



STATE OF NEW JERSEY

**FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION**

In the Matter of A.H. New Jersey
State Parole Board

Discrimination Appeal

CSC Docket No. 2017-1761

ISSUED: MARCH 28, 2018

A.H., a Senior Parole Officer with the New Jersey State Parole Board (NJSPB), represented by Michael A. Bukosky, Esq.,¹ appeals the determination of the Vice-Chairman, NJSPB, 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).

On July 8, 2016, the appellant filed a complaint with the Office of Equal Employment Opportunity (EEO) alleging that, starting in 2014, she had been subjected to a hostile work environment, sexual harassment, retaliation and gender discrimination by several current and former superior officers with regard to: her treatment by a former supervisor who held closed door meetings with her on non-work related items; assigning her all parolees who had computer monitoring requirements; denying her requests for a reassignment to a female Sergeant; and revoking her caseload and assigning her new cases which were understood to be “less desirable.” She also asserted, in relevant part, that during a conversation in July 2015, a male Senior Parole Officer, B.G. told her that, during a wedding of a co-worker, Captain E.R. and former Sergeant R.A., both male, told B.G. that the appellant “has sex with everybody,” that “she has sex in the bathrooms at Atlantic City” and that “she will probably have sex with you.”

¹ The appeal letter indicates that the PBA Local No. 326, joins the appellant in her instant appeal.

In response to the complaint, the EEO conducted an investigation and determined that, with regard to the appellant's allegations concerning her work assignments and reporting relationships, there was an insufficient basis to find that she had been subjected to a hostile work environment, sexual harassment, retaliation and gender discrimination. With regard to the comments allegedly made by E.R. and R.A., the EEO noted that the appellant did not have any personal knowledge of the statements, as she was told about them by another individual. The EEO also noted that no reports or complaints were made at the time that the alleged comments were actually made. With respect to the comments told to her by B.G., the EEO found that she did not have personal knowledge of the alleged comments, that she heard these comments from another officer who told her to talk to Senior Parole Officer D.B., that no personnel reported or complained of the alleged conversation to any supervisor in July 2015, and that the appellant did not raise the allegations about these comments until July 8, 2016. Further, the EEO found that the "conversation involved general teasing" of B.G., none of which was inappropriate and of a sexual nature as participant and witness accounts did not corroborate that inappropriate comments of a sexual nature were stated about the appellant by E.R. or R.A. Moreover, the EEO noted that the witness indicated that E.R. and R.A. were professional and did not hear them make "inappropriate comments in the workplace." Specifically, the EEO explained that the conversation was reportedly how B.G. wanted to attend a wedding, but was initially not invited, and personnel accounts of the conversations did not corroborate the appellant's allegations that inappropriate comments of a sexual nature were stated about the appellant by E.R. and/or R.A. The EEO also found that there was no corroborating evidence in support of the appellant's allegations that E.R. or R.A. made inappropriate comments of a sexual nature about the appellant.

On appeal, the appellant provides a copy of the complaint she filed with the Chairman of the State Parole Board that prompted the EEO investigation, but does not make any specific arguments as to which portions of the EEO's November 4, 2016 determination that she disagrees with.

In response, the EEO reiterates that its investigation did not substantiate the appellant's allegations and it notes that on appeal, the appellant has merely reiterated her original allegations. Therefore, it indicates that it will "rely" on its original determination letter in this matter.

In response, the appellant argues that she is currently seeking legal avenues to obtain statements from B.G. and D.B., who she claims are key witnesses in her case, and that their testimony will be provided as soon as the parties are able to schedule and provide testimony via deposition. She also notes that the EEO's failed to provide a report or transcript of the investigation for the Civil Service Commission (Commission) to review. In this regard, the appellant questions the thoroughness of the EEO's investigation as it only provides generalities and vague

conclusions to bolster its determination. For example, the EEO notes that its conclusions were based on “witness testimony” but does not elaborate who the witnesses are, or even if they are in a same or similar position as the appellant. Moreover, the EEO fails to indicate why their “testimony” should be given weight or what basis was used to establish their credibility. Additionally, the appellant argues that the EEO’s investigation does not appear to have been in-depth as it appears they merely accepted the answers given without any further questioning. The appellant maintains that the failure to provide a competent, full, neutral investigation chills the effect of an employee filing a discrimination claim. Finally, the appellant questions the qualifications of the EEO Officer due, in part, to his failure to recognize the blatantly obvious serious situation the appellant complained of. In this regard, she points to her allegation that comments were made that she had “sex with everybody” and that she would probably have sex with a co-worker. Yet, the EEO Officer merely concluded that these statements were not sexual in nature and were instead “general teasing.” Therefore, the appellant requests that this matter be sent for a hearing.

In response, the EEO reiterates that its determination was the result of a “fair, impartial and thorough investigation” and that the appellant’s mischaracterizations and disparaging statements are without merit. Moreover, it reiterates that the appellant has failed to sustain her burden of proof and this matter should be dismissed.

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

The appellant requests a hearing in this matter. Discrimination appeals are generally treated as reviews of the written record. *See N.J.S.A. 11A:2-6(b)*.

Hearings are granted in those limited instances where the Commission determines that a material and controlling dispute of fact exists which can only be resolved through a hearing. *See N.J.A.C. 4A:2-1.1(d)*. The Commission has reviewed this matter, as explained below in more detail, does not find it is necessary to refer this matter for a hearing, and concludes that the appellant has not established that she was subjected to discrimination in violation of the State Policy.

At the outset, *N.J.A.C. 4A:7-3.2(m)* states, in pertinent part, a complainant who disagrees with the determination of the State agency head or designee may submit a written appeal within 20 days of the receipt of the final letter of determination and include all material presented by the complainant at the State agency level, the final letter of determination, the reason for the appeal, and the specific relief requested. The appellant's appeal to the Commission does not challenge any specific finding in the EEO's November 4, 2016 determination letter. Rather, the appellant's December 5, 2016 appeal of the EEO's November 4, 2016 determination to the Commission is verbatim the same document that she filed with the Chairman of the State Parole Board dated July 8, 2016 that initiated the EEO investigation. While it is evident that the appellant disagrees with the EEO's determination, the burden of proof is on the appellant in discrimination appeals brought before the Commission and she has failed to even initially point out any area of the EEO's November 4, 2016 determination to suggest that the EEO's investigation was not thorough and impartial, or that the record supported a finding that there was a violation of the State Policy. *See N.J.A.C. 4A:7-3.2(m)4*. Therefore, on these grounds alone, the appellant's appeal is to be dismissed.

Although the appellant's appeal is dismissed on procedural grounds, there is no merit to the appellant's argument that the EEO determined that the alleged sexual statements were simply "general teasing" as it was never corroborated that the asserted statements were made by E.R. and/or R.A. Initially, in its response to the appellant's appeal, the EEO indicated that it would rely on its 11 page determination letter in this case as her appeal essentially raised the same issues that had already been investigated. In response to the EEO's submission, for the first time, the appellant then only questions if statements made by B.O. and D.B. during the investigation provided a complete set of facts and indicates that she is seeking to obtain testimony from them via deposition. In particular, she asserted that E.R. or R.A. made comments to B.G. that she has "sex with everybody" and that "she has had sex in the bathrooms at Atlantic City" and that "she will probably have sex with you," but that the EEO's determination simply defined this as "general teasing." She also challenged the EEO's qualifications. Notwithstanding the fact the investigation found that participant and witness accounts of the conversation did *not* corroborate the allegation that inappropriate comments of a sexual nature were stated about the appellant by E.R. and R.A., the EEO determination clearly explained that the "general teasing" was about how B.G. wanted to attend the wedding but was not initially invited. There is no suggestion

in the determination that the investigation found that the statements she has “sex with everybody” and that “she has had sex in the bathrooms at Atlantic City” and that “she will probably have sex with you,” were even made or that the EEO simply defined such alleged statements as “general teasing.”

The Commission has significant concerns with respect to the appellant’s delay in filing her initial complaint to the EEO. The appellant ultimately argues in her response to the Commission that the failure to provide a competent, full, neutral investigation chills the effect of an employee filing a discrimination claim. However, it cannot be ignored that the appellant alleged in her July 8, 2016 complaint to the Chairman of the State Parole Board that “in July of 2015” comments were made to B.G. and several other witnesses that she has “sex with everybody” and “has had sex in the bathrooms at Atlantic City” and “that she will probably have sex with you” but “agreed to forebear from instituting a formal complaint” based on an informal discussion with the employer. In other words, the appellant claims, without providing any substantiation, that both her and the employer were aware of the alleged situation implicating the State Policy but opted *not* to report these suspected violations to the EEO. Even assuming *arguendo* that this claim is true, the Commission underscores that neither the appellant nor any supervisory staff have the option not to report a suspected violation of the State Policy. The Commission must emphasize that *N.J.A.C.* 4A:7-3.2(a) states, in pertinent part, that all employees have the right and are encouraged to immediately report suspected violations of the State Policy. *N.J.A.C.* 4A:7-3.2(c) states 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. More significantly, *N.J.A.C.* 4A:7-3.2(d) states that supervisory employees shall immediately report all alleged violations of the State Policy and shall include those reported to a supervisor, and those alleged violations directly observed by the supervisor.

In this case, the appellant appears to have been aware of the alleged hearsay statements in July 2015. However, it was not until July 2016 that she asked to have an investigation conducted regarding the alleged hearsay statements that occurred one year prior to her filing a formal EEO complaint. While an investigation was conducted, including witness interviews, there is nothing in this record to corroborate her assertions that the alleged utterances about her were made. Further, it is the appellant’s excessive delay in reporting suspected violations of the State Policy that would have hindered a thorough and impartial investigation. Thus, her questioning of the thoroughness of the investigation on this point, assertion that failure to conduct a full neutral investigation chills employees from filing discrimination complaints, and requesting a hearing to solicit testimony to bolster this particular allegation, for the first time in a rebuttal appeal submission dated February 6, 2017, cannot be countenanced. Significantly, the appellant did not even raise her various allegations of incidents in 2014 and 2015 to

the EEO when E.R. returned from his leave on or about March 1, 2016. Rather, she posits that when K.A., a Sergeant and asserted minion of E.R., was assigned to supervise her in June 2016 three months after E.R.'s return from leave, K.A. retaliated against her on behalf of E.R. for the earlier complaints she never reported to the EEO when K.A. made various organizational changes in her work unit. In short, there is nothing to even remotely corroborate that the alleged crude statements were even made or that the appellant's work assignments were changed in June 2016 after she allegedly agreed not to file an EEO complaint of the incidents for which she is claiming retaliation that allegedly occurred sometime in 2014 and 2015.

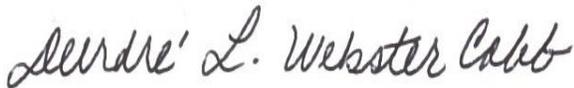
Accordingly, the Commission finds that the EEO's investigation was thorough and impartial, and the record does not support a finding that there was a violation of the New Jersey State Policy Prohibiting Discrimination in the Workplace.

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
27TH DAY OF MARCH, 2018



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