

B-153



STATE OF NEW JERSEY  
DECISION  
OF THE  
CIVIL SERVICE COMMISSION

In the Matter of K.S., Department of  
Corrections

CSC Docket No. 2015-705

Discrimination Appeal

ISSUED: FEB 09 2015 (SLK)

K.S., a Correction Major with the Department of Corrections (DOC), appeals the decision of the Assistant Director of the Equal Employment Division (EED) of the DOC which determined that it did not have jurisdiction to investigate K.S.'s allegation that he had been subjected to a violation of the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy).

By way of background, the appellant alleged that C.E., a Correction Lieutenant, F.C., a Correction Lieutenant, and S.T., a Communications Operator, Secured Facilities (Operator), at Bayside State Prison (BSP) retaliated against and sexually harassed him. Specifically, the appellant alleged that retaliatory actions were directed toward him due to his opposition to C.E.'s proposed 30 day suspension of M.W., an Operator, and his opposition to a proposed censorship by a group of other Operators against M.W. The appellant claimed that lewd images were sent to his home after he refused to sanction C.E.'s proposed suspension against M.W. after C.E. was barred from entering BSP due to an investigation by the Special Investigation Division (SID) where M.W. alleged workplace violence. The EED found that since the pictures were sent to the appellant's home, it was not an extension of the workplace. As such, the EED determined that the appellant's complaint did not touch on the State Policy and that it did not have jurisdiction to investigate this matter.

On appeal, the appellant presents that he received a package at his residence in July 2014 that contained a two page letter detailing several grievances from Operators and descriptions of an alleged improper relationship between him and

M.W. Additionally, the package contained two photographs of a naked female that he did not recognize and two photographs of M.W. posing suggestively while wearing a robe. As the package included the Operators' grievances and lewd photos of M.W., the appellant claims that these disgruntled employee(s) could have sent the package and he is concerned that the lewd material could have been viewed by his family or that the responsible party may pose a serious threat to his family or himself. Given these materials, the appellant posits that several Operators who previously signed a petition asking that M.W. be barred from speaking to management on their behalf in her capacity as shop steward could have sent the package to his home. The appellant also contends that S.T. is another possibility as it had previously been determined that she sent an anonymous complaint that mirrored the letter that was sent to his residence to the appointing authority's central office. Further, he presents that C.E. could have sent the package because he has been restricted from entering BSP due to an on-going SID investigation and that C.E. has made allegations of unfair treatment against him in the past. In this regard, the appellant claims that he had to correct C.E. because he had previously improperly issued a Preliminary Notice of Disciplinary Action (PNDA) for a 30 day suspension of M.W. Additionally, the appellant asserts that F.C. could have sent the package because he had previously come to him and accused M.W. and P.P. of having an improper personal relationship and that L.H., a Senior Correction Officer, stated his intent to launch a smear campaign against him after representing C.E. during an interview which led to discipline. In summary, the appellant believes that L.H., C.E., F.C., and S.T. could have collectively worked together to send the suspicious package to his home as this incident is consistent with their inappropriate behavior towards M.W. and him.

In light of this background, the appellant asserts that the package was sent to his home to harass him for his refusal to sanction discriminatory actions against M.W. The appellant argues that having nude photos and allegations of a sexual relationship with the person in the photos sent to his home, where his family, including his 12 year old daughter, could see them, is sexual harassment. Further, he maintains that his home is an extension of the workplace. The appellant highlights that such things as off-site training and union holiday parties are considered an extension of the workplace and he notes that he has access to DOC computer systems from home and regularly performs work at home. Moreover, since the sender of the package addressed workplace issues and the nude photos were obtained at work, the appellant asserts that his residence is an extension of the workplace and that the EED has jurisdiction. The appellant notes that the SID and E.N., an Assistant Superintendent 1 Corrections (Assistant Superintendent), also received the letter and pictures. Therefore, the appellant argues that the EED's conclusion that it did not have jurisdiction in this matter since the package was only sent to the appellant's residence is incorrect.

In a supplemental submission, the appellant indicates that after he filed this appeal, the DOC's Office of the Commissioner received another anonymous complaint alleging an improper relationship between M.W. and himself. Thereafter, the allegations were forwarded to Willie Bonds, Associate Administrator, Prison Complex, for an investigation. During the appellant's interview, he asked if he could see the anonymous complaint as the complaint was similar to the complaints sent to his home, the Assistant Superintendent, and SID. However, he was advised by the EED that it could not recall if the two complaints were similar and that since ethics investigations are confidential, the complaint could not be made available for him to view. Nevertheless, the appellant believes that it is likely that the author of the anonymous complaint sent to the Office of the Commissioner is the same person who sent the package to his home. As such, he maintains that this provides further evidence that his home should be considered an extension of the workplace.

In reply, the EED states that it does not have jurisdiction over the complaint and the matter was properly closed as it does not touch on the State Policy. Specifically, the EED argues that *N.J.A.C. 4A:7-3.1(a)(1)* provides that it has jurisdiction over conduct that occurs in the workplace, and conduct that occurs at any location which can reasonably be regarded as an extension of the workplace (*i.e.* any field location, any off-site business-related social function, or any facility where State business is being conducted and discussed). Here, the EED asserts that the appellant's home does not constitute an extension of the workplace as it is not a field location or facility, and it was not the site of a business-related social function. As such, the EED maintains that it properly determined that it did not have jurisdiction over the appellant's allegations. The EED advises that a package identical to the one received by the appellant was received by another BSP employee. However, since the identical package was mailed to the employee's attention at the workplace, the EED presents that it promptly opened an investigation in that matter.

Additionally, the DOC's Ethics Officer responds to the appellant's comments concerning a letter received by the Commissioner. The Ethics Officer states that allegations regarding ethics violations are confidential and not to be disclosed to SID. In this case, the letter received by the Commissioner alleged that the appellant was involved in a sexual relationship with a subordinate and was not properly disclosed. Therefore, issues involving consensual sexual relationships between supervisors and subordinates are not EED issues, but rather, subject to ethics investigations. In this regard, ethics matters are highly confidential and the Ethics Officer is prohibited from sharing investigation materials. As such, the allegation of a sexual relationship between the appellant and his subordinate was a confidential matter and properly maintained in confidence.

## CONCLUSION

*N.J.A.C. 4A:7-3.1(a)* provides that the State of New Jersey is committed to providing every State employee with a work environment free from prohibited discrimination or harassment.

*N.J.A.C. 4A:7-3.1(a)* also provides that the State Policy applies to both conduct that occurs in the workplace and conduct that occurs at any location which can be reasonably regarded as an extension of the workplace.

*N.J.A.C. 4A:7-3.1(c)* provides that it is a violation of the State Policy to engage in sexual harassment of any kind.

The Civil Service Commission (Commission) has reviewed the record in this matter and disagrees with the EED's determination that it did not have jurisdiction in this matter to conduct an investigation. In *In the Matter of N.J.* (CSC, decided September 17, 2014), an employee alleged that a co-worker posted discriminatory remarks about other employees on social media. This prompted an investigation, which resulted in a finding of a violation of the State Policy. In upholding the determination, the Commission considered the appellant's argument that her social media entries were private and personal, but found that she employed a social media website to publicize comments that referred specifically to employees, personal issues with supervisors, and use of a derogatory term to describe another employee's sexual orientation. In other words, a violation of the State Policy can occur even if these actions take place outside the workplace but involve work-related issues. This is because these actions undermine the State's commitment of providing every State employee with a work environment free from prohibited discrimination or harassment. To determine otherwise would mean that employees could undermine the State Policy by simply waiting for their co-workers to leave the workplace before engaging in harassing behavior. See *Karins v. City of Atlantic City*, 152 N.J. 532 (1998) (Firefighter properly disciplined for off-duty conduct, directing racial epithet at a Police Officer). See also, *Montone v. City of Jersey City*, Docket No. A-3326-11T2 (App. Div., December 24, 2013), 2013 N.J. Super. Unpub. LEXIS 3021 \* 41, certif. den. 217 N.J. 303 (2014) (While public employer lacked authority to regulate an independent website, it had the responsibility to determine whether postings constituted sexual harassment of a fellow Police Officer).

In this case, the appellant is making allegations that co-workers are sexually harassing him by sending lewd photographs of a female subordinate to his home due to work related grievances. *N.J.A.C. 4A:7-3.1(b)(1)vii* states, in pertinent part, that distributing materials in the workplace that contain derogatory or demeaning language or images pertaining to any of the protected categories is a violation of the State Policy. As the package allegedly contained suggestive photographs of a female subordinate and work related grievances, the sender of the package can be

considered to have extended workplace issues to the appellant's home. Since the matter involved workplace issues as well as lewd photographs of a female subordinate, at a minimum, in his supervisory capacity as a Correction Major, the appellant was required to report the matter to the EED so that it could conduct an investigation or he could have been subjected to administrative or disciplinary action. *See N.J.A.C. 4A:7-3.1(e)*. Therefore, since the matter touches on the State Policy and allegedly involved workplace grievances, the EED should conduct an investigation into the appellant's complaint.

Accordingly, this matter is remanded to the DOC's EED to conduct an investigation. Moreover, the Commission orders that the investigation be completed and a determination issued within 90 days of the date of this decision. Should an adverse determination be issued, the appellant shall be provided with a right to appeal.

**ORDER**

Therefore, it is ordered that this appeal be remanded to the Department of Corrections' Equal Employment Division to conduct an investigation consistent with this decision. Additionally, it is ordered that the investigation be completed and a determination be issued within 90 days from the issuance of this decision.

DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 4<sup>th</sup> DAY OF FEBRUARY, 2015



Robert M. Czech  
Chairperson  
Civil Service Commission

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and  
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Director  
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**Attachment**

**c: K.S.  
Victoria Kuhn  
Leila Lawrence  
Mamta Patel  
Joseph Gambino**



**State of New Jersey**  
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CHRIS CHRISTIE  
*Governor*

KIM GUADAGNO  
*Lt. Governor*

GARY M. LANIGAN  
*Commissioner*

July 16, 2014

K [REDACTED] S [REDACTED]  
[Mailed to Home Address]

Dear Major S [REDACTED]:

Please be advised that the Equal Employment Division ("EED") has reviewed your formal complaint, received in the EED on July 14, 2014, wherein you allege harassment and retaliation by Lieutenant C [REDACTED] E [REDACTED], Lieutenant F [REDACTED] C [REDACTED] and Communication Operator S [REDACTED] T [REDACTED]. The Department takes allegations of discrimination, harassment and/or retaliation very seriously and will open an investigation into those matters that are connected to the *Policy Prohibiting Discrimination in the Workplace*.

Please be further advised that, in order for the EED to have jurisdiction in a matter, the allegations of harassment, discrimination and/or retaliation must be connected to a protected category, as set forth on the complaint form. The nexus to a protected category is absent here. As a result, the EED is divested of jurisdiction.

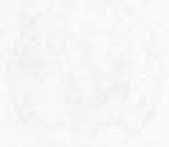
More specifically, the nude pictures were sent to the Major's home only. His home is not an extension of the work place. As such the EED does not have jurisdiction.

Sincerely,

Leila Lawrence, Assistant Director  
Equal Employment Division

c: Erin Nardelli, Assistant Superintendent ASL BSP





OFFICE OF THE  
ATTORNEY GENERAL  
STATE OF TEXAS  
AUGUST 19, 1902

Very respectfully,  
Your obedient servant,  
[Signature]

Accepted for filing  
[Signature]

Filed for recording  
[Signature]

Witness my hand and seal  
this 19th day of August, 1902.  
[Signature]

Notary Public in and for the State of Texas  
My Commission Expires [Date]