

**STATE OF NEW JERSEY**

In the Matter of I.B., Department of Banking and Insurance : **FINAL ADMINISTRATIVE ACTION OF THE CIVIL SERVICE COMMISSION**

CSC Docket No. 2023-382 :
Discrimination Appeal
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ISSUED: December 7, 2022 (SLK)

I.B., an Assistant Insurance Commissioner with the Department of Banking and Insurance, appeals the decision of a Deputy Director, Division of EEO/AA, Civil Service Commission (Commission) which found that I.B.'s complaint did not implicate the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy).

By way of background, T.C., a female African-American Supervisor of Operations, sent an email complaining about an employee's behavior towards her. I.B., who is a female Asian-American, was copied on the email. I.B. responded to the email stating, "...The Employee Relations team is reviewing and will handle. As [R.B.J.] noted, if you at all feel that the State Policy Prohibiting Discrimination is implicated, please email EEO..." R.B.J. is a female African-American Administrator, Employee Relations. In response, R.B.J. sent I.B. an email which, in summary, stated that she spoke with three African-American professionals in State government, and after speaking with them, as an African-American woman, I.B.'s actions demonstrated that she does not respect nor value her or her contributions to the appointing authority. Thereafter, R.B.J. sent I.B. another email indicating, in essence, that I.B. made R.B.J. feel, as an African-American female, that I.B. did not respect her and her authority was undermined. Thereafter, I.B. forwarded the emails to the appointing authority's Equal Employment Opportunity Officer (EEO). Additionally, I.B. filed a complaint stating R.B.J.'s comments were race-based and were directed towards her because she is not African-American, and her comments

created a racially-charged hostile work environment against her. This agency's EEO¹ issued a determination letter indicating that her complaint did not touch the State Policy and it would not take any other action.²

On appeal, I.B. presents that she promptly referred her subordinate's claims that I.B. engaged in racial discrimination towards R.B.J. to the appointing authority's EEO. Additionally, she notes that this agency's EEO did not investigate I.B.'s complaint. She complains that she was never interviewed to defend herself against these meritless accusations. I.B. contends that it is inexplicable that this agency's EEO found that there were no race-based workplace discrimination claims against her despite her subordinate making patently racial claims against her in writing. She asserts that if she had written to her subordinate invoking her race/ethnicity against her or had a Caucasian employee written to an African-American employee stating, "I spoke with my Caucasian friends and you disrespected me based on my race," she imagines that this agency's EEO's determination would have been the opposite. I.B. contends that the determination essentially says that managers have no obligation to report EEO claims against themselves, which she imagines is not the intended outcome and goes against all manager training about the State Policy. She presents that lawyers for the appointing authority assured her lawyer that this agency's EEO would investigate the matter; however, this did not happen. I.B. cites case law to support her position that this agency's EEO had an obligation to investigate the matter. She requests that, at the State's expense, a neutral, private law firm specializing in conducting independent, thorough investigations into allegations of workplace harassment and discrimination be retained to actually conduct a prompt and thorough investigation, which she asserts is required under the New Jersey Law Against Discrimination and the State Policy. Additionally, she requests that R.B.J. indicate, in writing, a complete and full retraction against her along with a written apology and acknowledgement that her claims are meritless. Finally, I.B. requests that R.B.J. be disciplined for her conduct and be directed to be appropriate and respectful in her communication with her.

In response, this agency's EEO amended its determination letter to indicate that the allegations against R.B.J. regarding race have been "unsubstantiated." It indicates that there is no indication that R.B.J. referred to I.B. as a "racist" in violation of the State Policy and it will take no further action.

In reply, I.B. highlights the language in R.B.J.'s email to her where she asserts that R.B.J. falsely accused her of acting based on race and/or because of race. She presents that R.B.J. repeatedly referred to her race, as well as T.C.'s race, as somehow a motivating factor. I.B. states that R.B.J.'s baseless, untrue allegations against her were patently race-based. Therefore, she reiterates her request that a full, complete,

¹ This agency's EEO may issue the determination letter instead of the appointing authority's EEO when there is a potential conflict of interest. See N.J.A.C. 4A:7-3.2(e).

² The determination letter also indicated that there was no State Policy complaint against I.B.

and comprehensive investigation of the false allegations against her be conducted by a private law firm that specializes in EEO workplace investigations, and such investigated be entirely at cost to the State.

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 will not be tolerated.

N.J.A.C. 4A:7-3.1(e) provides, in pertinent part, that supervisors shall immediately refer allegations of prohibited discrimination to the State agency's EEO.

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. An employee who knowingly makes a false accusation of prohibited discrimination/harassment or knowingly provides false information in the course of an investigation of a complaint, will be subject to administrative and/or disciplinary action, up to and including termination of employment. Complaints made in good faith, however, even if found to be unsubstantiated, shall not be considered a false accusation.

N.J.A.C. 4A:7-3.2(i) provides that at the EEO'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 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 in the incident(s) occurred, the time the incident was reported, and whether the complainant and/or responded 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, R.B.J. sent I.B. emails, which, based on I.B.'s reply to another female African-American employee's email which referenced R.B.J., expressed that as a female African-American, she felt that I.B. did not respect her and her authority was undermined. A review of these emails does not indicate that R.B.J. called I.B. a racist. Instead, a review indicates that R.B.J. was expressing how she felt based on her race. While R.B.J.'s emails may have been inappropriate for the workplace, an

expression as to how one feels based on her race is not necessarily a violation of the State Policy.

Concerning I.B.'s complaint that her allegations against R.B.J. were not investigated, under *N.J.A.C. 4A:7-3.2(i)*, the EEO has the discretion to decide whether an investigation was warranted. However, since the emails in question did not call I.B. a racist and were about how R.B.J. felt, it was appropriate for the EEO to find that no investigation was necessary. Regarding I.B.'s complaint that she was not interviewed and, therefore, not given a chance to defend herself against meritless accusations, it is noted that there was no complaint filed against I.B. As such, there is no need for I.B. to defend herself as there is nothing in the record that indicates that she engaged in any behavior that violates the State Policy. Moreover, I.B.'s testimony defending herself is not relevant to R.B.J.'s feelings based on her race. Referring to I.B.'s comments that if she or a Caucasian employee made similar comments, the determination would be different, the Commission does not speculate on hypotheticals and each situation must be examined based on the unique facts in that matter. Referring to I.B.'s statement that the EEO's determination essentially says that managers have no obligation to report EEO claims against themselves, there is nothing in the records that suggests this conclusion. Under *N.J.A.C. 4A:7-3.1(e)*, I.B., as a supervisor, absolutely had the obligation to report the emails in question to the EEO, which she did, as those emails potentially touched the State Policy. However, once reviewed, the EEO appropriately determined that there was no allegation against I.B. and R.B.J.'s actions did not violate the State Policy.

Regarding I.B.'s request that the Commission order an investigation to be conducted by a third-party law firm at the State's expense, the Commission does not order such investigations. The Commission either grants or denies appeals or, in some instances, may remand the matter back to the EEO for further investigation or transmit the matter to the Office of Administrative Law for a hearing if there is a dispute of material fact. However, in this case, there is no need for any further investigation or a hearing as there is no allegation that I.B. violated the State Policy and the emails in question do not violate the State Policy for the reasons stated above. Moreover, concerning I.B.'s requested actions against R.B.J., the Commission does not order specific disciplinary or administrative action that an appointing authority should take in response to an EEO complaint. Should I.B.'s appointing authority find that the emails are worthy of further action outside of the State Policy, it is at its discretion to take such action.

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 7TH DAY OF DECEMBER, 2022

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