



STATE OF NEW JERSEY

In the Matter of D.J., Department of
Human Services

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

CSC Docket No. 2024-2507

Discrimination Appeal

ISSUED: January 15, 2025 (HS)

D.J., a Field Service Supervisor 2 Family Development with the Department of Human Services, appeals the determination of the Assistant Commissioner, which found sufficient evidence that the appellant had violated the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy).

As background, on April 4, 2024, the appellant reported that in 2023, E.K., Administrative Analyst 3 Fiscal Management, used a gender-pejorative term when referring to A.A., Chief Contract Administration Section. The Office of Equal Employment Opportunity (EEO) conducted an investigation, during which it interviewed individuals and reviewed relevant documentation. The investigation revealed that under the State Policy, as a supervisor, the appellant had a duty to report the use of a gender-pejorative term by E.K. at the time it was used, but she did not. Based on the foregoing, the Assistant Commissioner substantiated a violation of the State Policy. The appellant received a written warning, which is not considered discipline. *See N.J.A.C. 4A:2-2.1, et seq.*, and *N.J.A.C. 4A:2-3.1, et seq.*

On appeal to the Civil Service Commission (Commission), the appellant initially requests that the action against her be dismissed based on two points. First, she highlights a March 28, 2024 e-mail from the EEO. In this e-mail, the EEO advises the appellant that it had received a discrimination complaint where the appellant was identified as a witness and that the appellant was “not in any kind of trouble.” The appellant contends that based on this assurance, she felt safe to speak freely but ultimately was misled by the EEO. She insists that at no time was she informed that

her statements could or would be used in any way, for or against her. Second, the appellant argues that at the time of the incident, Field Service Supervisor 2 Family Development was only her title; she was never a supervisor for the Contracts Administration Unit; and she never acted in a supervisory role.

In response, the EEO rejects both points. First, it explains that the original complaint had been filed by J.F., Contract Administrator 2, who alleged gender discrimination by A.A. Two days after the April 2, 2024 interview with the appellant, the appellant telephoned the EEO to report that E.K. had used a gender-pejorative term during a meeting in one instance in 2023. The EEO maintains that it did not ask the appellant about any employees who were not directly involved in the investigation. As E.K. was not directly involved in that investigation, no questions were asked about her during the original interview. Per the EEO, it was the appellant who herself called the EEO and opened the lines of communication regarding E.K., effectively volunteering the information. Second, the EEO notes that the appellant's Civil Service title designated her as a supervisor, whom the State Policy deems responsible for reporting discrimination in the workplace immediately. The EEO further highlights that the State Policy includes the word "broadly" when defining a supervisor, indicating that the term is to encompass those who may not even have the word "supervisor" in their titles. In addition, the State Policy goes so far as to include those who may be in a temporary role, such as a project manager, when defining a supervisor.

In reply, the appellant claims that she received no training as to the expected conduct, role, and responsibilities as a Field Service Supervisor 2 Family Development "non-acting or acting supervisor."

In reply, the EEO reiterates that with any supervisory title comes responsibility, one of which is to follow the State Policy. On the issue of training, as a State employee for over 19 years, the appellant has been required to participate in training or review the State Policy regularly. Specifically, her training history between 2022 and 2024 demonstrates that she has participated in regular training on, and review of, the State Policy recently. The EEO also rejects the appellant's use of the terms "acting" and "non-acting" to attempt to differentiate those supervisors who currently have employees reporting to them and those who do not. It maintains that whether the appellant supervises employees is not dispositive of whether she should be held to the standard of a supervisor under the State Policy. The EEO argues that the appellant garners the benefits of her title regardless of whether she supervises other employees directly, and she should be held to the same standards as others who have attained her position and title. In support, the EEO submits a record that shows the appellant completed training on the State Policy or reviewed and acknowledged the State Policy on February 24, 2022, April 11, 2023, and April 15, 2024.

In reply, the appellant argues that her immediate and active supervisor J.G., Program Manager Health/Human Services, was present and conducted the meeting where the gender-pejorative comment was made by E.K. Thus, the appellant proffers, the discriminating comment was reported to the appellant's supervisor during the meeting. Additionally, the appellant states that as this case has caused her extraordinary stress and mental anguish, she requests a transfer to another department for her safety, security, and health.

In reply, the EEO maintains that the fact that J.G. was present did not absolve the appellant of her duty as a supervisor to report. Under the State Policy, there is no mention of reporting an incident to a fellow supervisor as fulfillment of a supervisor's duty to report, and J.G. is not an EEO Officer. Further, the EEO argues that the written warning issued should not be considered a threat to the appellant's safety but rather should be deemed a legitimate action designed to enforce the State Policy and increase the likelihood that as a supervisor, the appellant will report potential allegations of discrimination promptly in the future.

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 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)*. 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.*

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 the investigation prior to concluding that the appellant violated the State Policy. In this regard, the investigation corroborated that under the State Policy, the appellant as a supervisor had a duty to report E.K.'s use of a gender-pejorative term at the time it was used in 2023, but she did not. On appeal, the appellant attempts a number of arguments, most of which require only brief comment. In this regard, the Commission rejects any suggestion that the EEO somehow misled the appellant into providing information that was then used against her. Rather, the investigation revealed that two days after the appellant was interviewed on April 2, 2024 in connection with J.F.'s allegations against A.A., the appellant called the EEO and effectively volunteered the information about E.K. The Commission also rejects any argument that training was not provided to the appellant. Rather, documentation supplied by the EEO indicates that the appellant received training on the State Policy including, notably, before 2023. The Commission further rejects the contention that E.K.'s gender-pejorative comment was effectively reported because the appellant's supervisor J.G. was present at the meeting where the comment was made. The State Policy requires the supervisor to make a report to the EEO Officer or another individual designated to receive complaints of workplace discrimination/harassment. There is no indication in the record that J.G. was either.

The Commission turns next to the appellant's arguments that at the time of the incident, she was a "non-acting" supervisor because Field Service Supervisor 2 Family Development was merely her title and she was not acting in a supervisory role. These arguments require some discussion but are also not ultimately persuasive. As the EEO notes, the appellant's Civil Service title of Field Service Supervisor 2 Family Development designated her as a supervisor, and the responsibility to follow the State Policy comes with any supervisory title. Further, it bears emphasizing that the State Policy defines a supervisor broadly to include any manager or other individual who has authority to control the work environment of any other staff member. The definition section of the job specification for Field Service Supervisor 2 Family Development states:

Under the direction of a supervisory officer in the Division of Family Development, Department of Human Services independently performs the monitoring, regulating and/or enforcing various aspects of the administration of a public assistance system and/or supervises the work of staff or public assistance programs administered by local jurisdictions; does related work as required.

Examples of work include the following: assists in developing appropriate programs and plans for the work of subordinate staff and may also supervise the performance of their work; collaborates with other staff and develops appropriate policies, procedures and standards for the training of bureau field staff and other personnel; and supervises the work operations and/or public assistance programs administered by local jurisdictions and has responsibility for effectively recommending the hiring, firing, promoting, demoting and/or disciplining of employees. It should also be noted that the Field Service Supervisor 2 Family Development title is assigned to the “S” Employee Relations Group (ERG). In this respect, titles are assigned to ERGs based on the classification of the position by this agency. *See N.J.S.A. 11A:3-1.* Each ERG is distinctly defined, and the “S” ERG is defined as those titles used in the secondary level of supervision. A factor in the Commission’s setting the compensation for “S” titles is that employees in this bargaining unit all have the authority to recommend hiring, firing, and disciplining of employees who supervise subordinate employees. *See, e.g., In the Matter of David Bobal, et al.* (CSC, decided November 23, 2016). Therefore, it is apparent that the appellant encumbered a position clothed with the authority to control the work environment of one or more other staff members, and she was thus properly held to the State Policy’s supervisory reporting obligation.

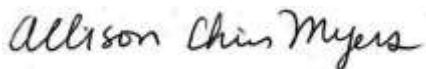
Based on the foregoing, the appellant’s inaction in 2023 was appropriately determined to be a State Policy violation. Accordingly, the investigation was thorough and impartial, and there is no basis to disturb the Assistant Commissioner’s determination or grant the appellant any remedy. Finally, as the purpose of the State Policy is to be instructive and remedial in nature, the written warning issued to the appellant was appropriate.

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 15TH DAY OF JANUARY, 2025



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