

B-31

STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

In the Matter of C.B-P., Department  
of Health

CSC Docket Nos. 2015-2727

Discrimination Appeal

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

C.B-P., an Administrative Analyst 2 (Data Processing) with the Department of Health (DOH), appeals the attached decision of the Chief of Staff, which substantiated that she violated the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy).

By way of background, R.P.<sup>1</sup>, an Indian-American male, filed a complaint with the Office of Diversity and Equity Services (ODES) alleging discrimination based on his race and/or national origin. Specifically, R.P. alleged that the appellant made the statement, "Indian men are dominant and think of their wives as subservient like old Italians." The ODES conducted an investigation which included six employee interviews and a review of relevant documentation. The investigation revealed that the appellant acknowledged that everyone in her lunch group discussed each other's cultures and backgrounds, she stated that no one in her lunch group ever indicated that they were offended by any of the comments, and she denied making the alleged statement. Further, while some of the employees interviewed stated that they were either not present when the alleged statement was made or could not recall the exact statement, most of the employees interviewed confirmed that they recalled having discussions about each other's cultures. Moreover, two employees confirmed hearing the appellant make the alleged statement, and therefore, the investigation substantiated a violation of the State Policy. Thereafter, the ODES recommended that the appellant receive individual counseling.

<sup>1</sup> R.P. retired from the DOH on January 1, 2015.

On appeal, the appellant denies making the alleged statement and claims that the witness testimony is not accurate. The appellant states that she was having a conversation with R.D., an Indian-American Software Development Specialist 2, and S.K, an Indian-American Health Data Specialist 2, where R.D. told them that her brother-in-law was mistreating his sister. The appellant presents that both R.D. and S.K. stated that Indian men are dominant with their women and the appellant replied it was the same with her family in past generations. The appellant asserts that R.P. filed the subject complaint in retaliation for her having filed a complaint against him in October 2013 alleging that he was creating a hostile work environment. The appellant indicates that the conversation between her, R.D and S.K took place many months before she filed her complaint against R.P. in 2013. The appellant presents that R.P.'s complaint was filed over a year after she made the alleged comment and therefore, she contends that his accusation is completely motivated by his desire to retaliate against her and is a violation of The Conscientious Employee Protection Act (CEPA). The appellant submits an October 2013 email from R.P. to another employee that was in response to her complaint against him. The appellant highlights that the email indicates that R.P. believed that they were friends and questions how R.P. could believe this if she had made the alleged discriminatory statement which was made prior to this email. The appellant also provides that she had previously eaten lunch with R.P. almost every day for four years, and asserts that if she had a discriminatory point of view, R.P. would have had many examples of her making discriminatory comments, but he does not.

In response, the ODES presents that during the investigation, two witnesses confirmed hearing the appellant state the alleged statement or a substantially similar comment. Consequently, as the investigator had no reason to believe that either of the two witnesses or R.P. lied, the ODES found that it was more likely than not that the appellant made the statement. The ODES provides that although it was aware that the appellant had filed a complaint with human resources against R.P., an employee has a right to file a complaint whenever he or she believes a protected category is involved and the matter implicates the State Policy. Therefore, the ODES states that R.P.'s complaint was not retaliation under the State Policy. The ODES also presents that the State Policy does not have a timeframe for reporting discrimination or harassment, that it cannot speak for R.P. as to why he did not report the alleged discrimination right away or why he remained friendly towards the appellant after the alleged incident occurred, that it cannot respond to her allegation that there was a violation of her rights under CEPA as that is outside its authority, that one incident of discrimination/harassment based on a protected category is enough to violate the State Policy, and that it cannot speak for R.P. as to why he did not tell his supervisor about the alleged discriminatory statement and instead chose to file a complaint with ODES. It notes that there is no "chain of command" requirement

under the State Policy and that R.P. was not required to report the incident to his supervisor.

## 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 and national origin, is prohibited and will not be tolerated. *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 or ethnic background. A violation of this policy can occur even if there was no intent on the part of an individual to harass or demean another.

*N.J.A.C.* 4A:7-3.1(d) states that any employee who believes that she or he has been subjected to subjected to any form of prohibited discrimination/harassment is encouraged to promptly report the incident(s) to a supervisor or directly to the State agency's Equal Employment Opportunity/Affirmative Action Officer.

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

*N.J.A.C.* 4A:7-3.1(i) provides that an employee who knowingly makes a false accusation of prohibited discrimination/harassment or knowingly provides false information in the course of an investigation may be subjected to disciplinary action. Complaints made in good faith, however, even if found to be unsubstantiated, shall not be considered a false accusation.

*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, 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 violated the State Policy. R.P. alleged that the appellant made the statement, "Indian men are dominant and think of their wives as subservient like old Italians." This statement on its face is a derogatory comment in reference to an individual's race, national origin, and/or ethnic background and therefore violates the State Policy. Further, in addition to the appellant and R.P., the ODES interviewed six employees and two of these employees confirmed that the appellant made the statement or a substantially similar statement. Therefore, the investigation substantiated that the appellant

violated the State Policy. Further, the Commission finds that since there was no reason presented as to why the two witnesses would lie, their testimony is credible.

Moreover, the Commission also finds that R.P.'s complaint was in good faith and not in retaliation, as an employee has the right to file a complaint if they believe that they have been subjected to a violation of the State Policy even if the accused had previously filed a harassment complaint against them. Additionally, the fact that the investigation substantiated the allegation provides more evidence that R.P.'s complaint was made in good faith. Further, while the State Policy *encourages* individuals to file discrimination complaints promptly, there is no mandated timeframe to file a discrimination complaint.<sup>2</sup> Moreover, R.P. did not have an obligation to report the allegation to his supervisor as, under the State Policy, an employee can report an incident to his or her supervisor *or* the ODES. Also, the mere fact that R.P. continued to characterize the appellant as a friend after the appellant made the derogatory statement does not change the fact that two other witnesses confirmed the allegation. It is also noted that even if the statement was an isolated comment among many conversations that the appellant had concerning one's cultural or ethnic background, one substantiated incident is enough to violate the State Policy even if the appellant had no intent to offend R.P. Additionally, it is further noted that the purpose of the State Policy is to be instructive and remedial in nature, and therefore, the corrective action taken by the ODES with respect to the appellant was appropriate.

Accordingly, the Commission finds that the ODES investigation was thorough and impartial. Therefore, the Commission finds that appellant failed to support her burden of proof and the allegation that she violated the New Jersey State Policy Prohibiting Discrimination in the Workplace is substantiated.

### ORDER

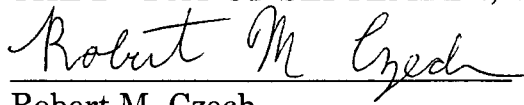
Therefore, it is ordered that this appeal be denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

---

<sup>2</sup> However, the Commission is concerned that R.P.'s reporting of the complaint was delayed for so long a period of time. Accordingly, it recommends that the appointing authority emphasize to its employees to promptly report alleged discriminatory conduct. The benefit of a timely complaint is to allow an appointing authority the opportunity to investigate an allegation in a contemporaneous manner, which will present the greatest opportunity for accurate evidence or testimony to be uncovered.

DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 2<sup>nd</sup> DAY OF SEPTEMBER, 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

Attachment

c: C.B-P.  
Neela Sookdeo  
Ruth Charbonneau  
Mamta Patel  
Joseph Gambino



State of New Jersey  
DEPARTMENT OF HEALTH  
PO BOX 360  
TRENTON, N.J. 08625-0360  
www.nj.gov/health

CHRIS CHRISTIE  
Governor  
KIM GUADAGNOLI  
Lt. Governor

MARY E. O'DOWD, M.P.H.  
Commissioner

March 30, 2015

\*\*\*\*Personal and Confidential\*\*\*\*

**SENT REGULAR AND CERTIFIED MAIL # 7014 2120 0002 7011 0576**

Ms. C. E. [REDACTED]  
[REDACTED]  
[REDACTED]

Re: R. P. [REDACTED] v. C. E. [REDACTED]-P. [REDACTED]  
Discrimination Complaint (EEO/AA # 2014-608/ODES #2014-25)

Dear Ms. B. [REDACTED]-P. [REDACTED]:

The Office of Diversity and Equity Services (ODES) at the New Jersey Department of Health (DOH) investigated information it received from R. P. [REDACTED] (Mr. P. [REDACTED] (Retired DOH employee) on August 4, 2014. Mr. P. [REDACTED] filed a formal discrimination complaint which the ODES received on or about October 14, 2014. The complaint alleged that you discriminated against Mr. P. [REDACTED] based on race and/or national origin which implicates the *New Jersey State Policy Prohibiting Discrimination in the Workplace (State Anti-Discrimination Policy)*. Specifically, Mr. P. [REDACTED] alleged that you made the statement, "Indian men are dominant and think of their wives as subservient like old Italians."

In accordance with the *State Anti-Discrimination Policy* and the Division of Equal Employment Opportunity/Affirmative Action's (Division of EEO/AA) Standard Operating Procedures, the ODES conducted a detailed investigation of Mr. P. [REDACTED] allegation, which included six employee interviews and an analysis of the pertinent information received. I have reviewed the investigation report and adopt the findings as discussed below.

During the investigation, you acknowledged that you used to occasionally eat lunch with Mr. P. [REDACTED] and other employees in the Division of HIV, STD and TB Services. You denied making the statement, "Indian men are dominant and think of their wives as subservient like old Italians." You stated that everyone, including Mr. P. [REDACTED] discussed each other's cultures and backgrounds and that no one ever stated that they were offended by any of the comments.

CONFIDENTIAL

Some of the employees the ODES interviewed stated that they were either not present when the alleged statement was made or could not recall the exact statement. Most of the employees interviewed stated that they recalled having discussions about each other's cultures. Two employees confirmed hearing you make the alleged statement, "Indian men are dominant and think of their wives as subservient like old Italians," or a substantially similar statement.

The *State Anti-Discrimination Policy* prohibits discrimination or harassment based upon the following protected categories: 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. Specifically, the *State Anti-Discrimination Policy* states that it is a violation of the policy to use a derogatory or demeaning reference with regard to a protected category in any communication. Based on the foregoing, the ODES' investigation substantiated a violation of the *State Anti-Discrimination Policy* based on race and national origin because there was evidence to show that you made the statement, "Indian men are dominant and think of their wives as subservient like old Italians" or a substantially similar statement. In accordance with this finding, the DOH will take appropriate corrective and/or administrative action. I am recommending an individual counseling on the *State Anti-Discrimination Policy* with Neela Sookdeo, Equal Employment Opportunity Officer at the DOH. The matter will also be referred to the Office of Human Resources Services (HR).

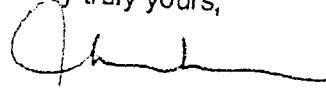
If you wish to appeal this determination, you must submit a written appeal to the New Jersey Civil Service Commission, Director of the Appeals and Regulatory Affairs, P.O. Box 312, Trenton, New Jersey 08635-0312, postmarked or delivered within 20 days of your receipt of this determination. **Please be advised, the burden of proof is on the Appellant.** Your appeal must include a copy of this determination, the reason for the appeal and the specific relief requested. Please be advised that pursuant to P.L. 2010, C. 26, effective July 1, 2010, there is a \$20.00 fee for appeals. Please include the required \$20.00 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 (N.J.S.A. 44:8-107 et seq.), P.L. 1973, c. 256 (N.J.S.A. 44:7-85 et seq.), or P.L. 1997, c. 38 (N.J.S.A. 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 Anti-Discrimination Policy* prohibits retaliation against any employee, who files a discrimination complaint, participates in a complaint investigation, or opposes a discriminatory practice. In addition, to the extent possible, the ODES maintains confidentiality of the investigation,

CONFIDENTIAL

review, and determination. Therefore, you are required to keep this matter confidential and should not discuss the results of the investigation or any other aspect thereof with others.

Very truly yours,



Ruth Charbonneau,  
Chief of Staff

- c: Mary E. O'Dowd, M.P.H., Commissioner, DOH  
Mamta Patel, Esq., Director, Division of EEO/AA,  
New Jersey Civil Service Commission  
Neela Sookdeo, Equal Employment Opportunity Officer, DOH  
Elizabeth H. Foster, Legal Specialist, (EEO Investigator, Designee of Neela  
Sookdeo), DOH