

B-21

STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of K.B., Department of
Corrections

CSC Docket No. 2014-2745

Discrimination Appeal

ISSUED: JUL 30 2014 (SLK)

K.B., a Senior Correction Officer with the Department of Corrections (DOC), appeals the attached decision of the Equal Employment Division (EED), which found that the appellant did not present sufficient evidence to support a finding that he 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 filed a complaint alleging discrimination based upon race and age. Specifically, he alleged that in June 2013 Correction Sergeant D.D. told him that the appellant reminded him of his neighbors to whom he does not speak because they are ignorant. The appellant also claimed that D.D. told him that he thinks he is too good for his job, had him pulled from his assignment in the Tower, and intentionally bumped into him and referred to him as a "young punk." Further, the appellant asserted that D.D. continually refers to him and other officers with less time in the DOC as, "young guys, babies and kids," does not respect him and the younger officers because they are inexperienced; and makes disparaging remarks about the younger officers. Lastly, he appellant alleged that D.D. orders him to perform his duties while D.D. watches television and laughs at him. The EED conducted an investigation, including interviewing witnesses and documentation, and was unable to corroborate the appellant's allegations. The EEO found that even though several witnesses indicated that many officers do not get along with D.D., the challenges of working with him do not touch the State Policy. Further, while several witnesses confirmed and D.D. acknowledged that he does refer to officers with fewer years of service as "young", they did not confirm the allegation that D.D. calls officers, "babies" and "kids". Furthermore, D.D. denies that he engaged in behavior that violates the State Policy.

On appeal, the appellant asserts that since all the witnesses that he listed were not interviewed, the investigation was not thorough. He highlights that D.D. admitted to referring to others and him as "young." The appellant argues that "young" is a harassing term because D.D. uses it to harass, belittle, talk down, and embarrass officers which creates an uncomfortable and hostile work environment. He states that "young" is not his name and he should not be called or referred to as "young." The appellant also requests all information collected during the investigation.

In reply, the EED states that appellant named numerous witnesses which resulting in it asking him what pertinent information each of the witnesses would provide to the investigation. Based on this information, the EED interviewed the witnesses who possessed relevant and non-repetitive information along with two others who were randomly selected. The EED asserts that a thorough investigation does not require that it interview every witness particularly where a witness is providing duplicate or non-relevant information. Therefore, the investigator reviewed the list of witnesses and concluded that all the pertinent information could be secured from eight of the named witnesses. Additionally, the EED represents that the investigation did confirm that D.D. calls officers with less seniority as "young" and "young fella." However, it determined that this reference did not rise to the level of a violation of State Policy. Despite its determination that D.D. did not violate the State Policy, the appointing authority did take remedial action and counseled D.D. that he must refrain from references which may be construed as offensive by others.

CONCLUSION

N.J.A.C. 4A:7-3.1(a) states, in pertinent part, that employment discrimination or harassment based upon protected categories, such as race and age, is prohibited and will not be tolerated.

N.J.A.C. 4A:7-3.1(g) states, in pertinent part, that all investigations, to the extent possible, shall be handled in a manner that will protect the privacy interests of those involved. Confidentiality shall be maintained throughout the investigatory process.

N.J.A.C. 4A:7-3.2(i) provides that at the EED/AA Officer's discretion, a prompt, thorough, and impartial investigation into the alleged harassment or discrimination will take place.

N.J.A.C. 4A:7.3-2(m)3 states, in pertinent part, that the appellant shall have the burden of proof in all discrimination appeals.

Initially, the appellant requests all information collected during the investigation. However, in light of the submissions received from the parties, particularly the thorough and detailed summary of the investigation prepared by the EED, 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 the appellant has not established that D.D. discriminated against him on the basis of his race or age. With regard to the appellant's claim that D.D. has created an uncomfortable and hostile work environment by referring to him and other officers with fewer years of service as "young," the investigation was unable to confirm that D.D. refers to officers with fewer years of service as "babies" or "kids." Although the investigation did confirm that D.D. refers to officers with less seniority as "young" and "young fella," use of the word "young" is not a *de facto* violation of the State Policy, unless other supporting factors substantiating a violation are present. *See In the Matter of Susan Guerrini* (CSC, decided October 17, 2012). Accordingly, as the EED's investigation did not find any evidence that D.D. targeted the appellant for harassment or any other corroborating evidence, this reference did not rise to the level of a violation of State Policy. With respect to the allegations concerning various other comments allegedly made by D.D., such as comparing the appellant to his neighbors, even if true, while these statements and conduct may be unprofessional, they do not touch on the State Policy. Regardless, the DOC took remedial action against D.D. in the form of verbal counseling, advising him to refrain from references which may be construed as offensive by others.

In reference to the appellant's comments that the EED's investigation was not thorough since it only interviewed 10 of the witnesses that the appellant named¹, under *N.J.A.C. 4A:7-3.2(i)*, the EED has discretion on how to conduct the investigation. The EED presents that it had asked the appellant to provide what pertinent information each witness could provide. Based on the appellant's responses, it determined that there were eight witnesses who had relevant and non-repetitive information and also randomly interviewed two additional witnesses

¹ The EED's determination letter indicates that the appellant named 19 witnesses for the investigation. The EED's response to the appeal indicates that the appellant named 17 witnesses for the investigation.

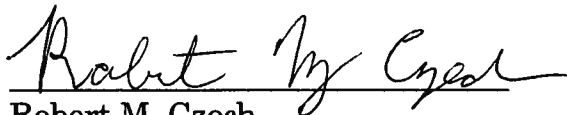
named by the appellant. It also interviewed D.D. who denied the allegations and believed that the reason the appellant filed the complaint was in response to an incident where the appellant was pulled from his post and written up due to a performance issue. The appellant has not provided any information that a potential witness who was not interviewed could have provided to the investigation that could have altered its findings. Accordingly, the Commission finds that appellant failed to support his burden of proof and no basis exists to find 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 30th DAY OF JULY, 2014



Robert M. Czech
Chairperson
Civil Service Commission

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and
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Attachment

c: K.B.
James Mulholland
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State of New Jersey
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CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

GARY M. LANIGAN
Commissioner

April 17, 2014

K [REDACTED] B [REDACTED]
[Mailed to Home Address]

Dear Mr. B [REDACTED]:

The Equal Employment Division (hereinafter "EED") has completed its review of your complaint wherein you allege that you have been subjected to discrimination/harassment based on race and age by Sergeant D [REDACTED] D [REDACTED] (hereinafter "Sgt. D [REDACTED]"). Please be advised that the EED was unable to substantiate a violation of the *Policy Prohibiting Discrimination in the Workplace* by Sgt. D [REDACTED]. However, the matter is being returned to New Jersey State Prison (hereinafter "NJSP") for administrative action.

Please be further advised that you allege that you are a five day ASOP officer assigned to NJSP. You allege that Sgt. D [REDACTED] has subjected you to on-going harassment based on your race and age. Specifically, you allege the following: (1) in June 2013, during a conversation with Sgt. D [REDACTED], he advised you that you reminded him of his neighbors to whom he does not speak because they are ignorant; (2) in October 2013, during a conversation with Sgt. D [REDACTED] about making rank, you advised him that you have two degrees, and he responded that his son, also, has two degrees and that you think you are too good for this job; and (3) in January 2014, Sgt. D [REDACTED] had you pulled from your assignment in the Tower, and intentionally bumped into you and referred to you as a "young punk." Further, with regard to your age, you contend that Sgt. D [REDACTED] (1) continually refers to you and other officers with less time in the Department as, "young guys, babies and kids"; (2) does not respect you and the younger officers because you are inexperienced; and (3) constantly points to the years of service stripes on his uniform sleeve and makes disparaging remarks about the younger officers. Lastly, you allege that Sgt. D [REDACTED] orders you to do his duties while he watches television, and that he recently saw you sitting on the second floor and laughed at you as he walked past.

Moreover, the Department of Corrections takes all allegations of violations of the *Policy* seriously and such conduct will not be tolerated by the Department. The EED conducted a thorough investigation which included interviews with the witnesses named by you. Please note that you named 19 witnesses for this investigation. After the EED Investigator obtained a proffer from you of the information each witness would provide, it was determined that only the 10 witnesses who had information pertinent to the investigation

would be interviewed. However, there was no evidence, through witnesses or otherwise, to corroborate the allegations that Sgt. Denson targeted you for harassment based on race and/or age. Rather, several witnesses advised that many officers do not get along with Sgt. Denson. However, the challenges of working with him do not touch the *Policy*. In addition, while several witnesses confirmed, and Sgt. Denson acknowledged, that he does refer to officers with fewer years of service as "young," they did not confirm the allegation that Sgt. Denson calls officers, "babies" and "kids." Moreover, Sgt. Denson was interviewed for this investigation. He denies engaging in behavior which violates the *Policy*. Sgt. Denson is of the belief that this complaint stems from the January 2014 Tower incident wherein you missed the security call-in check two times within a one hour period, and consequently, you were pulled from the Tower and written up.

Based on the foregoing, the EED was unable to substantiate a violation of the *Policy* by Sgt. Denson. However, this matter is being returned to NJSP for administrative action.

If you wish to appeal this determination, you must submit a written appeal to the New Jersey Civil Service Commission, Division of Merit System Practices & Labor Relations, Written Record Appeals Unit, P.O. Box 312, Trenton, New Jersey 08625-0312, postmarked or delivered within twenty (20) days of your receipt of this determination. The burden of proof is on the Appellant. Your appeal must include a copy of this determination, the reason for the appeal and the specific relief requested. 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 a check or money order along with your appeal, payable to NJCSC. Persons receiving public assistance and those qualifying for NJCSC Veterans Preference are exempt from this fee.

At this time, the EED also reminds you that the *Policy Prohibiting Discrimination in the Workplace* prohibits retaliation against any employee who files a discrimination complaint or participates in a complaint investigation or opposes a discriminatory practice. Furthermore, this matter remains confidential and the results of the investigation must not be discussed with others.

Sincerely,



Leila Lawrence, Esq., Assistant Director
Equal Employment Division

APPROVED: 
Gary M. Lanigan
Commissioner

c: Antonio Campus, Associate Administrator/ASL

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