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STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Y.C., Department of
Children and Families

CSC Docket No. 2015-153

Discrimination Appeal

ISSUED: SEP 19 2014 (SLK)

Y.C., an Assistant Family Service Worker 2 with the Department of Children and Families (DCF), appeals the attached decision of the Office of Equal Employment Opportunity and Affirmative Action (EEO/AA), which found that the appellant did not 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).

By way of background, the appellant filed a complaint alleging sexual harassment. Specifically, she alleged that H.G., a Family Service Specialist 2, placed his hand on her shoulder while in the office on two occasions. The appellant informed the EEO/AA that she found H.G.'s actions to be uncomfortable and inappropriate. The investigation revealed that H.G. corroborated the allegation that he placed his hand on her shoulder on one occasion and both the appellant and H.G. confirmed that his touch was not sexual in nature. The investigation indicated that after the appellant advised H.G. not to touch her again, no subsequent incident occurred. The EEO/AA commented that intentional and unwanted touching is inappropriate for the workplace; however, based on the results of the investigation, it could not be substantiated that there had been a violation of the State Policy on the basis of sexual harassment. Furthermore, out of an abundance of caution, corrective action was taken to resolve the complaint.

On appeal, the appellant asserts that even though corrective action had been given to H.G., this did not justify him touching her. She highlights that H.G. agreed that he touched her on one occasion, but she states that he touched her twice and she complains that he only got a "slap on the wrist". She argues that the State has a no nonsense policy on harassment of any form and that she is not seeing the

State Policy being applied in this matter. As a comparison, she comments about a situation where there was a disagreement about a "lie that was told" that resulted in an eight day suspension.

The EEO/AA, despite being provided the opportunity, did not respond.

CONCLUSION

N.J.A.C. 4A:7-3.1(c)1 states, in pertinent part, that it is a violation of the State Policy to engage in sexual harassment of any kind. For purpose of this policy, sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature.

N.J.A.C. 4A:7-3.2(k) provides, in pertinent part, that if a violation has occurred, the State agency head or designee will determine the appropriate corrective measures necessary to immediately remedy the violation.

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.

The Commission has conducted a review of the record in this matter and finds that the appellant has not established that H.G. sexually harassed her. Under *N.J.A.C. 4A:7-3.1(c)1*, sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, and other verbal or **physical conduct of a sexual nature**. However, the investigation revealed that both the appellant and H.G. corroborated that his touch was not sexual in nature. Furthermore, the appellant has not provided any argument or evidence on appeal that contradicts the EEO/AA's findings. Consequently, since the physical conduct was not in a sexual nature, the EEO/AA appropriately determined that there was not a violation of the State Policy on the basis of sexual harassment. Additionally, with regard to the appellant's assertion that the corrective action that had been provided to H.G. was a "slap on the wrist", since the appointing authority did not find that a violation of the State Policy occurred, it did not have to take any action. Moreover, even if it had determined that a violation of the State Policy had occurred, under *N.J.A.C. 4A:7-3.2(k)*, it is within the appointing authority's discretion to determine the appropriate remedial action. Also, in reference to the appellant's comments regarding a suspension that was received in another matter, as each incident is evaluated independently by the appointing authority, the appointing authority's determination in that separate matter has no relevance to its determination in this matter.

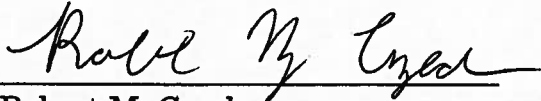
Accordingly, the Commission finds that the appellant failed to support her burden of proof and no basis exists to find a violation of the New Jersey State Policy Prohibiting Discrimination in the Workplace.

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 17th DAY OF SEPTEMBER, 2014**



**Robert M. Czech
Chairperson
Civil Service Commission**

**Inquiries
and
Correspondence**

**Henry Maurer
Director
Division of Appeals
and Regulatory Affairs
Civil Service Commission
Written Record Appeals Unit
P.O. Box 312
Trenton, New Jersey 08625-0312**

Attachment

**c: Y.C.
Jillian Hendricks
Laurie Hodian
Linda Dobron
Mamta Patel
Joseph Gambino**



State of New Jersey

DEPARTMENT OF CHILDREN AND FAMILIES

P. O. BOX 717

TRENTON, NJ 08625-0717

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

ALLISON BLAKE, PH.D., L.
Commissioner

June 19, 2014

Y [REDACTED] C [REDACTED]
[REDACTED]
[REDACTED]

Re: **Discrimination Complaint of January 29, 2014**
File No. 03-14

Dear Ms. C [REDACTED]

This letter is in reference to the sexual harassment complaint you filed against the Respondent (H [REDACTED] G [REDACTED] FSS2) with the Gloucester West Local Office, Department of Children and Families. We thank you for bringing your complaint to the Office of Equal Employment Opportunity and Affirmative Action (EEO/AA).

The Department of Children and Families (DCF) does not condone or tolerate any form of discriminatory behavior in the workplace. Therefore, pursuant to the *New Jersey State Policy Prohibiting Discrimination in the Workplace*, the Office of EEO/AA conducted an investigation.

Specifically, you alleged that the Respondent placed his hand on your shoulder while in the office on two occasions. You stated that you found his actions to be uncomfortable and inappropriate.

The investigation revealed that the Respondent corroborated the allegation that he placed his hand on your shoulder however the Respondent stated that it happened on one occasion. Both you and the Respondent corroborated that his touch was not sexual in nature. The investigation revealed that after you told the Respondent not to touch you again, no subsequent incident has occurred. Nonetheless, intentional and unwanted touching is inappropriate for the workplace.

Based on the results of the investigation, it could not be substantiated that there was a violation of the *New Jersey State Policy Prohibiting Discrimination in the Workplace* on the basis of

Yolanda Curtis
June 19, 2014
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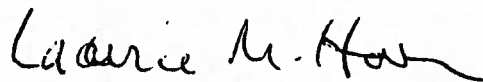
sexual harassment. However, out of an abundance of caution, corrective action was taken to resolve this complaint.

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 and Labor Relations, Written Record Appeals Unit, P. O. Box 312, Trenton, NJ 08625-0312, postmarked or delivered within 20 days of your receipt of this determination. Your appeal must include a copy of this determination, the reason for the appeal and the specific relief requested. Be advised that effectively July 1, 2010, there is 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, I would like to remind you that the *State Policy* prohibits retaliation against any employee or applicant for employment 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 Jillian Hendricks at the Office of EEO/AA at (609) 888-7177.

Very truly yours,



Laurie M. Hodian
Director of Administrations and Legal Affairs

cc: Jillian Hendricks, Director, EEO/AA-DCF
Mamta Patel, Director of EEO/AA, CSC
Betty Musso, Area Director, Gloucester, DCF
Crystal Page, Acting Manager, Gloucester West LO, DCF