



B-29

STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of A.D.,
Department of Corrections

Discrimination Appeal

CSC Docket No. 2013-2950

ISSUED APR 02 2015 (EG)

A.D., an Institutional Trade Instructor 1, Cooking with the Department of Corrections (DOC), represented by Estelle Flynn Lord, Esq., appeals the attached determination of the Commissioner of the DOC, 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).

The appellant, an African American female, filed a complaint on October 23, 2012 that Senior Correction Officer G.P., a Caucasian male, had subjected her to discrimination/harassment on the basis of race/color and retaliation. Specifically, the appellant alleged that sometime in May 2012 while in the inmate dining room, an officer asked a worker inmate for an additional slice of pizza for an inmate. The worker inmate responded that he needed to get approval from the appellant. Upon hearing this response, G.P. became upset and screamed "You don't have to ask for no fucking pizza . . . She is just a civilian . . . You don't want no shit, we run this." The appellant also indicated that G.P. referred to the appellant as a "bitch." Additionally, the appellant asserted that this is when G.P.'s harassing behavior commenced. Further, the appellant alleged that in August 2012, G.P began locking the door for the 7 wing kitchen bathroom and subjected her to harassment by making her wait long periods before unlocking the bathroom for her use. The appellant stated that she reported this action to the Shift Commander but no action was taken. Moreover, the appellant alleged that in October 2012, she received a food delivery which contained excess food. The appellant directed an inmate to leave the additional items (hot dog buns) on the truck so they may be returned. The

appellant asserts that G.P. ordered the inmate to remove the buns from the truck and then threw them on the ground in an attempt to get her in trouble. Furthermore, the appellant alleged that G.P. became irate and ordered a code which resulted in several officers responding and violently restraining her. Finally, the appellant claimed that G.P. started a rumor that the appellant had been impregnated by an inmate and that these actions resulted in her being investigated..

Based on the aforementioned allegations, the DOC's Division of Equal Employment (EED) conducted an investigation into the appellant's complaints. The EED found that there was no evidence, through witnesses or otherwise, to corroborate the allegation that G.P. called the appellant a "bitch." Rather, the witnesses interviewed did not confirm the use of a gender based slur. With regard to the bathroom, the EEO found no evidence to support the allegation that the bathroom was locked as a form of discrimination/harassment against the appellant. The investigation revealed that due to chemicals stored inside and accessibility of the inmates to these chemicals, the bathroom was maintained locked and could only be unlocked with a paracentric key, which only custody staff is authorized to possess. However, the investigation also revealed that this situation was brought to the attention of the prison administration. This led to the chemicals being moved and the bathroom being left unlocked during regular hours for custody, civilian and food service use. With regard to the allegations surrounding the hot dog buns, the investigation found that G.P. had been advised that for safety and security purposes, delivery trucks could not exit the secured perimeter of the facility with rejected items. The truck must exit the secured perimeter completely empty. Additionally, witnesses advised that a code was not called. Rather, G.P. radioed his supervisor for assistance only. Further, the appellant acknowledged in her interview that she was not violently restrained nor was she touched or handled physically in any way during this incident. Furthermore, the investigation revealed that while some witnesses were aware of the rumor about the appellant being impregnated by an inmate, there was no evidence that G.P. was the source of the rumor. Moreover, G.P. was interviewed and denied engaging in any behavior that violated the State Policy. Finally, the investigation determined that since there was no EED history between the appellant and G.P., a claim of retaliation could not be established. Based on the foregoing, the EED was unable to substantiate the appellant's allegations that G.P. violated the State Policy.

On appeal, the appellant reiterates the allegations made in her complaint. She states that G.P. became irate during the pizza incident and called her a "bitch." Additionally, the appellant asserts that the bathroom door was locked by G.P. as a form of discrimination/harassment because before the prior incident, the bathroom door had been open. In this regard, G.P. and his companions would make the appellant wait for many hours before unlocking the door. Further, the appellant argues that she was following accepted prison kitchen policy when she attempted to return the additional food items. She claims that G.P. threw the buns on the

ground in an attempt to instigate an incident. When she did not take the bait, G.P. called a code where approximately 10 prison guards and a Correction Lieutenant arrived on the scene to intimidate her and/or violently restrain her. The appellant alleges that this act was used by G.P. to intimidate her, as she was the only female kitchen worker on duty during her shift. Further, the appellant asserts that violent restraint does not require physical touching and can be accomplished by close physical proximity and the number of people involved. Moreover, the appellant reiterates her allegation that G.P. was the person that filed an anonymous complaint about the appellant being impregnated by an inmate. Finally, the appellant argues that there was no evidence that the EED interviewed a female prison guard who had specifically told her that she was being targeted for retaliation. It is noted that the appellant did not provide this witness' name.

In reply, the appointing authority argues that the appellant does not supply a basis for appeal and merely argues that an incorrect decision was reached on the facts of the case. It contends that it conducted a thorough investigation and that the appellant's appeal should be dismissed. Additionally, it asserts that while the investigation found that the appellant and G.P. had an exchange in the dining room, there was no evidence that G.P. used a gender-based slur. Further, it reiterates that the investigation found no evidence that the bathroom door was closed as a form of discrimination or harassment. Moreover, the EED found no evidence that G.P. called a code during the "hot dog bun" incident nor was the appellant violently restrained. Furthermore, the EED found no evidence that G.P. was the source of the rumors against the appellant. The appointing authority also adds that while it did not find a violation of the State Policy, it did refer the matter of the verbal altercation in front of inmates to the administration for appropriate action, which resulted in the verbal counseling of G.P. to remind him of his responsibility to refrain from disputes with staff in the presence of inmates. Finally, the appointing authority indicates that the EED investigation included interviews with female custody staff. These interviews did not uncover any evidence to support the appellant's allegations.

CONCLUSION

N.J.A.C. 4A:7-3.1(a) provides that under the State Policy, 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. *N.J.A.C.* 4A:7-3.1(c) provides 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.

In addition, retaliation against any employee who alleges that he or she 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 the subject of other retaliation. See *N.J.A.C. 4A:7-3.1(h)*. Examples of such retaliatory actions include, but are not limited to, termination of an employee; failing to promote an employee; altering an employee's work assignment for reasons other than legitimate business reasons; imposing or threatening to impose disciplinary action on an employee for reasons other than legitimate business reasons; or ostracizing an employee (for example, excluding an employee from an activity or privilege offered or provided to all other employees).

In the instant matter, the Commission has conducted a review of the record and finds that an adequate investigation was conducted. Specifically, the relevant parties were interviewed and the appropriate records were reviewed. Specifically, the EED interviewed witnesses concerning the verbal altercation between the appellant and G.P. and found no evidence that G.P. used a gender-based slur. Additionally, the EED investigation found no evidence that the locking of the bathroom was used to discriminate/harass the appellant. Rather, the storage of chemicals in the bathroom and the need to secure this from inmates provided a valid security reason to keep the bathroom locked. In addition, the investigation found that the bathroom situation was remedied as the chemicals were moved. With regard to the "hot dog buns" incident, the EED investigation found that G.P. was following prison security protocols when he did not allow the food to be returned. Further, no evidence was found that G.P. called a code or that the appellant was forcibly restrained and touched in any manner. Moreover, while the EED found that witnesses were aware of the rumor of the appellant's impregnation by an inmate, no evidence was found that G.P. filed an anonymous complaint or started such a rumor. Finally, there is no evidence that the appellant filed any prior complaint regarding G.P. Therefore, she cannot substantiate retaliation under the State Policy.

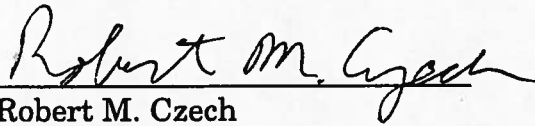
The determinations made by the EED are well reasoned, fully explained, and based on a thorough investigation. Moreover, the appellant has not provided any dispositive evidence in support of her contentions that she was subjected to a violation of the State Policy. Therefore, the appellant has not sustained her burden of proof in this matter. Accordingly, based on the foregoing, 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 1ST DAY OF APRIL, 2015



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