

B-166



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

In the Matter of V.W., Department of  
Corrections

Discrimination Appeal

CSC Docket No. 2016-1871

ISSUED: **DEC 09 2016** (HS)

V.W., a Social Worker 1 Corrections with the Department of Corrections (DOC), appeals the determination of the DOC Commissioner, which found that the appellant failed to 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, the appellant received a provisional appointment to the title of Assistant Social Work Supervisor Secured Facilities (ASWS) and moved to the New Jersey State Prison (NJSP) from another DOC facility on February 21, 2015. At that time, the appellant began reporting to C.R., Social Work Supervisor 1 Secured Facilities. Subsequently, the appellant, an African-American, filed a complaint in June 2015 with the Equal Employment Division (EED) against C.R., a Caucasian, alleging ongoing discrimination on the bases of race, color and national origin since February 2015. The appellant also alleged that C.R. was intentionally targeting her in order to “discredit” her work so that she would not satisfactorily pass her ASWS probationary period.<sup>1</sup> The appellant further alleged that C.R. targeted African-Americans under her supervision. In this regard, she alleged that African-Americans under C.R.’s supervision had not been able to perform their job responsibilities successfully and contended that “most” had been either terminated

<sup>1</sup> On August 6, 2015, the appellant received a regular appointment to the ASWS title. On February 22, 2016, the appellant was returned to her permanent title of Social Worker 1 Corrections at the end of her working test period in the ASWS title. Although the appellant appealed her return to her permanent title, the appeal was denied as untimely.

or had transferred "under duress." In response, the EED conducted an investigation during which it reviewed pertinent documents and interviewed C.R.; witnesses named by the appellant as having witnessed or having personal knowledge of the allegations; and S.L., Director of the Office of Transitional Services. After its investigation, the EED did not substantiate a State Policy violation by C.R., for the reasons described below.

In her complaint, the appellant provided the following specific claims of differential treatment: (1) C.R. did not permit her to report to work before her scheduled time, while L.C., Social Worker 1 Corrections, a Caucasian female, was permitted to do so; (2) C.R. spoke to her in a "confrontational and harsh manner," yelled at her, and was "impatient to clarify things" but did not treat Caucasian staff in this manner; (3) C.R. was demeaning and spoke to her in a "condemning tone" when she attempted to make a joke about what her "prize" would be for properly completing the Fair Release and Re-Entry Act packets, but when her colleague W.L., ASWS, a Caucasian male, made the same joke, C.R. smiled at him and said, "We'll think about it;" (4) she was not permitted to assist with training new employees, but W.L. and L.C. were permitted to do so; (5) C.R. met with W.L. and L.C. but did not keep her informed of the "team" meetings; and (6) on her final Performance Assessment Review (PAR) for the June 15, 2014 to June 14, 2015 rating period, C.R. improperly gave her an overall "Unsatisfactory" rating.

Regarding the claim that L.C., but not the appellant, was permitted to report to work early, L.C. advised that it was not typical for employees in the Social Work Department to arrive to work before their shifts began. Nevertheless, L.C. did note that at some point in February or March 2015, there were only three employees and C.R. was unexpectedly out for a week. Therefore, L.C. reported early while C.R. was out. In addition, A.K., Social Worker 2 Corrections, a Caucasian female, advised that C.R. told her that she was not permitted to report early either. C.R. advised that she had not given anyone permission to report early and that inmate movements dictate when the Social Service staff report to work. C.R. also recounted an incident when the appellant arrived at 7:30 a.m., one hour before her scheduled time, and sat in the hallway for the hour. C.R. advised that she told the appellant that staff are not allowed in the hallway before 8:00 a.m. because inmates cleaning in that area are unattended by an officer. C.R. further advised that despite this explanation, the appellant again reported early at 7:30 a.m. on a date she knew that C.R. would not be at work.

With respect to the claim that C.R. spoke to the appellant in a "confrontational and harsh manner," yelled at her, and was "impatient to clarify things" but did not treat Caucasian staff in this manner, both African-American and Caucasian witnesses named by the appellant did not corroborate her claim of differential treatment. K.J., Social Worker 2 Corrections, an African-American female, indicated that she had never observed C.R. speak in a dismissive or

negative manner toward anyone and that any issues she had with C.R. were due to legitimate work performance matters rather than race. A.P., Social Worker 2 Corrections, an African-American female, advised that she had never seen C.R. treat African-American staff any differently from Caucasian staff. Caucasian witnesses indicated that C.R. treated them in the same manner complained of by the appellant.

As to the claim that C.R. was demeaning and spoke to the appellant in a "condemning tone" when she attempted to make the same joke made by W.L., W.L. recalled discussing the packets but did not recall any negative comments by C.R. directed to the appellant. C.R. denied the allegation. Regarding the claim that the appellant was not permitted to assist with training new employees, but W.L. and L.C. were permitted to do so, the investigation revealed that new staff are routinely paired with more experienced staff such as W.L. and L.C. to "shadow" them. C.R. also advised that she had not assigned any new staff to the appellant for supervision due to the appellant's performance issues. With respect to the appellant's claim about "team" meetings, the investigation revealed that there were no "team" meetings. Rather, W.L. and L.C. provided updates or asked C.R. questions as needed, and C.R. generally communicated with her staff once per month via e-mail regarding issues affecting the unit. C.R. denied excluding the appellant from these meetings.

The investigation also did not substantiate the claim that C.R. improperly rated the appellant on her PAR. The investigation revealed that the appellant's rating was not based on race or national origin. Although the appellant indicated her disagreement, the PAR set forth legitimate business reasons for the appellant's rating in each category and included a detailed development and action plan to improve work performance. A review of the PARs also revealed that R.W., Policy and Compliance Manager in the Office of Transitional Services, also signed and approved the appellant's scores.

Further, the investigation did not substantiate the allegations that African-Americans had not been able to perform successfully under C.R.'s supervision and that most had been terminated or transferred "under duress." Witnesses did not confirm these claims. It was also revealed that the appellant was not similarly situated to the African-Americans referenced as being under C.R.'s supervision. In this regard, the referenced employees were new hires rather than employees who moved to the unit through promotion as the appellant had. In addition, of the 10 new hires during C.R.'s tenure as supervisor, four did not successfully complete their working test periods due to legitimate work performance issues.

On appeal to the Civil Service Commission (Commission), the appellant argues that the EED's determination does not reflect a true and thorough investigation. She states that the determination was very selective in its findings

as all the issues she raised in her complaint were not addressed. The appellant contends that the EED's determination only cites L.C., W.L. and K.J., C.R.'s "favored staff." The appellant nevertheless explains that she had identified K.J. as a witness because she had expressed to the appellant that C.R. treated E.M., ASWS, an African-American male, in a discriminatory manner and was aware that C.R. also treated the appellant differently. In the appellant's view, the EED should have considered information provided by A.K., who told her about negative statements that C.R. made before she moved to NJSP and witnessed discriminatory actions taken by C.R. against the appellant; E.M., who accounted for statements by C.R. before the appellant moved to NJSP and requested a transfer because of discriminatory treatment he also suffered; and E.G., Social Worker 2 Corrections, an African-American, who requested a transfer because she could no longer handle C.R.'s bullying, discriminatory conduct. The EED should also have considered the four individuals who were "supposedly" terminated due to performance issues. In her view, those four individuals "probably" never considered other legal options, so "performance issues" remained the final word in their cases. According to the appellant, A.P. has been in the office when C.R. spoke or acted against the appellant in a demeaning manner and could attest to that fact. She also claims that every staff member in the Social Services unit would prove that C.R. behaves more cordially toward other staff members than she does toward the appellant. She also notes her understanding that more than one EED complaint has been filed against C.R. by former NJSP Social Workers.

In addition, the appellant questions why C.R. would assign L.C., a junior employee at the time, the task of allocating new employees to staff. She maintains that C.R.'s action was intended to diminish her position since, as an ASWS, she had seniority and should have been next in line regardless of whether she was new to NJSP. As an example, while C.R. was at a meeting on May 28, 2015, she allocated to L.C. the task of assigning new employees to staff for unit tours. One new employee was assigned to tour the facility with A.P., a relatively new hire.

Further, the appellant contends that the issue of her PAR rating was not reviewed in an unbiased manner. In this regard, she has worked at DOC for 12 years and all supervisors she has worked with could vouch for her work ethic, character and productivity. She claims that C.R. is disproportionately allocating work to her in retaliation for her complaints. Based on the foregoing, the appellant believes that her complaint should be re-investigated. In support, she submits copies of her EED complaint and final PAR for the June 15, 2014 to June 14, 2015 rating period, among other documents.

In response, the EED emphasizes that it interviewed all of the witnesses named by the appellant on appeal as having information pertinent to the investigation. However, the allegations of discrimination/harassment based on a protected category were not substantiated. With respect to the remaining claims

presented on appeal, the EED states that it relies on the “very detailed” determination.

## 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)*. 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 this policy. No employee bringing a complaint, providing information for an investigation, or testifying in any proceeding under this policy shall be subjected to adverse employment consequences based upon such involvement or be the subject of other retaliation. *See N.J.A.C. 4A:7-3.1(h)*. The State Policy is a zero tolerance policy. *See N.J.A.C. 4A:7-3.1(a)*. Moreover, 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, that the relevant parties in this matter were interviewed and that the investigation failed to establish that the appellant was discriminated against or harassed in violation of the State Policy. The EED appropriately analyzed the available documents and interviewed several witnesses in investigating the appellant’s complaint and concluded that there was no violation of the State Policy based on the appellant’s race or any other protected category. Although the appellant identifies several witnesses on appeal as possessing relevant information and whose testimony should have been considered, the EED indicates that these individuals were interviewed and did not substantiate the allegations of discrimination or harassment based on a protected category. While she also reiterates her concern over C.R.’s assigning L.C. the task of allocating new employees to staff, the investigation revealed that new staff were routinely paired with more experienced staff to “shadow” them and that new staff had not been assigned to the appellant for supervision due to her performance issues. Concerning the appellant’s allegation that C.R. improperly gave her an overall “Unsatisfactory” rating on her final PAR for the June 15, 2014 to June 14, 2015 rating period, *N.J.A.C. 4A:7-3.2(m)1* provides that employees filing appeals that raise issues for which there is another specific appeal procedure must utilize those procedures. *N.J.A.C. 4A:6-5.3(b)* and (c) set forth specific appeal procedures

for employees wishing to challenge performance standards or final PAR ratings. However, there is no indication in the record that the appellant utilized these specific appeal procedures. As such, the Commission declines to address the appellant's allegations regarding her PAR rating. *See In the Matter of Ann Doherty* (MSB, decided May 5, 2006). Nevertheless, it is noted that the investigation found that the appellant's rating was based on legitimate business reasons, not race or national origin. Accordingly, the investigation was thorough and impartial, and no substantive basis to disturb the EED's determination has been presented.

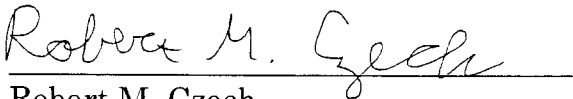
As a final matter, it is noted that the appellant alleges on appeal that C.R. is disproportionately allocating work to her in retaliation for her complaints. Since the Commission does not investigate potential violations of the State Policy, the appellant is advised that she may file another complaint with the EED regarding this new allegation.

### 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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