



B-22

STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of K.A. and E.G., Office
of the Public Defender

CSC Docket Nos. 2015-1844 and
2015-1779

Discrimination Appeals

ISSUED: ~~MAY~~ 21 2015 (SLK)

K.A. and E.G., Investigator 1s, Public Defender, with the Office of Public Defender (OPD) appeal the attached decisions of a First Assistant Public Defender for the OPD which found that the appellants did not present sufficient evidence to support a finding that they had been subjected to a violation of the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy). These appeals have been consolidated due to common issues presented.

By way of background, K.A., an African-American, and E.G, a 48 year-old African-American, filed complaints against their former supervisor E.G-D., Investigator 3, Public Defender, a Hispanic-American female. The appellants both alleged discrimination based on race and E.G. also alleged age discrimination. Specifically, K.A. alleged that E.G-D. granted K.M., an Investigator 1, Public Defender, and M.C., an Investigator 1, Public Defender, who are both Caucasian, permission to conduct an investigation in Pennsylvania together but initially denied the appellants permission to conduct an investigation in rural Pennsylvania due to their being African-American.¹ K.A. also alleged that J.O., an Investigator 1, Public Defender, who is Caucasian, received favorable treatment from E.G-D. by granting him permission to arrive before 8:00 AM and to depart at 3:00 PM. E.G. alleged that E.G-D.: (1) refused to allow her to return a case assignment while allowing younger, Caucasian investigators to do so; (2) ignored or discouraged her requests to discuss work related issues with her; (3) ignored her leave request, where other

¹ K.A. made the request to partner with E.G. due to concerns about navigating the area, locating the destination, and returning during darkness.

investigators received responses immediately; (4) initially refused her request to partner with K.A. as described above while other Caucasian investigators were approved for partnering; and (5) refused her to sign into work prior to 7:30 AM while allowing Caucasian workers to sign in at any time. The Equal Employment Opportunity (EEO) Office of the OPD conducted an investigation consisting of 13 employee interviews and reviewing relevant documentation and determined there were no violations of the State Policy.

On appeal, K.A. states that while she believes that OPD conducted a diligent investigation, she asserts that E.G-D. has harassed and humiliated her for several years without any disciplinary action being taken against her. K.A. also claims that E.G-D. retaliated against her after becoming aware of her complaints. K.A. requests that E.G-D. be removed as a supervisor, that her appeal letter be added to her personnel file, and that any allegations made by E-G-D. against her be removed from her personnel file.²

E.G. asserts that E.G-D. discriminated against her by charging her with insubordination and hindering an investigation for actions which were common to other investigators at her workplace. E.G. represents that subsequent to this investigation, E.G-D. was demoted and reassigned³ and yet she still has not been found to have violated the State Policy. E.G. requests that the charges against her be removed from her file.

In response to K.A., the EEO states that it is policy for one investigator to conduct an investigation which requires travel outside of the State due to expense concerns and to ensure effective personnel management. However, management has discretion to grant exceptions to this policy. The investigation revealed that witnesses, who were of different ethnicities, described E.G-D. as a manager who will approve most requests to partner with co-workers if presented good reasoning, which usually involved security concerns, and the majority of witnesses stated that E.G-D. never denied their partnering requests. Further, the investigation revealed that the majority of witnesses did not believe that E.G-D. treated K.A. differently based on her race. However, a few witnesses stated that K.A. felt that E.G-D. treated her differently due to her race, but they never witnessed it. The investigation showed that E.G-D. initially denied K.A.'s and E.G.'s request to partner in Pennsylvania. However, after discussing the matter with P.F., Chief Investigator, Public Defender, it was agreed to accommodate K.A.'s request to partner with E.G. Similarly, the investigation found that E.G-D. obtained P.F.'s agreement prior to approving K.M. and M.C.'s request to partner in Pennsylvania. With respect to K.A.'s allegation that J.O. was granted favorable hours by E.G-D.,

² The investigation revealed that K.A.'s personnel file did not contain any negative allegations by E.G-D.

³ The investigation revealed that E.G-D. was reassigned to another office for reasons unrelated to these complaints or allegations.

the investigation revealed that E.G-D. adamantly denied allowing J.O. to work abbreviated hours and witnesses did not corroborate the allegation.

In reply to E.G., the investigation found that standard work hours do not start before 8:30 AM.; however, there were exceptions when an investigator either had a State vehicle overnight and was bringing it back early for another investigator to use, or if they arrived early to pick up keys to a State vehicle for a visitation. Further, it was determined that no employee signed in at 7:30 AM and there were only a few exceptions where an investigator signed in at 8:00 AM in order to pick up a State car. The investigation showed that most investigators would never consider returning a case, but if they had good reasoning, E.G-D. would accommodate them. With respect to E.G.'s returning a case to E.G-D. in July 2014, P.F. directed E.G. to complete the assignment because earlier in the month E.G-D. reassigned another case due to E.G.'s caseload. Thereafter, in September 2014, E.G. was served with a Preliminary Notice of Disciplinary Action for insubordination in completing an assignment. The investigation revealed that most investigators stated that E.G-D. had an open door policy and therefore the investigation could not substantiate allegations that E.G-D. refused to meet E.G. or discuss her concerns. The investigation corroborated that E.G-D. promptly answered leave requests; however, E.G. had requested a month long leave. Consequently, due to the length of the requested leave, E.G-D. needed additional time to assess whether operational needs could be met during E.G's requested absence and ultimately she approved a request for a two week leave and stated that she would revisit the request for additional time in December 2014. Therefore, the investigation could not substantiate that E-G-D.'s delay in approving E.G.'s request for leave was based on race or age discrimination.

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. Under this policy, employment discrimination or harassment based upon race and age are prohibited. This is a zero tolerance policy.

N.J.A.C. 4A:7-3.1(g)(1) provides that the EEO shall conduct an investigation of discrimination/harassment claims in a prompt, thorough, and impartial matter and forward the results to the respective State agency head to make a final decision as to whether a violation of the policy has been substantiated.

N.J.A.C. 4A:7-3.1(h) provides that retaliation against any employee who alleges that she or he was the victim of discrimination/harassment is prohibited by the State Policy.

N.J.A.C. 4A:7.3-2(m)3 states, in pertinent part, that the appellant shall have the burden of proof in all discrimination appeals.

The Civil Service Commission (Commission) has reviewed the matter and finds that the neither appellant has established that they were discriminated against on the base of race or age or retaliated against for filing discrimination/harassment complaints. With respect to K.A., the investigation revealed that it was policy to only have one investigator travel outside of the State to conduct an investigation although exceptions were made when there were valid concerns, such as safety. The investigation showed that although E.G-D. initially denied K.A.'s request to partner with E.G. for an investigation in Pennsylvania, after consulting with P.F., she approved the request. The investigation revealed that E.G-D. followed this same procedure when approving the request of two Caucasian co-workers who had requested to partner for an investigation in Pennsylvania. Additionally, the investigation revealed that E.G-D. denied K.A.'s allegation that J.O. was provided preferential treatment by granting him abbreviated works hours and there were no witnesses to corroborate the allegation.

In relation to E.G., the investigation revealed that P.F. directed E.G. to complete a case that she had returned to E.G.-D. because E.G-D. had previously reassigned another case due to E.G.'s caseload. The investigation could not substantiate that E.G-D. refused to meet with the appellant to discuss her concerns as most investigators stated the E.G-D. had an open door policy. Further, the investigation revealed that the reason why there was some delay by E.G-D. in responding to E.G.'s request for a month long leave while approving other leave requests quickly was based on E.G-D.'s need to assess operation needs based on the length of the leave request and was not based on race or age discrimination. The investigation showed, after a review of the sign-in charts, that there were no employees who signed in at 7:30 AM as E.G. alleged and that there were only a small number of exceptions of employees who signed in at 8:00 AM when they were either returning or picking up a State car for an investigation.

Additionally, neither appellant has provided any evidence that show that actions were taken against them based on race, age, and/or retaliation. Instead, the investigation demonstrated that E.G-D.'s actions were based on non-discriminatory reasons or there was no evidence to corroborate the appellants' allegations. Moreover, as the investigation consisted of 13 interviews and a review of relevant documents, the Commission finds that the investigation into both appellants' complaints was thorough and impartial and therefore there is no reason to disturb the OPD's findings. Accordingly, the Commission finds that the appellants failed to support their burdens of proof and no basis exists to find a violation of the New Jersey State Policy Prohibiting Discrimination in the Workplace.

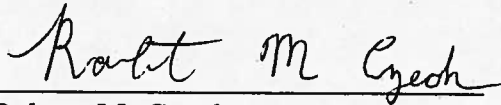
A final matter to be addressed is E.G.'s request to have disciplinary charges that have been filed against her removed from her file. A discrimination complaint is not the appropriate forum to address matters that are subject to a different appeal process, such as the imposition of major or minor discipline. This matter should be addressed through disciplinary appeal procedures.

ORDER

Therefore, it is ordered that these appeals 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 20th DAY OF MAY, 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

Attachments

c: K.A.
E.G.
Renee Herron-McKithen
Mamta Patel
Joseph Gambino



CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

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25 Market Street
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Trenton, New Jersey 08625
Tel: 609-292-8353 - Fax 609-984-0251

JOSEPH E. KRAKORA
Public Defender

December 3, 2014

Ms. E. [REDACTED] G. [REDACTED]
[REDACTED]
[REDACTED]

Re: Discrimination Complaint

Dear Ms. C. [REDACTED]

Pursuant to your discrimination complaint filed with the Equal Employment Opportunity Commission, the Office of the Public Defender conducted an investigation. You filed on the basis of race and age discrimination against Ms. E. [REDACTED] G. [REDACTED]-D. [REDACTED]. Specifically, you alleged differential treatment in that category.

The Office of the Public Defender conducted a thorough investigation during which individuals were interviewed and relevant documentation was received and analyzed. Therefore, based on the results of the investigation, it has been determined that there was no violation of the New Jersey State Policy Prohibiting Discrimination in the Workplace.

If you disagree with this determination, pursuant to N.J.A.C. 4A:7-3.2, you have the right to appeal the Public Defender's decision. You must submit a written appeal to the New Jersey Civil Service Commission, Merit System Practices and Labor Relations, Written Record Appeals Unit, P.O. Box 312, Trenton, NJ 08625-0321, postmarked or delivered within 20 days of your receipt of this determination. Your appeal must include a copy of this determination, the reason for the appeal and the specific relief requested. Be advised that effective July 1, 2010, there is a \$20 fee for appeals. Please include a check or money order along with your appeal, payable to NJCSC. Persons receiving public assistance and those qualifying for NJCSC Veterans Preference are exempt from this fee.

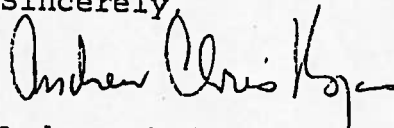
Please be advised that the *State Anti-Discrimination Policy* prohibits retaliation against any employee who alleges that he or she was a victim of discrimination or harassment, provides information in the court of an investigation into claims of discrimination or harassment in the workplace or opposes a discriminatory practice.

Lastly, I would like to remind you that all aspects of EEO complaints are considered highly sensitive and must be kept confidential. You should not discuss this matter with anyone else.

Persons who violate the confidentiality provision of the State Anti-Discrimination Policy may be subject to discipline.

Should you have any questions, please contact the Office of EEO/AA at (609) 777-1696.

Sincerely,



Andrew Chris Rojas
First Assistant Public Defender

ACR/rc

C: Mamta Patel, Director of NJ EEO/AA
Civil Service Commission

Renee Herron-McKithen, EEO/AA OPD



CHRIS CHRISTIE
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JOSEPH E. KRAKORA
Public Defender

December 3, 2014

Ms. K. A. [REDACTED]
[REDACTED]
[REDACTED]

Re: Discrimination Complaint

Dear Ms. A. [REDACTED]

Pursuant to your discrimination complaint filed with the Equal Employment Opportunity Commission, the Office of the Public Defender conducted an investigation. You filed on the basis of racial discrimination against Ms. E. G. [REDACTED]-D. [REDACTED]. Specifically, you alleged differential treatment.

The Office of the Public Defender conducted a thorough investigation during which individuals were interviewed and relevant documentation was received and analyzed. Therefore, based on the results of the investigation, it has been determined that there was no violation of the New Jersey State Policy Prohibiting Discrimination in the Workplace.

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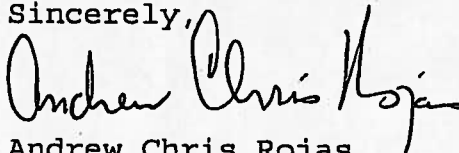
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Andrew Chris Rojas
First Assistant Public Defender

ACR/rc

C: Mamta Patel, Director of NJ EEO/AA
Civil Service Commission

Renee Herron-McKithen, EEO/AA OPD