



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of G.M.,
Motor Vehicle Commission

CSC Docket No. 2014-1571

Discrimination Appeal

ISSUED: **JUL 18 2014** (DASV)

G.M., a Senior Technician, Motor Vehicle Commission (MVC), appeals the attached determination of the Deputy Administrator, Finance and Administration, with the MVC, stating that the appellant failed to present sufficient evidence to support a finding that he had been subjected to violations of the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy).

The appellant, a Caucasian, filed a discrimination complaint on September 5, 2013, alleging a hostile work environment based on ancestry, national origin, race, and sex. Specifically, he asserted that D.T., a Supervisor 1, MVC, created a hostile work environment based on ancestry and national origin by yelling at him and treating him differently because he is Polish and by using "derogatory slang" to refer to Polish people. The appellant also alleged that D.T. and R.C., an Agent, MVC, subjected him to a hostile work environment based on race when D.T. told him that he had the "wrong friends" in reference to his association with African Americans. Moreover, D.T. and R.C. "singled out the Black employees." Further, the appellant claimed that J.R., a Technician, MVC, created a hostile work environment based on her inappropriate conversations about sex. In addition, the appellant claimed that R.C. retaliated against him by making false statements during his 2012 disciplinary hearing. In response, the appointing authority conducted an investigation, which included interviewing nine witnesses and reviewing various documents relating to the appellant's claims. As indicated in the attached November 26, 2013 determination, the appointing authority advised the appellant that no witnesses could corroborate his allegations and no evidence was

produced that the appellant or other employees were treated differently because of their race or national origin. The claims against J.R. were also not substantiated. Nevertheless, the appointing authority noted that appropriate administrative action would be taken to address the appellant's concerns. Moreover, the appointing authority indicated that the appellant's claim of retaliation could not be sustained since he was not involved in a prior discrimination matter. It found that the appellant's discrimination complaint was filed in 2013 subsequent to his 2012 disciplinary action. Lastly, the appointing authority stated that the investigation could not substantiate that M.C., Senior Executive Service, P.W., a Government Representative 1, or S.M., an Administrator, Employee Relations, enabled others to discriminate against the appellant. It is noted that with the exception of J.R., who is Hispanic, the named respondents are Caucasians.

On appeal to the Civil Service Commission (Commission), the appellant requests "a fresh look" into his allegations. He contends that M.C. and "his sex life [are] being protected by [the] 'people investigating'" his complaint and the investigation is "factually false." The appellant asks that "people be punished for not doing their job" and the investigators be retrained. In support of his appeal, the appellant submits copies of two e-mails, dated December 10, 2013 and October 23, 2013. The December 10, 2013 e-mail appears to have been sent to various members of the Legislature, wherein the appellant disputed the findings of the investigation, stating, among other things, that D.T. is a racist and has not talked to her father for 40 to 50 years because he married an African-American woman. The appellant also stated that D.T. unfairly treats an African-American employee who looks like her stepmother. For example, D.T. does not permit this employee to use her cell phone while other employees are allowed to do so. The appellant reiterated that D.T. told him that he has the "wrong friends" and told him to spy on African-American employees. Additionally, the appellant maintained that D.T. hates Polish people and has said that her grandchild's "dumb Polak's side is always getting him into trouble." Moreover, he contended that J.R. and L.K., a multi-racial Hispanic and Technician, MVC, talk about sex freely. They also discussed M.C.'s sex life with J.R.'s mother, L.R., a multi-racial Hispanic and Driver Improvement Analyst 2. The appellant indicated that he took offense when J.R. stated that she did not understand why her mother is seeing M.C. because he is Caucasian and "white men have small penis' [sic]." Furthermore, the appellant contended that he was falsely accused of yelling at a manager. In summary, the appellant stated in his e-mail that preferential treatment was being given because the "MVC director is having sex with the mother of a troublemaker" and D.T. and R.C. are protecting that "sex life." As for the October 23, 2013 e-mail, it appears to have been sent to the appointing authority and other individuals regarding the appellant's complaint. In

that e-mail, the appellant further outlined his complaints¹ and his various interactions with the appointing authority staff, such a S.M.

In response, the appointing authority explains that on September 8, 2012, D.T. filed a workplace violence complaint against the appellant. The complaint was not sustained, but the investigation of the matter revealed personality conflicts and managerial issues. Additionally, on September 18, 2012, the appellant was charged with insubordination and conduct unbecoming a public employee for an incident stemming from R.C.'s meeting with the appellant where she questioned him on why he gave 42 driving manuals to a customer. The insubordination charge was dismissed, but the appellant received an official written reprimand on January 4, 2013 for the charge of conduct unbecoming a public employee for his behavior during the meeting. Moreover, on December 20, 2012, the appellant filed workplace violence complaints for numerous incidents of alleged harassment against D.T., R.C., and L.K. The investigation of those complaints did not find that the alleged incidents rose to a level of workplace violence; however, management issues were found. Thereafter, on September 5, 2013, the appellant filed the subject discrimination complaint and an investigation pursuant to the State Policy was conducted. The appointing authority maintains that it is unclear as to what the appellant is appealing as the e-mails he submitted contain "management issues/disagreements" and are not based on a protected category. It emphasizes that many of the issues raised by the appellant were investigated through the workplace violence investigations or addressed in the disciplinary process.

Moreover, the appointing authority reiterates the findings of the discrimination investigation that no witnesses or evidence was found to corroborate the appellant's claims. Of particular note, it asserts that the appellant admitted that D.T never made any statement to him about his Polish heritage. Additionally, one witness stated that there was a personality conflict between the appellant and D.T. on how work-related issues should be handled. Regarding the alleged discussions about sex, the appointing authority reiterated that no witnesses could verify such discussions. However, administrative action was nevertheless recommended "to ensure a workplace free of inappropriate conversations." Furthermore, the appointing authority maintains that the appellant's retaliation complaint could not be sustained since the disciplinary hearing was in 2012 before he filed his discrimination complaint in 2013. It also notes that the appellant did not allege claims during his disciplinary hearing that would implicate the State Policy. Further, the appointing authority submits that S.M., P.W., and M.C. did not enable the alleged discrimination or harassment against the appellant. It notes

¹ The appointing authority advises that the appellant also filed workplace violence complaints in December 2012. Some of the incidents he alleged and the results of the complaints are discussed in the e-mail. Additionally, the appellant filed a complaint with the Equal Employment Opportunity Commission (EEOC). On January 31, 2014, the EEOC advised the appellant that it was "unable to conclude that the information obtained establishes violations of the statutes."

that S.M. oversees workplace violence investigations and had all of the appellant's complaints investigated, but no violation was found. P.W. denied having knowledge of the appellant's specific complaints but referred him to the appropriate offices to file his claims if he wished. Regarding M.C., the appointing authority indicates that he was only aware of the disciplinary action taken against the appellant and the workplace violence investigations. Lastly, the appointing authority maintains that there was no nexus between M.C.'s relationship (with L.R.) and any protected category. Thus, it maintains that the appellant's claim that M.C.'s relationship was interfering with the operation of the agency is without merit. Accordingly, the appointing authority contends that the appellant's appeal should be denied.

CONCLUSION

Initially, it is emphasized that an investigation cannot be conducted under the State Policy nor can a violation of the State Policy be found if a protected category is not claimed as the basis for the alleged actions. *See e.g., In the Matter of Jan Earl Petty* (CSC, decided November 2, 2011). Furthermore, the mere indication of the different races of the parties in a discrimination complaint does not entitle an employee to an investigation under the State Policy. The employee must, at minimum, assert that the alleged actions were motivated by his or her race or gender or other protected category and prohibited by the State Policy. *See In the Matter of Sonia Smith* (CSC, decided September 19, 2012). For instance, the appellant refers to workplace violence complaints and his discipline. The claims in that regard do not implicate the State Policy, and it was appropriate for the appointing authority to have addressed those matters separately. The Commission also notes that it does not review the actions of appointing authorities in the investigation of incidents of workplace violence. *See In re Edward F. Millerick and Cynthia I. Mitchell*, Docket Nos. A-2676-00T5 and A-6318-00T5 (App. Div. January 2, 2003).

Regarding the appellant's discrimination complaint, *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. Further, *N.J.A.C. 4A:7-3.1(a)2* provides that the State Policy also applies to third party harassment, defined as unwelcome behavior involving any of the protected categories that is not directed at an individual but exists in the workplace and interferes with an individual's ability to do his or her job. Third party harassment based upon any of the aforementioned protected categories is prohibited by the State Policy. *N.J.A.C. 4A:7-3.1(b)* provides that 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. Additionally, 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)4*.

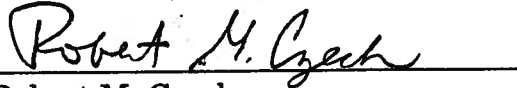
The Commission has reviewed this matter and finds that a thorough investigation of the appellant's discrimination complaint was conducted. The investigation included interviewing witnesses and reviewing pertinent documents. No testimony or evidence was found demonstrating that the appellant was subject to a hostile work environment or retaliation in violation of the State Policy. In particular, there was not sufficient evidence to find that M.C.'s relationship with L.R. created a hostile work environment based on race or other protected category. Moreover, the investigation revealed that the appellant and D.T. had a personality conflict on how work-related issues should be handled. There was nothing to corroborate that D.T. made comments in violation of the State Policy or that D.T. or R.C. "singled out the Black employees." It is noted that unprofessional behavior or disagreements between co-workers cannot sustain a violation of the State Policy. *See In the Matter of Aundrea Mason* (MSB, decided June 8, 2005) and *In the Matter of Bobbie Hodges* (MSB, decided February 26, 2003). Furthermore, apart from the appellant's assertion that employees engaged in vulgar discussions or that certain employees enabled the alleged discrimination or harassment, the investigation did not produce any evidence to support the appellant's contentions. However, the Commission agrees with the appointing authority that administrative action should be taken to ensure that the workplace is free from inappropriate conversations. Moreover, in order to sustain a claim of retaliation under the State Policy, the alleged retaliation must be in response to an employee's participation in a prior discrimination proceeding. The record does not demonstrate that the appellant was involved in a discrimination proceeding prior to his disciplinary action. Thus, his claim of retaliation under the State Policy fails. 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. *See N.J.A.C. 4A:7-3.2(m)4*.

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 16TH DAY OF JULY, 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: G.M.
Richard J. Miller
Mamta Patel
Joseph Gambino**



**New Jersey
Motor Vehicle Commission**

P.O. Box 160
Trenton, New Jersey 08666-0160

STATE OF NEW JERSEY

Chris Christie
Governor

Kim Guadagno
Lt. Governor

Raymond P. Martinez
Chairman and Chief Administrator

November 26, 2013

G. M. [REDACTED]
[REDACTED]

Re: EEO Complaint
EEO File No. 2013-A-OK-25

Dear Mr. M. [REDACTED]:

As you know, the Motor Vehicle Commission's Equal Employment Opportunity Office ("EEO Office") conducted an investigation into your discrimination complaint alleging hostile work environment based on ancestry, national origin, race, sex and retaliation in violation of the State Policy Prohibiting Discrimination in the Workplace (State Policy). This letter is to advise you of the results of the investigation.

Specifically, you alleged that D. [REDACTED] T. [REDACTED] created a hostile work environment based on your ancestry and national origin because she yelled at you and treated you differently because you are Polish and that you have overheard her use a derogatory slang for Polish people. The investigation could not substantiate this allegation because no witnesses corroborated your allegation and there was no evidence that you were treated differently because of your Polish heritage.

You also alleged that D T and R C created a hostile work environment based on race because Ms. T told you that you had the "wrong friends" in reference to your association with Black employees and Ms. T and Ms. C singled out the Black employees for differential treatment. The investigation could not substantiate your allegations as no witnesses corroborated that you were told you had the "wrong friends" nor any evidence that Ms. T and Ms. C singled out or treated the Black employees differently because of their race.

You alleged that your co-worker J R created a hostile work environment based on having inappropriate conversations about sex and body parts in the workplace. No witnesses corroborated your allegation therefore this allegation could not be substantiated.

Although your allegations could not be substantiated, we are taking appropriate administrative action to address your concerns.

With respect to your allegation that Ms C retaliated against you by making false statements during your disciplinary hearing in 2012, the investigation cannot substantiate this allegation. Your allegation of retaliation was not based on a participation in a protected activity under the State Policy such as filing a discrimination complaint (your discrimination complaint was filed in 2013 subsequent to the disciplinary action in 2012), participating in a discrimination investigation or opposing a discriminatory practice.

Finally, based on the evidence, the investigation could not substantiate that Mr. C Mr. W and Mr. M enabled others to discriminate against you.

If you wish to appeal this determination, you must submit a written appeal to the N.J. Civil Service Commission, Division of Appeals and Regulatory Affairs, P.O. Box 312, Trenton, NJ 08625 postmarked or delivered within 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 be advised that effective July 1, 2010, there is a \$20 fee for appeals. Please include a check or money order along with your appeal payable to the "NJCSA." Persons receiving public assistance and those qualifying for NJCSA Veterans Preference are exempt from this fee.

Sincerely,



Richard J. Miller
Deputy Administrator
Finance & Administration
NJ Motor Vehicle Commission
On Behalf of Rachael Gervais

Approved:



Raymond P. Martinez
Chairman and Chief Administrator
NJ Motor Vehicle Commission

- c: Katharine Tasch, Acting Deputy Chief Administrator
- Selika Gore, Deputy Administrator of Operations
- Mamta Patel, Director, Division of EEO/AA, CSC

