



B-34

STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of M.R., Department of
Children and Families

Discrimination Appeal

CSC Docket Nos. 2013-3554 and
2014-410

ISSUED: APR - 2 2015 (SLD)

M.R., a Family Service Specialist 2 with the Department of Children and Families (DCF), appeals the attached determinations of the Office of Equal Employment Opportunity and Affirmative Action (EEO/AA), 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). Since these matters concern similar issues, they have been consolidated herein.

On February 19, 2013, the appellant, an African-American female, sent a letter to the Director of Employee Relations, alleging that C.K., an African-American female Supervising Family Service Specialist, discriminated against her on the basis of her age. Specifically, the appellant alleged that C.K. referred to her and other staff members as "youngsters" and "baby girl." The appellant also alleged that she had was being harassed, discriminated and retaliated against due to an incident in January 2013, when the appellant refused to perform an investigation, claiming that she was not trained to perform the investigation properly. Specifically, the appellant noted that she had received a notice of minor discipline due to the January 2013 incident and another incident where the appellant was late to work. Thereafter, on February 26, 2013, the matter was referred to the EEO/AA. In response to the appellant's complaint, the EEO/AA conducted an investigation and determined that there was no probable cause to substantiate a violation of the State Policy on the basis of the appellant's age. Specifically, the EEO/AA noted that although the investigation had substantiated that C.K. had referred to the appellant and others as "youngsters" and "baby girl," it was unable to substantiate

that the comments had violated the State Policy. In this regard, it noted that C.K. had stated that she had referred to the individuals as "youngsters" as C.K. was not as technically savvy as her younger subordinates and that she had used the term "baby girl" as a term of endearment. Finally, with regard to the appellant's grievance regarding the minor discipline, the EEO/AA noted that that matter was being referred to the Office of Cooperative Labor Relations as the issues did not implicate the State Policy.

Subsequently, on June 19, 2013, the appellant filed a second complaint against M.B., a Caucasian female Local Office Manager,¹ alleging that M.B. had discriminated against her on the basis of her age and race and had retaliated against the appellant. Specifically, the appellant asserted that M.B. had discriminated against her because the appellant is a young, African-American, with long black hair. The appellant maintains that M.B. does not respond to the appellant's greetings and would instead roll her eyes and put her head down as M.B. walks by the appellant, and that M.B. would look the appellant up and down and stare at the appellant's hair. Additionally, the appellant claimed that M.B. had retaliated against the appellant by inquiring about the authenticity of some information in a report, stating that "workers in this office create fake documents all the time," and by accusing the appellant of providing confidential information regarding the reporter of a new referral to an existing client. Additionally, the appellant asserted that M.B. had recommended a four day suspension due to the January 2013 incident. The appellant also maintained that the EEO/AA had failed to investigate her allegations against M.B. which she had listed in her February 19, 2013 letter. In response to her complaint, the EEO/AA conducted an investigation and determined that there was no probable cause to substantiate a violation of the State Policy on the basis of the appellant's age or race or that she had been retaliated against. Specifically, the EEO/AA noted that a legitimate question arose when a current client of the appellant was made aware of detailed information regarding the identity of a reporter on a new complaint against her. Moreover, the EEO/AA noted that it was determined that the appellant had falsified her time on December 5, 2012, after arriving to work late and that the appellant was insubordinate and therefore, received an oral counseling for the falsification infraction and a four day suspension for being insubordinate.

On appeal, the appellant reiterates her allegations and disputes that an investigation occurred as she questions whether any of the seven witnesses she named were spoken to. The appellant also argues that as the State Policy is a "zero tolerance" policy, then the EEO/AA wrongly found that the comments of "youngster" and "baby girl" did not violate the State Policy. The appellant asserts that C.K.'s admitted use of those terms was derogatory, demeaning, discriminatory and that C.K. said them in a harassing manner.

¹ M.B.'s official civil service title is Senior Executive Service.

Additionally, the appellant asserts that M.B. was the "real" person of interest in her complaint, but the EEO/AA minimized and totally ignored her actions, instead singling out C.K. as the "culprit." The appellant maintains that M.B. used C.K. to treat her in a hostile manner, and that when the appellant requested a reassignment from C.K.'s unit, M.B. left her there to suffer. However, the appellant also notes that she was re-assigned to a new unit on June 24, 2013. The appellant argues that M.K.'s questioning of her integrity is in retaliation for the EEO/AA complaint she filed. Moreover, the appellant asserts that M.B.'s inappropriate actions were apparent in her efforts to discipline the appellant. Finally, the appellant claims that the EEO/AA incorrectly notes that she served a four day suspension, since the suspension was ultimately withdrawn.

In response, the EEO/AA initially notes that the appellant's February 26, 2013 complaint was actually a February 19, 2013 letter the appellant had sent to the Director of Employee Relations in which she listed several concerns. Thereafter, the matter of C.K.'s comments of "youngster" and "baby girl" were referred to the EEO/AA. Although the investigation confirmed that C.K. had used the terms "youngster" and "baby girl" towards the appellant, the EEO/AA notes that C.K. explained that she used the term "youngster" to illustrate how C.K. was not as skilled in the newest computer technology as her younger subordinates. C.K. also stated that she used the term "baby girl" as a term of endearment towards her younger subordinates. The EEO/AA asserts that based on the context provided, the comments did not violate the State Policy. However, the EEO/AA notes that C.K. was counseled that she should refrain from making these types of comments in the future.

Additionally, the EEO/AA asserts that although the appellant had referenced M.B. in her initial February 19, 2013 letter, none of the complaints were in reference to an EEO/AA matter. Subsequently, in the appellant's June 19, 2013 complaint, the appellant alleged that M.B.'s actions were due to sex/gender, race, age and retaliation. The EEO/AA notes that in response to the appellant's June 19, 2013 complaint, it investigated the allegations made against M.B. However, the EEO/AA maintains that upon interviewing the appellant, she only stated that M.B. discriminated against her because she is a "young, African American with long black hair," and M.B. does not respond to her greetings. Moreover, although the appellant claimed that M.B. treated her differently because she is a "young, African American with long black hair," the appellant provided no details as to how she was treated differently. The EEO/AA argues that despite interviewing the appellant twice with regard to her allegations, she gave no specifics to support her allegations with regard to any of the protected categories.

With regard to the appellant's claim that she was retaliated against after M.B. questioned her about the authenticity of one of the appellant's reports and stated that workers create fake documents, the EEO/AA notes that its investigation

did not substantiate that she was retaliated against in violation of the State Policy. In this regard, the EEO/AA maintains that none of the actions taken against the appellant by M.B., including the disciplinary actions, were in reference to anything of an EEO/AA nature.

CONCLUSION

The Civil Service Commission (Commission) has conducted a review of the record in this matter and finds that adequate investigations were conducted, that the relevant parties in these matters were interviewed and that the EEO/AA appropriately analyzed the available documents in investigating the appellant's complaints. The EEO/AA concluded that none of the appellant's complaints evidenced a violation of the State Policy based on the appellant's race, sex or age. The Commission does not fully agree. In this regard, while the appellant claimed that C.K.'s usage of the phrase "baby girl" was a violation of the State Policy, the EEO/AA determined that based on the context of the comments, the use of that phrase was not a violation of the State Policy. Although the Commission agrees that the use of the term "youngster" did not, in this instance, violate the State Policy, the use of the term "baby girl" did. Behaviors that may constitute prohibited workplace discrimination or harassment include treating an individual differently because they are in one or more of the above protected categories; calling another by an unwanted nickname which refers to one or more of the above protected categories; or using derogatory references with regard to any of the above protected categories in any communication. See *N.J.A.C. 4A:7-3.1(b)1ii*, *N.J.A.C. 4A:7-3.1(b)1iv*, and *N.J.A.C. 4A:7-3.1(b)1v*. Since the appellant has indicated that the use of the term "baby girl" was directed towards her, and the term refers to at least one of the above-noted categories, it is clear that C.K.'s use of the phrase "baby girl" violates the State Policy. Moreover, it is of no moment that C.K.'s usage of that term was as a form of endearment. *N.J.A.C. 4A:7-3.1(b)* provides that:

It is a violation of this policy to use derogatory or demeaning references regarding a person's race, gender, age, religion, disability, affectional or sexual orientation, ethnic background or any other protected category . . . A violation of this policy can occur even if there was no intent on the part of an individual to harass or demean another.

However, with regard to C.K.'s use of "youngster," the Commission notes that not every term or phrase that may refer to a protected category is a violation of the State Policy. In this regard, C.K. used the term to refer to C.K.'s own technological shortcomings and therefore, it was not used in a derogatory or demeaning way towards others. Regardless, even finding that C.K. violated the State Police for her use of "baby girl," the Commission notes that C.K. was advised to not use such terms and phrases in the future and the appellant has been reassigned to another unit. Accordingly, the Commission finds no other remedial action needs to be taken.

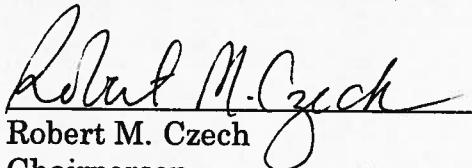
With regard to the appellant's complaint against M.B., as noted by the EEO/AA, none of these allegations implicate the State Policy. In this regard, none of the allegations indicate that the appellant was treated less favorably based upon her inclusion in one of the protected categories noted above. Moreover, under the State Policy, a retaliation complaint *must* be based upon one of the protected classes listed in the State Policy *and* be in reference to a previously filed discrimination complaint or participation in an EEO investigation. Accordingly, that investigation was thorough and impartial and no basis exists to find a violation of the New Jersey State Policy Prohibiting Discrimination in the Workplace in that matter.

ORDER

Therefore, it is ordered that these appeals be granted in part.

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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