



STATE OF NEW JERSEY

In the Matter of J.S., Department of  
Corrections

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

CSC Docket No. 2023-1336

Discrimination Appeal

ISSUED: March 15, 2023 (SLK)

J.S., a Senior Correctional Police Officer with the Garden State Youth Correctional Facility (GSYCF), Department of Corrections (DOC), appeals the determination of an Acting Managing Attorney<sup>1</sup>, Equal Employment Division and Ethics Unit (EED), that her allegations do not touch the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy).

By way of background, J.S., who is a Christian female, alleged that she was being discriminated against based on religion and sex/gender by the Department of Corrections (DOC). Specifically, she alleged that DOC’s policy on transgender, intersex, and non-binary inmates that requires all staff to “conduct searches of inmates, including transgender, intersex, or non-binary inmates” violates her religious beliefs. The EED noted that the policy indicates that the searches were to be conducted “in a professional and respectful manner, and in the least intrusive manner as possible, consistent with security needs.” Moreover, this policy defines gender identity as a “person’s internal, deeply held knowledge of their own gender regardless of the gender they were assigned at birth.” Additionally, the determination indicated that while the DOC is respectful and appreciative of the

<sup>1</sup> Initially, in an October 5, 2022, letter, the Director of the EED sent the appellant a letter indicating that the matter did not touch the State Policy and there would be no investigation. Thereafter, in response to J.S.’s supplemental submission, in a November 29, 2022 letter, an Acting Managing Attorney of the EED reiterated that her request could not be accommodated, and the office would not open an investigation of her claim.

religious beliefs of all its staff and inmates, organizational and security needs require that all staff comply with the DOC policy. Moreover, the EED found that the allegations did not touch the State Policy as there was no nexus between the alleged conduct and membership in a protected class. Therefore, it noted that it was not opening an investigation in the matter.

On appeal, J.S. presents that she is requesting a religious exemption from strip searching transgender woman with male genitalia because it violate her sincerely held religious belief. She asserts that having to strip search inmates who identify other than their biological sex is a burden on her religious belief. J.S. states that her religious belief is that God creates males and females and females should not look at a male naked unless they are married. She emphasizes that her beliefs are wholehearted. J.S. argues that the DOC is infringing on her religious rights by not accommodating her religious beliefs even though she sent it her baptismal certificate, church membership, and her church's bylaws that support her beliefs. She contends that the DOC's "one-size-fit-all policy" concerning the searching of inmates is discriminatory towards her religious beliefs. J.S. reiterates that this policy is causing her stress because she is being threatened with disciplinary action unless she does something that is against her beliefs. She also states that the denial of her complaint without a hearing or interview is discriminatory. Additionally, while she acknowledges that she put her work address on the EED complaint, J.S. asserts that the EED harassed and retaliated against her by sending the denial letter to both her work address, in addition to her home address, while knowing that all incoming mail sent through the regular inmate mailing system would be opened and inspected, which violated her right to privacy. Further, she believes that since the determination letter was date stamped October 5, 2022, and received on October 25, 2022, which signified that the 20 day timeframe for an appeal expired, this was done to hinder her from fighting for her religious beliefs.

Additionally, J.S. submits her EED complaint, which included her statement, where she indicates that female staff members are being treated differently than male counterparts because male officers are not permitted to strip search female inmates who identify as males. She contends that this is a contradiction of policy and these policies treat women as second-class citizens. J.S. also submits a statement where she notes that the DOC recently approved religious exemptions for staff members who did not want to take the COVID vaccine for religious reasons.

Further, J.S. provides this agency's discrimination complaint processing form, her grievance procedure form, policy definitions regarding prohibited discrimination in the workplace, her Certificate of Baptism from her church, the bylaws from her church, a Special Custody Report where she complained about the policy, a letter from the EED indicating that her complaint was assigned to a Legal Specialist for investigation and she would be contacted for an interview, a follow-up letter from the EED indicating that her allegations did not touch the State Policy and there would

be no investigation, and an additional follow-up letter from the EED after J.S. sent supplemental information indicating that her request for an accommodation could not be accommodated because the request would impose an additional burden on her co-workers to do her job and there would be no investigation.

In response, the DOC presents that it employs approximately 7,000 staff and oversees approximately 12,000 inmates across nine facilities. It indicates that prior to J.S.'s appointment as a Senior Correctional Police Officer in 2015, she had undergone extensive training in the Custody Staff Training Academy, which included training in searching incarcerated persons of the opposite sex. The DOC states that this training provided extreme detailed guidance on conducting strip searches, including cross-gender, transgender and intersex individuals. Additionally, it provides that J.S. received subsequent trainings in 2020, 2021, and 2022 on conducting strip searches "in how to conduct cross-gender pat-down searches, and searches of transgender and intersex inmate, in a professional and respectful manner, and in the least intrusive manner possible, consistent with security needs." Also, the training specified that inmate strip searches are conducted by "custody staff of the same gender as the inmate." The DOC presents that on September 14, 2022, J.S. was asked to strip search a transgender inmate who identified as a woman and had obtained a Search Preference Card from it requesting that she preferred to be searched by a female officer. J.S. conducted the strip search, but indicated that she was doing so under duress because the inmate identified as a transgender woman, but had male genitalia. Further, J.S. completed a Special Custody Report that stated, "When I took this job I knew I would have to strip male inmate [sic]. Stripping a male with intact genitalia goes against my religious and moral beliefs. To compel female staff under duress of disciplinary action to strip males who get to choose what gender of staff strips them isn't an emergent situation. It's a contrived reality imposed on female staff." Additionally, she added, "My Christian values and belief will not allow my conscience to condone or rationalize with the stripping of male inmates because they identify as a female." The DOC notes that J.S. was not disciplined for filing her complaint and it presents that it is estimated that there 1,300,000 individuals in the United States who identify as transgender.

The DOC presents that *N.J.S.A. 30:1B-46* provides, pertinent part, that the DOC was to develop policies so that strip searches be conducted by an officer of the same gender and transgender inmates be permitted to indicate a preference for the gender of the officer conducting a strip search in non-exigent circumstances. It indicates that the DOC developed policies that are consistent with the State Legislature's mandate, the federal Prison Rape Elimination Act (PREA) standards, the New Jersey Law Against Discrimination (NJLAD) and in accordance with departmental regulations, policies, and procedures. Further, it indicates that State Attorney General Guidelines provides that "whenever the action that an officer takes depends at least in part on an individual's gender, then that action shall be performed in accordance with the individual's gender identity, regardless of the gender that

individual was assigned at birth and/or their anatomical characteristics...In other words, officers must treat a transgender woman as they would treat any other woman, and they must treat a transgender man as they would treat any other man.” Additionally, the DOC states that the State Policy indicates that sex/gender, gender identity, and religion are among the listed protected categories and it is violation of the policy to treat individuals less favorable based upon a protected category. It highlights that under its policies, a transgender woman, barring exigent circumstances, can be searched only by a female officer. The DOC describes seven circumstances where a strip search is conducted and, therefore, it presents that inmate strip searches are not infrequent, and this duty is an essential function of custody staff. It states that under the NJLAD, discrimination against religion is an unlawful employment practice. However, the DOC notes that the right to a religious accommodation is not absolute as it must be weighed against the hardship or burden placed on the employer for the accommodation.

The DOC argues that the finding that J.S.’s discrimination claim was unsubstantiated must be upheld because its policies, which required her to strip search a transgender woman whose Search Preference Card indicated a preference to be strip searched by female custody staff, was consistent with the law. Additionally, it states that J.S. contends that she was discriminated against as a Christian woman because she has religious beliefs that are not accepting of transgender persons. However, the DOC provides that its policies are neutral as male officers are required to strip search transgender inmates who identify as male and female officers are required to strip search transgender inmates who identify as female. It asserts that it did not violate the State Policy as J.S. was treated the same as other custody staff, be they Christian or not, as all custody staff were required to conduct strip searches of transgender and cisgender inmates and J.S. did not receive any adverse employment action as she was not disciplined. The DOC highlights that J.S. acknowledges that when she accepted employment, she knew she would have to strip search cisgender incarcerated males, *i.e.* cross gender searches, in exigent circumstances, which would expose her to male genitalia. Therefore, it argues that her current claim that “a female should not look at a male naked unless they are married” is without merit. Moreover, the DOC argues that if J.S.’s accommodation request was granted, this would be an undue hardship on it. It argues that if it were to grant a religious exemption to custody staff who deems its search policy a violation of their religious belief, it would be compromising an essential function of a Correctional Police Officer. DOC asserts that moving custody staff from one facility to another is unfeasible given the geographic distribution of the facilities across the State. Therefore, it contends that such accommodations would compromise safety for both staff and inmates and morale of officers who would still be required to conduct strip searches of transgender persons would plunge. The DOC emphasizes that in the correctional facilities environment, it is particularly important that it be perceived as fair and even handed in how it treats its staff.

In reply, J.S. submits a letter that certain female Correctional Police Officers wrote to the DOC, the GSYCF, and the EED regarding their claim that requiring female Correctional Police Officers to conduct strip searches of transgender inmates who have male genitalia, in non-emergency situations, is improper. The Correctional Police Officers present that under PREA, officers are to be trained on how to conduct cross-gender searches. However, they claim that they are required to conduct searches of transgender inmates, including those with male genitalia, without any warning or training. Further, they assert that some female officers are required to conduct these searches without any barriers between the inmate and officer while male officers are permitted to place inmates in a protected area when they conduct strip searches to protect the security of the male officers. Also, these officers claim that the DOC's failure to provide religious and medical accommodations violated the NJLAD, Title VII of the Civil Rights Act and the Americans with Disabilities Act (ADA). They assert that because the GSYCF has refused to even consider their requests and has not engaged in an interactive process to determine if an accommodation can be requested, the DOC has not established that providing them an accommodation is an undue burden.

The female Correctional Police Officers present that they are required to stand for constant watch of transgender inmates with male genitalia, which in some circumstances, has resulted in female officers having to observe transgender inmates masturbating with their male genitalia for a period of hours. They state that correctional facilities can be held liable for sexual harassment of female inmates, especially when something could have been done to stop the harassment, which is to stop requiring female officers to conduct constant watch of transgender inmates with male genitalia. The female officers indicate that although they respect that there are laws to protect transgender people, they believe that there are some inmates abusing the laws and changing from male to female and back, at a whim, in attempt to harm the officers or game the system. They request to stop the practice requiring female officers to conduct strip searches of transgender inmates; training on conducting cross-gender pat down searches and searches of transgender and intersex inmates; allowing female officers to request an accommodation for religious, medical, or any other reason so that they not be required to conduct strip searches of transgender people with male genitalia; there be in interactive process to determine if accommodations and actual proof demonstrating that an accommodation would cause the DOC an undue hardship; have a barrier between themselves and the inmates; and eliminate the practice of having female officers on constant watch of inmates who have male genitalia.

## CONCLUSION

*N.J.S.A. 10:5-12(q)* provides, in pertinent part, that it shall be an unlawful practice, or, as the case may be, an unlawful discrimination, for an employer to impose upon a person as a condition of obtaining or retaining employment, any terms

or conditions that would require a person to violate or forego a sincerely held religious practice or religious observance, unless, after engaging in a *bona fide* effort the employer demonstrates that it is unable to reasonably accommodate the employee's religious observance or practice without undue hardship on the conduct of the employer's business. "Undue hardship" means an accommodation requiring unreasonable or difficulty, unreasonable interference with the safe or efficient operation of the workplace.

*N.J.S.A. 10:5-12(q)(3)(b)* provides in determining whether the accommodation constitutes an undue hardship, the factors considered shall include:

- (i) The identifiable cost of the accommodation, including the costs of loss of productivity and of retaining or hiring employees or transferring employees from one facility to another, in relation to the size and operating cost of the employer.
- (ii) The number of individuals who will need the particular accommodation for a sincerely held religious observance or practice.
- (iii) For an employer with multiple facilities, the degree to which the geographic separateness or administrative or fiscal relationship of the facilities will make the accommodation more difficult or expensive.

*N.J.S.A. 10:5-12(q)(3)(c)* provides an accommodation shall be considered to constitute an undue hardship if it will result in the inability of an employee to perform the essential functions of the position in which he or she is employed.

In a religious discrimination case, a *prima facie* case includes a showing "(1) plaintiff belongs to a protected class; (2) she was performing her job at a level that met her employer's legitimate expectations; (3) she suffered an adverse employment action; and (4) others not within the protected class did not suffer similar adverse employment actions." Once a plaintiff establishes a *prima facie* case, an "inference of discrimination" is created. The employer can combat the inference of discrimination by articulating a "legitimate, nondiscriminatory reason for the employer's action." If the employer can meet its burden, the burden again shifts back to the employee to prove the reason provided by the employer is "merely a pretext for discrimination and not the true reason for the employment decision." A plaintiff can prove pretext by using either circumstantial or direct evidence that "discrimination was more likely than not a motivating or determinative cause of the action" or plaintiff can discredit the legitimate reason provided by the employer. *See Tisby v. Camden County Correctional Facility*, 448 N.J. Super. 241 (App. Div. 2017).

Under Title VII, it is unlawful “to discriminate against . . . individual[s] with respect to [their] compensation, terms, conditions, or privileges of employment, because of [an] individual's . . . religion.” 42 U.S.C. § 2000e- 2(a)(1). Title VII defines the term “religion” to “include[] all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that [they are] unable to reasonably accommodate . . . an employee’s . . . religious observance or practice without undue hardship on the conduct of the employer's business.” 42 U.S.C. § 2000e(j). “To establish a *prima facie* case of religious discrimination” under Title VII employees must show: they hold a sincere religious belief that conflicts with a job requirement; they informed their employer of the conflict; and they were disciplined for failing to comply with the conflicting job requirement. *See In the Matter of Carolyn Whitehead, City of East Orange, Department of Policy, Planning and Development, Docket No. A-0730-21 (App. Div. December 22, 2022).*

*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 sex/gender and religion.

*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, the record indicates that in order to comply with State and federal law and the State Attorney General Guidelines, the DOC’s policy is that when a transgender woman whose Search Preference Card indicates a preference to be strip searched by female custody staff, a female officer shall conduct the search regardless of the gender that individual was assigned at birth and/or their anatomical characteristics. In other words, officers must treat a transgender woman as they would treat any other woman, and they must treat a transgender man as they would treat any other man. Pursuant to that policy, on September 14, 2022, J.S. was asked to strip search a transgender inmate who identified as a woman and had obtained a Search Preference Card form requesting that she preferred to be searched by a female officer. J.S. conducted the strip search, but indicated that she was doing so under duress because the inmate identified as a transgender woman, but had male genitalia. Specifically, she claimed that this practice discriminated against her because, “My Christian values and belief will not allow my conscience to condone or rationalize with the stripping of male inmates because they identify as a female.”

Initially, J.S. acknowledges that when she accepted employment, she knew she would have to strip search cisgender incarcerated males, *i.e.* cross gender searches, in exigent circumstances, which would expose her to male genitalia. As J.S. accepted employment under these terms nor is there anything in the record that suggests that

she requested an accommodation requiring conducting strip searches of cisgender incarcerated males either at the time of her hire or anytime thereafter, it would appear that her complaint of religious discrimination does not involve her exposure to male genitalia from someone she is not married to, but it is limited to transgender women with male genitalia. However, one's discriminatory religious belief, even if sincerely held, is not protected under the State Policy as to find otherwise would be contrary to the intent of the State Policy. As such, J.S.'s complaint does not touch the State Policy and the EED appropriately used its discretion to not interview her or otherwise investigate the alleged discrimination. *See N.J.A.C. 4A:7-3.2(i)*.

Regardless, even if J.S.'s complaint did touch the State Policy, while she argues that women are being treated as second class citizens compared to men because male officers are not permitted to strip search female inmates who identify as males, the record indicates that J.S. incorrectly states DOC policy and she was not treated any differently based on her gender and/or religion, as DOC indicates that its policies are neutral as, regardless of one's religion or non-religion, and gender, male officers are required to strip search transgender inmates who identify as male and female officers are required to strip search transgender inmates who identify as female. Further, the record indicates that the DOC's policies regarding transgender strip searches were developed to comply with State and federal law. Therefore, the record indicates that DOC's policy is not a violation of the State Policy.

Moreover, although J.S. is claiming discrimination under the ADA, as she has not alleged that she was discriminated against based on a disability, the ADA is inapplicable. Concerning her complaints under the NJLAD and Title VII of the Civil Rights Act, as J.S. was not disciplined, she has not made a *prima facie* case of religious discrimination under either statute. Regardless, even if she had, the DOC describes seven circumstances where a strip search is conducted and, therefore, it presents that inmate strip searches are not infrequent. Therefore, it indicates that if it were to grant a religious exemption to custody staff who deem its search policy a violation of their religious belief, it would be compromising an essential function of a Correctional Police Officer. The DOC asserts that moving custody staff from one facility to another is unfeasible given that it employs approximately 7,000 staff and oversees approximately 12,000 inmates housed in nine facilities geographic distributed across the State. Therefore, it contends that such accommodations would compromise safety for both staff and inmates and morale of officers who would still be required to conduct strip searches of transgender persons would plunge. The DOC emphasizes that in the correctional facilities environment, it is particularly important that it be perceived as fair and even handed in how it treats its staff. Consequently, the Commission finds that the DOC has demonstrated that providing J.S. a religious accommodation under these circumstances would be an undue burden for it.



Referring to J.S. complaints about privacy and her allegation that the EED was trying to hinder her right to appeal its determination letter, there is nothing in the record that indicates that the EED's decision to mail its determination to both her work address, in addition to her home address, was done for the purpose of interfering with her right to privacy. It is noted that J.S. acknowledges that she did provide her work address to the EED. Additionally, mere speculation, without evidence, is insufficient to find a violation of the State Policy. *See In the Matter of T.J.* (CSC, decided December 7, 2016). Similarly, there is nothing in the record that indicates that the EED was trying to hinder J.S.'s right to appeal its determination. It is noted that J.S.'s time to file the appeal was not 20 days from when the determination letter was issued, but 20 days from her receipt. *See N.J.A.C. 4A:7-3.2(m)*. Therefore, it is not logical to conclude that the EED's decision to mail its determination letter to her work address was done with the purpose of trying to hinder appeal. Additionally, the timeliness of J.S.'s appeal was not based on the initial determination letter, but a follow-up determination after J.S. submitted additional information. Moreover, the Commission has accepted J.S.'s appeal as being timely so her complaint regarding being "hindered" is moot.

Concerning J.S.'s statement that she has to strip search transgender woman with male genitalia without warning, without proper training, she has to stand for constant watch of transgender woman with male genitalia, which in some circumstances, has resulted in female officers having to observe transgender inmates masturbating with their male genitalia for a period of hours, and without appropriate barriers, the Commission finds that these complaints do not touch the State Policy, as stated above, the DOC policies regarding strip searches of transgender inmates is both gender and religious neutral. Notwithstanding, the record indicates that the DOC has provided extensive training on conducting the searches at issue and J.S. was aware of DOC's policies. Additionally, the Commission will not dictate how DOC conducts its searches to ensure the safety and operation of its staff and inmates as these policies are at its discretion. However, if J.S. feels she has received inadequate training or has other issues with how these searches are conducted, this is an internal matter for her to discuss with her superiors. Finally, although the DOC has not addressed J.S.'s statement that it recently approved religious exemptions for staff members who did not want to take the COVID vaccine for religious reasons, even if her statement is true, it is noted that the accommodation requests regarding vaccines is based on public health concerns, *i.e.* the current rate of transmission, the current rate of hospitalization and death, available treatments, *etc.*, and have no bearing on the subject request which has completely different variables. The fact that one religious accommodation request may have been granted does not automatically signify that all religious accommodation request need to be granted, especially when the reasons for the grant or denial involve completely separate factors.

**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 15<sup>TH</sup> DAY OF MARCH, 2023

*Dolores Gorczyca*

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