



**STATE OF NEW JERSEY**

**DECISION OF THE  
CIVIL SERVICE COMMISSION**

In the Matter of R.M., Department of  
Community Affairs

CSC Docket No. 2023-20

Discrimination Appeal

**ISSUED:** January 18, 2023

R.M., a former Technical Assistant 3 with the Department of Community Affairs (DCA),<sup>1</sup> represented by Mark D. Laderman, Esq., appeals the determination of the Commissioner, which found sufficient evidence that the appellant had violated the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy).

C.M., an Executive Assistant 2, a Caucasian, filed an April 8, 2022 complaint with DCA’s Equal Employment Opportunity/Affirmative Action Office (EEO/AA) against the appellant, an African-American, alleging discrimination based on race and color. Specifically, C.M. alleged that the appellant, on several occasions including April 5, 2022, told O.B., a temporary employee, a Caucasian, that “[C.M.] must not like [the appellant] because [the appellant] is black.” The EEO/AA conducted an investigation, during which it interviewed relevant parties and witnesses and reviewed relevant documentation submitted into the record. The investigation corroborated that the appellant called C.M. a racist on at least one occasion and asked O.B. if she felt the same way. These conversations, it was found, made O.B. uncomfortable. The appellant was also found to have talked with O.B. on more than one occasion about C.M. treating her differently because she is black or based on the color of her skin. The appointing authority substantiated a violation of the State Policy based on race.<sup>2</sup>

<sup>1</sup> The appellant has moved to a different State department and title.

<sup>2</sup> No action was taken against the appellant in light of her departure from DCA.

On appeal to the Civil Service Commission (Commission), the appellant states that she was being neglected, misguided, and treated differently than her Caucasian co-workers by C.M., who was her supervisor. The appellant maintains that she attempted to address these issues directly with C.M. According to the appellant, those attempts failed, so she went up the chain of command and inquired regarding a transfer. She claims that C.M. suppressed the transfer request upon learning of it; demanded that the appellant not go up the chain of command again; and told her that “if you are so unhappy here, why not see if your previous position is available.” The appellant indicates that on March 2, 2022, she filed a complaint with the New Jersey Department of Law and Public Safety’s Division on Civil Rights (DCR) regarding the treatment she received from C.M. She contends that C.M.’s EEO/AA complaint was retaliatory as it was filed only after the appellant’s formal DCR complaint and after she raised concerns of racial discrimination by C.M. for months before April 5, 2022. The appellant requests that the appointing authority’s determination be reversed.

In response, the EEO/AA maintains that the types of conversations that took place between the appellant and O.B. are disruptive and violate the State Policy. Those conversations, the EEO/AA asserts, did little to address the appellant’s concerns and made O.B. uncomfortable. In support, the EEO/AA submits various documents.

## 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 this policy to use derogatory or demeaning references regarding a person’s race, gender, age, religion, disability, affectional or sexual orientation, ethnic background, or any other protected category. A violation of this policy can occur even if there was no intent on the part of an individual to harass or demean another. *See N.J.A.C. 4A:7-3.1(b)*. Additionally, 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. *See N.J.A.C. 4A:7-3.1(h)*. The State Policy is a zero tolerance policy. *See N.J.A.C. 4A:7-3.1(a)*.

*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).

The appellant shall have the burden of proof in all discrimination appeals. See *N.J.A.C.* 4A:7-3.2(m)4.

Initially, it is noted that the appellant has alleged on appeal that C.M. discriminated against her on the basis of race; that she voiced her concerns of racial discrimination directly with C.M. to no avail; and that C.M.'s April 8, 2022 complaint was retaliatory as it came only after her DCR complaint and after she had raised concerns of racial discrimination by C.M. for months before. The record reflects that these allegations have not been investigated at the departmental level. Therefore, it is appropriate to refer to the EEO/AA the allegations that C.M. discriminated against the appellant on the basis of race; that C.M. did not adhere to her supervisory obligation to immediately refer the appellant's claims of prohibited discrimination to the EEO/AA or other authorized designee when the appellant raised those concerns directly with C.M.; and that C.M.'s complaint was in retaliation for the appellant's DCR complaint and for earlier raising concerns of racial discrimination by C.M. so that the EEO/AA can initiate an investigation and, if warranted, take appropriate action against C.M. in accordance with *N.J.A.C.* 4A:7-3.1(k). Given this referral, the Commission finds it appropriate to also order the EEO/AA to re-investigate C.M.'s complaint against the appellant as its investigation into the aforementioned allegations against C.M. may provide the EEO/AA with additional context that could lead to a different determination. Accordingly, within 120 days of the issuance of this decision, subject to any properly obtained extensions,<sup>3</sup> the EEO/AA shall complete its investigations and issue determinations to the appellant and C.M. Copies of these determinations shall be forwarded to the Division of Appeals and Regulatory Affairs. Should the appellant remain dissatisfied with the appointing authority's determination concerning C.M.'s complaint against her, she may at that time request that the instant appeal be reopened without the assessment of an additional appeal processing fee.<sup>4</sup>

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<sup>3</sup> See *N.J.A.C.* 4A:7-3.2(l)3 and 52 *N.J.R.* 971(a).

<sup>4</sup> Thus, the Commission, at least at this juncture, leaves the appointing authority's conclusion that the appellant violated the State Policy undisturbed but takes no position on the merits of that conclusion.

**ORDER**

Therefore, it is ordered that this matter be remanded to the EEO/AA for further investigation consistent with this decision.

DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 18<sup>TH</sup> DAY OF JANUARY, 2023



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