



STATE OF NEW JERSEY

In the Matter of T.H., Juvenile
Justice Commission

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

CSC Docket No. 2023-2765

Discrimination Appeal

ISSUED: December 20, 2023 (HS)

T.H., a former Director 1, Education with the Juvenile Justice Commission (JJC), appeals the determination of the Chief Ethics and Compliance Officer, which found sufficient evidence that the appellant had violated the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy).

L.L., Secretarial Assistant 1, Non-Stenographic, a Caucasian female, filed a complaint with the Attorney General's Office of Equal Employment Opportunity (EEO) against the appellant, an African-American male, alleging discrimination based, in pertinent part, on sex/gender and race. Specifically, L.L. alleged, in pertinent part, the following:

- The appellant wore a facemask with a picture of a rooster on it. When L.L. asked the appellant if the mask was appropriate for him to wear, the appellant responded to L.L., "I don't care [because] everyone in this place can suck my cock."
- On numerous occasions, the appellant referred to or addressed L.L. as "baby," "beautiful," "sexy," and "hot."

Additionally, witnesses provided, in pertinent part, the following statements about the appellant's alleged inappropriate workplace conduct based on sex/gender and race:

- The appellant touched or grabbed the hair of S.J., Supervisor of Educational Programs 1, at a supervisors' meeting at the Rutgers EcoComplex.
- The appellant pulled on the ponytail of D.H., Education Program Development Specialist 3 Special Education, while she was standing near or in a storage room (date unknown).
- During a teachers' training in Monroe Township, the appellant touched the hair of M.R., Supervisor of Educational Programs 1, inappropriately.
- The appellant referred to Caucasian female staff at the JJC as "snow bunnies" on several occasions.

The EEO conducted an investigation, during which it interviewed relevant parties and witnesses and reviewed relevant documentation. The investigation corroborated the allegation that the appellant wore a rooster facemask and used phrasing to the effect of, "I don't care [because] everyone in this place can suck my cock." The appellant admitted that he wore the rooster facemask in the workplace. Further, after the appellant denied ever using the word "cock," when investigators showed the appellant a Facebook post with a picture of the appellant where the appellant wore the rooster facemask with the caption "[u] cock suckers thought I was done," the appellant admitted that he posted the picture and the caption. The post was provided by a JJC employee during the course of the investigation. The appellant also advised that he was "friends" with several people from work on Facebook, and he intended the caption to be a "play on words." The EEO noted that intent was irrelevant in the determination of whether a comment violates the State Policy. Thus, the appellant's intent for the statement to be a "play on words" did not excuse his conduct as a State Policy violation.

The EEO substantiated the allegation that the appellant called L.L. "baby" on at least one occasion and that he called L.L. "beautiful" because there was evidence to corroborate these events. Specifically, L.L. provided screenshots of text messages where the appellant addressed her as "baby" and "beautiful." Further, the appellant admitted that he "definitely referred to [L.L.] as beautiful" on more than one occasion. The appellant stated that his intent was to raise staff morale, so he often complimented male and female staff on their appearance.

The EEO noted that the references to L.L. as "beautiful" and "baby" had a nexus to the protected category of sex/gender. Intent was not relevant in determining whether there was a State Policy violation. The texts the appellant sent to L.L. were private and not in the workplace, and there was no legitimate purpose for the use of the words "beautiful" and "baby" in the context of the text.

The EEO noted that one text addressed L.L. as "beautiful." The EEO explained that there was a difference between calling or referring to someone as "beautiful" as

a means of address and telling them they “look beautiful” in the workplace. It may occasionally be acceptable for a colleague to tell another colleague that they “look beautiful” as a compliment in the workplace. It is never appropriate, however, for a supervisor to do so with a subordinate. Further, it is never appropriate for anyone in the workplace (supervisor or line employee) to call or address anyone in the workplace by the term “beautiful.” Here, because of the appellant’s role as a supervisor, both his use of the word “beautiful” as a means of address to his subordinate and as a compliment were inappropriate. L.L. was uncomfortable with both the text and the appellant’s repeated references in the workplace. Thus, the appellant’s calling or referring to L.L. as “beautiful” in a private text and repeatedly telling her she was beautiful in the workplace was an inappropriate comment of a sexual nature and violated the State Policy.

The EEO found that the appellant’s use of the term “baby” as a form of address in a text was also inappropriate. The EEO explained that “baby” objectifies and undermines a female’s role in the workplace. It is never appropriate to use this term toward a female in the workplace. Although the appellant denied this allegation, L.L. provided corroborating evidence via the text. Thus, the allegation that the appellant called L.L. “baby” was substantiated.

The EEO substantiated that the appellant touched, pulled, or grabbed female coworkers’ hair in the workplace. The EEO explained that unwanted physical contact such as touching or grabbing was prohibited by the State Policy and constituted sexual harassment. The EEO found that it was more likely than not that these events occurred because multiple witnesses corroborated the appellant’s conduct in this regard. Thus, these allegations were substantiated.

The EEO substantiated the allegation that the appellant called Caucasian females in the workplace “snow bunnies” because witnesses corroborated, separately and independently, multiple incidents where the appellant called Caucasian females in the workplace “snow bunnies.” The EEO explained that the use of the term “snow bunnies” was discrimination prohibited by the State Policy in that it was a demeaning and derogatory reference to persons because they are Caucasian. Further, the comment was also an example of sexual harassment in that it was a generalized sex/gender-based remark or comment, and it was a verbal comment framed as a joke. Based on the evidence derived from the investigation, the EEO substantiated this allegation.

Based on the foregoing, the Chief Ethics and Compliance Officer substantiated violations of the State Policy based on sex/gender and race.

On appeal to the Civil Service Commission (Commission), the appellant denies the following: that he made any statement to the effect of, “I don’t care [because] everyone in this place can suck my cock,” in the workplace or to any JJC employee;

that he touched, pulled, or grabbed female coworkers' hair in the workplace; and that he called Caucasian females in the workplace "snow bunnies." As for the Facebook post, the appellant argues that such cannot be considered discrimination as the post was made on his personal account during non-work hours; did not refer to any specific sex/gender; did not reference the JJC, the workplace, or any JJC employees; was not directed at any specific individual; and was merely a "play on words." As for referring to L.L. as "beautiful" or addressing her "baby," the appellant argues that any such references were not of a sexual nature and did not violate the State Policy. He contends that words and statements must be considered contextually. Per the appellant, the EEO was made aware that L.L. frequently referred to him as "hon" in the office and that they were personal friends. L.L. had confided in the appellant regarding personal issues since 2018. According to the appellant, L.L. never expressed or showed any discomfort or disapproval of his addressing her in this manner in the workplace or otherwise. The appellant reiterates that he frequently made positive comments to male and female staffers to boost individual and collective morale in the workplace. Under the circumstances, the appellant asserts, his references did not objectify L.L. as a female and did not constitute any form of harassment or discrimination. He also alleges that the determination was not timely issued.

Additionally, the appellant proffers that the subject investigation and determination were, along with other adverse actions, retaliatory under New Jersey's Conscientious Employee Protection Act (CEPA) and Law Against Discrimination (LAD) as they were instigated and initiated by the JJC and EEO directly in response to his own reporting of race-based misconduct committed against him by H.W., Deputy Executive Director.¹ The appellant also alleges that the JJC and EEO have an ongoing practice of imposing minor corrective or disciplinary action for Caucasian employees in positions of authority while imposing major discipline up to removal for African-American employees in positions of authority accused of engaging in the same or similar misconduct.

Further, the appellant seeks the remedy of closure of this matter with no discipline or, at most, closure of this matter with counseling. Any remedy, per the appellant, should have no adverse effect on his ability to collect his full pension, retroactive to January 1, 2023.

In response, the EEO, represented by Meredith Accoo, Deputy Attorney General, explains that the EEO had reviewed allegations received as a result of an

¹ The appellant also complains of deficiencies in the determination of his complaint against H.W. However, any appeal concerning that determination required the submission of an additional appeal fee as the determination of the appellant's complaint against H.W. is separate from the determination of L.L.'s complaint against the appellant. Since only a single appeal fee was received, there is no properly filed appeal of the determination of the appellant's complaint in this forum. Consequently, there is no basis for the Commission to address said determination in this decision.

investigation conducted by the JJC's Office of Investigations. After a review of those allegations, the EEO opened an investigation on December 14, 2022. Pursuant to *N.J.A.C. 4A:7-3.2(1)2*, the EEO had 120 days, or until April 13, 2023, to complete its investigation into the allegations and submit findings and recommendations. On May 3, 2023, the EEO requested an extension of 60 days to complete its investigation and submit its findings and recommendations. The request was granted with the deadline thereby being extended to June 13, 2023. The Chief Ethics and Compliance Officer issued the determination on May 17, 2023.

Turning to the merits, the EEO maintains that the appellant did not provide any specific or substantive arguments, materials, or witnesses that demonstrate error in the determination. The EEO rejects the appellant's arguments concerning his Facebook post, arguing that the State Policy applies to social media and any location that can reasonably be regarded as an extension of the workplace; his coworkers, including subordinates, could view his Facebook posts because many were his Facebook friends; "cock suckers" refers to a sexual act and "cock" is vernacular for male genitalia; and intent is irrelevant under the State Policy. The EEO also rejects the appellant's arguments concerning his references to L.L. as "beautiful" and "baby," contending that these words have a nexus to the protected category of sex/gender; intent is irrelevant under the State Policy; there was no legitimate purpose for the appellant to refer to L.L. as "beautiful" or "baby" given their manager-direct report professional relationship; and the term "baby" objectifies and undermines a female's role in the workplace. The EEO adds that L.L. was uncomfortable with both the text message and the appellant's repeatedly calling her "beautiful" in the workplace. Her alleged reference to the appellant as "hon" does not negate the impropriety of the appellant's references, while in his managerial capacity, to his subordinate as "baby" and "beautiful" in the workplace. The EEO highlights that supervisors have a particular duty under the State Policy to make every effort to maintain a work environment that is free from any form of prohibited discrimination/harassment.

The EEO further rejects other arguments proffered by the appellant. In this regard, it argues that there is no jurisdiction in this forum to address CEPA and LAD claims. The EEO also states that the appellant never filed a retaliation complaint under the State Policy and has raised a retaliation allegation for the first time in the instant appeal. It nevertheless denies the allegation. Regarding the appellant's allegation that there is an ongoing practice of imposing disparate corrective and disciplinary actions based on race, the EEO states that this appeal is the first occasion it has been notified of this allegation, which it maintains is not supported by any evidence in any event.

Further, as to the appellant's sought-after relief, the EEO states that the appellant already enjoys the relief sought since the determination was released subsequent to the appellant's departure from State service; the EEO closed this

matter once the determination was issued; and the JJC did not seek disciplinary action for the State Policy violations.

CONCLUSION

Initially, it is noted that the appellant suggests that the determination was untimely. *N.J.A.C.* 4A:7-3.2(l)2 provides that the investigation of a complaint shall be completed and a final letter of determination shall be issued no later than 120 days after the initial intake of the complaint. Additionally, *N.J.A.C.* 4A:7-3.2(l)3 states that the time for completion of the investigation and issuance of the final letter of determination may be extended by the State agency head for up to 60 additional days in cases involving exceptional circumstances. The State agency head shall provide the Division of Equal Employment Opportunity/Affirmative Action and all parties with written notice of any extension and shall include in the notice an explanation of the exceptional circumstances supporting the extension. Further, it is noted that in accordance with Paragraph 6 of Executive Order 103 issued in response to the COVID-19 pandemic, the Commission approved various emergency adoptions of temporary rule relaxations and modifications to *N.J.A.C.* 4A with respect to timeframes. In particular, effective April 9, 2020, *N.J.A.C.* 4A:7-3.2(l)3 was modified to state:

The time for completion of the investigation and issuance of the final letter of determination may be extended by the State agency head for up to 60 additional days, which may be extended for good cause, in cases involving exceptional circumstances. The State agency head shall provide the Division of [Equal Employment Opportunity/Affirmative Action] and all parties with written notice of any extension and shall include in the notice an explanation of the exceptional circumstances supporting the extension.

Here, the record reflects that the EEO opened its investigation on December 14, 2022, and the determination was issued May 17, 2023. Thus, given the extensions to the normal timeframe for issuance permitted by regulation, the determination was ultimately timely. However, the requirement that written notice of any extension, including an explanation of the exceptional circumstances supporting the extension, be provided to the Division of Equal Employment Opportunity/Affirmative Action *and all parties* remained. The record is, at best, unclear on whether such notice was provided in this case. As such, the EEO is reminded that it must comply with the regulatory directives in the future. Nonetheless, as further explained below, the Commission finds that a thorough investigation was conducted in the present matter, which substantiated the appellant's violation of the State Policy.

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 the State 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 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).*

It is a violation of the State 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. *See N.J.A.C. 4A:7-3.1(c).* Sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when, for example, such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment. *See N.J.A.C. 4A:7-3.1(c)1(iii).* Examples of prohibited behaviors that may constitute sexual harassment include, but are not limited to generalized gender-based remarks and comments; unwanted physical contact, such as intentional touching, grabbing, pinching, brushing against another's body, or impeding or blocking movement; and verbal, written, or electronic sexually suggestive or obscene comments, jokes, or propositions, including letters, notes, e-mail, text messages, invitations, gestures, or inappropriate comments about a person's clothing. *See N.J.A.C. 4A:7-3.1(c)2.*

Supervisors shall make every effort to maintain a work environment that is free from any form of prohibited discrimination/harassment. 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). *See N.J.A.C. 4A:7-3.1(e).*

The State Policy applies to conduct that occurs in the workplace and conduct that occurs at any location that can be reasonably regarded as an extension of the workplace (any field location, any off-site business-related social function, or any facility where State business is being conducted and discussed). The State Policy also applies to posts on any social media site and/or electronic device, personal or business, that adversely affects the work environment defined by the State Policy. *See N.J.A.C. 4A:7-3.1(a)1.*

The State Policy is a zero tolerance policy. *See N.J.A.C. 4A:7-3.1(a).*

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

The Commission has conducted a review of the record in this matter and finds that an adequate investigation was conducted and that the investigation established that the appellant violated the State Policy. The available documents were appropriately analyzed and individuals were interviewed in investigating the allegations prior to concluding that the appellant violated the State Policy on the basis of sex/gender and race. In this regard, the investigation corroborated the allegations that the appellant wore a rooster facemask and used phrasing to the effect of, “I don’t care [because] everyone in this place can suck my cock;” touched, pulled, or grabbed female coworkers’ hair in the workplace; and called Caucasian females in the workplace “snow bunnies.” On appeal, the appellant offers mere self-serving denials, which are insufficient to meet his burden of proof as to these allegations.

The investigation corroborated that the appellant made a Facebook post with a picture of himself wearing a rooster facemask with the caption “[u] cock suckers thought I was done.” On appeal, the appellant argues that the post cannot be discrimination as it was made on his personal account during non-work hours; did not refer to any specific sex/gender; did not reference the JJC, the workplace, or any JJC employees; was not directed at any specific individual; and was merely a “play on words.” The Commission is unpersuaded. The appellant’s intent for the communication to be a “play on words” does not absolve the appellant given that a State Policy violation can occur regardless of intent and “cock suckers” is clearly an offensive sexual reference. Moreover, the State Policy clearly covers social media posts, and many of the appellant’s coworkers, including subordinates, were his Facebook friends and could view his posts. As such, the Facebook post was appropriately determined to be a State Policy violation.

The investigation corroborated that the appellant called L.L. “baby” and “beautiful.” On appeal, the appellant contends that, in context, these references were not a State Policy violation. Again, the Commission is unpersuaded. As noted, a State Policy violation can occur regardless of intent. Here, the investigation revealed that L.L. was uncomfortable with the references. Particularly given the manager-direct report relationship the appellant and L.L. shared, the terms were demeaning sex/gender-based references. Under the State Policy, managers have a particular duty to make every effort to maintain a work environment that is free from any form of prohibited discrimination/harassment. As such, the appellant’s calling L.L. “baby” and “beautiful” was appropriately determined to be a State Policy violation. Accordingly, the investigation was thorough and impartial, and there is no basis to disturb the Chief Ethics and Compliance Officer’s determination.

The Commission proceeds to address other arguments raised by the appellant. Concerning his claim that the subject investigation and determination were, along

with other adverse actions, retaliatory under CEPA and the LAD as they were instigated and initiated by the JJC and EEO directly in response to his own reporting of race-based misconduct committed against him by H.W., the Commission notes that it lacks jurisdiction to decide CEPA and LAD claims. While it is true that the State Policy contains an anti-retaliation provision, *see N.J.A.C. 4A:7-3.1(h)*, it also bears noting that under the State Policy, claims of retaliation must be initially investigated at the departmental level. Since the record reflects that the appellant did not file an EEO complaint alleging retaliation and raised the allegation for the first time in the instant appeal, the Commission declines to address the retaliation allegation here. The appellant has also alleged the existence of an ongoing practice of imposing disparate corrective and disciplinary action based on race. However, claims of race-based discrimination too must be initially investigated at the departmental level. Since the record reflects that the appellant did not file an EEO complaint concerning the disparate race-based treatment allegation and raised the allegation for the first time in the instant appeal, the Commission declines to address this allegation here.

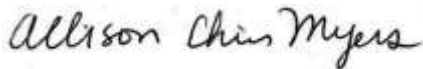
Further, the Commission notes that it lacks jurisdiction to decide whether the appellant is able to collect his full pension.

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 20TH DAY OF DECEMBER, 2023



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