



STATE OF NEW JERSEY

In the Matter of M.J.,
Department of Corrections

**FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION**

CSC Docket No. 2018-2825

Discrimination Appeal

ISSUED: DECEMBER 7, 2018 (JET)

M.J., a Correctional Police Sergeant with the Department of Corrections (DOC), appeals the determination of the Director, Equal Employment Division (EED), DOC, which found that the appellant failed to support a finding that he had been subjected to a violation of the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy).

The appellant, an African-American, filed a complaint with the EED, alleging that he was subjected to discrimination on the basis of race/color by S.D., a Caucasian Correction Major. The appellant is assigned to the Central Reception and Assignment Facility (CRAF), and he serves as an "As Assigned by Operations (ASOP) Sergeant and S.D. is the Security Major. The appellant also alleged that he was subjected to retaliation as the appellant participated as a witness in an EED complaint filed against S.D., and filed a complaint against him with the Equal Employment Opportunity Commission (EEOC). Specifically, the appellant alleged that S.D. engaged in taunts and attacks against the appellant as a result of being a witness in an EED complaint against him; attempted to write the appellant up for approving 18 minutes of overtime; wrote the appellant up for submitting a witness statement two or three days after the incident occurred pertaining to an incident involving L.M., an African-American Correctional Sergeant; adjusted time for everyone during L.M.'s disciplinary hearing except for non-white employees; did not use the appellant as a management witness despite that he is the Sergeant with the most seniority; and only Caucasian Officers were called as witnesses to testify during the hearing. Additionally, the appellant alleged that S.D. ordered a security perimeter inspection of CRAF during a winter storm on January 23, 2017, knowing

that the inspection would have to be conducted by the appellant or L.M. as they were working on that date. The appellant claimed that the inspection was a form of retaliation against him as a part of S.D.'s personal vendetta against the appellant and L.M. The appellant alleged that S.D. treats people of color more harshly than Caucasian employees, as K.D., an African-American Correctional Sergeant, was issued a written reprimand for using administrative leave time on a holiday, and N.S., a Caucasian Correctional Sergeant, used administrative leave time on a holiday which was later converted to sick time and was not disciplined. The appellant also alleged that S.D. disseminated e-mails highlighting mistakes that were made by supervisors of color, which he did less often for Caucasian supervisors. However, the appellant did not submit the e-mails to the EED for review.

After conducting an investigation, the EED did not substantiate a violation of the State Policy. Specifically, the EED interviewed the appellant, S.D., and reviewed relevant documentation pertaining to the matter, and it was determined that S.D. did not subject the appellant to discrimination or retaliation. Rather, the appellant admitted that he did not submit a report pertaining to a matter involving L.M. until two or three days after the incident occurred, and the appellant was written up as he failed to submit the report pursuant to Internal Management Procedure (IMP) 1014 – Special Incident Report Writing. The EED added that the matter involving K.D. was resolved and could not be disclosed within the context of the appellant's EED complaint due to the confidential nature of that separate matter that did not involve the appellant. With respect to the inspection of the CRAF facility, S.D. indicated that it was necessary to conduct the investigation due to a security concern due to damage caused by the weather. S.D. confirmed that he assigned the task to the Shift Commander and did not pick which employee would perform the task. The investigation confirmed the appellant's allegation that he was not selected as a management witness for L.M.'s hearing, but determined it was not based on his race, and although the appellant appeared at the hearing as a witness, his time was not adjusted because he did not appear as a management witness as consistent with the appointing authority's protocol. The investigation confirmed and the appellant admitted that he was not disciplined for approving the 18 minutes of overtime. Also, the investigation did not reveal that S.D. retaliated against the appellant due to his involvement in a previous EED complaint or as a result of the appellant's EEOC complaint against him. Moreover, S.D. denied that he targeted the appellant and/or subjected him to inappropriate conduct based on his membership in a protected category under the State Policy. As such, the EED determined that S.D.'s actions were non-discriminatory, non-retaliatory and for legitimate business reasons.

On appeal, the appellant asserts that various individuals, including Major T.B., Associate Administrator A.D., and former Administrator R.R. are encouraging S.D. to continue with his discriminatory behavior toward the appellant. In this regard, the appellant claims that management conspired with S.D. with respect to such inappropriate behavior, which includes, but is not limited to, making false accusations against him, unjustified disciplinary action, and making an effort to separate him from employment. Specifically, the appellant alleges that S.D. alleged in August 2016 that the appellant failed to provide a witness statement. The appellant explains that L.M. asked him not to submit a report pertaining to an incident that he had witnessed, and he obtained permission from another supervisor to submit the report on a future date. The appellant contends that S.D. alleged that he failed to timely submit the report in accordance with IMP 1014, which indicates that “reports must be completed and submitted to the shift commander or requesting supervisor as soon as possible, but no later than the end of your tour of duty.” The appellant asserts that the prior version of IMP 1014 stated that “if you are unable to complete a report by the end of your shift, you must contact the shift commander.” However, the appellant has been unable to find a prior copy of that procedure. The appellant adds that he was disciplined due to not submitting the report. Additionally, the appellant contends that S.D. stated that the appellant had filed an EED complaint against him in front of various witnesses. The appellant adds that S.D. threatened him and had to be told by several individuals to calm down. The appellant maintains that such behavior constitutes workplace violence and none of the witnesses reported the incident except the appellant.

The appellant asserts that, on October 11, 2018, S.D. alleged that the appellant inappropriately authorized an overtime expenditure of 18 minutes. The appellant explains that A.C.W., a Correction Sergeant, who was at the time a Correction Officer, worked 18 minutes after her shift while awaiting to be relieved by another Correction Officer, and the appellant authorized the overtime. As a result, the appellant contends that S.D. went on a tirade as he believed the appellant should have been able to work understaffed. The appellant adds that, although no charges were issued against him as a result of the incident, S.D. had the appellant sign a Weingarten rights form and an investigatory interview was conducted. Further, the appellant asserts that, with respect to the inspection that occurred on January 23, 2017 that S.D. ordered pertaining to a possible security breach, the appellant did not find any documentation, work orders, or reports to show that any security concerns existed at the time. The appellant contends that, although a fence inspection occurs daily by a general assessment officer who walks the entire perimeter and no breach was found on the date in question, S.D. stated the inspection was necessary to address a security concern. The appellant adds that a three day suspension was issued against him which was later downgraded on to a one day suspension. The appellant contends that the disciplinary charges against

him were shared with other administrative staff, which shows that correspondence about him was shared in violation of the State Policy. The appellant asserts that it was alleged that a radio was left in an unsecured area, and in response, S.D. stated to R.S. that if the radio was left in the inmate law library “then that’s good for him.” The appellant explains that various African-American employees have been reassigned from their posts as a result of minor incidents, including Officer L, and was replaced by a Caucasian Officer who was later promoted. The appellant adds that S.P., an African-American Correctional Sergeant, was 10 minutes late and was required to fill out a late slip while P.J., a Caucasian Correctional Sergeant, was 31 minutes late and was not asked to fill out a late slip. The appellant contends that L.M. was disciplined and received a 30-day suspension as a result of fraudulent charges. The appellant states that he continues to be subjected to inequality, disparate treatment, racial bias, harassment and discrimination. He adds that minorities assigned to custody staff are subjected to discrimination on a continuous basis. Moreover, the appellant requests relief under Title VII of the Civil Rights Act of 1964.

In response, the EED maintains that there was no violation of the State Policy. Specifically, the EED asserts that with respect to the appellant’s arguments on appeal, the arguments pertaining to the African-American Sergeant who is not the appellant and the information provided by the appellant’s witnesses do not establish the appellant’s claims in this matter. The EED adds that the appellant set forth additional allegations in his appeal that were not included in the underlying EED investigation. However, such allegations were listed in the appellant’s EEOC complaint, and as a result, the EED conducted a separate investigation, and as such, the findings regarding the appellant’s EED determination in this matter are correct. In addition, the EED explains that it conducted a thorough investigation and it was not substantiated that S.D. targets minority employees in the custody unit. The EED adds that witnesses indicated that S.D.’s business decisions were not made in an attempt to subject the appellant to discrimination in violation of the State Policy. As such, the EED determined that S.D.’s, as well as other members of the CRAF administration’s, business decisions were made for legitimate business reasons. With respect to the appellant’s claims that an African-American Sergeant was subjected to disparate treatment for using sick time, the EED avers that a separate investigation was conducted for that matter and it was confirmed there were other factors that contributed to his disciplinary action that were not related to his race. However, corrective action was taken with regard to the disciplinary action. In support, the EED provides a copy of the separate investigation it conducted pertaining to the appellant’s EEOC complaint.

CONCLUSION

N.J.A.C. 4A:7-3.1(a) provides that under the State Policy, 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. The appellant shall have the burden of proof in all discrimination appeals. *See N.J.A.C.* 4A:7-3.2(m)(3). Additionally, retaliation against any employee who alleges that she or he 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, is prohibited by the State Policy. Examples of such retaliatory actions include, but are not limited to, termination of an employee; failing to promote an employee; altering an employee's work assignment for reasons other than legitimate business reasons; imposing or threatening to impose disciplinary action on an employee for reasons other than legitimate business reasons; or ostracizing an employee (for example, excluding an employee from an activity or privilege offered or provided to all other employees). *See N.J.A.C.* 4A:7-3.1(h). It is noted that the burden of proof is on the appellant to provide information in support of her case. *See N.J.S.A.* 11A:2-6(b) and *N.J.A.C.* 4A:2-1.4(c).

N.J.A.C. 4A:7-3.1(j) establishes that all discrimination complaints and investigations shall be handled, to the extent possible, in a manner that will protect the privacy interests of those involved. To the extent practical and appropriate under the circumstances, confidentiality shall be maintained throughout the investigatory process. In the course of the investigation, it may be necessary to discuss the claims with the person(s) against whom the complaint was filed and other persons who may have relevant knowledge or who have a legitimate need to know about the matter. All persons interviewed, including witnesses, shall be directed not to discuss any aspect of the investigation with others in light of the important privacy interests of all concerned. Failure to comply with this confidentiality directive may result in administrative and/or disciplinary action, up to and including termination of employment. A violation of this policy can occur even if there was no intent of the part of an individual to harass or demean another. *See N.J.A.C.* 4A:7-3.1(b).

The Civil Service Commission (Commission) has conducted a review of the record in this matter and finds that the appellant has not established that S.D. discriminated against him in violation of the State Policy. The record shows that

the EED conducted an adequate investigation. It interviewed the relevant parties in this matter and appropriately analyzed the available documents in investigating the appellant's complaint. Specifically, the EED concluded that the appellant was not discriminated against on the basis of race with respect to his allegations pertaining to S.D. With respect to the appellant's allegations pertaining to the witness statement that he submitted with respect to L.M., he has not established his claims. Initially, there is no evidence that L.M. filed a discrimination appeal with respect to the incident that occurred. Although the appellant states that another supervisor gave him permission to file the report at a later time, he submits no substantive evidence in support of that claim. With respect to the appellant's assertions that a prior version of IMP 1014 indicates that reports must be completed and submitted to the shift commander or requesting supervisor as soon as possible, but no later than the end of your tour of duty, the appellant admits in this matter that he cannot find a copy of the prior version of the policy. A review of the record reveals that the EED investigated the matter and found that the appellant was required to submit the report pursuant to IMP 1014. The appellant's failure to submit the report and the subsequent corrective action taken, in and of itself, does not show that S.D. discriminated against him. Moreover, the record reflects that S.D. properly complied with the provisions of IMP 1014 at the time of the incident.

Regarding the appellant's allegations that S.D. blurted out that the appellant filed an EED complaint against him, the appellant has not submitted any substantive information to show that the incident occurred. Even if S.D. stated that the appellant filed an EED complaint against him, there does not appear to be a breach of any of the confidentiality provisions of the State Policy. In this regard, it does not appear that S.D. shared any information with respect to the investigation that was pending. Moreover, it appears that he refrained from discussing the matter after he was warned that he should not be engaging in discussions regarding EED matters. Such corrective action was appropriate under such conditions.

With respect to the appellant's allegation that he was inappropriately targeted by S.D. for authorizing 18 minutes of overtime, the appellant admits in this matter that he was not disciplined for the incident. As such, it is of no moment that the appellant signed a form pertaining to waiving his Weingarten rights. Even if, as the appellant's supervisor, S.D. corrected the appellant for issuing the overtime, such information, in and of itself, is not sufficient to show that there was a violation of the State Policy. It was at S.D.'s discretion as the appellant's supervisor to discuss the authorization of overtime with him. Further, although the appellant states that a one-day suspension was issued against him pertaining to an incident that occurred during a facility inspection during a winter storm, such information does not establish his claims. The appellant admits in this matter that he was initially issued a three day suspension which was later reduced to a one day suspension. The one day suspension constitutes minor disciplinary action and does

not, in and of itself, establish that there was a violation of the State Policy. Further, the EED investigated the incident and it was determined that S.D. ordered the inspection due to property damage that may have occurred during the winter storm, and he instructed the Shift Commander to perform the inspection. As such, the fact that the inspection was conducted during a winter storm, and that the appellant may have been required to perform the inspection, in and of itself, does not establish that the appellant was singled out by S.D. in violation of the State Policy. Additionally, it appears that the appellant had a personality conflict with S.D., which is not sufficient to establish a violation of the State Policy. Disagreements between co-workers 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). Although the appellant also alleged that S.D. disseminated e-mails highlighting mistakes that were made by supervisors of color, which he did less often for Caucasian supervisors, he did not submit the e-mails to the EED for review. Moreover, there is no substantive evidence to show that S.D. singled out other minority employees in violation of the State Policy.

With respect to the appellant's allegations in this matter that also appear in his EEOC complaint, it appears that he did not report them in his separate EED complaint in this matter. Rather, the record reflects that the appellant filed a federal EEOC complaint with separate allegations, and a separate EED investigation was conducted for that matter. The Commission cannot render a determination in those matters, and as such, it cannot review the EED's separate determination pertaining to that matter.

Additionally, none of the witnesses confirmed that the appellant was singled out by S.D. on the basis of race. Moreover, the appellant provided no substantive information to show that he was retaliated against by S.D. pursuant to the above listed rule. Other than his mere allegations, the appellant did not provide any information to confirm that she was discriminated against in violation of the State Policy. Accordingly, the Commission is satisfied that S.D.'s actions were made for legitimate work-related business decisions and he did not specifically target the appellant in violation of the State Policy. Accordingly, the EEO/AA's investigation was thorough and impartial, and therefore, 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 5th DAY OF DECEMBER, 2018



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