

B-29

STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of V.E., Department of
Human Services

CSC Docket Nos. 2015-1663

Discrimination Appeal

ISSUED: **MAY 11 2015** (SLK)

V.E., a Payroll Clerk with the Department of Human Services (DHS), appeals the attached decision of the Equal Employment Office (EEO) Director for DHS, which found that the appellant did not present sufficient evidence to support a finding that she 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, an African-American female, filed a complaint with the EEO alleging that she had been discriminated and retaliated against by her immediate supervisor K.M., Supervisor Personnel Records and Payroll Processing 2, on the basis of color and race. Specifically, the appellant asserted that: (1) K.M. overly scrutinized and sabotaged her work; (2) the Vineland Developmental Center (VDC) demonstrated a pattern of past discrimination against minorities in the payroll unit; and (3) K.M. retaliated against her for taking a prior day off. The EEO conducted an investigation into the matter which included interviews with two employees and review of 12 documents and found no evidence to support the allegations. With regard to the allegation that K.M. overly scrutinized and sabotaged the appellant's work due to her race and color, the investigation revealed that several witnesses corroborated that the appellant made mistakes and then accused staff of sabotaging her work, that there was no evidence that K.M. subjected the appellant to a hostile work environment, and that K.M. frequently found errors in the appellant's work and would attempt to correct her errors which the appellant was unwilling to accept. In relation to the allegation that the VDC displayed a pattern of discrimination against African-American employees, the investigation was unable to substantiate this claim and found that three African-American employees left the payroll unit due to excessive absenteeism, reassignment due to misconduct, and poor work performance. With

regard to the allegation that K.M. retaliated against the appellant because she was stressed and had taken off work on a prior Friday, this allegation was determined to be unfounded as the allegation did not meet the definition of retaliation under the State Policy.

On appeal, the appellant denies that she told the Investigator that her supervisor was sabotaging her work and claims that it is not true that she was unwilling to accept correction and blamed others for her work. The appellant reiterates that she is working in a hostile environment and that she was given an unfair work assignment. The appellant maintains this environment caused her to seek a doctor's care. Further, the appellant presents that another employee left her department due to stress and then resigned in August 2011. Additionally, the appellant states that, when she started in December 2011, she was trained by a temporary worker when she felt she should have been trained by a State employee, and then she was blamed for issues that should have been the responsibility of the trainer. The appellant describes an incident in August 2012 where K.M. singled her out in front of others for a mistake and presents that she only made the mistake because she was given incorrect guidance. When she tried to explain this, the appellant claims that K.M. got upset with her and stated "I'm getting pissed." The appellant also asserts that there was an incident in September 2012 where she was falsely accused of misplacing work. When she explained to K.M. that she felt like she was being set-up, the appellant maintains that K.M. turned to the staff present in a rage and stated, "Did you hear that?" The appellant also presents an incident in October 2012 where she and co-workers made mistakes. The appellant explains that although other workers made greater mistakes than her, K.M. singled her out. Additionally, the appellant describes an incident in August 2014 where K.M. complained that it should not have taken her two hours to complete a task and the appellant believes that K.M. actually got mad at her for taking a prior day off. The appellant maintains that when K.M. gets upset at herself and others, she yells, screams, and curses. The appellant asserts that there are previous minority employees in the payroll department who have received the same treatment as she has and she submits an email from a co-worker and a letter from a former employee who worked in the payroll department under K.M. who support the appellant's claims. As a remedy, the appellant requests to be reassigned to a non-hostile environment.

In response, with regard to the appellant's allegation that K.M. overly scrutinized her work due to her race and color, the EEO restates that the appellant denies that she is unwilling to take correction and that she does not blame others for her mistakes. However, the investigation revealed that the appellant blamed a temporary employee and another employee for mistakes that she made. Additionally, witnesses stated that the appellant accused other employees for her mistakes. As the investigation revealed that the appellant frequently made

mistakes which K.M. tried to correct, there was no evidence that K.M. created a hostile work environment.

CONCLUSION

N.J.A.C. 4A:7-3.1 states, in pertinent part, that employment discrimination or harassment based upon a protected category, such as race and color, is prohibited and will not be tolerated. *N.J.A.C. 4A:7-3.1(h)* states that retaliation against any employee who alleges that he or she was the victim of discrimination/harassment as a result of bringing forward a complaint of discrimination is prohibited by the State Policy.

N.J.A.C. 4A:7-3.2(i) provides that at the EEO/AA Officer's discretion, a prompt, thorough, and impartial investigation into the alleged harassment or discrimination will take place. *N.J.A.C. 4A:7-3-2(m)4* states that the appellant shall have the burden of proof in all discrimination appeals.

The Civil Service Commission (Commission) has conducted a review of the record in this matter and finds that the appellant has not established that K.M. violated the State Policy. During the course of the investigation, the EEO interviewed two witnesses and reviewed 12 documents and found no evidence to support that any of the appellant's allegations. With regard to the allegation that K.M. overly scrutinized and sabotaged her work because of her race and color, the appellant acknowledges on appeal that K.M. did not sabotage her work. Further, the investigation revealed that the appellant frequently made mistakes, blamed others or did not accept responsibility for her mistakes, and that K.M. tried to correct her mistakes. As such, there is no evidence that K.M.'s treatment of the appellant was based on her race or color. Further, with regards to the appellant's allegations that she should not have been trained by a temporary employee, that she should not have been singled out in front others when she made a mistake, that she was unfairly accused of making mistakes when it was not her fault, that K.M. yelled, screamed, and cursed at her, and other similar allegations against how K.M. treated her, disagreements on how those matters should have been handled cannot sustain a violation of the State Policy. *See In the Matter of Aundrea Mason* (MSB, decided June 8, 2005) and *In the Matter of Bobbie Hodges* (MSB, decided February 26, 2003). Regardless, the witnesses corroborated that the appellant made mistakes and then accused staff of sabotaging her work and that K.M. would attempt to correct her. In reference to the retaliation allegation, under *N.J.A.C. 4A:7-3.1(h)*, a retaliation claim is based on filing a previous complaint for discrimination/harassment. Therefore, the allegation that the appellant was retaliated against by K.M. for previously taking a day off and not for filing a prior discrimination/harassment complaint, is an allegation that does not implicate the State Policy. With relation to the claim that the VDC displayed a pattern of discrimination against African American employees, the appellant has only

submitted allegations and her subjective impressions that actions taken by K.M. were based on race. Additionally, she has not substantially refuted the legitimate business reasons offered by the appointing authority in its dealings with the former employees of the unit. As such, this claim cannot be substantiated.

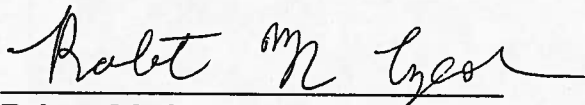
Accordingly, the Commission finds that the EEO's investigation was thorough and impartial. Therefore, the Commission finds that appellant failed to support her burden of proof and no basis exists to find a violation of the New Jersey State Policy Prohibiting Discrimination in the Workplace.

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 6th DAY OF MAY, 2015



Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Henry Maurer
Director
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Attachment

c: V.E.
Rachel Gervais
Mamta Patel
Joseph Gambino



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

CHRIS CHRISTIE
Governor
KIM GUADAGNO
Lt. Governor

JENNIFER VELEZ
Commissioner

November 20, 2014

W E
[Redacted]
[Redacted]

Dear Ms. E [Redacted]

On September 4, 2014, you submitted a Discrimination Complaint Form alleging color and race discrimination and retaliation against K [Redacted] M [Redacted] Payroll Supervisor. Specifically, you reported the following:

Ms. M [Redacted] displayed differential treatment towards you by demeaning you in public, ostracizing you and sabotaging your work; IN CORRECT did not say that

Ms. M [Redacted] demonstrated a pattern of past discrimination against minorities in the payroll unit;

Ms. M [Redacted] raises her voice and curses at her.

The Department of Human Services (DHS) neither condones nor tolerates any form of discriminatory behavior in the workplace. Accordingly, the Office of EEO assigned this matter to Marcia Pollard-Hampton for investigation.

The Office of EEO did not substantiate the allegations for the following reasons:

ALLEGATION #1: Ms. M [Redacted] overly scrutinized your work and sabotaged you because of your race and color.

CONCLUSION #1: Unsubstantiated

No evidence or witnesses supported your allegation. Several witnesses corroborated that you made mistakes and then accused staff of sabotaging your work. Ms. M [Redacted] contended that all the staff members made mistakes and the mistakes were corrected.

The investigation revealed no evidence that your supervisor, Ms. M [REDACTED] subjected you to a hostile work environment. The investigation further revealed that Ms. M [REDACTED] frequently found errors in your work and would attempt to correct your errors. Coworkers observed that you were unwilling to accept correction and blamed others.

ALLEGATION #2 VDC displayed a pattern of discrimination against African-American employees.

CONCLUSION #2 Unsubstantiated

There is no evidence to suggest that a pattern of discrimination has been displayed against African-Americans in Payroll. The investigation revealed that three former African-American employees left the payroll unit due to excessive absenteeism, reassignment due to placing crosses with oil on the office furniture and poor work performance.

ALLEGATION #3 Ms. M [REDACTED] retaliated against you.

CONCLUSION #3 Unfounded

In your signed statement, you said Ms. M [REDACTED] retaliated against you because she took off on a Friday and because Ms. M [REDACTED] was stressed. Discriminatory retaliation is for having filed a discrimination complaint, participating in a complaint investigation, or for opposing a discriminatory practice. Your allegation is not discriminatory retaliation.

If you disagree with this determination, you have the right to file an appeal with the Civil Service Commission 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 Division of Appeals and Regulatory Affairs, 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.

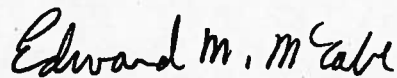
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Page 2

You are reminded 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,



Edward M. McCabe
EEO Director

EMM

C: Chris Mongon, Assistant Commissioner, HR
Dave Thomas, CEO
Mamta Patel, CSC
Lois Robinson, EEO Liaison

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