

B-43



STATE OF NEW JERSEY

In the Matter of M.M.,
Department of Human Services

**FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION**

CSC Docket No. 2014-2223

Discrimination Appeal

ISSUED: FEB 11 2015 (JET)

M.M., a Senior Food Service Handler with Greystone Park Psychiatric Hospital, Department of Human Services, appeals the attached determination of the Chief of Staff, which found that the appellant failed 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).

The appellant filed a complaint on August 4, 2011 with the Department of Human Services' Office of Equal Employment Opportunity (EEO), alleging that J.M., a Supervisor Food Service Area Operations, sexually harassed and subjected her to retaliation. Specifically, the appellant alleged that J.M. stood behind her and touched his crotch on March 16, 2011. She also alleged that J.M. stood in close proximity to her in retaliation for filing an EEO complaint. After an investigation was conducted, the EEO/AA determined that there was no violation of the State Policy.

On appeal, the appellant maintains that she observed J.M. stand behind her and touch his crotch on March 16, 2011. The appellant adds that she requested a video of the incident and it was not available. Further, the appellant contends that the named witness is not being truthful regarding the incident that occurred. The appellant explains that the witness is incorrect since there was no confrontation that occurred between J.M. and herself. In addition, the appellant asserts that J.M. was reassigned to a new location in response to her complaints and he is not permitted to enter areas of the first floor where she is currently assigned. The appellant requests J.M. to continue to stay away from her while she is on duty.

Moreover, the appellant acknowledges that she cannot provide any evidence or witnesses in support of her claims.¹

In response, the EEO maintains that there was no violation of the State Policy. Specifically, the EEO asserts that J.M. was reassigned to another unit on August 4, 2011 and is no longer the appellant's supervisor. He was instructed to limit his contact with the appellant to necessary work-related issues. Further, J.M. denied that he stood near the appellant and harassed her. J.M. added that he cannot completely avoid the appellant in the workplace since it is sometimes necessary for him to work on the first floor where she is assigned. J.M. explained that he is responsible to locate employees on the first floor for work-related matters. J.M. further indicated that the entrance, exit, vending machines, and cafeteria are also on the first floor. J.M. also named S.S. as a witness to the March 16, 2011 incident. S.S. denied that J.M. touched his crotch during the March 16, 2011 incident. Thus, the EEO contends that there is no evidence that J.M. stood near the appellant when he appeared on the first floor or that he touched his crotch during the March 16, 2011 incident. Moreover, the EEO states that there is no evidence that the appellant was subjected to retaliation.

CONCLUSION

N.J.A.C. 4A:7-3.1(c)1 provides that sexual harassment is defined as unwelcome advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature. Examples of prohibited behaviors that may constitute sexual harassment and are therefore a violation of this policy include, but are not limited to, inappropriate touching, generalized gender-based remarks and comments and verbal, written or electronic sexually suggestive or obscene comments, jokes or propositions including letters, notes, e-mail, text messages, invitations, gestures or inappropriate comments about a person's clothing. See *N.J.A.C.* 4A:7-3.1(c)2i and ii.

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. See *N.J.A.C.* 4A:7-3.1(h). For example, it is prohibited to impose or threaten to impose disciplinary action on an employee for reasons other than legitimate business reasons. See *N.J.A.C.* 4A:7-3.1(h)4.

The Civil Service Commission has conducted a review of the record in this matter and finds that the appellant has not established that J.M. engaged in conduct in violation of the State Policy. The record shows that the EEO conducted

¹ The appellant provides documentation indicating that she was referred to the Employee Advisory Service.

an adequate investigation. It interviewed the relevant parties in this matter and it could not be substantiated that J.M. engaged in sexual harassment in violation of the State Policy. Further, the appellant acknowledges that she does not have any evidence or witnesses to present in support of her claims. In addition, the appellant has not established that the EEO's investigation was deficient or improperly conducted. J.M. and the witness denied that J.M. had touched his crotch during the March 13, 2011 incident. Although the appellant states that the witness is incorrect, she did not provide any evidence to refute the witness' statement on appeal. Other than the appellant's allegations, there is no evidence to show that J.M. touched his crotch or sexually harassed her. Thus, there was no evidence to substantiate a violation of the State Policy on the basis of sexual harassment.

In regard to the allegations of retaliation, the appellant did not provide any evidence or witness statements on appeal to show that she was retaliated against by J.M. in response to filing the EEO complaint regarding the March 16, 2011 incident. Further, J.M. denied that he subjected the appellant to retaliation. Nonetheless, although it appears that J.M. appears on the first floor with the appellant when there is a legitimate business need, the record reflects that he was reassigned and instructed to avoid the appellant.

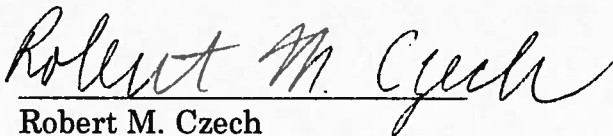
Accordingly, the record establishes that the EEO's investigation was thorough and impartial, and therefore, no basis exists to find a violation of the New Jersey State Policy Prohibiting Discrimination in the Workplace.

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 4th DAY OF FEBRUARY, 2015



Robert M. Czech
Chairperson
Civil Service Commission

**Inquiries
and
Correspondence**

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

Attachment

**c: M.M.
Ed 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

December 13, 2014

M. M.
[Redacted]
[Redacted]
[Redacted]

Dear Ms. M. [Redacted]:

On August 4, 2011, you filed a Discrimination Complaint Form, wherein you alleged sexual harassment and retaliation by J. M., Supervisor Area Operations, GPPH. Specifically, you complained that Mr. M. invades your personal space by being near food trucks that you push. In addition, you alleged that Mr. M. stood too close to you and on March 16, 2011, fondled his crotch while standing behind you.

The Department of Human Services (DHS) neither condones nor tolerates any form of discriminatory behavior in the workplace. Therefore, the Department's Office of Equal Employment Opportunity (EEO) conducted an investigation of your complaint. The DHS Office of EEO and my office reviewed the findings of this investigation.

Your allegations against Mr. M. were not substantiated. Mr. M. denied the allegation that he stood behind you touching his crotch and another employee said he witnessed the confrontation and denied that Mr. M. touched his crotch.

Mr. M. denied retaliating against you and his presence on the first floor is necessary. The entrance and exit to the hospital, vending machines and cafeteria are on the first floor. In addition, he is a supervisor and often needs to find employees on the first floor for overtime or other work-related matters. There is no evidence that he harassed you by appearing on the first floor near you.

Based on the results of the investigation, it was not substantiated that J. M. violated the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy). Therefore, this office will take no further action regarding this matter.

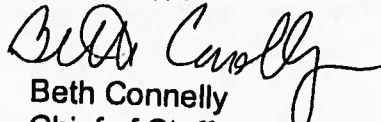
If you disagree with this determination, you have the right to file an appeal with the Merit System Board within twenty (20) days of your receipt of this letter. The appeal must be in writing, state the reason(s) for the appeal, and specify the relief requested. Please include all materials presented at the department level and a copy of this determination letter with your appeal. The appeal should be submitted to the Civil Service Commission, 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.

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 Connelly
Chief of Staff

BC: EM

C: Office of EEO
Janet Monroe, CEO
Mamta Patel, CSC

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