



STATE OF NEW JERSEY

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

In the Matter of P.L., Department of
Human Services

CSC Docket No. 2018-1884

Discrimination Appeal

ISSUED: APRIL 23, 2018 (CSM)

P.L., a Principal Clerk Typist with the Department of Human Services, appeals the determination of the Assistant Commissioner, Office of Operations, 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).

The appellant filed a complaint with Human Services' Office of Equal Employment Opportunity (EEO) alleging that she had been discriminated against based on race, disability and retaliation by S.B., Senior Executive Service, M.S., Secretarial Assistant 2, D.S., Habilitation Plan Coordinator, and G.M., Program Specialist 4. Specifically, the appellant claimed that S.B. made a racially insensitive joke; that she had been subjected to ongoing harassment and intimidation because of her race, color and physical disability; that D.S. made rude comments to her about her body odor; that she was denied a reasonable accommodation for her disability when her request to be transferred from her old location had not been granted; that G.M. started asking her to report on the progress of her work even though he does not do the same to other clerical employees he supervises; that the "No Bully Zone" sign in her cubicle was thrown in the trash; that her cubicle was "taped up" while she was away; that G.M. told her "I don't know what's going on in your head;" and that G.M. purposely seated her next to M.S. and S.B. when staff was relocated to Central Office as an act of retaliation for filing her complaint. The EEO investigated the matter, which included interviewing 11 witnesses and reviewing over 100 relevant documents and could not substantiate a violation of the State Policy.

On appeal, the appellant states that she has been subjected to harassment, humiliation, bullying unfavorable treatment, and discrimination by a Case Manager, Regional Assistant Director, and Human Resources. She states that an incident occurred in June 2016 with the Case Manager that was handled by Human Resources, “where the [C]ase [M]anager had close family ties which had a heavy influence on the outcome” resulting in her claim of harassment never being addressed. As a result, the appellant presents that she had to go out on stress leave because of the incident. Although her doctor provided her with a prescription asking that she be transferred to a more stable environment, Human Resources denied her request. Further, the appellant claims that her supervisor got so frustrated with her in a meeting he stated that its not his fault that he cannot figure out what is going on inside of her head. The appellant also asserts that the Regional Assistant Director “humiliated me in front of seven staff members” which resulted in her taking stress leave again. With respect to the EEO’s determination, the appellant argues that the witnesses and offenders did not tell the truth and questions if they were even interviewed. The appellant states that she would like to be reassigned to another department as she is still uncomfortable in her work environment. The appellant claims that she filed a complaint with the Equal Employment Opportunity Commission (EEOC) and that its decision was different than the findings of the EEO. She also states that the EEO’s decision is over 30 days late and requests that her matter be reinvestigated.

In response, the EEO initially states that the EEOC dismissed the appellant’s complaint on October 26, 2017. Regarding the EEO’s investigation, it states that the appellant complaint was received on May 25, 2017 and her initial interview was conducted on July 27, 2017. However, during a follow-up interview on August 30, 2017, the appellant added allegations of disability discrimination and retaliation. Further, on September 7, 2017 and October 17, 2017, the appellant submitted additional allegations of discrimination and retaliation. In response, the EEO conducted an investigation which included 11 interviews and reviewing over 100 documents. With respect to the allegations of race discrimination against S.B. and M.S., the investigation was unable to corroborate that they made a “lightbulb” joke in a meeting and both denied the allegation. In response to the allegation of disability discrimination based on D.S.’s alleged comment to the effect of, “I can smell her” on or about June 24, 2016, D.S. did not know the appellant had a disability and denied making the alleged comments. Additionally, the investigation found that D.S. “was gone” by the time the appellant got into the office on the supposed date and no other witness could corroborate the allegation. Regarding the appellant’s allegation that the appointing authority refused her a reasonable accommodation, the investigation found that Human Resources engaged in an interactive process for an ADA accommodation along with the appellant. The appellant was provided with a Reasonable Accommodation Request form, Medical Release form, and Essential Functions Worksheet via email on July 25, 2016. G.M.

completed the Essential Functions Worksheet and all the documents were placed in her ADA file. The investigation disclosed that the appellant was issued a letter on November 29, 2016, advising that her current medical condition prevented her from performing work assignments at her current location and that based on her physician's input, she was offered continuous leave under the Federal Family and Medical Leave Act (FMLA). As a result, she was approved for FMLA from February 27, 2017 through May 3, 2017. Regarding the appellant's request for a transfer, she was advised that she could submit a reassignment request and the investigation found that the division's lateral reassignment list included the appellant's name.

In response to the appellant's claim that G.M. referred to her "disability several times," the appellant was unable provide any witnesses who could corroborate the allegation that he made statements in a meeting regarding her disability. G.M. denied discriminating against the appellant for being part of a protected category and explained during the investigation that the appellant seemed "consumed" by being granted a transfer, which resulted in her work being "diminished to a certain degree" that required him to prompt her about projects. When asked if he did the same with other direct reports, G.M., replied that he did not because his other direct report is usually proactive and informs him of the status of her assignments. G.M. did recall a meeting about the appellant's work performance, but he denied making a comment regarding her disability. Rather, the investigation found that G.M. told the appellant that he wanted to support her, but that the appellant was not disclosing enough information to him where he could take action. G.M. also stated during the investigation, "I could not understand how she was feeling", and the appellant responded to him, "Oh, now you are in my head" and that she was offended. Therefore, the investigation was unable to substantiate any of the appellant's allegations.

In response, the appellant claims that M.S. was not just a witness, she was also a participant in the discriminatory behavior because she laughed and clapped her hands, thus encouraging S.B. to make racially insensitive jokes. With respect to G.M.'s comment, "I can't get inside your head," the appellant asserts that G.M.'s own account of the situation gives credibility to her allegations and demonstrates that he is not being truthful. She also contends that it does not make sense that the facilities manager could or would determine seating arrangement of a unit without the input of those who are managing the unit.

In reply, the EEO presents that both S.B. and M.S. denied making a joke about getting a light bulb fixed and there was no corroborating evidence that they did make the joke. Regardless, even if S.B. made the joke and M.S. laughed, a joke about a light bulb does not rise to the level of an EEO violation. With respect to G.M.'s alleged comment "I don't know what is going on in your head," the appellant concedes that there were no witnesses and G.M. denied making the comment. Therefore, the investigation could not substantiate the allegations. In response to

the contention that G.M purposely seated the appellant next to M.S. and S.B. when staff relocated to Central Office, the investigation and record indicates that the Director of Facilities Management and Support, J.R., crafted the seating arrangements and there was no evidence that G.M. had any influence in preparing the seating arrangements. Rather, the record indicates that G.M. did in fact try to move the appellant's proposed seat, but his effort was unsuccessful, as the move was being driven by prior arrangements that the Governor's Office and Treasury made with NJOIT and Verizon.

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. Additionally, the appellant shall have the burden of proof in all discrimination appeals. *See N.J.A.C.* 4A:7-3.2(m)(3). *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.

Initially, the appellant asserts that the determination is "more than 30 days late." In this regard, the determination is dated December 11, 2017 and the appellant's initial complaint was received by the EEO on May 25, 2017. However, it is un rebutted by the appellant that she made additional allegations on August 30, 2017, September 7, 2017, September 8, 2017, and October 17, 2017 that were also investigated and included in the December 11, 2017 determination letter. Therefore, there is no basis to find a violation of 4A:7-3.2(l) which requires determinations to be issued no later than 180 days after the initial intake of the complaint.

The Commission has conducted a review of the record and finds that the appellant has not established that she was subjected to discrimination in violation of the State Policy. The investigation included interviewing 11 witnesses and reviewing over 100 documents, but none of the witnesses named by the appellant could substantiate any of her allegations. In this regard, both S.B. and M.S. denied the allegations regarding the light bulb joke and the joke in question does not rise to the level of an EEO violation. Further, none of the witnesses the appellant named could corroborate that D.S. made a rude remark to her regarding an odor and/or her disability and D.S. denied making any discriminatory comments to the appellant. Regarding the appellant's claim that she was denied a reasonable accommodation, the investigation found that Human Resources engaged in the required interactive

process regarding her accommodation request and she was offered FMLA and instructed on the proper procedures to follow for lateral transfer requests. The investigation also found that G.M. had concerns about the appellant's work performance which required that he prompt her about projects. Moreover, there were no witnesses who could corroborate that G.M. told her "I don't know what is going on in your head" and G.M. denied making the comment. Further, the appellant was unable to identify any witnesses or individuals responsible for tampering with the décor of her cubicle. Finally, the investigation found that J.R., not G.M., was responsible for the seating arrangements when the office was relocated. Other than her disagreement with the findings, the appellant has not provided any evidence to substantiate her allegations.

Accordingly, the Commission finds that the EEO's investigation was thorough and impartial, and the record does not support a finding that there was 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
18TH DAY OF APRIL, 2018

Deirdre L. Webster Cobb

Deirdre L. Webster Cobb
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Christopher S. Myers
Director
Division of Appeals
and Regulatory Affairs
Civil Service Commission
Written Record Appeals Unit
P.O. Box 312
Trenton, New Jersey 08625-0312

c: P.L.
Pamela Conner
Mamta Patel
Records Center