STATE OF NEW JERSEY

In the Matter of M.R.,
Motor Vehicle Commission

CSC Docket No. 2023-1467

FINAL ADMINISTRATIVE ACTION OF THE CIVIL SERVICE COMMISSION

Discrimination Appeal

ISSUED: March 19, 2025 **(JET)**

M.R., a Safety Specialist 2, MVC, with the Motor Vehicle Commission, appeals the determination of the Equal Employment Opportunity Office (EEO), Motor Vehicle Commission, which found that the appellant failed to support a finding that she had been subjected to a violation of the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy), but did find sufficient evidence that she had violated the State Policy.

The appellant, a Hispanic female, submitted a complaint on January 22, 2022, alleging that S.J., a Supervisor 2, MVC, discriminated against her on the basis of race and subjected her to retaliation in violation of the State Policy. Specifically, the appellant asserted, in relevant part, that S.J. treated her differently in the workplace, and: while in training, he spoke to her in a condescending manner; instructed her to perform certain functions despite that she learned different techniques in training; asked her to time customers when she did not observe other employees timing customers; did not allow her to use the same computer as he used, but allowed other employees to use the computer; and that S.J.'s actions prohibited her from performing her duties. The appellant alleged that she was upset as S.J. initially told her that she could choose whichever route she wanted, that S.J. retaliated against her by nitpicking and scrutinizing her, and that she disagreed with her employee evaluation that S.J. completed. In addition, the appellant asserted that most of her colleagues are Caucasian men, and that she was the only Latina "born outside the U.S. on top of her skin color and gender." The appellant alleged that, based on her accent while

speaking English, she was treated differently in the workplace. The appellant also alleged, "That's why I always say that S.J. discriminates against me in the sense that treatment is inequitable. Other employees that are white, straight, and cisgendered are treated differently than I am, so I have no choice but to questions these intentions."

The EEO conducted an investigation, including interviewing witnesses, and it determined that the allegations pertaining to S.J. were not substantiated. The EEO determined that there was no evidence of M.R. being treated differently in the workplace based on her race, national origin, color, gender identity and/or sexual orientation. The EEO found that the appellant was the only Hispanic Safety Specialist serving in her unit, and she was frequently left in charge since she is the only Safety Specialist employee in the workplace. However, based on allegations made against the appellant, claiming she referred to an African-American co-worker as "mono negro," which in English means "black monkey;" and for treating customers who speak limited English less favorably than customers who speak fluent English, the EEO substantiated that the appellant had violated the State Policy, and referred the matter to the appointing authority for further action.

On appeal, the appellant maintains that the investigation was flawed, as the November 17, 2022, determination letter did not discuss several of her allegations, including allegations that she submitted on February 12, 2021, and on March 12, 2022, alleging that S.J. allowed another employee to issue a report from his computer, but S.J. denied her use of the computer at the Edison-Kilmer work location. Further, the appellant asserts that S.J. discriminated and retaliated against her in violation of the State Policy in the following ways: at the time she began wearing sneakers at work due to foot pain, S.J. did not notify the appellant of a dress code policy indicating that she could not wear sneakers at work; that S.J. indicated negative ratings on her employee evaluations; and that S.J. treats other employees who are white and cisgendered differently in the workplace, but she provides no further specifics with respect to that issue. The appellant contends that she is being subjected to hostile work environment, as it appeared that S.J. wanted to replace her with another employee, and she is concerned since she is the only Spanish speaking employee in her unit.

In addition, the appellant states that S.J. is subjected her to retaliation. In this regard, the appellant asserts that on October 27, 2022, S.J. instructed her about how to check for certain information, and after she contacted the involved school, she was informed that orders were only to be sent to S.J. She also claimed that S.J. leaves instructions for her and claims that she does not do her job. The appellant maintains that S.J.'s actions constitute an abuse of his supervisory authority, and she believes that he is subjecting her to psychological harassment. Moreover, the appellant explains that she is concerned that the appointing authority improperly subjected her

to discipline on April 21, 2022,[1] and she confirms that she was reassigned to another work location.[2]

The appellant further asserts that she also reported that S.J. changed her lunch hour on January 14, 2022 and on November 1, 2022, but he did not change the lunch times for her co-workers. In support, the appellant submits a January 16, 2022 e-mail in which S.J. confirms that he gave the appellant an oral counseling regarding a request to change the appellant's lunch time and complete a "CDL." The appellant adds that on July 14, 2022, when she asked to take a break because she did not take a lunch break, S.J. denied this request as her break was scheduled at 3:00 p.m. The appellant also asserts that on July 14, 2022, she asked to leave early as she did not have lunch, and her break was not until 3:00 p.m. In support, she submits a July 25, 2022, e-mail, in which the appellant indicates that she "asked [S.J.] for a second break on July 14, 2022 but [he] said no, because it was at 3:00 p.m." She also submits a July 25, 2022, e-mail, in which S.J. indicated "you chose not to take your lunch, I never said you could not take your lunch, in fact I told you to take your lunch at 3:00 p.m." The appellant also submits a July 21, 2022, e-mail, indicating that another employee went out for coffee prior to starting work, but S.J. did not inform him that his break was not until 10:00 a.m.; and a July 25, 2022 e-mail indicating, in pertinent part, that on July 21, 2022, the employee:

> . . . left for DD at 8:10 when were [sic] 7 cars over the hill he didn't even start any ride and returned 8:28 am when his break is at 10:00 am [sic] I mean if he can take an early break and I never do that and I asked your for my second break on 7/14/22 but you said no. [sic] because it was at 3 and I was leaving at 2:30 pm. [B]ut that's fine."

In response, the EEO asserts that it relies on information provided in its November 17, 2022 determination letter. It does not provide any further information or arguments in response to the appeal.

CONCLUSION

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

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[1] A Preliminary Notice of Disciplinary Action (PNDA) was issued to the appellant on April 21, 2022, recommending a 20-day suspension, on charges of conduct unbecoming, insubordination, neglect of duty, and other sufficient cause. On February 5, 2024, the appellant accepted a settlement agreement, which withdrew the April 21, 2022 PNDA, and recorded a 15-day suspension for record purposes only with respect to the charges.

[2] In a May 24, 2024 e-mail to J.M., the appellant requested to be reassigned to another work unit.

expression, atypical hereditary cellular or blood trait, genetic information, liability for service in the Armed Forces of the United States, or disability. 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 the State Policy. 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). *See N.J.A.C.* 4A:7-3.1(h). The appellant shall have the burden of proof in all discrimination appeals. *See N.J.A.C.* 4A:7-3.2(m)(3).

The Civil Service Commission (Commission) has conducted a review of the record in this matter and finds that the appellant has not established that she was subjected to discrimination on the basis of race, national origin, color or gender in violation of the State Policy. The record reflects that the EEO conducted a proper investigation. It interviewed the relevant parties in this matter and appropriately analyzed the available documents in investigating the appellant's complaint. The appellant has failed to point to specific deficiencies in the investigation which would change the outcome of this matter.

In this matter, the appellant did not provide any witnesses or substantive evidence to show that she was subjected to race or gender discrimination. With respect to the allegations pertaining to S.J., none of the information the appellant submits in this matter constitutes a violation of the State Policy based on race or gender. In this regard, there is no substantive evidence to show that S.J. prevented the appellant from performing her duties, or that he tasked her with performing duties that were inappropriate for her position. The appellant, other than her mere allegation, has not provided a scintilla of substantive evidence in this matter to show that S.J. treated her differently from other employees, or singled her out in the workplace in violation of the State Policy. Moreover, the appellant does not name any employees in support of her claim that S.J. treated such employees more favorably than herself. In addition, there is no evidence that S.J. had any discriminatory motivation with respect to the appellant's assignments. With respect to the appellant's claims that she was treated differently due to her "accent" and being the only Spanish speaking individual in her unit, such claims, in and of themselves, are insufficient to establish that she was discriminated against in violation of the State Policy. Regarding the appellant's claims that the EEO did not review all of the evidence submitted pertaining to S.J., the EEO's investigation was tasked with reviewing pertinent information in order to sufficiently determine that there was no violation of the State Policy. Even if the EEO did not review all of the appellant's

allegations in this matter, which in not readily apparent in the record, such information does not establish the appellant's claims in this matter.

Regarding the appellant's claims of retaliation, none of the information she provides on appeal constitutes retaliation as defined above. Rather, the appellant's concerns appear to be work-related, which does not, in and of itself, establish that she was discriminated against or retaliated against in violation of the State Policy. In this regard, the appellant's contentions with respect to her assignments, training, and computer use, absent a nexus to a protected category or other invidious motivation, do not invoke the State Policy. With respect to the appellant's concerns pertaining to the employee evaluations, generally, the Commission does not review the exercise of the appointing authority's discretion in the assignment of employee evaluation scores, unless there is substantial credible evidence that a rating is based upon invidious discrimination considerations, such as age, gender bias, or race; is in retaliation for the exercise of lawful activities, such as grievance filings; or is the product of a significant violation of the employee evaluation rules. However, in the instant matter, the appellant does not provide any substantive evidence to show that the employee evaluations scores were the result of invidious motivation, gender bias, or retaliation in violation of the State Policy.

Moreover, the appellant has not provided a nexus between her allegations and any of the above noted protected categories of the State Policy to sufficiently establish that a violation occurred. Moreover, the Commission has consistently found that disagreements between co-workers cannot sustain a violation of the State Policy. *See In the Matter of Aundrea Mason* (MSB, decided June 8, 2005) and *In the Matter of Bobbie Hodges* (MSB, decided February 26, 2003). Although the appellant disagrees with S.J.'s supervisory style, such information does not establish her claims in this matter, as the Commission has determined on numerous occasions that management or supervisory style is not reviewable under the State Policy unless that style evidences some form of discriminatory conduct under the State Policy, which is not present in this matter. Other than the appellant's tenuous allegations in this matter, she has failed to provide any evidence that she was discriminated or retaliated against in violation of the State Policy.

With respect to the appellant's claims that the EEO did not address all of her allegations, she has not established that claim on appeal. Nonetheless, none of those allegations, on their face, constitute a violation of the State Policy pursuant to the above listed rules. However, the appellant may file a new EEO complaint based on any new allegations if she believes that she has been subjected to a violation of the State Policy.

Finally, the record establishes that the appellant violated the State Policy. In this regard, the EEO interviewed witnesses who confirmed that the appellant referred to an African-American employee as "mono negro," which in English means

"black monkey," and that the appellant treated customers that speak limited English less favorably, which the appellant does not refute on appeal. The appellant does not provide any substantive evidence in this matter to show that she did not use the offensive language, or that she did not treat customers less favorably for the reasons indicated above. Such inappropriate comments and behavior in the workplace cannot be condoned under the provisions of the State Policy. Accordingly, for the reasons set forth above, the Commission finds that there is sufficient evidence to show that the appellant violated the State Policy.

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 19TH DAY OF MARCH, 2025

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