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STATE OF NEW JERSEY

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

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

CSC Docket No. 2017-543

Discrimination Appeal

ISSUED: FEB 13 2017 (JET)

D.K., a Senior Police Officer, Human Services, with Ancora Psychiatric Hospital, appeals the determination of the Assistant Commissioner of Human Resources, Department of Human Services (DHS), which found sufficient evidence that he had violated the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy).

By way of background, on April 22, 2016, K.M., a Senior Police Officer, Human Services, with Ancora Psychiatric Hospital, filed a complaint with the Office of Equal Employment Opportunity (EEO) alleging that the appellant discriminated against her on the basis of gender in violation of the State Policy. Specifically, K.M. alleged that the appellant addressed her as "hon" and referred to her as "overtime whore."<sup>1</sup> The EEO Office conducted an investigation and determined that the appellant admitted to referring to K.M. as an "overtime whore." Accordingly, the appellant received a written warning as a corrective measure.

On appeal, the appellant asserts that, in his 13 years of employment at DHS, he has been recommended for numerous commendations and, other than the EEO complaint in this matter, no other complaints have ever been filed against him. He asserts that, on the night of the incident, he had a discussion with K.M. pertaining to her overtime shifts, and she complained that she was falling behind with her reports and was being denied overtime. The appellant explains that he stated to K.M. that she was painting herself in a bad light, as he was aware that other

<sup>1</sup> It is noted that the record is unclear with regard to the exact date the appellant stated "overtime whore." It appears that the incident happened sometime in the summer of 2015.



officers had complained about her having multiple opportunities for overtime shifts. The appellant acknowledges that he stated to K.M. at the time that she was an "overtime whore." However, the appellant asserts that K.M. had no reaction when the comment was made.

Additionally, the appellant acknowledges that he admitted to the EEO investigator that he referred to K.M. as an "overtime whore." Further, the appellant contends that his use of the term "overtime whore" is not a gender specific term. In this regard, he states that it is a slang term that refers to an individual who works as much overtime as possible and generally complains when an opportunity to work overtime is missed. The appellant adds that it is reasonable to assume that, in her 10 years of employment as a Police Officer, K.M. had previously heard the term "overtime whore," and as such, should have been aware that it does not specifically apply to women. In support of his arguments, the appellant provides slang definitions for the term "overtime whore" that he obtained from various websites, such as Facebook, the Urban Dictionary, and a newspaper article.

Moreover, the appellant asserts that, during a meeting with K.M. and his supervisor on September 17, 2015 to address their deteriorating relationship, K.M. stated that she did not want the appellant to continue to refer to her as "hon." However, the appellant explains that he stated during the meeting that "I don't think I ever called [K.M.] 'hon' in the past but if I did, I apologize." In this regard, the appellant contends that he admitted to the EEO investigator that he only agreed that he may have said "hon" to avoid further conflict with K.M. As such, the appellant maintains that there is no evidence that he called her "hon" and he should not have been found to have violated the State Policy on that allegation. Additionally, the appellant questions why the EEO complaint was not filed until April 22, 2016, which is several months after the September 17, 2015 meeting and the incident that is the subject of this matter. He also states that he has continuously requested to review the investigative materials as a part of discovery, and he cannot file a proper appeal as his discovery requests have been denied. The appellant adds that he was reassigned as a result of the incident and, as a result, he and his family have been burdened by the reassignment. He also requests the EEO to conduct an investigation against K.M. for making an improper complaint.

In response, the EEO maintains that, in an e-mail K.M. sent to Sergeant D.F., she reported ongoing issues that she was experiencing with the appellant.<sup>2</sup> The EEO adds that K.M. subsequently reported the appellant's inappropriate remarks in the EEO complaint that is the subject of this matter. In this regard, K.M. reported that, in 2015, she and the appellant were in a patrol car during a shift and had a conversation about overtime, and he referred to K.M. as an

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<sup>2</sup> The EEO explains that Sergeant D.F. instructed K.M. and the appellant to cease contacting each other and advised them that any future communication was to go through him.

“overtime whore.”<sup>3</sup> The EEO conducted an investigation and the appellant admitted to the EEO investigator that he referred to K.M. as an overtime whore.<sup>4</sup> As such, the investigation substantiated that the appellant referred to K.M. as an “overtime whore.”

Additionally, the EEO asserts that Sergeant D.F. conducted a meeting on September 17, 2015, and K.M. stated during the meeting that she did not want the appellant to refer to her as “hon.” The EEO contends that the appellant stated during the meeting, “If I ever said that I apologize and it will never happen again.” Further, the EEO explains that the appellant stated that he only refers to K.M. by [her first name] and/or by “partner,” and he did not recall referring to her as “hon.” Moreover, the EEO states that K.M. recorded the conversation between herself and the appellant during the meeting on September 17, 2015. The EEO avers that the following conversation occurred between the appellant and K.M. in the recording of the September 17, 2015 meeting:

K.M.: While you’re here, I just want to let you know I don’t like it when you call me “hon.” I don’t like it at all, I’m your partner not your hon.

The appellant: inaudible

K.M.: [Y]ou call me hon a lot of times.

The appellant: Ok. I didn’t realize I was doing that.

K.M.: ... [Y]ou can call me officer ... hon or anything of the sort I don’t like it.

The appellant: Ok. I’m glad you told me.

K.M.: I know ok, I’m telling you now.

As such, based on the appellant’s admissions and K.M.’s recording, the EEO states that it was decided that the appellant did not absolutely deny that he referred to K.M. as “hon.” Accordingly, the allegation that the appellant referred to K.M. as “hon” was considered credible.

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<sup>3</sup> The EEO notes that K.M. acknowledged that there were no witnesses present in the patrol car at the time of the incident.

<sup>4</sup> The EEO indicates that the appellant stated to the EEO investigator that the term “overtime whore” is a gender neutral term.



## 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 expression, atypical hereditary cellular or blood trait, genetic information, liability for service in the Armed Forces of the United States, or disability. Additionally, *N.J.A.C.* 4A:7-3.1(b) states that it is a violation of this 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 set forth in(a) above. A violation of this policy can occur even if there was no intent on the part of an individual to harass or demean another.

Initially, the appellant requests access to the investigation report prepared in relation to the instant matter. The appellant argues that the report should be provided as a part of discovery as he cannot properly prepare his appeal without such information. In light of the voluminous and detailed submissions received from the parties, particularly the thorough and detailed summary of the investigation prepared by the appointing authority, the Civil Service Commission (Commission) does not find it necessary to compel production of the investigation report in this matter. The Commission is satisfied that the appellant has had a full opportunity to present evidence and arguments on his behalf, and the Commission has a complete record before it upon which to render a fair decision on the merits of the appellant's complaint. *See In the Matter of Juliann LoStocco, Department of Law and Public Safety*, Docket No. A-0702-03T5 (App. Div. October 17, 2005); *In the Matter of Salvatore Maggio* (MSB, decided March 24, 2004).

The Commission has conducted a review of the record in this matter and finds that it has been established that the appellant engaged in conduct in violation of the State Policy. Specifically, the EEO correctly concluded that the appellant violated the State Policy and made inappropriate comments to K.M. on the basis of her gender. The appellant admitted that he referred to K.M. as an "overtime whore," which is sufficient to substantiate K.M.'s complaint. Although the appellant argues that the term "overtime whore" is gender neutral and K.M. probably heard the term before, those arguments are of no moment. Clearly, K.M. perceived the comment as offensive on the basis of her gender. Even if the appellant used the term "overtime whore" within the context of discussing K.M.'s particular overtime situation, it does not excuse the fact that he made the offensive statement. The slang definitions the appellant submits on appeal do not overcome that his comments violated the State Policy. Even if the appellant used the term "overtime whore" within the context of its slang meanings in the definitions he



provided, his intent was irrelevant. Further, the regularly accepted definition of the word whore is "a prostitute," historically a pejorative term used toward women. See *Webster's II, New University Dictionary* (1988). Given the definition, the Commission finds that the comment "overtime whore" violates the State Policy. See *In the Matter of Joanne Cole* (MSB, decided November 4, 2004); *In the Matter of Alonzo Wade* (MSB, decided November 19, 2003).

Regarding the allegation that the appellant referred to the appellant as "hon," the EEO maintains that the appellant did not completely deny that he made the comment. It provides an excerpt from K.M.'s recording pertaining to the meeting that occurred on September 17, 2015. However, this does not conclusively establish that the appellant referred to K.M. as "hon." Nevertheless, the appellant actually *suggests* in this matter that he may have called the appellant "hon." In this regard, the appellant acknowledges on appeal that he said during the September 17, 2015 meeting that "I don't think I ever referred to the appellant as hon in the past but if I did, I apologize." Although the appellant argues that he only made the statement to avoid further conflict, he did not provide any witnesses or substantive evidence to show that he did not refer to K.M. as "hon." Based on the appellant's suggestion that he *may* have called K.M. "hon," the EEO's finding that the appellant implicitly admitted to making the remark is reasonable.

With respect to the appellant's argument that the EEO complaint was filed months after the incidents occurred, any delays in reporting the incidents do not establish that the investigation was improperly conducted. *N.J.A.C. 4A:7-3.2(a)* provides that all employees and applicants for employment have the right and are encouraged to immediately report suspected violations of the State Policy Prohibiting Discrimination in the Workplace. Further, *N.J.A.C. 4A:7-3.2(c)* provides that every effort should be made to report complaints promptly. Delays in reporting may not only hinder a proper investigation, but may also unnecessarily subject the victim to continued prohibited conduct. However, the Commission finds that the investigation was properly conducted, the evidence was reviewed, and the appellant admitted to the improper behavior. The State Policy is a zero tolerance policy, meaning that the State and its agencies reserve the right to take either disciplinary action, if appropriate, or other corrective action, to address any unacceptable conduct that violates this policy, regardless of whether the conduct satisfies the definitions under State or federal statutes of discrimination or harassment. See *In the Matter of George Mladenetz* (MSB, decided February 27, 2008).

Accordingly, the EEO Office's investigation of the complaint was thorough and impartial, and therefore, no basis exists to disturb the finding that the appellant violated the New Jersey State Policy Prohibiting Discrimination in the Workplace.

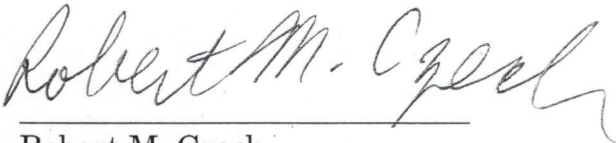
One final matter warrants comment. *N.J.A.C. 4A:7-3.2(d)* provides that supervisory employees shall immediately report all alleged violations of the State Policy to the EEO. Such a report shall include both alleged violations reported to a supervisor, and those alleged violations directly observed by the supervisor. In this matter, the EEO explains that K.M. informed her supervisor, Sergeant D.F., of her concerns that are set forth in this matter. However, the record in this matter is unclear if Sergeant D.F. reported K.M.'s concerns to the EEO. If it has not already done so, the EEO must remind Sergeant D.F. of his supervisory obligation to immediately notify the EEO when he is in receipt of any future complaints.

### 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 8<sup>th</sup> DAY OF FEBRUARY , 2017



Robert M. Czech  
Chairperson  
Civil Service Commission

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c: D.K.  
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