

B-26

STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

In the Matter of B.M., Department of  
Human Services

CSC Docket Nos. 2015-2356

Discrimination Appeal

ISSUED: JUN 05 2015 (SLK)

B.M., a Supervisor of Professional Residential Services at the Vineland Developmental Center (VDC), appeals the attached decision of the Equal Employment Office (EEO) Director for the Department of Human Services (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, filed a complaint with the EEO alleging that she had been discriminated against by G.C., Assistant Superintendent Developmental Disabilities at the VDC, on the basis of disability and race. Specifically, the appellant asserted that G.C. minimized her medical condition when she could not report for duty. The investigation revealed that the appellant called out from work on a severe weather day attempting to use compensatory time. The VDC authorized Federal Family and Medical Leave Act (FMLA) time for that purpose, but the appellant did not attempt to use it when she called out. The VDC applied its prohibition against using compensatory time in the appellant's situation and listed the day as an unauthorized absence. However, it subsequently reversed its decision and paid the appellant for the day. Therefore, the investigation did not find any evidence that G.C. or the VDC had discriminated against the appellant in this matter.

The appellant also complained that G.C. referred to African-American employees as "you people" at morning management meetings. However, the investigation revealed that Caucasian and Latino employees were also present at the meetings. Further, G.C. denied using the term and said she referred to the meeting participants as "you guys." The investigation determined there was no

evidence that G.C. discriminated against African-American employees by the use of either term. Additionally, the appellant alleged that G.C. used the term "cultural laggards" to belittle African-American employees. However, the investigation revealed that G.C. used the term referring to employees of all races and that it was a legitimate, non-discriminatory phrase that refers to activity that was once, but no longer, acceptable.

On appeal, the appellant presents that if the VDC was correct in initially denying her request to use compensatory time when she called out during inclement weather, then its decision should not have been reversed. The appellant asserts that the FMLA is not supposed to be used for absences due to inclement weather and if it is, this is an abuse of the FMLA/sick leave policy by the administration. The appellant claims that G.C. stated that the appellant should have real problems such as her, which is an unacceptable statement. The appellant maintains that the VDC's decision to make all employees call in sick during inclement weather is wrong and that this is just the administration's way of disciplining employees for abusing sick leave.

The appellant argues that the terms "you people" and "cultural laggards" are derogatory, demeaning, and outdated terms. The appellant alleges that when G.C. used the term "you people" it was directed solely at her and not at other individuals at the meeting. The appellant claims that after the morning meeting she had a private meeting where G.C. stated directly to her, "I hear that you think I think some of you people around here are dumb, and you know what, some are." The appellant maintains that since she was the only one being spoken to, G.C. was referring to her when she allegedly used the term, "you people." The appellant further presents that the term "cultural lagger" should not be used when referring to anyone regardless of race as the term "lag" can mean to be last, comparative slowness or retardation, or fail to keep up pace and culture is "the act of developing intellectual and moral faculties by education." The appellant asserts that since the majority of the VDC's employees are minorities with high school educations, this term is discriminatory and should not be used by someone in G.C.'s position. The appellant believes that G.C. should receive training on using proper terminology.

In response, the EEO states that the investigation consisted of interviewing two employees and reviewing five documents; however, none of the allegations were substantiated. With respect to the decision to reverse the appellant's unauthorized absence when she called out during inclement weather, the investigation found that the VDC reviewed its determination and found that in accordance with its collective bargaining agreement, it was required to pay the appellant for the day. Further, the appellant incorrectly assumed that the FMLA did not cover her absence. Moreover, the investigation revealed that G.C. denied using the term "you people" and even if it was used, the term was not discriminatory when taken within the context of the situation. With respect to G.C.'s instructions to staff on what to tell

the auditors, the investigation found that the recipients of the email were Caucasians, African-Americans, and Hispanics. Further, when G.C. said to the appellant, "I hear that you think I think some of you people around here are dumb, and you know what, some are" the investigation determined that it was not reasonable for the appellant to claim that she was only referring to African-Americans when she was referring to the recipients of G.C.'s email. Additionally, the investigation revealed that G.C. was referring to all races when she used the term "cultural laggards" which is a legitimate, non-discriminatory term used to refer to activity that is no longer acceptable.

### 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 disability, is prohibited and will not be tolerated.

*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 G.C. violated the State Policy. During the course of the investigation, the EEO interviewed two witnesses and reviewed five documents and found no evidence to support any of the appellant's allegations. With regard to the allegation that G.C. or the VDC discriminated against the appellant for failing to allow her to use compensatory time when the appellant called out due to her medical condition and her inability to function in a snow/ice storm, the investigation revealed that although the VDC did initially deny the appellant's request to use compensatory time, it later reversed itself in order to comply with the collective bargaining agreement and the appellant was paid for the day. Further, the VDC would have authorized the appellant to utilize FMLA time as she indicated that she could not come to work due to how the inclement weather impacted her medical condition.

In reference to the appellant's claim that G.C. used the term "you people" in a derogatory manner due to her race, G.C. has denied using the term. On appeal, the appellant alleges that G.C. used this term in a private meeting between G.C. and her. As such, the appellant is unable to provide any witnesses that G.C. used this term and therefore there is no evidence to substantiate this allegation. Moreover, the investigation did reveal that G.C. did make a comment to the appellant referring to the recipients of an email that G.C. sent, who were Caucasian, African-

American, and Hispanic, as "dumb." While it may be unprofessional, particularly for a management level employee such a G.C., to refer to employees as "dumb", as the comment was directed at employees from different ethnicities, in the context of the situation, there was no evidence that this comment was made due to the appellant's or any other employees' inclusion in a protected category. *See In the Matter of S.C.* (CSC, decided July 17, 2013). Also, with respect to the appellant's allegation that G.C. used the term "cultural lagger" in a discriminatory manner, the investigation determined that G.C. used the term to refer to individuals of all races who were using terminology that was no longer appropriate. As such, the term was a legitimate, non-discriminatory phrase.

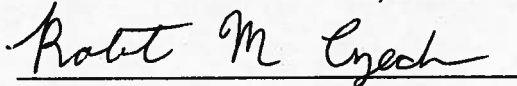
Accordingly, the Commission finds that the EEO's investigation was thorough and impartial. Therefore, the Commission finds that appellant failed to support her burden of proof and no basis exists to find a violation of the New Jersey State Policy Prohibiting Discrimination in the Workplace.

### 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 3<sup>rd</sup> DAY OF JUNE, 2015



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**Attachment**

c: **B.M.**  
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