at least, other employees be moved to different locations for their alleged constant false claims against her.

S.S. acknowledges that she played a racial version of a song before the agency opened that bleeped out words, such as "b**ch," that you could still make out the words. However, S.S. claims that C.G., a Hispanic and Native American Technician MVC, spoke to employees from the regional office and referred to her as a "b**ch." She indicates that when she spoke to the EEO, she was advised that it was not a State Policy issue and she was referred to the Office of Employee Relations (Employee Relations). S.S. questions how a State Policy violation can be substantiated against her for playing "bleeped out" music when she was advised that C.G.'s conduct was "downgraded" to Employee Relations as she was told it was only hearsay. She questions why her conduct was not "downgraded" to Employee Relations instead of a State Policy violation. S.S. believes that she was treated differently because she was African-American.

In response, the appointing authority submits two acknowledgements signed by S.S. The first acknowledgment related to an all-day mediation that was done with S.S. and G.T. to correct S.S.'s behavior and make her aware of the issues and complaints against her. The second acknowledgment was S.S. indicating that she has been advised during her interview about confidentiality and the prohibition against retaliation regarding the State Policy complaints against her.

In reply, S.S. submits a Disciplinary Action Recommendation form that she submitted to K.K., a Caucasian Division Director, regarding C.G. The account of the events leading to proposed discipline indicates that it was mentioned that C.G. was applying the validation stickers incorrectly to the permits. C.G. allegedly responded, "Do you think I care about others, it's just a sticker after 18 years, they can't fire me. I don't care about these b**ches." The form indicates that T.R.-V., an Asian Technician MVC, was a witness. S.S. states that C.G. referred to her as a b**ch to two Technicians. She presents that the former Deputy Director of Legal Affairs advised her that this matter was not for the EEO and then it was "downgraded" to Employee Relations. S.S. claims that she was advised that she could not go forward with the complaint against C.G. without corroboration from K.A., a Technician MVC, who was hesitant to confirm due to fear of being blackballed by the appointing authority. She submits a text message, presumably from K.A.[3], where it appears that S.S. was claiming that K.A. was part of the problem because he remained silent and K.A. responds that he was "apprehensive, but culprit no!" S.S. questions how a State

[3] The text itself does not identify who is involved in the text message conversation.

Policy claim of gender bias can be substantiated against her just because she played a song with the words bleeped out prior to the agency opening, but when C.G., who is Hispanic, calls her a "b**ch," there is not an EEO issue and the matter gets "downgraded" to Employee Relations.

Additionally, S.S. submits photos from M.N., a Hispanic Senior Technician MVC, which she posted on her public Facebook page. She presents that in the screen shot M.N. states to K.C., a former Hispanic Supervisor 1, MVC[4], "Happy Birthday to my chocolate "n**ga…my crazy crespos and best friend…" S.S. presents that this was presented to the EEO and was advised that this was a Facebook translation issue. She asks if she used a Spanish word for the "N" word, what is the difference as Facebook is only going to translate what is typed. S.S. indicates that she typed the word Crespo in Google translation and it meant "curly/frizzy" which she assumes is a reference to K.C.'s hair. She states that she believes that the post was primarily typed in English with a few Spanish words. S.S. states that the issue is that she did not press translate, and when she went to the page, it was already in English with a few words not translated from Spanish to English. She asserts that the appointing authority cannot choose when a rule can be applied.

Regarding the determination letter's comment that she violated the principle of separation of church and State when she allowed a group prayer at the end of the day after S.S. announced to the agency that a co-worker was in the hospital, S.S. indicates that she is Muslim. She presents that she stood in the agency at the end of the day and the employees decided to say a prayer for the co-worker. S.S. asserts that if she would have stopped the prayer should would have been perceived as being insensitive. She notes that the appointing authority celebrates the birth of Jesus Christ with a Christmas tree and all the symbols even though it is called a Holiday Party. S.S. states that this is still a celebration of Jesus Christ. She argues that the appointing authority cannot pick and choose when they want to separate church and State. She asserts that she could have been offended that she had to work every day with the symbols of Jesus Christ.

In further response, the appointing authority presents that in July 2021, an allegation was brought to the EEO that C.G. said, "Is she going to fire me after 18 years for putting a sticker in the wrong place, fuck her." It indicates that this statement alone does not implicate the State Policy and was referred to Employee Relations. Subsequently, S.S. submitted a recommendation to Employee Relations to have C.G. disciplined. Employee Relations then included the EEO because S.S. submitted that the statement regarding a comment of "these b**ches," but the statement did not give a name of who signed or heard this statement. However, once it was determined who heard the comment, the EEO initiated an investigation. The alleged statement was, "it's just a sticker after 18 years, they can't fire me. I don't care about these b**ches." At the time, the Newark Agency had all female

[4] Personnel records indicate that K.C. resigned in good standing, effective April 15, 2022.

supervisors, so the comment was not necessarily about S.S. It notes that since S.S. was neither a complainant nor witness, she would not have received a letter notifying her the result.

The appointing authority provides that after S.S.'s departure, in February 2022, she texted a former colleague about a Facebook post she saw. It presents that she alleged that the post was an employee calling another employee the N-word. S.S. also sent a message via the appointing authority's official Facebook page regarding the post, which is currently under investigation by the EEO. The appointing authority indicates that it advised S.S. that what she saw was Facebook's own translation into English of a post in Spanish. It asserts that if an employee posted the equivalent of the N-word in Spanish, then the State Policy would apply. The appointing authority states that it did open an investigation and it does not pick and choose to apply a rule and/or policy.

Concerning holiday decorations, the appointing authority states that if S.S. was offended by a Christmas tree, she did not complain to the EEO. It notes that as the Manager of the Newark Agency, she had the authority to change decorations in her agency. Regarding the group prayer, the appointing authority presents that S.S. was not found to have violated the State Policy on this issue, even though the prayer was inappropriate.

Finally, the appointing authority argues that S.S. has not made any argument that indicates that the substantiated violations against her were erroneous. Instead, she has sought to deflect her own behavior by pointing to the behavior of other staff.

CONCLUSION

N.J.A.C. 4A:7-3.1(a) provides, in pertinent part, 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 upon race and/or sex/gender will not be tolerated.

N.J.A.C. 4A:7-3.1(e) provides that supervisors shall make every effort to maintain a work environment that is free from any form of prohibited discrimination/harassment. Supervisors shall immediately refer allegations of prohibited discrimination/harassment to the State agency's Equal Employment Opportunity/Affirmative Action Officer, or any other individual designated by the State agency to receive complaints of workplace discrimination/harassment. A supervisor's failure to comply with these requirements may result in administrative and/or disciplinary action, up to and including termination of employment. For purposes of this section and *N.J.A.C.* 4A:7-3.2, a supervisor is defined broadly to

include any manager or other individual who has authority to control the work environment of any other staff member (for example, a project leader).

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.

Initially, it noted that S.S. was an unclassified employee. *N.J.A.C.* 4A:2-2.1 provides that the right to appeal major discipline, which includes the termination of an employee, applies only to permanent employees in the career service or a person serving a working test period. *See also N.J.S.A.* 11A:2-2.6. As such, even if S.S. was not found to have violated the State Policy, the appointing authority could have removed her from employment at any time. Similarly, even if she was found to not have violated the State Policy on appeal, the appointing authority would have no obligation to return her to her prior position or any other position within the appointing authority.

Regarding the merits, there were substantiated allegations against S.S. for saying "n**ga" in the workplace, for not correcting I.J.'s use of "n**ga" in the workplace, for allowing a song that she knew used the n-word and "b**ches" to be played in the workplace, and, for failing to report I'J's use of "n**ga" and the aforementioned song to the EEO as required as a supervisor. S.S. does not deny that she engaged in the substantiated conduct, but instead refers to other staff's conduct, which she believes was conduct that violated the State Policy. She questions why conduct by Hispanics that she alleges violated the State Policy was not referred to and/or investigated by the EEO office, while her "lesser" conduct, as an African-American, was.

Regarding the use of "n**ga," all forms of the use of the n-word violate the State Policy, even if the S.S. believed that "n**ga" was not a slur. *See In the Matter of B.G.* (CSC, decided March 22, 2017). Therefore, the EEO office correctly found that S.S. violated the State Policy by using the word herself, which she did acknowledge. Further, since under *N.J.A.C.* 4A:7-3.1(e) supervisors shall make every effort to maintain a work environment that is free from any form of prohibited discrimination/harassment, the EEO office appropriately found that S.S., who was a supervisor, violated the State Policy by not correcting I.J.'s use of the word. Additionally, S.S. had to an obligation to report I.J.'s use of the word to the EEO under *N.J.A.C.* 4A:7-3.1(e), but failed to do so, and, therefore, the EEO office correctly found that this was also a violation of the State Policy. Moreover, for the same reasons, the EEO appropriately found that S.S. violated the State Policy by permitting the use of the aforementioned song and for her failure to report such use to the EEO. Additionally, while S.S. states that she has witnesses that were not interviewed, as S.S. acknowledges that she engaged in this conduct, there is no witness that could refute that S.S. engaged in conduct that violated the State Policy.

Concerning S.S.'s argument that Hispanic staff allegedly engaged in behavior that violated the State Policy, but she believed was not investigated and/or not found to be a violation of the State Policy, this argument is irrelevant to this matter, as potential violations of the State Policy by others does not negate her conduct which was found to violate the State Policy. Moreover, the EEO has indicated that investigations are pending regarding other alleged violations of the State Policy. Referencing S.S.'s specific complaint where she questions why her violations of the State Policy were referred to the EEO while her allegations against C.G. were referred to Employer Relations and not the EEO office, this was not a "downgraded" action as she argues. The EEO only investigates conduct which potentially touches the State Policy. The EEO explains that the original allegation did not touch the State Policy, but once the allegation was changed to reference a potential violation of the State Policy, *i.e.* using the term "b**ch," an investigation ensued. Furthermore, the EEO only determines whether conduct violates the State Policy. It may refer matters to Employer Relations or other appropriate personnel within the appointing authority for potential discipline, but the EEO office does not issue discipline. The EEO also indicates that it is investigating the allegations related to Facebook posts. Therefore, once it was determined that allegations touched the State Policy, the record does not indicate that the EEO office or anyone else within the appointing authority reviewed such allegations in a "downgraded" manner.

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 12TH DAY OF OCTOBER, 2022

Deirdré L. Webster Cobb

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Chairperson
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