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STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of J.M., Motor Vehicle
Commission

CSC Docket Nos. 2015-2371

Discrimination Appeal

ISSUED: **SEP 04 2015** (SLK)

J.M., a Technician, MVC with the Motor Vehicle Commission (MVC), appeals the attached decision of the Chairman and Chief Administrator of the MVC, 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 filed a complaint alleging discrimination by J.F., a Caucasian male Agent, MVC, against her and other employees on the basis of race and gender, retaliation, hostile working environment, and for treating her unfairly due to her union activity. Specifically, in August 2014, the appellant and other Technicians filed a group grievance against J.F. alleging that he created a "hostile work environment." After the matter was forwarded to the Equal Employment Opportunity Office (EEO), it interviewed the appellant and another employee listed on the Grievance Form. The appellant provided a five page statement explaining why she felt she worked in a "hostile work environment," showed photographs of Dunkin Donuts plastic containers of ice coffee at certain work stations, and a photograph of a handwritten sign "J****'s Day Care." She also showed a photograph on her cell phone, allegedly of S.E., a Senior Technician who is an African-American male, sitting behind R.D., a Technician, MVC who is an African-American female, and the appellant complained that R.D. was being inappropriately closely monitored. As part of its investigation, the EEO reviewed statements made during interviews, disciplinary actions issued for the Rahway Agency for the period of January 1, 2013 through May 8, 2014, statistics that were compiled for the Rahway Agency, and Rahway Agency's policies. However, it did not find any evidence to support the allegations.

On appeal, the appellant questions how the investigation was performed and what information was utilized since the determination letter indicates that the appellant did not provide the name of employees or other evidence to prove her case. The appellant asserts that the EEO never contacted her seeking this information. Accordingly, the appellant submits copies of timesheets and photos of employees as proof for this matter. The appellant requests as a remedy that her disciplinary history be removed from her personnel record as she asserts that some of the disciplinary actions against her were due to alleged retaliation, that her work schedule be changed to her original schedule due to the hardship that the schedule change has caused her, and that either she or J.F. be reassigned to another location so that she no longer has to work in a hostile environment.

In response, the appointing authority's EEO Officer states that the appellant did not provide the EEO with the documentation for the investigation that she submits on appeal. However, it highlights the thoroughness of the investigation as described above and asserts that even with the additional documents the appellant now provides, there is no evidence to support her allegations. Additionally, it argues that there is no evidence to support a finding of retaliation. The appellant filed a complaint at the Equal Employment Opportunity Commission (EEOC) and Division on Civil Rights (DCR) on or about March 18, 2014. On March 20, 2014, the appellant was issued a Preliminary Notice of Disciplinary Action (PDNA) for her chronic and excessive absenteeism or lateness and for failure to follow MVC Policies and Procedures for an unscheduled call-out the day before or after a holiday. The EEO Officer asserts that the Employee Relations Coordinator who signed the PDNAs would not have known about the EEOC and DCR complaints at that point. Further, it presents that in July 2014, the appellant was issued two PNDAs which both involved leaving the work area without permission. The appellant appealed and settled all of her disciplinary actions. Until the EEO opened its investigation into the allegations based on the Group Grievance that was filed, the appellant did not have any other EEO complaints. It also maintains that disciplinary action may be taken for "legitimate business reasons" and that the appellant's allegation that female Technicians were disciplined greater than similarly situated male Technicians is not supported by the evidence. In this regard, based on disciplinary actions between January 1, 2013 and May 8, 2014, a higher percentage of male employees (one out of two which is 50%) were disciplined than female employees (13 of 28 which is 46%).

Further, the EEO asserts the appellant's examples of conduct that allegedly contributed to a hostile work environment did not fall under any protected category. For example, even if the appellant had to use a clock that was two minutes fast when signing in and out, since all the employees and not just employees belonging to the same protected category had to use this clock, the appropriate forum to address this issue is either a discussion with management or by filing a grievance. The EEO presents that the appellant provided timesheets and statements from

employees of the Rahway Agency. However, it maintains that while these submissions may indicate "favoritism" they do not prove discrimination. It states that even if the J.F. did yell at an employee, without more, this is not a violation of the State Policy. Regarding the appellant's claim that she was made to train a new employee late in the day when this should have been a Senior Technician's responsibility, the EEO states that this is an issue to be addressed by filing a grievance. It states that it cannot verify the appellant's allegations that other employees falsified their timesheets or that any supervisor was aware of this alleged practice simply by reviewing timesheets. In regard to the appellant's allegation that there was an inconsistent application of the beverage container policy, the appointing authority indicates that no employee at the Rahway Agency was disciplined specifically for using the wrong beverage container.

With respect to the appellant's claim that a certain African-American female was inappropriately monitored, during the investigation, J.F. explained that this employee was put on a 90-Day Improvement Plan. The Senior Technician was observing her in order to train and improve her performance. J.F. acknowledged that he did provide supervisory staff more flexibility than MVC Technicians since they sometimes missed breaks and lunch due to their additional responsibilities. The appointing authority asserts that providing supervisory staff, which consists of male and female employees with diverse ethnic backgrounds, more flexibility than regular staff does not fall under any protected categories and is a management issue. In regard to the appellant's claim that race was a factor in disciplines by citing an example where a African-American male employee was removed, the EEO highlights that there are only four male employees, excluding J.F., and that three of the four individuals, who come from different ethnic backgrounds, received varying degrees of penalty for different violations and therefore there is no evidence of racial discrimination.

CONCLUSION

N.J.A.C. 4A:7-3.1(a) states, in pertinent part, that employment discrimination or harassment based upon a protected category, such as race or sex/gender is prohibited and will not be tolerated. *N.J.A.C.* 4A:7-3.1(a)3 provides that it is a violation of the State Policy to engage in any employment practice or procedure that treats an individual less favorably based upon any of the protected categories referred to in in (a) above.

N.J.A.C. 4A:7-3.1(c) provides that it is a violation of the State Policy to engage in sexual (or gender-based) harassment of any kind, including hostile work environment harassment, quid pro quo, or same-sex harassment.

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)4 states, in pertinent part, 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 J.F. has violated the State Policy. During the course of the investigation, the EEO interviewed the relevant witnesses and reviewed the relevant documentation and could not substantiate a violation of the State Policy. With respect to the proposed disciplinary action, *N.J.A.C.* 4A:7-3.2(m)1 states that employees filing appeals which raise issue for which there is another appeal procedure must utilize those procedures. As such, the appellant's concerns regarding the PNDA's she was issued must be addressed through the disciplinary appeals process. Regardless, the investigation revealed that the timing was such that the Employee Relations Coordinator could not have known about the appellant's EEOC and DCR complaints at the time the March 20, 2014 PNDAs were issued and the July 2014 PNDAs involved leaving the work area without permission.

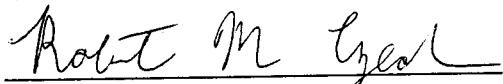
Further, the investigation revealed that a higher percentage of male employees were disciplined than female employees and, as there were no Caucasian employees other than J.F.; there was no evidence that minority employees were disciplined more severely than Caucasian employees. Moreover, the investigation revealed that the appellant was not subjected to a hostile work environment for any issue that fell under any protected category. For example, all employees used a clock to sign in/out where the timing was off and not just employees belonging to the same protected category. Additionally, while many of the employees indicated in statements that there was an issue of "favoritism" based on who was "friends" with the manager or supervisors, they did not specifically allege favoritism based on sex or race discrimination. Additionally, R.D. was monitored closely due to a performance issue and the issue regarding having to train a new employee needed to be addressed via a grievance. Finally, simply providing employee timesheets does not prove that employees falsified timesheets or that management was aware of this alleged falsification and the application of the beverage policy and the issue regarding portable heaters does not fall under the State Policy. Accordingly, the Commission finds that the EEO 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 2nd DAY OF SEPTEMBER, 2015



Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Henry Maurer
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Attachment

c: J.M.
Betty Ng
Mamta Patel
Joseph Gambino

Mr. Lavigne



New Jersey Motor Vehicle Commission

Equal Employment Opportunity Office
P.O. Box 684
Trenton, New Jersey 08666-0684

STATE OF NEW JERSEY

Chris Christie
Governor

Kim Guadagno
Lt. Governor

Raymond P. Martinez
Chairman and Chief Administrator

CONFIDENTIAL

January 20, 2015

SENT VIA REGULAR AND CERTIFIED MAIL

J. [REDACTED] M. [REDACTED]
[REDACTED]
[REDACTED]

Re: Discrimination Complaint
MVC EEO File No. 2014-A-RA-51

Dear Ms. M. [REDACTED]:

On or about August 9, 2014, you and other MVC Technicians at the Rahway Agency filed a Group Grievance against your Manager, J. [REDACTED] F. [REDACTED]. In the Grievance Procedure Form, you wrote that your contractual rights were violated, specifically Article 2.C.6 of the Contract between the State of New Jersey and the Communications Workers of America (CWA) (the "Contract"). Further, you stated that Mr. F. [REDACTED] created a "hostile work environment." An attached page alleges that Mr. F. [REDACTED] engaged in "harassment" of the employees and that he targets certain employees. Subsequently, the Group Grievance was forwarded to the attention of the MVC Equal Employment Opportunity Office (the "EEO Office"). You were interviewed on September 19, 2014, at which time you filed a Discrimination Complaint Processing Form alleging discrimination on the basis of "Retaliation" in violation of the *New Jersey State Policy Prohibiting Discrimination in the Workplace* ("State Policy"). Further, your attorney, Lawrence N. Lavigne, Esquire, wrote two letters on your behalf to Raymond P. Martinez, Chairman and Chief Administrator, alleging discrimination based on your "race and possibly [your] gender."

The EEO Office has concluded a thorough and impartial investigation into your allegations pursuant to the State Policy. The investigation included individual interviews and review of all relevant document.

The State Policy specifically states:

The State of New Jersey is committed to providing every State employee and prospective State employee with a work environment free from prohibited discrimination or harassment. Under this policy, forms of employment 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.

Moreover, the State Policy further prohibits retaliation against any employee who alleges that 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."

Hostile Work Environment

In your statement, you alleged that you have been subjected to a "hostile work environment" because of the following activities: Your agency Manager, J. F., yelled at employees in front of customers and employees; Mr. F. may be mad at you because you are a Shop Steward; certain employees do whatever they want; Mr. F. had Senior Technicians watch certain employees then write them up; the inconsistent application of the beverage container policy; a sign that stated, "J.'s Daycare. Free 9:00-5:30 PM"; and that you were intimidated by your Coordinator and Supervisor because they questioned you on the timesheet.

Regarding the behavior you described as yelling, the EEO investigation did not find any evidence that Mr. F. was targeting any particular group or individuals that belong to any particular protected category. You said during your interview that Mr. F. never yelled at you in front of customers but you observed Mr. F. yell at J. C. in front of customers. Ms. C. is a non-Hispanic White female. You did not provide any other examples.

Further, you described certain female employees being able to bring in Dunkin Donut iced coffee plastic cup containers despite the MVC policy that prohibits such containers at the workstation. Mr. F█████ said that when he personally observes anyone with a drinking container that does not conform to the policy, he simply uses a sign to tell the employee to remove the vessel but he has not disciplined anyone for the use of a drinking container.

Further, you also indicated that there are two female employees who are being treated better than others because they are allowed to take longer breaks. These two women are Hispanic. You further allege that E█████ R█████, Senior Technician, is given preferential treatment. She was allowed to take unscheduled breaks and longer breaks. Mr. F█████ admitted that he treats his supervisory staff differently than the MVC Technicians. He said that he holds them to a different standard. He admitted that there are times when he has allowed Ms. R█████, Hispanic female, to take unscheduled breaks or a longer lunch because she may have had to go to the bank and did not get any break time. As for the other two female employees being treated better than others, without specific dates and times, the investigation was unable to determine whether they were treated better or because unusual circumstances led to the irregular breaktime. Nevertheless, the MVC management will be reminded to enforce the MVC policies and procedures consistently throughout the agency.

Regarding certain employees being closely monitored, you described how a Black female employee was being monitored by Senior Technician S█████ E█████, a Black male employee. The investigation revealed that the observation of this particular employee was done for legitimate business reasons. While we are not at liberty to discuss another employee's job performance with you, it is not a violation of the State Policy to observe employees to assess and improve performance standards.

The examples you provided of certain female employees being treated better than others may be instances of possible favoritism. In addition, based on the information you provided, the EEO investigation was unable to ascertain whether the women were given favorable treatment by Mr. F█████ or one of the other supervisors. However, while all policies should be applied consistently, the EEO investigation failed to find that the complained-of conduct was based on a protected category in violation of the State Policy. In fact, the conduct you complained of were all examples of management issues that do not fall under the State Policy.

Race Discrimination

Mr. Lavigne wrote letters on your behalf, dated October 2 and November 13, 2014. In addition to hostile work environment,

the letters allege discrimination based on race and "possibly [your] gender." Mr. Lavigne alleges that there is disparate treatment of Black employees and gave an example of how a Black male employee was discharged due to chronic tardiness when a White male employee with tardiness issues was not disciplined. Counsel further stated, Mr. F. [REDACTED] allegedly shows "favoritism towards White employees." He gave examples of how a clock that is two minutes fast is used for employee sign-in/sign-out; and the various disciplines that you have received.

Neither you nor Mr. Lavigne stated which "White" employee was chronically tardy and treated better than the Black employees. However, a thorough review of the attendance disciplines issued in the past year and a half failed to reveal any evidence of discrimination. On the contrary, it appears that employees of different races and color have been disciplined for tardiness, with penalties ranging from minor discipline to removal. Other than the manager, there are no White male employees employed at the Rahway Agency; and hence, there could not have been better treatment of White male employees. The EEO investigation failed to substantiate the allegations of race discrimination in violation of the State Policy.

Gender Discrimination

In regards to gender, as you are aware, your Agency has only four male employees with twenty-eight full time female employees. A review of the disciplinary actions issued in the past approximate 18 months at your Agency failed to reveal any evidence of discrimination based on gender. Male employees as well as female employees have been disciplined for violations ranging from tardiness and attendance to conduct unbecoming a public employee.

Regarding the time clock for signing in/signing out, and your various disciplinary actions, the EEO investigation found no evidence of a violation of the State Policy. When the "late" clock was used, every employee used that same clock, therefore, no one was treated any worse than anyone else. As for disciplinary actions, you have appealed all of your pending disciplinary actions, which will be handled by the Office of Employee Relations and your union, in accordance with the contract between the State of New Jersey and the Communication Workers of America. The act of issuing a disciplinary notice, as long as there is supporting evidence, does not violate the State Policy.

Retaliation

You also allege retaliation. Retaliation against any employee who alleged that she was the victim of discrimination/harassment, or who provides information in the

course of an EEO investigation, or who opposes a discriminatory practice is prohibited. Here there has not been any evidence showing a nexus between the disciplinary actions you received and the fact that you filed a complaint. Mr. Lavigne complained of a recent disciplinary action served upon you with a notice date of July 18, 2014 and an infraction date of August 19, 2014. The Office of Employee Relations reviewed the notice and determined that a typographical error was made. A corrected notice will be issued.

Other issues

Lastly, Mr. Lavigne's October letter alleges that you may have been treated differently because of your union activity. While MVC respects the rights of employees to unionize and participate in lawful union activities, any variance from the Contract should be addressed via your union, the CWA and is not within the jurisdiction of the EEO Office or covered under the State Policy.

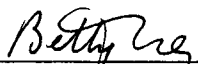
Based on the above, the EEO Office's investigation did not substantiate any favorable treatment based on any of the protected categories in violation of the State Policy.

If you disagree with this determination, you have the right to file an appeal with the New Jersey Civil Service Commission within 20 days of your receipt of this letter. **The burden of proof is on the Appellant.** The appeal must be in writing, state the reason(s) for the appeal and specify the relief requested. All materials presented at the department level and a copy of this determination letter must be included. The appeal should be submitted to the NJ Civil Service Commission, Director of the Division of Appeals and Regulatory Affairs, P.O. Box 312, Trenton, NJ 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, payable to the "NJ CSC." Persons receiving public assistance pursuant to 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.

At this time, I would like to remind you that the State Policy prohibits retaliation against any employee who files a discrimination complaint, participates in a complaint investigation or opposes a discriminatory practice. In addition, all aspects of the EEO complaints, investigations and determinations are considered highly sensitive and must be kept confidential.

If you have any questions, please contact the EEO Office at
(609) 777-3831.

Sincerely,



Betty M. Ng
Equal Employment Opportunity Officer

Approved:



Raymond P. Martinez
Chairman and Chief Administrator

c: Katharine Tasch, Deputy Administrator of Legal and Legislative
Affairs
Selika Gore, Deputy Administrator of Operations
Mamta Patel, Esq., Director, Division of EEO/AA