

CSC
B-73



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of S.J., Department of
Human Services

Discrimination Appeal

CSC Docket No. 2013-1535

ISSUED: **MAR 06 2015** (HS)

S.J., a Staff Clinical Psychologist 3 with the Woodbine Developmental Center (WDC), Department of Human Services (DHS), appeals the attached determination of the Assistant Commissioner, stating that only one of four allegations of a violation of the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy) had been substantiated.

By way of background, the appellant, an African American, filed a "hostile work environment" complaint¹ on December 16, 2010 with J.C., a Quality Assurance Coordinator, against S.B., a former Assistant Supervisor of Professional Residential Services, Developmental Disabilities,² a Caucasian. The appellant alleged that S.B. had asked the appellant, "Where the fuck were you?" after the appellant had failed to appear for a client intervention on December 15, 2010. It is noted that WDC investigated this complaint, substantiated the allegation that S.B. had used intemperate language and took corrective action.

Subsequently in January 2011, the appellant filed a discrimination complaint against S.B. and WDC alleging retaliation and discrimination on the basis of her race. Specifically, the appellant alleged that: 1) WDC and J.C. had retaliated and racially discriminated against her when J.C. did not substantiate her December 16, 2010 complaint because of a previous discrimination complaint she had filed against

¹ For a hostile work environment complaint to implicate the State Policy, the complaint must involve a protected category. See *N.J.A.C. 4A:7-3.1(a)*.

² Agency records indicate that S.B. left State service effective September 1, 2013.

co-workers in November 2007; 2) S.B. had also retaliated against her due to the November 2007 complaint; 3) S.B. had racially discriminated against the appellant by yelling at her and by being "condescending, rude and . . . degrading towards" her; and 4) S.B. had made racial comments by referring to a co-worker as a "black mother fucker" and referring to a client as "greased up as if he were a black person." In response, the Office of Equal Employment Opportunity (EEO) conducted an investigation of the appellant's January 2011 discrimination complaint and determined that only allegation four had been substantiated. In this regard, in the November 2012 determination letter, it was noted that allegation one was not substantiated since the December 16, 2010 complaint the appellant reported to J.C. did not implicate the State Policy. Moreover, allegations two and three were also not substantiated since S.B. denied the allegations and there was no evidence to support them.

On appeal to the Civil Service Commission (Commission), the appellant argues that J.C.'s initial determination was that her December 16, 2010 complaint lacked merit. The appellant also argues that S.B. had a long history of using intemperate and inappropriate language toward members of the professional staff, mainly those of color, and the residential service staff. The appellant states that S.B.'s use of such language was so commonplace that it seemed to be S.B.'s normal language. The appellant argues that she should receive monetary relief.

In response, the EEO initially contends that the appellant's appeal fails to provide any rebuttal of its conclusions. The EEO states that it interviewed the appellant, S.B. and a witness, S.C., a Behavior Support Technician. The EEO notes that WDC, rather than the EEO, investigated the appellant's December 16, 2010 complaint since the appellant's complaint did not implicate the State Policy. However, WDC substantiated the allegation that S.B. had used intemperate language, and it took appropriate corrective action. In addition, the EEO's investigation found no witnesses to corroborate the allegation that S.B. harassed the appellant on account of her race, nor did the investigation reveal any relation between S.B.'s alleged actions and the prior discrimination complaint filed by the appellant. As to the appellant's reference to S.B.'s alleged long history of intemperate language, the EEO argues that this issue was addressed by WDC's investigation into the appellant's December 16, 2010 complaint. In closing, the EEO argues that its investigation was proper and that it appropriately substantiated one of the appellant's allegations.

In reply, the appellant notes that it was substantiated that S.B. made racial comments and argues that it was inappropriate that S.B. was promoted to the position of Assistant Supervisor of Professional Residential Services, Developmental Disabilities³ after engaging in such uncivil behavior. With respect to her failure to

³ Agency records indicate that S.B. received a regular appointment to the title of Assistant Supervisor of Professional Residential Services, Developmental Disabilities effective July 16, 2011.

appear at the December 15, 2010 client intervention, the appellant explains that it is not normal for a staff psychologist to respond to a call for assistance from a Head Cottage Training Supervisor, S.B.'s title at the time of this incident, and that to the best of her recollection, no other psychologist has ever been called upon to respond to a behavioral issue when not in the building where the issue arose. In this regard, the appellant states that she was providing psychological services in another building at the time S.B. called for her assistance and argues that S.B.'s action in calling for the appellant while knowing that she was otherwise engaged supports her claim of harassment and unfair treatment. Additionally, the appellant states that she was subjected to S.B.'s intemperate and abusive remarks, such as those noted in allegation four, on a daily basis, causing her to seek psychological and medical assistance. The appellant also argues that it was inconceivable that she had to remain in a working relationship with S.B. for approximately four to six months after she filed her discrimination complaint. Finally, the appellant alleges that R.A., a management-level employee,⁴ made it known to the appellant that disciplinary measures would be initiated should she pursue this matter too vigorously and that R.A. has hindered her case by preventing other individuals from speaking truthfully.

CONCLUSION

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)*. 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)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 appropriately substantiated only one of the appellant's allegations. Although the appellant contends that S.B.

⁴ The individual's exact title is not being used to preserve confidentiality. *See N.J.A.C. 4A:7-3.1(g)1*.

had a long history of directing intemperate and inappropriate language toward members of the professional staff, mainly those of color, the EEO's investigation did not corroborate the allegation that S.B. had harassed the appellant because of her race. However, the EEO's investigation did substantiate the allegation that S.B. had made inappropriate racial remarks regarding a co-worker and a client. The EEO also notes that although the appellant's December 2010 complaint did not implicate the State Policy, the WDC did investigate and had substantiated that S.B. had used inappropriate language towards the appellant. While the appellant further argues that S.B. inappropriately received a promotion to the title of Assistant Supervisor of Professional Residential Services, Developmental Disabilities, it should be noted that the EEO's investigation had not yet been completed at the time S.B. received her regular appointment. It is settled that such a pending matter, which may result in discipline, may be considered by an appointing authority in its selection of candidates from a promotional list. *See In the Matter of Gary R. Kern, Antonio C. Campos, Larry W. Cole and Robert M. Rupp* (MSB, decided October 11, 2000). However, an appointing authority is not mandated to do so. Thus, the appointing authority had the discretion to appoint S.B. despite the pending EEO matter. Regarding the appellant's objection that she had to continue working with S.B. for a period of months after filing her discrimination complaint, it is noted that the discretion to take remedial action such as separating employees lies with the State agency. *See N.J.A.C. 4A:7-3.1(g)2*. Accordingly, the investigation was thorough and impartial, and no basis exists to disturb the EEO's determination.

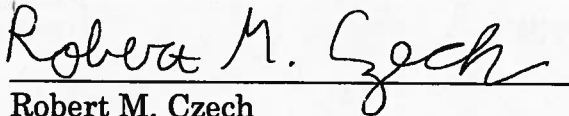
Two additional issues warrant comment. Regarding the appellant's allegations that R.A. engaged in retaliatory behavior, it does not appear from the record that the appellant raised these claims in her EEO complaint, and the EEO's determination did not address any allegations against R.A. Since the Commission does not investigate potential violations of the State Policy, the appellant is advised that she may file another complaint with the EEO regarding these allegations. With respect to the appellant's request for monetary relief, it is noted that the Commission does not have the jurisdiction to provide an appellant with punitive or monetary damages.

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 MARCH, 2015



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Chairperson
Civil Service Commission

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and
Correspondence

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Attachment

c. S.J.
Edward McCabe
Mamta Patel
Kenneth Connolly
Joseph Gambino



State of New Jersey
DEPARTMENT OF HUMAN SERVICES
PO Box 700
TRENTON NJ 08625-0700

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

November 8, 2012

JENNIFER VELEZ
Commissioner

S. J. [Redacted]
[Redacted]

Dear Ms. J. [Redacted]:

On January 25, 2011, you filed a complaint against S. [Redacted] B. [Redacted] Assistant Supervisor of Professional and Residential Services at Woodbine Developmental Center and a complaint against Woodbine Developmental Center alleging discrimination based upon retaliation and race. Specifically, you alleged that:

1. Woodbine Developmental Center and J. [Redacted] C. [Redacted] Quality Assurance Coordinator retaliated and racially discriminated against you for your complaint against Dr. S. [Redacted] and Mr. V. [Redacted] when he made no finding when you reported Ms. B. [Redacted] actions to him.
2. S. [Redacted] B. [Redacted] retaliated against you due to your prior complaint that you filed in November 2007.
3. Ms. B. [Redacted] racially discriminated against you because "She yells at you, she's condescending, rude and is degrading towards you."
4. Ms. B. [Redacted] made racial comments by "referring to S. [Redacted] H. [Redacted] as a black mother fucker" and referring to a client as "greased up as if he were a black person."

The Department of Human Services (DHS) neither condones nor tolerates any form of discriminatory behavior in the workplace. Therefore, the 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.

- Allegation one was not substantiated. On December 16, 2010, you reported a hostile work environment claim to J. [Redacted] C. [Redacted] that did not implicate the State's Discrimination Policy.
- Allegation two was not substantiated. Ms. B. [Redacted] denied the allegation and there was no evidence to support it.

Advisory, Consultative, Deliberative and Confidential Communication

S [REDACTED] J [REDACTED]

- Allegation three (3) was unsubstantiated. Ms. B [REDACTED] denied the allegation and there was no evidence to support it.
- Allegation four (4) was substantiated.

Based on the results of the investigation S [REDACTED] B [REDACTED] violated the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy). Consequently, the appropriate administrative and/or disciplinary action will be taken.

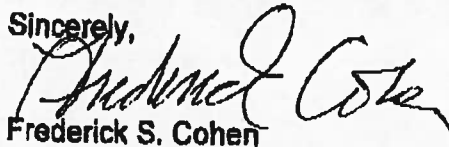
If you disagree with this determination, you have the right to file an appeal with the Merit System Board within twenty (20) days of your receipt of this letter. The appeal must be in writing, state the reason(s) for the appeal, and specify the relief requested. Please include all materials presented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



Frederick S. Cohen
Assistant Commissioner

FSC: BE

C: Ed McCabe, Office of EEO Director

[REDACTED]
Mamta Patel, Treasury

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