

STATE OF NEW JERSEY

FINAL ADMINISTRATIVE  
ACTION  
OF THE  
CIVIL SERVICE COMMISSION

In the Matter of M.G-L.,  
Department of Children and  
Families

CSC Docket No. 2016-4225

Discrimination Appeal

ISSUED: **DEC 14 2016** (SLK)

M.G-L., a Child Care Quality Assurance Inspector 2 with the Department of Children and Families, appeals the decision of the Director of Administration, which found that the appellant did not present sufficient evidence 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).

By way of background, appellant, a Caucasian, filed a discrimination complaint alleging that C.K., an African-American Supervisor, Child Care Quality Assurance Inspections, discriminated against her on the basis of race and age. Additionally, she alleged that C.K. treated her very poorly and was afraid to mention her name to other workers since she was the only Caucasian person under C.K.'s supervision. The investigation was unable to corroborate the allegations as there was no evidence to support the claims.

On appeal, appellant asks if the investigator interviewed each person in the office. She states that if the investigator only interviewed individuals in her unit, the thoroughness of the investigation is in question because individuals in the unit will not be comfortable making statements against their supervisor. Further, the appellant believes that she was discriminated against during the investigation process as everyone she dealt with is African-American and she is Caucasian. She asserts that the investigation was not confidential because a male individual threatened and bullied her because he claimed that she was talking about the case. Therefore, she questions if her name was mentioned by the investigator during the interviews. The appellant states that the investigation did not mention a situation where she was verbally attacked by a manager for using the term, "you people," and asserts that there should have been an apology or an explanation in that matter.

The appellant states that she has prided herself in treating all people equally and she has never been treated as poorly as she has been treated in this environment. She also questions if the purpose of the \$20 appeal fee is to discourage her from filing appeals.

In response, the Equal Employment Opportunity Office (EEO) states that the investigation is a confidential process and therefore appellant is not privy to who was interviewed. It highlights that she was given the opportunity to present witnesses. The EEO states that the race of the investigator is not relevant and asserts that it is offensive that appellant suggests that the process was biased against her since every person involved in the EEO's process was African-American and she is Caucasian. It presents that she was cautioned by the investigator that this matter is confidential and should not be discussed in the office because it was reported that she was discussing the matter in the office during the investigation. The EEO states that appellant's admission of using the term "you people," which is a phrase that is discriminatory in nature, cannot be negated by her defense that she was not aware that this was an offensive phrase. It highlights that the \$20 appeal fee is assessed by the Civil Service Commission (Commission) to all appellants and the appointing authority has no jurisdiction over this fee.

### CONCLUSION

*N.J.A.C.* 4A:7-3.1(a) states, in pertinent part, that the State is committed to providing every State employee a work environment free from prohibited discrimination based on race and age.

*N.J.A.C.* 4A:7-3.1(b) states that it is a violation of this policy can occur even if there was no intent on the part of an individual to harass or demean.

*N.J.A.C.* 4A:7-3.1(g)1 states that all investigations of discrimination/harassment shall be conducted in a way that respects, to the extent possible, the privacy of all the persons involved.

*N.J.A.C.* 4A:7-3.2(i) provides, in pertinent part, a prompt, thorough, and impartial investigation into the alleged discrimination will take place.

*N.J.A.C.* 4A:7.3-2(m)4 states, in pertinent part, that the appellant shall have the burden of proof in all discrimination appeals.

*N.J.A.C.* 4A:2-1.8(a) provides that a \$20 processing fee shall be charged for all appeals and requests for relief filed with the Commission.

The Commission has conducted a review of the record and finds that the appellant has not established that C.K. violated the State Policy. The EEO's

investigation did not reveal any evidence to substantiate the allegations. Further, the EEO presents that the appellant was given the opportunity to name witnesses. While the appellant complains that she does not think that the investigation was thorough, she does not assert that there were specific witnesses who she named at the time she was asked to present witnesses who were not interviewed. Additionally, appellant has not named specific individuals who were not interviewed or identified any other specific evidence that would confirm that C.K. treated her poorly based on her race or age or was afraid to mention her name because she was the only Caucasian under C.K.'s supervision.

The appellant states that confidentiality was breached because a male individual threatened her because he claimed that she was talking about the case. She then asks if her name was mentioned by the investigator during the interviews. It is noted that *N.J.A.C. 4A:7-3.1(g)1* does not preclude the investigator from mentioning her name as part of the investigation. The policy states that all investigations of discrimination/harassment shall be conducted in a way that respects, *to the extent possible*, the privacy of all the persons involved. While the EEO does not specifically state that appellant's name was mentioned during the interviews, it would not have been unreasonable for the investigator to have done so since the purpose of the investigation was to determine if the appellant specifically was being subjected to discrimination. Moreover, if appellant was talking about the investigation in the office, she was violating the State Policy.

As part of her appeal, appellant made statements which are concerning in light of the State Policy. She acknowledged that she used the term, "you people," when speaking with a manager. Depending on the context, the appellant's use of this term potentially violated the State Policy. While she claims that she had no idea that this phrase could be offensive, it is noted that under *N.J.A.C. 4A:7-3.1(b)*, a violation of the State Policy can occur even if there was no intent on the part of an individual to harass or demean another. Regardless, if the appellant believes that she was inappropriately treated by her manager in response to her comment, she can file a grievance under the appointing authority's procedures. Additionally, the appellant states that since every person that she dealt with in the investigation process was African-American and she is Caucasian, she believes that she has been discriminated against. However, as stated earlier, she has not provided one scintilla of evidence to support her allegation that the investigation was flawed or not thorough and proper. Regardless, the Commission cautions the appellant that this statement may also be a State Policy violation as she is implying that individuals cannot treat her fairly solely based on their race. The Commission notes that the purpose of the State Policy is to be instructive and remedial in nature and suggests that the EEO provide appellant individual training on the State Policy.

Additionally, the appellant questions if the \$20 fee to file the appeal was an attempt to discourage her from filing an appeal. Under *N.J.A.C. 4A:2-1.8(a)*, all non-exempt appellants who file a discrimination appeal with the Commission are required to pay \$20. The purpose of the fee is to help cover the administrative processing costs in reviewing appeals and is in no way meant to discourage individuals from exercising their right to appeal.

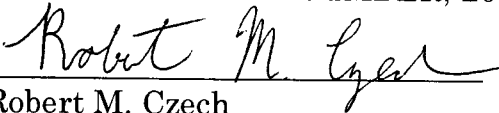
Accordingly, the Commission finds that the EEO's investigation was thorough and impartial. Therefore, the Commission finds that appellant failed to support her burden of proof and no basis exists to find a violation of the New Jersey State Policy Prohibiting Discrimination in the Workplace with respect to these allegations.

### 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 7<sup>th</sup> DAY OF DECEMBER, 2016



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