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STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of N.J., Department of
Human Services

Discrimination Appeal

CSC Docket No. 2014-1980

ISSUED: SEP 18 2014 (HS)

N.J., a Cottage Training Supervisor with the Department of Human Services, appeals the attached determination of the Acting EEO Director, which found sufficient evidence that the appellant had violated the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy).

M.P., an Assistant Supervisor of Resident Living (Developmental Disabilities) with Vineland Developmental Center (VDC), filed a complaint with the Office of Equal Employment Opportunity (EEO) against the appellant, alleging discrimination on the basis of affectional/sexual orientation. M.P. alleged that the appellant had posted discriminatory remarks about VDC employees on social media. After an investigation was conducted, the EEO determined that there was a violation of the State Policy. Specifically, the EEO indicated that a witness and copies of Facebook entries corroborated the allegation. As a result, the EEO referred the matter for appropriate administrative action.¹

On appeal to the Civil Service Commission (Commission), the appellant asserts that she is not sure why M.P. would feel that the appellant had discriminated against her since the appellant has never expressed having an issue with M.P.'s sexual orientation and since the appellant is unaware of M.P.'s sexual orientation. The appellant argues that her Facebook entries were not intended to hurt anyone and that she was unaware that she was doing something wrong. The

¹ The appointing authority took corrective action based on the results of the EEO's investigation but did not take any disciplinary action against the appellant.

appellant claims that she was unaware that her "private and personal" page would be "exploit[ed]." The appellant apologizes for any offense she may have caused.

In response, the EEO reiterates that its investigation was thorough and complete and it had substantiated that the appellant violated the State Policy by discriminating against M.P. on the basis of sexual orientation. In this regard, it asserts that it conducted three interviews and reviewed 11 related documents. On April 11, 2013, D.T., an Assistant Supervisor of Professional Residential Services, Developmental Disabilities, advised M.P. of inappropriate comments the appellant had posted about VDC staff on her Facebook account on April 2, 2013. M.P., in turn, submitted copies of the Facebook entries to the EEO. The first entry, posted at 2:03 p.m., read as follows: "The heads at the VDC r the worst! They lie, steal time and money, and just rude terrible workers ... now who is my example ... the dike, the theif, or the liar" (sic). Her second entry, posted at 2:13 p.m., read as follows: "They walk around with walkie talkies like they better then people and got degrees ... bitch u passed a civil service test just like me" (sic). M.P. stated that, upon reading the entries, she knew that the appellant was referring to her since she was the only gay female at VDC who would be considered a "head at VDC" and walked around with a walkie talkie. On December 17, 2013, the EEO interviewed the appellant. Although the appellant initially denied making comments on Facebook regarding incidents at VDC, she admitted she had made the entries when shown copies of her entries. Still, the appellant denied that she was referring to any specific person. She further denied her awareness of M.P.'s sexual orientation and denied that she was referring to M.P. as "the dike" or to anyone as "bitch." V.V., a Cottage Training Supervisor, stated during her interview that she and the appellant were talking outside at work in the summer of 2013 when the appellant said to her, "you can't say anything because all of your friends are gay. You know that M.P. is gay." V.V. recalled that the appellant said, "I don't like her; that bitch is gay," and further stated that all of V.V.'s girlfriends and M.P. were "dikes." V.V. was asked if she told M.P. that the appellant said M.P. was a "dike" and a "bitch" and that the appellant hated M.P. Although V.V. did not remember exactly what she told M.P., she responded that it was something to that effect.

Additionally, the EEO contends that the appellant's statement that she did not understand why M.P. would accuse her of discrimination, based on her claimed lack of awareness of M.P.'s sexual orientation and her claim that she never expressed having a problem with M.P.'s sexual orientation, is not credible. In this regard, the EEO notes that the appellant admitted that she made the Facebook entries but stated that she was not referring to any particular person. Although the appellant did not use any employee's name in her entries, the EEO argues that her comments included enough information to permit VDC employees including M.P. to know, upon reading the entries, that the appellant was referring to M.P. as "the dike" and "bitch." The EEO further argues that the testimony of V.V., a credible witness, refutes the appellant's claim that she did not know about and did not have

an issue with M.P.'s sexual orientation. Finally, the EEO asserts that the appellant's claim that she did not intend to hurt anyone and was unaware that she was doing something wrong is not a defense. In this regard, the EEO notes that a violation of the State Policy, a zero tolerance policy, can occur regardless of an individual's intent.

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)*. It is a violation of the State 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. *See N.J.A.C. 4A:7-3.1(b)*. Moreover, the appellant shall have the burden of proof in all discrimination appeals. *See N.J.A.C. 4A:7-3.1(m)3*.

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 established that the appellant violated the State Policy. The EEO appropriately analyzed the available documents and conducted three interviews in investigating M.P.'s complaint and concluded that there was a violation of the State Policy based on M.P.'s sexual orientation. M.P. noted during the investigation that she knew the appellant's entries referred to her since she was the only gay female who would be considered a "head at VDC" and walked around with a walkie talkie. V.V. indicated that, during a conversation at work in the summer of 2013, the appellant stated that M.P. was gay and referred to M.P. as a "bitch" and a "dike." The conclusion that the appellant was referring to M.P. as a "dike" on Facebook was appropriate in light of the testimony of M.P. and V.V. Although the appellant claims that she did not intend to offend anyone, it is noted that *N.J.A.C. 4A:7-3.1(b)* provides, in pertinent part, that the State Policy may be violated regardless of an intent to harass or demean if the individual uses a derogatory reference regarding another individual's sexual orientation. In this regard, the investigation substantiated that the appellant referred to M.P. as a "dike" on Facebook and during a conversation at work with V.V. in the summer of 2013. Moreover, the appellant does not deny making the Facebook entries. While the appellant argues that her "private and personal" page was "exploit[ed]," the appellant employed a social media website to publicize comments that referred

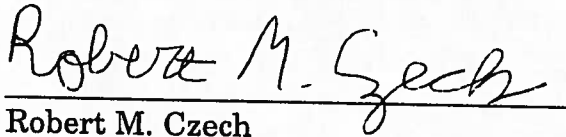
specifically to VDC, expressed personal issues with supervisors, and included the use of a derogatory term to describe another employee based on that employee's sexual orientation. Accordingly, the investigation was thorough and impartial, and no basis exists to disturb the EEO's determination.

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 17TH DAY OF SEPTEMBER, 2014



Robert M. Czech
Chairperson
Civil Service Commission

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and
Correspondence

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Attachment

- c. N.J.
Edward McCabe
Mamta Patel
Joseph Gambino



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

January 31, 2014

N. J. [REDACTED]
[REDACTED]
[REDACTED]

Dear Ms. J. [REDACTED]

On September 9, 2013, M. [REDACTED] P. [REDACTED] an Assistant Supervisor of Residential Living, Vineland Developmental Center (VDC), filed a Letter of Complaint against you, alleging discrimination based upon affectional/sexual orientation. Specifically, Ms. P. [REDACTED] alleged that you posted discriminatory remarks about VDC employees on social media.

The Department of Human Services (DHS) neither condones nor tolerates any form of discriminatory behavior in the workplace. Therefore, the Office of Equal Employment Opportunity (EEO) assigned B. [REDACTED] E. [REDACTED] from our office to conduct an investigation of the complaint. A witness and copies of Facebook entries obtained by EEO corroborated the allegations.

Based on the results of the investigation, it has been determined that you violated the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy). Consequently, the appropriate administrative and/or disciplinary action will be taken.

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.

However, if it is determined that disciplinary action will be taken, the procedures for the appeal of disciplinary action must be followed.

N [redacted] J [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
Edward M. McCabe
Acting EEO Director

EMM

C: Beth Connolly, Chief of Staff
Dave Thomas, CEO
Mamta Patel, CSC

NT OF HUMAN SERVICES
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