



STATE OF NEW JERSEY

In the Matter of M.M., Department of
Children and Families

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

CSC Docket No. 2023-660

Discrimination Appeal

ISSUED: May 3, 2023 (SLK)

M.M., a former Paralegal Technician 1 with the Department of Children and Families¹, appeals the determination of a Deputy Commissioner, Policy, Legal Affairs & Compliance (Deputy Commissioner) that substantiated that she violated the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy).

By way of background, it was alleged that M.M., who is Caucasian, shared a story in a negative light about how her relative took a DNA test and discovered that he was seven percent African-American. M.M. admitted to sharing a story with a co-worker about her relative taking a DNA test and discovering that he was seven percent African-American, but she denied that the story was conveyed in a negative manner and/or that anyone had a negative reaction. However, the investigation confirmed there to be witness corroboration to suggest this allegation to be true.² Therefore, it substantiated a violation of the State Policy.

On appeal, M.M. asserts that she did not speak negatively about the race of her own family member nor did anyone make a negative comment regarding the results of this DNA test. She states that her cousin, J.L., a Caucasian Family Service

¹ M.M. is now an unclassified State Investigator Trainee, Law and Public Safety with the Division of Gaming Enforcement, Law and Public Safety.

² It was also alleged that M.M. engaged in other racially inappropriate conversations regarding African-Americans and she made a comment about the Complainant's, E.K.'s, mental health. However, there was insufficient evidence to substantiate these allegations.

Specialist 2 who is an intake worker in her office, could attest that she never spoke about her cousin's DNA test in a negative manner. M.M. indicates that although J.L. has not been made aware of the allegations, she requests that J.L. be interviewed as part of the appeal process.

Additionally, M.M. expresses concerns about the possible witness used to corroborate this allegation. She presents that E.K., who is an African-American Family Service Specialist 1, had a previous dating relationship with another unit member, T.C., an African-American Head Clerk³. M.M. states that if T.C. was a witness, she is concerned that she provided a false statement based on statements from her supervisor, B.M., an African-American Supervising Family Service Specialist 2, who told her that E.K. and T.C. had a "rocky past," but that this situation brought them closer together.

M.M. also alleges that the confidentiality of the investigation was compromised based on comments that B.M. made to her co-workers about the investigation. She also believes that B.M. made certain comments to her co-workers that violated the State Policy. Additionally, M.M. provides that her supervisors have made comments that have made her feel uncomfortable in the workplace.

In response, the EEO presents the following statements regarding the substantiated allegation:

During the second conversation, [redacted] overheard Respondent [M.M.] tell the "other ladies" that her relative took a DNA test and discovered that he was 7% African American. After Respondent [M.M.] made that comment, there was an immediate "gasp" from the "other ladies." [Redacted] stated that [redacted] said, "Oh my God, how did he react" followed by [redacted] repeating, "was he upset?" The Complainant stated that their reaction to Respondent [M.M.'s] comment demonstrated that they believed being African American is a negative thing. The Complainant stated that she heard Respondent [M.M.] say that when she told her relative that he was okay, the relative stated that he now had an "in" which Respondent [M.M.] disagreed and told him that he did not have an "in" because "they (African Americans) are not your people."

It states that it is a violation of the State Policy to use derogatory or demeaning references to one race and a violation of this policy can occur even if there was no intent on the part of an individual to harass or demean another. The EEO provides that even if the language does not appear to be demeaning or derogatory, a "microaggression" can be a violation of the State Policy when it creates a hostile work

³ Personnel records do not indicate a T.C. However, there is a S.C. and it appears that the "T" is nickname for the "S."

environment. A microaggression is defined as the everyday slights, indignities, put-downs and insults that people of color, women, LGBTQI+ populations and other marginalized people experience in their day-to-day interactions. A microaggression can appear to be a compliment but contains a “metacommunication” or hidden insult to the marginalized person or group to which it is delivered. These messages may be sent verbally, nonverbally, or environmentally. People who communicate using microaggressions may not believe their actions are discriminatory, but they are. Sometimes microaggressions are unintentional, but they can still cause harm to the receiver. Further, similar to using demeaning or derogatory language based on a protected category, the impact of microaggressions, matters more than the person’s intent.

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 will not be tolerated. Per *N.J.A.C.* 4A:7-3.1(b), 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:7-3.2(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, the record indicates that M.M. had a conversation that referenced race. It is noted that referencing race in a conversation is not a *per se* violation of the State Policy. A review of the above statements indicates that these statements are not predominantly negative or derogatory references to race on their face and no context has been provided to determine that most of these comments were intended as derogatory racial comments. Instead, it appears that based upon E.K.’s belief that the comments were negative or derogatory references to race, which was based on the “other ladies” reactions to M.M.’s comments, the appointing authority determined that all of M.M.’s comments violated the State Policy. However, M.M. has no control over the reactions of the “other ladies” and it is purely speculative to assume that M.M. made a negative reference to race based on their reactions. Mere speculation, without evidence, is insufficient to substantiate a violation of the State Policy. See *In the Matter of T.J.* (CSC, decided December 7, 2016). Nonetheless, in M.M.’s last statement, she refers to African-Americans as “they,” which is clearly a term that a reasonable person could interpret, in the context of the conversation, as a negative reference to race. Therefore, even if M.M. had no intent to harass or demean another, the Commission finds that this statement was a derogatory or demeaning reference to race in violation of the State Policy. See *N.J.A.C.* 4A:7-3.1(b).

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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