

CSC  
B-291



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

In the Matter of Y.T., Department of  
Corrections

Discrimination Appeal

CSC Docket No. 2014-1443

ISSUED: **Jul 18 2014** (HS)

Y.T., an Assistant Food Service Supervisor 2 with the Department of Corrections (DOC), appeals the attached determination of the Assistant Director, Equal Employment Division (EED), which found that the investigation did not support a finding that the appellant had been subjected to a violation of the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy).

On January 18, 2013, the appellant filed a complaint alleging that M.B., a Food Service Supervisor 2, discriminated against and harassed her due to her age. Specifically, the appellant asserted that M.B. (1) displayed in the appellant's work area an aerial photograph of buildings that appeared to display the letters "KKK" backwards; (2) assigned the creation of the inmate count sheet roster to the appellant when this task had previously been handled by the kitchen officers; (3) commented to the appellant "Let me tell you something, little girl;" (4) before being promoted to Food Service Supervisor 2, repeatedly belittled and demeaned the appellant by referring to the appellant as her "Assistant" even though both held the title of Assistant Food Service Supervisor 2; (5) repeatedly kept the appellant out of the loop regarding office business and advised the Institutional Trade Instructors of staff changes prior to advising the appellant; (6) was overly friendly with and protected K.Z., an Institutional Trade Instructor 1 Cooking, who is a direct report to the appellant, and prevented the appellant from properly supervising and disciplining K.Z.; (7) protected K.Z., causing K.Z. to disrespect the appellant, and permitted K.Z. more favorable assignments and work locations; (8) permitted K.Z. to be confrontational towards the appellant, including putting her hand in the

appellant's face, an incident for which K.Z. was not disciplined; (9) placed the appellant's request for leave slips in the box designated for the Institutional Trade Instructors' leave slips; and (10) realigned the appellant's regular days off and changed the appellant's job duties.

In response to her complaint, the EED conducted an investigation and determined that there was an insufficient basis to find that the appellant had been discriminated against or harassed on the basis of her age. Specifically, the EED noted in its determination letter that none of the witnesses named by the appellant supported the appellant's allegation of discrimination and harassment based on age and noted that there was no other supporting evidence. Rather, the witnesses indicated that the relationship between the appellant and M.B. had been strained since both had applied for the Food Service Supervisor 2 promotion and M.B. was awarded the position. The EED also noted that M.B. was interviewed, and she denied violating the State Policy. Rather, M.B. indicated that on January 10, 2013, she provided the appellant with two letters detailing the appellant's specific job responsibilities and a realignment of the appellant's regular days off. M.B. further indicated and a witness confirmed that after providing the appellant with the letters, the appellant became very upset and began yelling at M.B., called M.B. disparaging names and confronted M.B. face to face. As a result of this incident, the administration at the Albert C. Wagner Youth Correctional Facility (WYCF) banned the appellant from the Main Building until appropriate action could be taken. M.B. also advised that it was her belief that the January 10, 2013 incident provided the impetus for the appellant's filing of the EED complaint at issue in this matter.

On appeal to the Civil Service Commission (Commission), the appellant argues that her complaint was not investigated in a timely fashion. Specifically, the appellant states that she filed her complaint on January 18, 2013 and was interviewed by the EED Assistant Director on February 7, 2013. The appellant asserts that she requested status updates and also received a letter on July 2, 2013 from the EED Assistant Director requesting a 30-day extension and indicating an intent to render a decision by July 22, 2013. However, the appellant states that she did not receive her determination until November 1, 2013 and that her rights to status updates and a prompt decision were impeded.

Regarding the merits of her appeal, the appellant initially states that M.B.'s inappropriate behavior dates back to the appellant's promotion to the title of Assistant Food Service Supervisor 2 in November 2011 and that M.B. was then and continues to be the appellant's supervisor. The appellant maintains that all of her allegations are factual events and that witnesses may have hesitated to be open for fear of retaliation from M.B. While the appellant acknowledges that M.B. had the authority to effect the realignment of her job duties, she maintains that the realignment stemmed from the issuance on January 1, 2013 of the promotional examination for Food Service Supervisor 2 (PS6169I), the title M.B. had been

provisionally serving in since August 2012. The appellant also argues that the investigation did not address all of her allegations and that there was a lack of clarity as to the findings. Specifically, the appellant raises the following contentions: the investigation did not address M.B.'s participation with K.Z. in an EED complaint against the appellant; the investigation did not address the defacing of one of her memoranda, just days after the appellant's disciplining K.Z.; the investigation did not address the fact that M.B.'s behavior was connected to her viewing the appellant as her younger competition; there was a lack of clarity as to the characterization of the relationship between the appellant and M.B. as "strained;" the determination letter did not note that M.B. admitted that the paperwork she gave the appellant on January 10, 2013 was for the purpose of realigning the appellant's regular days off and job duties; and the investigation did not address the fact that M.B. held the January 10, 2013 meeting without providing the appellant advance notice. The appellant submits various supporting documents.

In response, regarding the issue of timeliness, the EED does not deny that its determination was delayed. The EED explains that it is short-staffed, and the investigator initially assigned had a conflict of interest involving a friendship between the investigator and the appellant's mother. Thus, the investigation was assigned to the EED Assistant Director. However, the EED Assistant Director's responsibilities in that role and the role of Ethics Officer caused a delay in the investigation. The EED argues that if the appellant had been subjected to a violation of the State Policy by M.B., it could not continue since initial inquiries indicated that the appellant had been reassigned to another building following the January 10, 2013 incident. The EED further states that the January 10, 2013 incident had been assigned to DOC's Special Investigations Division for a potential violence in the workplace investigation. Although the EED advises that future investigations assigned to the EED Assistant Director will not be delayed, the EED contends that the appellant was not prejudiced as DOC had up to one year to discipline M.B., if a violation had been substantiated.

Regarding the merits, the EED advises that it thoroughly investigated all of the appellant's allegations but that it did not substantiate a violation. The EED further advises that the appellant initially named 21 witnesses but that she was informed that only those witnesses holding pertinent, non-repetitive information to provide to the investigation would be interviewed. The appellant and the EED Assistant Director together reviewed the appellant's witness list and identified five as possessing pertinent, non-repetitive information. The only witness who confirmed the allegations acknowledged herself to be a close friend of the appellant of many years. The remaining four witnesses did not confirm the allegations. Rather, those four witnesses stated that the appellant and M.B. do not get along for reasons not connected to the appellant's age. The witnesses stated that the appellant has worked at WYCF longer than M.B., and due to this fact, they believed

that the appellant felt that she was entitled to the Food Service Supervisor 2 position and became very angry when the position was awarded to M.B. instead. The witnesses described a very tense working unit. One of the witnesses indicated that the atmosphere in the unit required employees to "pick a side" and that it was difficult to be friends with both the appellant and M.B. None of the witnesses confirmed the appellant's allegation of discrimination and harassment based on age. Rather, the witnesses believed that the tension in the unit stemmed from the appellant's anger over being passed over for promotion. Additionally, the EED maintains that the description of the working relationship between the appellant and M.B. was accurately described as "strained" in light of the witness interviews. The EED also notes that as the supervisor of the Food Services Unit, M.B. is required to report any allegations of violations of the State Policy. When K.Z. brought such an allegation to M.B.'s attention, M.B. correctly referred K.Z. to the EED, and since M.B. was named as a witness, she participated in the investigation as required.

In addition, the EED maintains that its determination letter did note that M.B. acknowledged the purpose of the paperwork she provided to the appellant on January 10, 2013. The EED also argues that it did not rely solely on M.B.'s word to determine what occurred on January 10, 2013. Rather, the EED also interviewed the appellant's union representative, who was a witness to the January 10, 2013 incident. Although neither the appellant nor M.B. named the union representative as a witness, the EED chose to interview him upon learning that he was present. The EED asserts that the union representative was not aware he would be called as a witness until contacted by the EED. The union representative indicated that he was given, for his review, the two letters to be given to the appellant realigning her job duties and regular days off and concluded that the letters did not raise a union issue. M.B. nevertheless indicated that she did not have a good working relationship with the appellant, indicated that she did not know how the appellant would react to the changes and therefore requested the union representative to remain present for the meeting. The union representative further indicated that upon reviewing the letters, the appellant agreed to the change in her regular days off but then began telling M.B. what duties she would and would not perform. M.B. agreed to remove the challenged duties. The appellant then became very angry, began to yell at M.B., called M.B. "stupid" and indicated that M.B. needed the appellant because M.B. could not do her job. The union representative further indicated that the appellant arose from her chair and approached M.B. while yelling and wagging her finger in M.B.'s face, that the appellant was the aggressor and that M.B. did not yell or approach the appellant. Since it appeared to the union representative that M.B. was shaken, he walked M.B. to the appropriate office to report the incident. As a result, the WYCF administration, not M.B., banned the appellant from the main building and reassigned her to another building on the WYCF grounds. The EED asserts that this incident was not connected to the State

Policy and that the appellant filed her EED complaint only after being banned from the main building.

In response, the appellant argues that since she was interviewed on February 7, 2013, the issues of the conflict of interest and the EED's staffing shortage had been resolved. The appellant states that she did note that her union representative was present for the January 10, 2013 meeting. The appellant also claims that her union representative advised her not to file her EED complaint against M.B. until a determination was rendered regarding K.Z.'s complaint against the appellant. The appellant argues that the investigation did not include an interview with the administrator of the facility, whom the appellant spoke to regarding M.B.'s behavior. The appellant maintains that her promotion to Assistant Food Service Supervisor 2 caused M.B. to view the appellant as competition. The appellant contends that the EED continued to focus on the January 2013 incident and did not question M.B. as to her reasons for realigning the appellant's job duties. The appellant asserts that there is no record that she behaved inappropriately towards M.B. other than the allegations of the incident in January 2013. The appellant claims that if she was upset by M.B.'s promotion, there should be paperwork to support the claim. The appellant argues that she has records of M.B.'s inappropriate behavior towards the appellant. The appellant claims that M.B. and K.Z. worked together to file an EED complaint against the appellant based on false allegations in an effort to discredit the appellant's candidacy for the Food Service Supervisor 2 position.

## CONCLUSION

Initially, the appellant complains that the appointing authority's determination was untimely. The appellant states that she filed her complaint on January 18, 2013, but did not receive a determination until November 1, 2013. *N.J.A.C. 4A:7-3.2(1)2* provides that the investigation of a complaint shall be completed and a final letter of determination shall be issued no later than 120 days after the initial intake of the complaint. Additionally, *N.J.A.C. 4A:7-3.2(1)3* states that the time for completion of the investigation and issuance of the final letter of determination may be extended by the State agency head for up to 60 additional days in cases involving exceptional circumstances. The State agency head shall provide the Division of EEO/AA and all parties with written notice of any extension and shall include in the notice an explanation of the exceptional circumstances supporting the extension. In the present matter, the EED explains that it is short-staffed, that a conflict of interest caused the investigation to be assigned to the EED Assistant Director and that her other duties caused a delay in the issuance of the determination. However, the EED is reminded that it must comply with the regulatory directives. If it fails to do so in the future and egregious violations occur, it may be subject to fines and penalties pursuant to *N.J.A.C. 4A:10-2.1(a)2*. Nonetheless, as further explained below, the Commission finds that a thorough

investigation was conducted in the present matter, which did not substantiate the appellant's complaint.

With regard to the merits of the appellant's appeal, 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)*. Moreover, the appellant shall have the burden of proof in all discrimination appeals. *See N.J.A.C. 4A:7-3.1(m)3*.

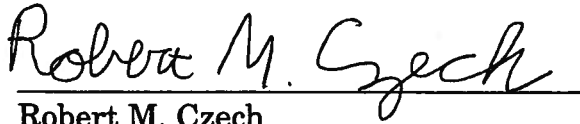
The Commission has conducted a review of the record in this matter and finds that an adequate investigation was conducted, that the relevant parties in this matter were interviewed and that the investigation failed to establish that the appellant was discriminated against or harassed due to her age in violation of the State Policy. The EED appropriately analyzed the available documents and interviewed several witnesses in investigating the appellant's complaint and concluded that there was no violation of the State Policy based on the appellant's age. Although the appellant asserts that the witnesses were intimidated by M.B. and therefore may have hesitated to be forthcoming during the investigation, she submits no evidence in support of these allegations. While the appellant maintains that all of her allegations are factual, other than her mere allegation that M.B. considered the appellant younger competition, she provides no evidence in support. In this regard, only one of the five witnesses interviewed corroborated any of the appellant's allegations, and that witness indicated that she was a close personal friend of the appellant, for many years. Moreover, none of the other witnesses indicated that M.B. considered the appellant "younger competition." In addition, the appellant provides no evidence in support of her contention that M.B. collaborated with K.Z. to file an EED complaint based on false allegations to discredit the appellant. As noted by the EED, as a supervisor, M.B. was required to notify the EED of any allegations of violations of the State Policy. *See N.J.A.C. 4A:7-3.1(e)*. Accordingly, the investigation was thorough and impartial, and no basis exists to disturb the EED'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 16<sup>TH</sup> DAY OF JULY 2014



Robert M. Czech  
Chairperson  
Civil Service Commission

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and  
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Attachment

- c. Y.T.  
Victoria Kuhn  
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CHRIS CHRISTIE  
Governor

KIM GUADAGNO  
Lt. Governor

GARY M. LANIGAN  
Commissioner

October 24, 2013

Y [REDACTED] T [REDACTED]  
[Mailed to Home Address]

Dear Ms. T [REDACTED]

The Equal Employment Division (hereinafter "EED") has completed its investigation into your formal complaint wherein you allege that Food Service Supervisor M [REDACTED] B [REDACTED] (hereinafter "Ms. B [REDACTED]") subjected you to discrimination/harassment based on age. Specifically, you allege that Ms. B [REDACTED] (1) purposefully displayed in your work area an aerial shot of the buildings on the grounds of South Woods State Prison and that the buildings appeared to display the letters "KKK" backwards; (2) assigned the task of creating the inmate count sheet roster to you when in the past this duty had been handled by the kitchen officers; (3) has commented to you, "Let me tell you something, little girl"; (4) before being promoted to Food Service Supervisor, repeatedly belittled and demeaned you by referring to you in the presence of others as her "Assistant," despite the fact that you both held the title of Assistant Food Service Supervisor; (5) repeatedly keeps you out of the loop with regard to office business and advises the ITI's of staff changes before advising you; (6) is overly friendly with and protects ITI K [REDACTED] Z [REDACTED], who is a direct report to you, and prevents you from properly supervising/disciplining Ms. Z [REDACTED]; (7) protects Ms. Z [REDACTED] which causes her to disrespect you, and she is permitted more favorable assignments and work locations; (8) permits Ms. Z [REDACTED] to be confrontational towards you, including putting her hand in your face, for which she was not disciplined; (9) places your Request For Leave slips in the box that is designated for the ITI's leave slips; and (10) realigned your RDOS and changed your job duties. Please be advised that the EED did not substantiate a violation of the *Policy Prohibiting Discrimination in the Workplace* by Ms. B [REDACTED]

Please be advised that the Department of Corrections takes all allegations of violations of the *Policy* seriously and such conduct will not be tolerated by the Department. In response to your complaint, a thorough investigation was conducted by the EED. The investigation included interviews with the witnesses named by you, as well as the witness present during the January 10, 2013 incident involving you and Ms.



B [REDACTED] However, there was no evidence, through witnesses or otherwise, to support the allegation that Ms. B [REDACTED] subjected you to discrimination/harassment because of your age. Rather, witnesses advised that the relationship between you and Ms. B [REDACTED] has been strained since the two of you applied for the Food Service Supervisor promotion and she was awarded same. Finally, Ms. B [REDACTED] was interviewed for this investigation. She denies engaging in behavior which violates the *Policy*. Additionally, she advised that on January 10, 2013, she provided you with two letters detailing your specific job responsibilities and a realignment of your regular days off. She advised, and a witness confirmed, that after providing you with the letters, you became very upset and began yelling at her, calling her disparaging names, and confronted her face to face. As a result, the administration at WYCF banned you from the Main Building until appropriate action could be taken. Ms. B [REDACTED] indicated that she is of the belief that this incident was the impetus for your immediate filing of this EED complaint.

Based on the foregoing, the EED investigation did not substantiate a violation of the *Policy Prohibiting Discrimination in the Workplace* by Ms. B [REDACTED]

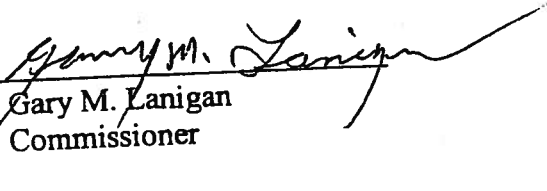
If you wish to appeal this determination, you must submit a written appeal to the New Jersey Civil Service Commission, Division of Merit System Practices & Labor Relations, Written Record Appeals Unit, P.O. Box 312, Trenton, New Jersey 08625-0312, postmarked or delivered within twenty (20) days of your 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,

[REDACTED]  
L [REDACTED], Assistant Director  
Equal Employment Division

APPROVED:

  
Gary M. Lanigan  
Commissioner

c: Robert Chetirkin, Associate Administrator (ASL)

WYCF|13:01.005