



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

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

Discrimination Appeal

CSC Docket No. 2016-1428

ISSUED: **NOV 16 2018** (HS)

M.N., a Technician MVC with the Motor Vehicle Commission (MVC), appeals the determination of the Chief Administrator, which found sufficient evidence that the appellant had violated the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy).

M.D., a Technician MVC, filed a complaint alleging that the appellant had discriminated against her on the basis of age. Specifically, M.D. alleged that the appellant made the following statements: (1) "If it wasn't for you, [M.D.], I would be working full-time;" (2) "I can't get a full-time job because [this location] has too many full-time workers so we need to be working on getting rid of two people;" and (3) "The older people in here, they should retire. They should get rid of them." The complaint was referred to this agency's Division of Equal Employment Opportunity/Affirmative Action (CSC EEO) for administrative reasons. The CSC EEO conducted an investigation and substantiated the allegations against the appellant. The MVC's Equal Employment Opportunity Office (MVC EEO) reviewed the CSC EEO's investigative report and adopted the findings. As a result, corrective action was taken.¹

On appeal to the Civil Service Commission (Commission), the appellant takes issue with the referral of M.D.'s complaint to the CSC EEO, questioning whether this is now a "civil matter." She also questions how the MVC EEO could have made a determination "from reading papers."

¹ The appellant was required to complete training.

Turning to the allegations at issue, the appellant explains that she was asked during a conversation whether she was full-time. The appellant answered that she was not and that she had to wait until a full-time position became available. According to the appellant, M.D. then "butted into" the conversation and stated, "You blame me for you not having a full-time position." The appellant replied, "Yes I do." The appellant believes that M.D. was trying to "set [her] up" and questions how her agreement with M.D.'s statement could constitute age discrimination. She maintains that M.D. in fact took a full-time position at the appellant's expense. In this regard, the appellant claims to have been told that she would move into another employee's full-time position when that employee left; however, it was M.D. who ultimately moved into that employee's position.

The appellant also denies commenting that older workers needed to retire and that "[t]hey should get rid of them." She claims that it is actually M.D. who makes age-related comments. As to the witnesses who stated that they heard the appellant make such comments, the appellant argues that their statements are hearsay. She questions whether those witnesses were co-workers with whom M.D. spends time with outside of work. The appellant also requests not to be seated next to M.D. at work since M.D. makes her feel uncomfortable, by making comments and writing down everything that everyone does in the office in a notebook.

In response, the MVC EEO notes that the instant matter is an administrative proceeding pursuant to the State Policy and applicable regulations. It indicates that M.D.'s complaint was forwarded to the CSC EEO for administrative reasons. Moreover, when it received the investigation report from the CSC EEO, its EEO Officer and Chief Administrator reviewed the report and findings prior to issuance of the determination.

Turning to the merits, the MVC EEO submits that the appellant has been a part-time employee of the MVC since 1998 and transferred to the location in question in approximately 2005. It states that the appellant had advised the three most recent managers of her desire to be appointed to a full-time position. M.D. was 64 years old in 2014 and is one of two employees who is close to or at retirement age. During her interview with an investigator from the CSC EEO, the appellant admitted to a conversation with M.D. in which she said, "I've been waiting to go full-time," and admitted to blaming M.D. for taking the full-time position from her. The investigation further revealed that witnesses heard the appellant say that "older people should retire" and that "they should get rid of them" in reference to older people. Specifically, Witness X,² who has no known motive to speak against the appellant and no friendship with M.D., stated that on one occasion she heard the appellant say, "The older people in here, they should retire. They should get rid of them," out of frustration. Witness S, who was also

² In its response, the MVC EEO refers to witnesses using letters in order to protect witness confidentiality and prevent a "chilling effect" on employees' reporting inappropriate behavior.

found credible, stated that she had heard the appellant make statements that older people should retire. The MVC EEO contends that the appellant violated the State Policy not because she believed that M.D. took her job but because of the negative comments she made about the need for older workers to retire. In response to the appellant's complaint that the witnesses' statements are hearsay, the MVC EEO maintains that it is not at liberty to show the appellant statements made by other employees due to the State Policy's confidentiality requirement. The MVC EEO maintains that the appellant was determined to have violated the State Policy after a thorough and impartial investigation.

Regarding the appellant's request to be seated away from M.D., the MVC EEO argues that the location of the appellant and M.D. are at her supervisors' discretion and that if the manager feels the need to place them next to each other for operational efficiency, the appellant should cooperate. It contends that should the appellant have complaints about M.D., she may bring her concerns to her supervisors or to the MVC EEO if the concerns implicate the State Policy.

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 of this policy 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)*.

The State Policy further provides that all complaints and investigations shall be handled, to the extent possible, in a manner that will protect the privacy interests of those involved. To the extent practical and appropriate under the circumstances, confidentiality shall be maintained throughout the investigatory process. In the course of an investigation, it may be necessary to discuss the claims with the person(s) against whom the complaint was filed and other persons who may have relevant knowledge or who have a legitimate need to know about the matter. All persons interviewed, including witnesses, shall be directed not to discuss any aspect of the investigation with others in light of the important privacy interests of all concerned. Failure to comply with this confidentiality directive may

result in administrative and/or disciplinary action, up to and including termination of employment. See *N.J.A.C.* 4A:7-3.1(j). Furthermore, the appellant shall have the burden of proof in all discrimination appeals. See *N.J.A.C.* 4A:7-3.2(m)4.

Initially, the Commission finds no error with the MVC's issuance of its determination after its review of the CSC EEO's investigation report and findings. In this regard, M.D.'s complaint was forwarded to the CSC EEO for investigation due to administrative reasons. In addition, the State Policy provides that the State agency head or designee will review the investigatory report issued by the EEO/AA Officer or authorized designee and make a determination as to whether the allegation of a violation of the State Policy has been substantiated. See *N.J.A.C.* 4A:7-3.2(k).

The Commission has conducted a review of the record in this matter and finds that an adequate investigation was conducted, that the relevant parties in this matter were interviewed and that the investigation established that the appellant violated the State Policy. The available documents were appropriately analyzed and several witnesses were interviewed in investigating M.D.'s complaint prior to concluding that the appellant violated the State Policy on the basis of age. The appellant's denials notwithstanding, credible witnesses corroborated the allegation that the appellant stated, "The older people in here, they should retire. They should get rid of them." Clearly, this is a demeaning age-based comment. Accordingly, the investigation was thorough and impartial, and there is no basis to disturb the MVC's determination.

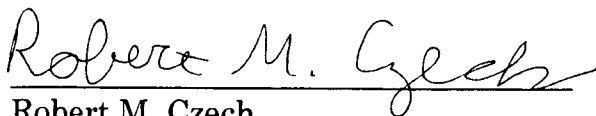
Finally, although the appellant requests to be seated away from M.D., the Commission lacks the authority to order such relief.

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 10TH DAY OF NOVEMBER, 2016



Robert M. Czech

Chairperson

Civil Service Commission

Inquiries
and
Correspondence

Director
Division of Appeals and Regulatory Affairs
Written Record Appeals Unit
Civil Service Commission
P.O. Box 312
Trenton, New Jersey 08625-0312

c. M.N.
Betty Ng
Mamta Patel
Records Center