

B-18



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of M.F.,
Department of Human Services

CSC Docket No. 2014-2085

Discrimination Appeal

ISSUED: **NOV 21 2014** (WR)

M.F., a Human Services Assistant with the Woodbine Developmental Center (Woodbine), Department of Human Services, appeals the attached determination of the Director of the Office of Equal Employment Opportunity (EEO), stating 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).

The appellant, a female, filed a discrimination complaint alleging that L.H., a male, sexually harassed her by "constantly touching [her] and making inappropriate comments." Specifically, she alleged that L.H. rubbed her shoulders. She also alleged that other coworkers gave her the "cold shoulder" and called her a "snitch" due to a fire drill and police coming to her workplace. In response, the appointing authority conducted an investigation in which it was unable to substantiate the appellant's sexual harassment claim because L.H. denied it and there were no witnesses. The investigation also determined that the appellant's claim of being given the "cold shoulder" and labeled a snitch by her coworkers did not implicate the State Policy.

On appeal to the Civil Service Commission (Commission), the appellant states that she alleged that L.H. "did more than just [sic] [her] shoulder." She states that since the incident at issue, she has been "verbally abused, intimidated, [has received] threatening phone calls" and has had her car vandalized. Finally, the appellant contends that the appointing authority concluded its determination too fast and requests a fair hearing and a meeting with EEO Director Edward McCabe

and Woodbine CEO Robert Armstrong. In support of her appeal, the appellant submits a copy of the incident statement she filed.

In response, the EEO reiterates the allegations from the appellant's complaint and states that its subsequent investigation was unable to substantiate the appellant's claim because L.H. denied harassing her and there were no other witnesses. During the investigation, the EEO states that L.H., who had previously worked in the same unit as the appellant, was re-assigned to another unit pending the outcome of the investigation. Additionally, the EEO disputes the appellant's contention that it issued its determination too quickly, claiming that it conducted a thorough investigation. The EEO also contends that the appellant's initial allegation of retaliation does not implicate the State Policy. Finally, the EEO states that the appellant's allegations of retaliation will be investigated as a separate matter.

CONCLUSION

Initially, the appellant requests a hearing in the matter. However, 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)*. No material issue of disputed fact has been presented which would require a hearing. *See Belleville v. Department of Civil Service, 155 N.J. Super. 517 (App. Div. 1978)*.

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. *N.J.A.C. 4A:7-3.1(b)* states in part a violation of this policy can occur even if there was no intent on the part of an individual to harass or demean another. Further, 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)*. Moreover, the appellant shall have the burden of proof in all discrimination appeals. *See N.J.A.C. 4A:7-3.2(m)3*.

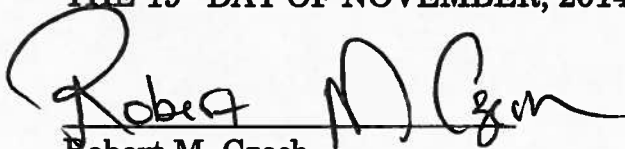
The Commission has conducted a review of the record and finds that a thorough investigation was conducted. The EEO interviewed L.H., who denied harassing the appellant. As there were no other witnesses to the alleged events, the investigation found the appellant's allegations were unsubstantiated. On appeal, the appellant offers no evidence to support her allegation. Rather, she states that she has been subject to further retaliation. However, the appellant's initial claims of retaliation do not implicate the State Policy and the EEO indicates that it is addressing her new retaliation claims. The appellant also contends that the EEO reached its decision too quickly. As previously noted, however, the EEO conducted a thorough investigation, and the appellant provides no evidence to the contrary on appeal. Finally, the Commission observes that it lacks jurisdiction to grant the appellant's request for a meeting with Messrs. Edward McCabe and Robert Armstrong. Therefore, the appellant has failed to meet her burden of proof in this matter. See *N.J.A.C. 4A:7-3.2(m)3*. Accordingly, under these circumstances, no basis exists to find a violation of the State Policy.

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 19th DAY OF NOVEMBER, 2014



Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Henry Maurer
Director
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Attachment

c: **M.F.**
Edward McCabe
Mamta Patel
Joseph Gambino

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State of New Jersey
DEPARTMENT OF HUMAN SERVICES
PO Box 700
TRENTON NJ 08625-0700

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

JENNIFER VELEZ
Commissioner

February 14, 2014

M [REDACTED]
[REDACTED]

Dear Ms. F [REDACTED]

On December 31, 2013, you filed a Letter of Complaint alleging discrimination based upon sexual harassment against L [REDACTED] H [REDACTED], a Behavior Support Technician (BST) at Woodbine Developmental Center (WDC). Specifically, you reported that he rubbed your shoulders when it was unwelcome.

The Department of Human Services (DHS) neither condones nor tolerates any form of discriminatory behavior in the workplace. Accordingly, the Office of Equal Employment Opportunity (EEO) assigned the matter to Bernice Eckard for investigation.

After a thorough investigation of your concerns, your allegation against Mr. H [REDACTED] was unsubstantiated because Mr. H [REDACTED] denied it and there were no witnesses.

If you disagree with this determination, you have the right to file an appeal with the Civil Service Commission within twenty (20) days of your receipt of this letter. The appeal must be in writing, state the reason(s) for the appeal, and specify the relief requested. Please include all materials presented at the department level and a copy of this determination letter with your appeal. The appeal should be submitted to the Division of Appeals and Regulatory Affairs, P.O. Box 312, Trenton, N.J. 08625-0312.

Please be advised that pursuant to P.L. 2010, c.26, effective July 1, 2010, there shall be a \$20 fee for appeals. Please include the required \$20 fee with your appeal. Payment must be made by check or money order only, payable to the NJ CSC. Persons receiving public assistance pursuant to P.L. 1947, c. 156 (C.44:8-107 et seq.), P.L. 1973, c.256 (C.44:7-85 et seq.), or P.L. 1997, c.38 (C.44:10-55 et seq.) and individuals with established veterans preference as defined by N.J.S.A. 11A:5-1 et seq. are exempt from these fees.


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M [REDACTED] F [REDACTED]

At this time, I would like to remind you that the State Policy prohibits retaliation against any employee who files a discrimination complaint or participates in a complaint investigation. Furthermore, this matter remains confidential and the results of the investigation should not be discussed with others.

Should you have any questions, please contact the DHS Office of EEO at (609) 292-2816 or 292-5807.

Sincerely,



Edward M. McCabe
Acting EEO Director

EMM

cc: Beth Connolly, Chief of Staff
Robert Armstrong, CEO
Mamta Patel, CSC

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