



STATE OF NEW JERSEY

In the Matter of A.B., Department of Health

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

CSC Docket No. 2023-1240

Discrimination Appeal

ISSUED: May 3, 2023 (SLK)

A.B., a former unclassified Clinical Psychiatrist – Post Certified with Ancora Psychiatric Hospital (Ancora), Department of Health¹, represented by David E. Gray, Esq., appeals the determination of a Chief of Staff which substantiated that she violated the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy).

By way of background, A.B., who is an Indian-American female, was alleged to have made derogatory comments based on sexual orientation and an inappropriate gesture based on race to A.D., a Caucasian female Program Specialist 1, Social Human Services. Specifically, it was alleged that on September 18, 2021, when A.B. learned that she was not invited to A.D.’s wedding, A.B. pointed to her face and said that she would not fit in anyway indicating her skin color. Additionally, it was alleged that A.B. commented, “Aww the lipstick lesbian is getting married.” While A.B. denied the allegations, the investigation revealed that a witness corroborated both allegations. Further, A.D. also alleged that sometime in 2020, A.B. called her a “lipstick lesbian.” While A.B. also denied this allegation, a separate witness corroborated it. Moreover, A.D. alleged that sometime in 2020 when A.B. and A.D. were having a “general conversation,” A.B. suggested that A.D. should have been a model. After A.D. responded that she was not a model, A.D. said that A.B. referred to her being a “dyke.” While A.B. denied the allegation, the investigation revealed

¹ A.B. resigned from her unclassified appointment effective September 12, 2022.

that a witness confirmed that A.B. made the derogatory comment directed toward A.D. Therefore, the Office of Diversity and Equity Services (ODES) substantiated that A.B. violated the State Policy based on sexual orientation and color. It noted that the matter would have been referred to Employee Relations for review and discipline as it deemed appropriate, but as A.B. was no longer a State employee, no further action was taken.

In response, A.B. asserts that she never made the alleged statements. She contends that A.D. and the two witnesses, Y.O.², and M.D., an Asian-American female Program Coordinator Mental Health, are best friends and biased against her. She indicates that they all work for R.F.³, and she alleges that R.F. engaged in a pattern of retaliation against her. A.B. states that A.D. was known to share her sexual orientation and political views with patients and staff, many staff members complained about A.D. to supervisors, and A.B. also reported her conduct. A.B. contends that since A.D. made accusations that were not specific in time in 2020, these allegations are not sufficient to justify a finding of wrongdoing. A.B. alleges that the allegations against her were made to retaliate against her January 24, 2022, complaint. She presents that in March, approximately two months after she reported incidences of discrimination, she received a letter dated February 24, 2022, regarding A.D.'s complaint. A.B. states that the investigation was conducted by two investigators who were threatening, intimidating, condescending, hostile, and biased where she was asked about her race, religion, social background, and repeatedly called a "liar." Also, she was not properly addressed by her title "Doctor" and was instead called "ma'am." A.B. notes that a union representative accompanied her during the interview and asserts that the union representative was appalled by the racist and sexist remarks made towards A.B., indicating that she had never seen an interview accusing a doctor of unsubstantiated wrongdoing. A.B. highlights that on her Employee Exit Rating Form, she received a favorable review from Ancora's Medical Director. Therefore, she believes that there is no indication of any wrongdoing, any inappropriate statements or any history of conduct unbecoming a medical doctor. A.B. provides that she has witnesses that have not been investigated nor questioned and who could substantiate that these allegations are biased. Although no action was taken against her, she wants the record to be cleared.

In response, the ODES presents that A.D.'s complaint against A.B. was received on October 6, 2021. During her February 11, 2022, interview, A.D. indicated that she identified as a lesbian and made the above-referenced allegations against A.B. Further, as indicated above, the allegations were substantiated.

The ODES provides that on February 15, 2022, A.B. called the ODES and expressed work-related issues involving doctors leaving early, coming in late, that she was not permitted to telecommute, and she was assaulted by a patient. A.B.

² Y.O. is not listed in personnel records.

³ R.F. is not listed in personnel records.

speculated that she may be being discriminated against by male staff that ate together due to her being female. A.B. failed to provide specifics and indicated that she needed to think about whether she was going to file a complaint. The ODES describes its attempts to interview A.B. regarding her complaint from March 2022 through May 2022, but due to scheduling conflicts and A.B.'s hesitation to go forward with her complaint, the intake interview did not happen. On May 18, 2022, A.B. forwarded A.M., a Caucasian⁴ male Clinical Psychiatrist – Post Certified⁵, an email regarding work-related issues and she concluded the email by stating that she believed that A.M. was attempting to force her out of her position because she was “a woman with a different ethnicity,” he had no concern for her safety, he did not rectify her concerns, and she preferred to be transferred to a female patient unit.

The ODES indicates that on June 10, 2022, it interviewed A.B. regarding A.D.'s complaint. At that meeting, A.B. also indicated that she did not wish to proceed with the intake interview regarding her complaint as she was not prepared with all her information and documentation at that time. Following A.B.'s respondent interview, she emailed the interviewer about her work-related issues and she disapproved of the investigators attempt to interview her about her complaint before her respondent interview. She also objected to the investigator referring to her as “Ma’am” instead of “Doctor.” On June 15, 2022, the ODES followed-up with A.B. requesting that she complete an intake form regarding her complaint within 10 days or it was going to close that case. The ODES describes multiple attempts to schedule an interview with A.B. in July and August 2022. However, on August 15, 2022, A.B. advised the ODES that she intended to submit her resignation effective September 1, 2022, and she would not be attending an interview with the investigator. Consequently, the ODES closed A.B.'s complaint file.

Regarding A.B.'s appeal and the alleged biases of witnesses, the ODES presents that the witnesses were read and signed a State Policy Confidentiality/Prohibition Against Retaliation Form and were advised that they had an obligation to be candid and truthful in providing all relevant information pertinent to the investigation. Also, it noted that A.B. did not disclose during her interview her allegation that she was being subjected to retaliation by R.F. The ODES notes that an employee sharing or disclosing their sexual orientation is not a violation of the State Policy. Further, A.D. did not make any allegations regarding anyone's political views and politics are not a protected category under the State Policy. During A.B.'s respondent interview, she claims that she heard A.D. use the terms “lipstick lesbian” and “dyke” and she reported those comments to R.F. However, A.D. denied using those terms, the interviewed witnesses never heard A.D. use those terms, and R.F. denied that A.B. made these allegations to him. The ODES notes that under the State Policy, as a supervisor, A.B. had an obligation to report these allegations.

⁴ Personnel records indicate that A.M.'s primary race is Caucasian, and he additionally identifies as African-American.

⁵ A.B.'s appeal identifies A.M. as the Ancora Medical Director.

Concerning the alleged lack of specific timing of these incidents, it highlights that for one of the incidents, there was a specific date, September 18, 2021. Further, the ODES emphasizes that the State Policy does not have a statute of limitations, and although the 2020 allegations did not have an exact date, there was corroboration that A.B. used the derogatory term “dyke” in the past. Referring to her retaliation claim, it reiterates that A.D.’s claim was filed on October 6, 2021, which was prior to A.B.’s January 24, 2022, complaint. Therefore, A.B.’s claim of retaliation does not fall under the State Policy. It argues that A.B. has provided no substantive evidence that warrants overturning the determination.⁶

CONCLUSION

N.J.A.C. 4A:7-3.1(a) provides, in pertinent part, the State 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 race and sexual orientation will not be tolerated.

N.J.A.C. 4A:7-3.1(h) provides, in pertinent part, that 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 this policy. No employee bringing a complaint, providing information for an investigation, or testifying in any proceeding under this policy shall be subjected to adverse employment consequences based upon such involvement or be the subject of other retaliation.

N.J.A.C. 4A:7-3.2(m)4 provides that the appellant shall have the burden of proof in all discrimination appeals brought before the Civil Service Commission (Commission).

In this matter, A.D. alleged that A.B. made comments and gestures that discriminated against her based on sexual orientation and skin color. Specifically, there was a September 18, 2021, incident where A.D. alleged that in response to A.B. not being invited to her marriage, A.B. pointed to her face and said that she would not fit in anyway indicating her skin color and said, “Aww the lipstick lesbian is getting married.” The investigation revealed that a witness corroborated these allegations. Further, sometime in 2020, there were incidents where A.D. alleged that

⁶ It is noted that the appointing authority initially sent its response to A.B. and not her attorney. This agency followed-up with her attorney asking for confirmation that A.B. forwarded the appointing authority’s response, but her attorney did not respond. Thereafter, this agency followed-up with the appointing authority advising that it needed to send its response to A.B.’s attorney. Subsequently, the appointing authority emailed its response to A.B.’s attorney. However, A.B.’s attorney did not indicate that he received the response from the appointing authority nor did he submit a reply to the appointing authority’s response.

A.B. made derogatory comments based on her sexual orientation, namely calling her a “lipstick lesbian” and a “dyke,” which were also corroborated by a witness.

On appeal, A.B. denies that she made the alleged comments and gestures and she accuses the witnesses of being biased. She asserts that she has witnesses that have not been investigated nor questioned and who could substantiate that these allegations are biased. However, it is noted that she has not presented the names of these witnesses nor has she provided any statements from these witnesses. A.B. also claims that her union representative witnessed that her respondent interview was biased. However, she has not submitted a statement from this union representative. In other words, other than mere unsupported statements, she has not provided any evidence that the witnesses and/or investigator were biased while the appointing authority has presented two separate witnesses who have confirmed separate allegations against A.B that indicated that she violated the State Policy.

Concerning A.B.’s other comments, if A.D. did share her sexual orientation and political views with patients and staff, and even if staff and patients complained about it, this is not a violation of the State Policy and is not justification for A.B. violating the State Policy. Regarding her claim that R.F. “retaliated” against her, this is also an unsupported statement without any evidence. Further, the investigation revealed that A.G’s complaint was filed before A.B.’s complaint; therefore, there is no evidence that A.D.’s complaint or any other adverse treatment that A.B. alleges was based on A.B.’s complaint. Consequently, her allegation of “retaliation” does not touch the State Policy. Referring to her complaint that she was called “Ma’am” instead of “Doctor” during her respondent interview, even if true, this does not violate the State Policy as A.B.’s professional status is not a protected category under the State Policy. Moreover, even if it is true that A.B. received a favorable review from Ancora’s Medical Director when she resigned, that review is not evidence that she did not make the alleged comments and gesture. Moreover, regarding A.B.’s argument that because a specific date was not identified for each incident, she should not be found to have violated the State Policy, it is noted that there was a specific date for one of the incidents, September 18, 2021. Regardless, there is no requirement that a specific date be provided for an incident under the State Policy and witness corroboration confirmed each alleged incident. Accordingly, there is no basis to disturb the appointing authority’s determination that A.B. violated the State Policy.

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 3RD DAY OF MAY, 2023

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