

B-26



STATE OF NEW JERSEY

In the Matter of K.R.,
Department of the Treasury

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC Docket No. 2014-2028

Discrimination Appeal

ISSUED: SEP 05 2014 (JET)

K.R. an Assistant Ombudsman, Secured Facilities with the Department of the Treasury, appeals the attached determination of the Chief of Staff, Department of Human Services, which found that the appellant failed 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).

The appellant filed a complaint with the Office of Equal Employment Opportunity and Affirmative Action (EEO/AA) on January 15, 2014 alleging that religiously offensive posters were being displayed. Specifically, the appellant indicated that he verbally complained on January 13, 2014 to his supervisor, D.D., an Ombudsman, Secured Facilities, that he observed a poster at the Special Treatment Unit (STU), Ann Klein Forensic Center,¹ that indicated, "Hard work makes you free." The appellant added that the words were placed inside two triangles that resemble an iron cross which was a symbol of the Nazi regime. The appellant contended that the sign was offensive to him as a Jewish person because similar signs were placed at the entrances to Nazi concentration camps with the words "Arbeit macht frei."² The appellant also alleged in his EEO complaint that the Department of Corrections (DOC) and STU failed to take immediate corrective

¹ STU is part of Ann Klein Forensic Center, Department of Human Services, and provides psychiatric and psychological treatment to incarcerated sex offenders. Security is provided by the Department of Corrections. Dr. M.M. directs the STU and Dr. G.F. is the CEO of AKFC. The appellant is assigned to STU to address patient issues. He has an alternate reporting relationship with the Department of the Treasury and the Department of Corrections (DOC).

² The literal translation in English is "Work makes free."

action by removing the offending posters. After conducting an investigation, the EEO determined that the allegations did not implicate the State Policy. However, prior to conducting the investigation and in response to the appellant's concerns, the EEO noted that the posters were promptly taken down on January 14, 2014 and copies were sent to DHS EEO for review. Moreover, the EEO determined that the content of the posters did not constitute a violation of the State Policy.

On appeal, the appellant asserts that the posters should have been removed from STU at the time he complained about them. In this regard, he is concerned about DOC's and DHS's failure to immediately remove the signs from the workplace. The appellant adds that DOC and DHS are not excluded from immediately removing the signs as the State Policy applies to every agency. In this regard, DOC and DHS should have complied with the State Policy and immediately removed the signs since STU is jointly operated by those agencies. The appellant explains that all of the employees at STU are aware of their responsibilities under the State Policy as they receive a copy of it every year for review. In addition, the appellant indicates that "passing the buck" for removing the posters between DOC and DHS is a blatant violation of the State Policy.³ Moreover, the appellant avers that leaving the posters hanging at STU was unconscionable and contributed to "third party" discrimination.

Additionally, the appellant perceives the signs that were posted at STU as offensive. In this regard, he insists that the mere fact of his taking offense to the posters constitutes a violation and therefore they should have been immediately removed. The appellant asserts that the language on the signs can be interpreted as reminders of the Nazi concentration "death" camps, as the signs contain "flowery language, have the shape of a quadrangle rather than a triangle, and share the word "work" with a Nazi slogan. The appellant contends that since it is inappropriate to post sexually suggestive images in the workplace and to fly the Confederate flag on State property, then it is also inappropriate to place the posters that were the subject of his EEO complaint at STU. In addition, the appellant explains that the significance of the posters is clear and he does not characterize them as offensive on an impulse. In this regard, the appellant explains that the Holocaust was a significant event in history and should not be easily dismissed by the EEO. The appellant adds that several of his family members were victims of the atrocities of the Nazi concentration camps and the Holocaust. Moreover, the appellant contends that it was reasonable for him to perceive the posters as offensive based on his Jewish ancestry as they have a connection to the Holocaust.

The appellant contends that the EEO's determination is not objective, thoughtful, or fully researched, and he is disappointed with the outcome of the

³ The appellant contends that he advised Sergeant B.W., DOC, to remove the posters as he considered them offensive. Sergeant B.W. refused as she did not have the authority to remove the signs.

investigation. The appellant adds that the EEO failed to interview all the witnesses during the investigation. The appellant asserts that the EEO did not utilize all of the information that was provided by the appellant during the investigation, and the intent of the State Policy has not been upheld. In this regard, the appellant contends that the investigation and the determination are flawed.⁴

In response, the EEO maintains that there was no violation of the State Policy. Specifically, the EEO contends that it expeditiously conducted an investigation in response to the appellant's complaint. The EEO/AA explains that on January 13, 2014, the appellant verbally complained to his supervisor, D.D., that he was offended by a poster at STU that allegedly indicated "Hard work makes you free." In response, the appellant's supervisor notified the Department of the Treasury's EEO Officer, who notified DOC's EEO Officer, who notified the DHS's EEO Officer by e-mail on January 14, 2014. On January 14, 2014, the EEO instructed G.F., CEO, Ann Klein Forensic Center, to remove the posters. The EEO adds that Dr. M.M., Director of STU, removed the posters and sent copies of them to the EEO for review that same day. Thus, the EEO confirms that the posters were taken down on the day after the appellant complained about them. Moreover, the EEO confirms that the appellant did not file the EEO complaint until January 15, 2014, and the investigation was conducted within a reasonable amount of time after the appellant filed the complaint. Regarding the appellant's allegation that DOC and DHS failed to take immediate corrective action, the EEO notes that DOC had no authority to remove the posters. In this regard, DOC correctly referred the matter to DHS which had jurisdiction over the matter.⁵

Additionally, the EEO asserts that the content of the posters does not violate the State Policy. Specifically, the EEO contends that the appellant alleged that the posters indicated "Hard work makes you free" and that the words in the posters were placed inside two triangles that resembled an iron cross which was symbolic of the Nazi regime. After reviewing the posters, the EEO maintains that they do not resemble the signs that were posted over the Nazi concentration camps. In this regard, the EEO researched the signs that appeared near the entrances to the Nazi concentration camps. It found that those signs indicated "Arbeit macht frei," which in English means "Work makes free." It adds that triangles, quadrangles, or iron crosses did not appear in those signs. The EEO further explains that the iron cross has historically been used as a symbol for the German Army since before World War II. In contrast, the EEO confirms that the wording of the posters that appeared at STU indicated "The harder you work for something, the greater you'll feel when you finally achieve it. To prove that hard work pays off." (sic). The EEO states that the

⁴ The appellant requests relief in the form of letters of apology letters from DOC and DHS; he asks that training on the State Policy be provided for all DOC and DHS staff; allow those employees to tour the Holocaust Memorial Museum in Washington, D.C.

⁵ The DHS EEO Office immediately ordered the posters removed without examining them and the appellant then argued that his mere offense at the posters required more immediate action.

words "hard work pays off" are displayed inside two opposing irregular quadrangles and do not appear to be triangles as alleged by the appellant. Moreover, the EEO states that examination of the posters revealed that the only similarities between them and the Nazi signs was the word "work." Thus, the EEO determined that the posters in question did not contain any of the language from the Nazi signs except for the word "work."

Further, the EEO interviewed Dr. M.M. regarding the meaning of the posters in question. Dr. M.M. indicated that the posters were designed as an effort to encourage patients to work harder in their treatment programs. Dr. M.M. also stated that rehabilitation staff members and patients made the posters in preparation for an event that was scheduled on January 29, 2014 called "Hard work pays off." In addition, Dr. M.M. revealed that some of his relatives were victimized and killed during the Holocaust. Moreover, Dr. M.M. stated that he did not find the content of the posters offensive. The EEO explains that it used the "reasonable person" standard to determine if a similarly situated Jewish employee would be offended by the posters in question. In that regard, the EEO states that Dr. M.M. is a Jewish employee with relatives who died during the Holocaust and he does not view the posters as offensive. In fact, he asked to have the posters returned to their original locations at STU. Thus, the EEO determined that while there are certain *per se* violations that are commonly determined to be discriminatory, there was no such violation in this case as the posters in question would not be viewed as offensive to a reasonable Jewish employee. The EEO indicates that the appellant's perception of the posters in this case is not enough to substantiate a violation of the State Policy. The EEO adds that if perception was the only determining factor for an EEO violation, then any speech could potentially be a violation of the State Policy simply by the filing of an EEO complaint. Therefore, the EEO asserts that the determination that there was no violation of the State Policy was correct.

CONCLUSION

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. The appellant shall have the burden of proof in all discrimination appeals. *See N.J.A.C. 4A:7-3.2(m)(3)*.

Initially, the appellant argues that his complaint was not immediately investigated after he made a report to his supervisor. However, a review of the record reveals that the EEO responded to the appellant's complaint within a

reasonable amount of time. In this regard, the EEO confirms that staff at STU took down the posters on January 14, 2014 which was before the appellant filed the EEO complaint on January 15, 2014. The fact that the posters were not removed until the next day does not show that the EEO neglected to timely respond to his complaint. Although the appellant may have preferred that the posters be immediately removed by DOC staff, it is noted that DOC staff did not have the authority to remove them. In this regard, STU is jointly operated by DOC and DHS, and only DHS staff had the authority to remove the posters. Even if DOC personnel did have authority to remove the poster in question, as discussed more fully below, the content of the posters did not violate the State Policy. Thus, any delay in removing the posters in question is rendered moot since there is no evidence of a violation of the State Policy.

The Commission has conducted a review of the record in this matter and finds that the appellant has not established that there was a violation of the State Policy. The record reflects that the EEO conducted an adequate investigation. It interviewed the relevant parties in this matter and appropriately analyzed the available documents in investigating the appellant's claims. Specifically, the EEO determined that the posters in question did not constitute a violation of the State Policy. Based on the submissions of the parties, including the EEO's adequate description of the posters on appeal, the Commission is satisfied that there was no violation of the State Policy. Moreover, the appellant did not name any witnesses on appeal or provide any documentation that would somehow change the outcome of this matter.

In this matter, the appellant alleged that the posters in question contained the language "Hard work makes you free" and he was offended as it is similar to language that appeared on signs located near Nazi concentration camps. However, the EEO reviewed the posters that were the subject of the appellant's complaint and it determined that the language actually indicated "The harder you work for something, the greater you'll feel when you finally achieve it. To prove that hard work pays off." (sic). Moreover, the investigation found that there is no similarity between the posters in question and the Nazi signs. In this regard, the EEO researched the Nazi signs and compared them with the posters that are the subject of the appellant's complaint and found that the language that appeared on the Nazi signs indicated "Arbeit macht frei," which is translated in English as "Work makes free" or "Work makes you free." In contrast and as noted above, the posters that are the subject of the appellant's complaint did not indicate "Work makes you free." Further, the posters in question did not contain any symbols that suggested a connection with the Nazi signs. Rather, the only similarities between the posters in question and the Nazi signs was the word "work," which was not, in and of itself, sufficient to substantiate a violation of the State Policy. In this regard, the EEO was correct when it determined that it could not substantiate a *per se* violation based on the word "work." The word "work," on its face, does not establish a nexus

between the posters in questions and Nazi signs, or substantiate a violation based on the State Policy based on the protected categories.

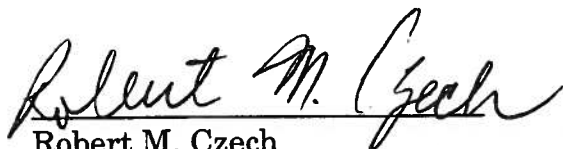
In regard to the appellant's claim that a violation should have been substantiated based on his perception alone, that argument is not persuasive. Based on the EEO's description of the posters in question, the Commission finds that the appellant's perception of the posters is not sufficient to substantiate a violation of the State Policy. Although the appellant may have perceived the posters in question as offensive, as noted above, he did not provide any substantive information to show some relationship between them and signs used by the Nazis. Further, the appellant did not provide any substantive information to show that the signs were used for any other purpose beside the treatment of the patients. Moreover, the Director of STU, who is of Jewish ancestry, was not offended by the posters and he confirmed that the posters are used in the treatment of patients. Thus, the EEO properly determined that the appellant's perception of the posters in question did not constitute a violation of the State Policy. Other than the appellant's allegations in this matter, he has failed to provide any substantive information to show that he was subjected to the violation based on the protected categories as listed above. Accordingly, the appellant has failed to meet his burden of proof in this matter and 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 3rd DAY OF SEPTEMBER, 2014



Robert M. Czech
Chairperson
Civil Service Commission

**Inquiries
and
Correspondence**

**Henry Maurer
Director
Division of Appeals
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P.O. Box 312
Trenton, New Jersey 08625-0312**

Attachment

**c: K.R.
Ed McCabe
Mamta Patel
Joseph Gambino**



2/25

State of New Jersey
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CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

JENNIFER VELEZ
Commissioner

February 3, 2014

K [REDACTED] R [REDACTED]
[REDACTED]
[REDACTED]

Dear Mr. R [REDACTED]:

On January 13, 2014, you complained verbally to your supervisor, D [REDACTED] D [REDACTED], that you observed a sign at the Special Treatment Unit (STU), Ann Klein Forensic Center, where you are assigned to work, that said, "Hard work makes you free." You contend that the sign is offensive to you as a Jewish person because a similar sign was placed at the entrances to Nazi concentration camps. You subsequently filed a Discrimination Complaint Form on January 15, 2014, additionally alleging that the Department of Corrections (DOC) and STU failed to take immediate corrective action by removing the offending posters. Mr. D [REDACTED] reported the matter to D [REDACTED] L. W [REDACTED] C [REDACTED] EEO Officer, Department of Treasury, who in turn notified V [REDACTED] K [REDACTED] Director of the Equal Employment Division, DOC, who notified the Department of Human Services (DHS) EEO Office by e-mail on January 14, 2014.

The Department of Human Services neither condones nor tolerates any form of discriminatory behavior in the workplace. Accordingly, the matter was assigned to E [REDACTED] M. M [REDACTED], Acting EEO Director, for investigation.

After a thorough investigation of your concerns, the Office of EEO did not substantiate that your allegations violate the State Policy Prohibiting Discrimination in the Workplace (EEO Policy).

Regarding your allegation that TPU displayed an impermissible religiously offensive poster, Mr. D [REDACTED] said you originally alleged to him that the offending posters said, "Hard work makes you free." You alleged that this is similar to the sign that appeared over most Nazi concentration camp entrances that said, "Arbeit macht frei." The literal translation from German is, "Work makes free." In English it is understood to mean, "Work makes you free." In your complaint, you stated that the words are placed inside two triangles that resemble an iron cross, which you contend was a symbol of the Nazi regime.

Dr. M [redacted] M [redacted], Director of STU, contends that the posters are motivational efforts designed to encourage patients to work hard in their treatment programs and jobs. He said the posters were constructed by vocational rehabilitation staff and patients in preparation for a January 29 event called, "Hard Work Pays Off." Dr. M [redacted] sent copies of five posters to our office.

Examination of the posters revealed that they say, "The harder you work for something, the greater you'll feel when you finally achieve it. To prove that hard work pays off." (sic) The words, "Hard work pays off," are displayed inside two opposing irregular quadrangles, not triangles as stated by you.

The signs that typically appeared over Nazi concentration camp entrances only contained the words, "Arbeit macht frei," with no triangles, quadrangles, or iron crosses. The iron cross was used by Germany as a symbol for their army before, during, and after the Nazi era and is currently in use as the symbol for Germany's army. We see no similarity between the posters at STU and the Nazi sign except for the word, "work."

When investigating issues of speech that could potentially violate the EEO Policy, we agree that there are certain *per se* violations that are commonly thought to be discriminatory. This is not such a case. Here, we use a "reasonable person" standard and determine if a similarly situated employee (Jewish) would reasonably be offended. We do not believe this poster is offensive to a reasonable Jewish employee. In that regard, Dr. M [redacted] asks to have the posters returned to their original locations.

Regarding your allegation that DOC and DHS failed to take immediate corrective action, DOC had no authority to remove the posters. The DOC correctly referred the matter to DHS, who has jurisdiction since the posters are located within a DHS facility. In an abundance of caution, the DHS EEO Office immediately ordered the posters removed without examining them. The posters were removed the day after you complained. You then argued that your mere offense at the posters required more immediate action. An examination of the posters in question reveals that they bear no resemblance to the signs or language used at the entrance of the Nazi concentration camps. In this case, the posters did not contain any of the language from the Nazi signs except for the word, "work."

The actions of DOC and TPU were correct and prompt.

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.

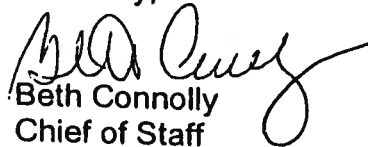
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Please be advised that pursuant to P.L. 2010, c.26, effective July 1, 2010, there shall be a \$20 fee for appeals. Please include the required \$20 fee with your appeal. Payment must be made by check or money order only, payable to the NJ CSC. Persons 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.

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,


Beth Connolly
Chief of Staff

BC: EMM

C: Office of EEO
Glenn Ferguson, CEO ✓
Mamta Patel, CSC
Merrill Main, Director
Victoria L. Kuhn, DOC EED Director
Deirdre Webster Cobb, Department of Treasury EEO Director

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