



STATE OF NEW JERSEY

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

In the Matter of B.R., Department of
Corrections

Discrimination Appeal

CSC Docket No. 2022-3112

ISSUED: August 23, 2023 (EG)

B.R., a Senior Correctional Police Officer with the Department of Corrections (DOC) appeals the determinations of the Director of the Equal Employment Division (EED), stating that the appellant failed to present sufficient evidence to support findings that he had been subjected to violations of the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy).

The appellant, a Hispanic male, filed a complaint with the EED June 3, 2022, in which he alleged that Correctional Police Major C.S. discriminated and retaliated against him due to his race and familial status. Specifically, the appellant claimed that C.S. was hostile to him on June 3, 2022, when he ordered him to write a special report for allegedly being caught sleeping. Additionally, C.S. yelled at him for requesting a union representative’s help in writing the special report. The appellant then followed the procedures to sign out of work sick. He asserted that he felt he was being harassed and retaliated against because his mother had previously been assigned to the same facility before being involuntarily reassigned.

In response to the appellant’s complaints, the EED issued a determination letter dated June 7, 2022, indicating that the complaint filed by the appellant did not provide a nexus between the alleged conduct and membership in a protected category under the State Policy. Specifically, the EED found that its records did not show the appellant having been involved in an EED matter with C.S. It explained that a claim of retaliation refers to adverse action taken against the person for filing a

discrimination or harassment complaint, participating in a complaint investigation, or opposing a discriminatory practice. Additionally, it indicated that the appellant had not met his burden of showing that a sufficient nexus existed between the alleged conduct and a protected category.

On appeal, the appellant reiterates his allegations and provides a narrative similar to his EED complaint regarding the incident on June 3, 2022. The appellant also submits a copy of an additional EED complaint which indicates a filing date of June 3, 2022, but includes an incident from June 7, 2022. The narrative portion of this complaint has a date stamp of June 8, 2022. In this complaint, the appellant alleges that C.S. retaliated against him for having filed a prior EED complaint by requiring only the third shift staff to remain until the end of their shift to purposefully cause angst, confusion, and anger of staff towards the appellant for filing an EED complaint against C.S. The appellant also indicated that on June 7, 2022, in the front lobby, C.S. yelled to another officer one floor up, "Get out of here, you're gonna get caught up in some EED shit." Further, on appeal, the appellant describes an incident on June 23, 2022, involving two other officers in which he was asked to drop a grievance filed against C.S. The appellant also indicates that he has been asked about his mother by numerous staff. The appellant argues that he established a nexus due to his relation to his mother who previously worked at the same facility. In addition, the appellant claims that C.S. only behaves in a hostile manner towards minority officers.

In response, the EED asserts that the appellant failed to provide any nexus between the alleged actions and a protected category in the State Policy. It contends that while the appellant claims that C.S. treated him adversely because he is Hispanic, he failed to provide any information to support his conclusory claim. The EED argues that an objective interpretation of the appellant's complaint narrative suggests that he believed the alleged conduct was due to his mother being a former officer at the same facility. It explains that the intent of "familial status" as a protected category in the State Policy is to protect the parents and guardians, *etc.*, of minor children. The appellant is the adult child of the former officer. Further, it relies on its determination letter's explanation as to why the present matter did not constitute retaliation under the State Policy.

CONCLUSION

Initially, the Civil Service Commission (Commission) notes that no determination letter regarding the appellant's June 7, 2022, EED complaint has been provided. Further, the EED has not addressed this complaint in this matter nor given an explanation as why a determination letter has not been issued. Therefore, assuming the complaint was actually filed by the appellant, the Commission orders a determination letter of the appellant's June 7, 2022, EED complaint be issued or an

explanation as why an EED determination letter is not appropriate in this matter be issued to the appellant within 60 days of the issuance of this decision.

Further, on appeal, the appellant has described additional alleged incidents that occurred after the filing of his June 3, 2022, and June 7, 2022, complaints that do not appear to have been included in a complaint filed with the EED. Allegations of State Policy violations must first be filed with the EED, and only after receiving a determination letter from the EED, will such allegation be reviewed by the Commission.

N.J.A.C. 4A:7-3.1(a) provides that under the State Policy, discrimination or harassment based upon the following protected categories are prohibited and will not be tolerated: 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. *N.J.A.C. 4A:7-3.1(c)* provides that it is a violation of this policy to engage in sexual (or gender-based) harassment of any kind, including hostile work environment harassment, quid pro quo harassment, or same-sex harassment.

In addition, retaliation against any employee who alleges that he or she 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 the subject of other retaliation. *See N.J.A.C. 4A:7-3.1(h)*. Examples of such retaliatory actions include, but are not limited to, termination of an employee; failing to promote an employee; altering an employee's work assignment for reasons other than legitimate business reasons; imposing or threatening to impose disciplinary action on an employee for reasons other than legitimate business reasons; or ostracizing an employee (for example, excluding an employee from an activity or privilege offered or provided to all other employees).

In the instant matter, the appellant filed a discrimination complaint with the EED on June 3, 2022. The EED determined that the complaint filed by the appellant did not provide a nexus between the alleged conduct and membership in a protected category under the State Policy. Specifically, the EED stated that the appellant failed to provide any information to support his claim that that C.S. treated him adversely because he is Hispanic. Additionally, the EED asserted that the appellant's claim of discrimination or retaliation due to familial status was misplaced as the intent of "familial status" as a protected category in the State Policy is to protect the parents and guardians, *etc.*, of minor children, while the appellant use of "familial status" as

a protected category is as the adult child of the former officer.¹ Further, the EED indicated that the appellant's claim could not be considered retaliation because as of the June 3, 2022, filing of his complaint, it had no record of the appellant having previously filed a discrimination or harassment complaint, participating in a complaint investigation, or opposing a discriminatory practice involving C.S. The determinations made by the EED were well reasoned. Moreover, the appellant has not provided any dispositive evidence in support of his contentions that he was subjected to a violation of the State Policy. Therefore, the appellant has not sustained his burden of proof in this matter. Accordingly, based on the foregoing, no basis exists to find a violation of the New Jersey State Policy Prohibiting Discrimination in the Workplace.

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 23RD DAY OF AUGUST, 2023

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¹ Even if his compliant implicated "familial status," the appellant has presented no substantive evidence that any alleged actions taken against him were in response to him being related to any other individual.