



**STATE OF NEW JERSEY**

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

In the Matter of K.D., Department of  
Children and Families

Discrimination Appeal

CSC Docket No. 2023-417

**ISSUED:** November 22, 2023 **(EG)**

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K.D., a Program Support Specialist 2, Assistance Programs with the Department of Children and Families (DCF) appeals the determination of a Deputy Commissioner for DCF, stating that the appellant failed to present sufficient evidence 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 male, filed a complaint with DCF’s Office of Equal Employment Opportunity/Affirmative Action (EEO/AA) on March 24, 2022, in which he alleged that Governmental Representative 1, D.S., discriminated against him due to his race, creed, and gender. Specifically, the appellant claimed that D.S. continually harassed, bullied, targeted, stereotyped, and provoked him by making comments about his appearance.

In response to the appellant’s complaints, the EEO/AA conducted an investigation into the appellant’s complaints. It found that while D.S. had made comments about the appellant’s appearance, this was part of the typical conversation between the appellant and D.S. because they regularly discussed personal topics. Additionally, EEO/AA confirmed that D.S. made the comment “you look like a robber.” However, it concluded that this comment did not implicate the State Policy. Nevertheless, it referred the matter to DCF’s Diversity Officer. Based on the foregoing, EEO/AA was unable to substantiate the appellant’s allegations that D.S. violated the State Policy.

On appeal, the appellant argues that while he had discussed personal topics with D.S., he asked D.S. to stop making inappropriate comments about him and D.S. failed to stop. Specifically, the appellant indicates that D.S. failed to stop making comments about how he dressed, his beard, his hair and head covering. Additionally, the appellant disagrees that the “comment you look like a robber” did not implicate the State Policy. He asserts that there are racial disparities when it comes to African American males and the criminal justice system. The appellant states that stereotypes exist that black men are criminals. He finds being told that he resembles a “robber” demeaning and derogatory. Further, the appellant contends that the investigation was not impartial because the Deputy Commissioner that made the determination and D.S. have work-related meetings. Moreover, the appellant argues that the investigation was not thorough as he was not followed up with as the investigation progressed to either refute or support what was being discovered. Finally, the appellant requests more cultural awareness training mandated for all staff, supervisors and executive management, an apology for the emotional pain he suffered, and compensatory damages for the EEO/AA failure to conduct a proper investigation.

In response, the EEO/AA asserts that the investigation confirmed that D.S. made comments about the appellant’s hair, clothes and appearance but D.S. stated that this part of the typical conversation that took place because she and the appellant regularly discussed personal topics. The investigation revealed that the appellant and D.S. regularly engaged in jovial and intense conversations amicably. Additionally, the investigation explored if the comments made by D.S. could be microaggressions as described in the New Jersey Law Against Discrimination to see if subtle but offensive comments or actions were made. Further, the investigation found that D.S. asked about the appellant’s hair because he was wearing a hat which was not typical and asked about his dress because the appellant was typically well dressed and well groomed and that day his dress was not typical. The EEO/AA concluded that although the appellant identifies within a minority group, the question did not stem from a minority characteristic but rather because it was uncharacteristic for the appellant to wear a hat. Moreover, D.S. acknowledged making the “robber” comment and explained that she did so because he was wearing a skull cap, mask and sunglasses. Thus, the investigation determined that the comment was not based on the appellant’s race or ethnicity. Finally, the EEO/AA investigated a claim that the appellant’s work environment had changed and found that there had been a misunderstanding between the appellant and D.S. about a new employee’s role.

## 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. *N.J.A.C.* 4A:7-3.1(c) provides that it is a violation of this policy to engage in sexual (or gender-based) harassment of any kind, including hostile work environment harassment, quid pro quo harassment, or same-sex harassment.

In addition, retaliation against any employee who alleges that he or she 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 the subject of other retaliation. *See N.J.A.C.* 4A:7-3.1(h). 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).

Initially, the appellant asserts that the investigation was not impartial because the Deputy Commissioner who made the determination meets with D.S. for work-related initiatives. The appellant has not provided any other argument or evidence as to why these meetings would render the determination invalid. The mere fact that the Deputy Commissioner meets with D.S. on work-related matters does not establish that the Deputy Commissioner was anything but impartial when making the determination in this matter.

In the instant matter, the Civil Service Commission has conducted a review of the record and finds that an adequate investigation was conducted. Specifically, the relevant parties were interviewed, and the appropriate records were reviewed. The EEO/AA interviewed D.S. and found that she while she acknowledged making the statements the appellant alleged, she made them as part of the typical conversation that took place between her and the appellant as they regularly discussed personal topics. Additionally, the EEO/AA concluded that the statements made by D.S. were not motivated by the appellant's race or ethnicity but rather on observations about the appellant that were out of the norm for him. Moreover, given the context provided, the comments cannot be said to be *per se* violations of the State Policy. Based on these findings, the EEO/AA investigation properly determined that the comments made did not implicate the State Policy.

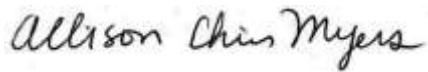
The determinations made by the EEO/AA were well reasoned, fully explained, and based on a thorough investigation. Moreover, the appellant has not provided any dispositive evidence in support of his contentions that he was subjected to a violation of the State Policy. Therefore, the appellant has not sustained his burden of proof in this matter.

**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 22<sup>ND</sup> DAY OF NOVEMBER, 2023



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