

B-91



**STATE OF NEW JERSEY**

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

In the Matter of E.P., Motor Vehicle  
Commission

CSC Docket No. 2015-441

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**Discrimination Appeal**

**ISSUED: FEB - 9 2015**

**(SLD)**

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E.P., a former Records Technician 3, Motor Vehicles,<sup>1</sup> with the Motor Vehicle Commission, appeals the attached determination of the Chairman and Chief Administrator, stating that the appellant failed to present sufficient evidence to support a finding that she had been subjected to violations of the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy).

On July 2, 2014, the appellant, a female, filed a complaint with the Equal Employment Opportunity Office (EEO), alleging that F.P., a male supervisor, sexually harassed her in violation of the State Policy. Specifically, the appellant alleged that on June 16, 2014, F.P. touched the middle of her back while she was seated at her desk; on June 19, 2014, F.P. walked past her in the hallway by the water cooler and touched her right shoulder blade; and on July 2, 2014, F.P. approached her at her desk to discuss an e-mail complaint she had sent, and he touched her on her right shoulder. The appellant claimed that F.P.'s actions were not wanted and made her uncomfortable.

In response to these complaints, the EEO conducted an investigation and determined that there was no probable cause to substantiate a violation of the State Policy on the basis of sexual harassment. Specifically, the EEO noted that F.P. admitted to touching the appellant's shoulder on July 2, 2014 while talking to her at her workstation, and that he may have touched her shoulder on another occasion in

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<sup>1</sup> Agency records indicate that the appellant received a regular appointment to the title of Child Care Quality Assurance Inspector 1, effective October 4, 2014, with the Department of Children and Families.

an attempt to get her attention. However, the EEO found that although there was at least one unwanted touch, the physical contact was not sexual in nature and thus, a violation of the State Policy could not be substantiated.

On appeal, the appellant reiterates her allegations. The appellant also notes that with regard to the June 19, 2014 incident, F.P. had walked towards her down the hallway and had "reached his hands out towards [her] and said 'boo' " before passing by her and touching her right shoulder with his right hand. Additionally, she maintains that the EEO erred in its decision since all three touches were unwelcomed, uninvited and made her feel very uncomfortable, and thus were sexually harassing. In this regard, the appellant maintains that since the three incidents, she has been unable to sleep well, unable to focus on anything for a long period of time, her body tenses when she sees or hears F.P. and she has lost her sex drive. Consequently, the appellant requests that she be "transferred" out of her department. In support, she submits an August 7, 2014 permanent reassignment request.

In response, the EEO reiterates that its investigation was thorough and complete and did not substantiate that a violation of the State Policy had occurred. In this regard, during her interview, the appellant indicated that she sits in a low-wall cubicle, next to a co-worker. With regard to the June 16, 2014 incident, the appellant explained that she was having trouble logging into the training system, and she e-mailed F.P. about the issue. F.P. came to her desk to assist, and while standing next to her chair, he used his left palm to touch the middle of her back, which the appellant described as lasting for a second or two. The appellant indicated that when she asked her co-worker seated next to her, the co-worker indicated that she did not see anything. With regard to the June 19, 2014 incident, the appellant explained that she was walking down the hallway (which was about five feet wide), when she saw F.P. walking towards her. The appellant stated that F.P. said "boo" to her and as they neared the water cooler, F.P. touched her right shoulder blade with his hand as he passed. The appellant stated that she did not say anything to him, but she "made a face" at him. With regard to the July 2, 2014 incident, the appellant claimed she had received an e-mail from a co-worker regarding a collection for a sick employee. The appellant asserted that she replied to the e-mail, and blind copied F.P., that she was not going to participate since no collection was taken up for her when she was sick. The appellant claimed that F.P. came to her desk, and put his hand out as if to shake her hand, to which she replied that it was not necessary. The appellant asserted that as she was sitting in her chair, F.P. placed his right hand on her shoulder with light pressure and then left. The appellant claimed that the touch "felt like forever," but she did not know if anyone saw the incident. The appellant indicated that she has limited interactions with F.P., but "did not like how he treats people." She was unhappy with his management and thought he had issued her a heavy penalty for an incident involving another employee and that F.P. did not bother to "hear her side of the

story." The appellant finally indicated that she could continue to work with F.P. "as long as he keeps his hands to himself."

The EEO noted that in his interview, F.P. stated that with regard to July 2, 2014 incident, after receiving the appellant's e-mail, he went to her desk, leaned down, touched her shoulder to get her attention and said excuse me. F.P. stated that he spoke in a low voice because he did not want the others to hear their conversation in which he wanted to ask her if she wanted to go to his office to discuss the issue further. F.P. stated that before he could ask the appellant, the appellant told him to "get away from me," at which point he left the cubicle. With regard to the June 19, 2014 incident, F.P. stated that he did not remember the incident, but that it was possible that he had indicated with his hand for the appellant to pass first as they neared one another.

The EEO argues that under the State Policy, "physical conduct of a sexual nature" may constitute sexual harassment when such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment. However, even giving full credit to the appellant's version of events, the EEO maintains that F.P.'s actions do not appear to be sexual in nature. In this regard, the EEO notes that the appellant describes the touches as fleeting, lasting a second or two. Although the appellant may have felt shocked or uncomfortable, there was no evidence that the contact was of a sexual nature. Nor did the appellant allege that F.P. had made any inappropriate sexual comments. The EEO indicates that during the investigation, the appellant had indicated that she was able to continue working with F.P., as long as he kept his hands to himself. The EEO maintains that although it could not substantiate a violation, F.P. was counseled about the State Policy and told to refrain from any unnecessary physical contact with any employee.

### CONCLUSION

The Civil Service Commission (Commission) has conducted a review of the record in this matter and finds that an adequate investigation was conducted, and that the investigation failed to establish that the appellant was sexually harassed or retaliated against in violation of the State Policy. The EEO appropriately analyzed the available documents in investigating the appellant's complaints and concluded that there was no violation of the State Policy. In this regard, *N.J.A.C. 4A:7-3.1(c)* provides in part, that it is a violation of this policy to engage in sexual (or gender-based) harassment of any kind, including hostile work environment harassment, quid pro quo harassment, or same-sex harassment.

1. For the purposes of this policy, sexual harassment is defined, as in the Equal Employment Opportunity Commission Guidelines, as unwelcome sexual advances, requests for sexual favors, and

other verbal or physical conduct of a sexual nature when, for example:

\* \* \*

iii. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.

2. Examples of prohibited behaviors that may constitute sexual harassment and are therefore a violation of this policy include, but are not limited to:

\* \* \*

ii. Unwanted physical contact such as intentional touching, grabbing, pinching, brushing against another's body, or impeding or blocking movement;

\* \* \*

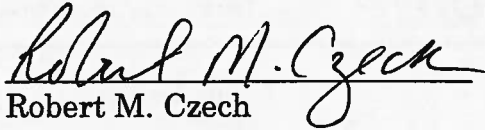
Even accepting all of the appellant's allegations as true, while the contact made by F.P. was unwanted, the record does not establish that the contact was of a sexual nature. A fleeting touch to her shoulder and/or back, in and of itself, does not establish that the contact was sexual. Moreover, although the appellant states that the contact was unwelcome and shocking, she does not classify the contact as sexual in nature. Accordingly, the investigation was thorough and impartial 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 4TH DAY OF FEBRUARY, 2015



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: E.P.  
Betty Ng  
Mamta Patel  
Kenneth Connolly  
Joseph Gambino



# New Jersey Motor Vehicle Commission

Equal Employment Opportunity Office  
P.O. Box 684  
Trenton, New Jersey 08666-0684

STATE OF NEW JERSEY

**Chris Christie**  
Governor

**Kim Guadagno**  
Lt. Governor

**Raymond P. Martinez**  
Chairman and Chief Administrator

July 28, 2014

Via Hand Delivery



Re: Harassment Complaint  
MVC EEO File No. 2014-H-OS-30  
Division of EEO/AA File No. 2014412

Dear Ms. P [REDACTED]:

The Equal Employment Opportunity (EEO) Office investigated your complaint filed on or about July 3, 2014, against Mr. F [REDACTED] P [REDACTED], Administrative Analyst 1, alleging sexual harassment in violation of the New Jersey State Policy Prohibiting Discrimination in the Workplace (the "State Policy").

The State Policy specifically states:

The State of New Jersey is committed to providing every State employee and prospective State employee with a work environment free from prohibited discrimination or harassment. Under this policy, forms of employment 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, the State Policy provides numerous examples of prohibited conduct that may constitute harassment, including but not limited to "unwanted physical contact such as intentional touching, grabbing, pinching, brushing against another's body or impeding or blocking movement."

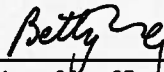
You alleged that Mr. P [REDACTED] touched you on three separate occasions. Specifically, you claim that on June 16, 2014, Mr. P [REDACTED] was standing next to your chair when he used his left palm to touch the middle of your back. You further allege that on June 19, 2014, as you and Mr. P [REDACTED] were walking along a walkway, he touched your right shoulder blade with his hand as he passed you. Further, you allege that on July 2, 2014, Mr. P [REDACTED] was at your workstation talking to you when he put his right hand over your right shoulder with light pressure.

The EEO Office conducted a thorough and impartial investigation pursuant to the State Policy, during which individuals were interviewed and relevant information was reviewed. Mr. P [REDACTED] admitted to touching your shoulder on July 2, 2014, while talking to you in your workstation. He further admitted that he may have touched your shoulder on another occasion in an attempt to get your attention. Based on the information gathered, the EEO Office finds that although there was at least one unwanted touch, the physical contact was not sexual in nature. The EEO Office is unable to substantiate sexual harassment as defined in the State Policy. However, in an abundance of caution, appropriate corrective action has been taken. Therefore, no further action will be taken regarding this matter.


If you disagree with this determination, you have the right to file an appeal with the New Jersey Civil Service Commission within 20 days of your receipt of this letter. The burden of proof is on the Appellant. The appeal must be in writing, state the reason(s) for the appeal and specify the relief requested. All materials presented at the department level and a copy of this determination letter must be included. The appeal should be submitted to the NJ Civil Service Commission, Director of the Division of Appeals and Regulatory Affairs, P.O. Box 312, Trenton, NJ 08625-0312. Please be advised that pursuant to P.L. 2010, c. 26, effective July 1, 2010, there shall be a \$20 fee with your appeal. Payment must be made by check or money order, payable to the "NJ CSC." Persons receiving public assistance pursuant to 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, participates in a complaint investigation or opposes a discriminatory practice. In addition, all aspects of the EEO complaint, investigations and determinations are considered highly sensitive and must be kept confidential. If you have any questions, please contact the EEO Office at (609) 777-3831.

Sincerely,

  
\_\_\_\_\_  
Betty M. Ng  
Equal Employment Opportunity Officer

Approved:

  
\_\_\_\_\_  
Raymond P. Martinez  
Chairman and Chief Administrator

c: Katharine Tasch, Acting Deputy Chief Administrator  
Richard J. Miller, Deputy Administrator of  
Finance and Administration  
Mamta Patel, Esq., Director, Division of EEO/AA