



STATE OF NEW JERSEY

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

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

CSC Docket No. 2024-1552

Discrimination Appeal

ISSUED: August 14, 2024 (HS)

B.L., a Human Services Assistant with the Department of Human Services (DHS), appeals the determination of the Deputy Commissioner/Chief of Staff, which found that the appellant failed to present sufficient evidence to support a finding that they had been subjected to a violation of the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy).

The appellant, who identifies as nonbinary, filed a complaint with the Office of Equal Employment Opportunity against respondents G.B., Cottage Training Supervisor; A.P., Head Cottage Training Supervisor; S.P., Cottage Training Supervisor; and E.M., Affirmative Action Officer 2, alleging discrimination based, in pertinent part, on gender identity or expression. Specifically, the appellant alleged that the respondents discriminated against them based on their gender identity or expression by disregarding their preference to be called T. and calling them B., which is their formal/given name. Due to a conflict of interest, Leonard C. Leicht, Esq. conducted an investigation, during which individuals with relevant knowledge were interviewed and relevant documentation was reviewed and analyzed, and found no corroboration for the allegation. Leicht found that there was not a preponderance of evidence that the respondents discriminated against the appellant based on gender identity or expression. While the appellant stated that they prefer to be called T. as opposed to B., there was no evidence to corroborate that the respondents called the appellant B. in order to harass them based on gender identity or expression, as opposed to calling them B. because it is their formal/given name. As such, the Deputy

Commissioner/Chief of Staff did not substantiate any violation of the State Policy based on a protected category.

On appeal to the Civil Service Commission (Commission), the appellant reiterates that they identify as nonbinary and state that they experienced harassment.

In response, DHS indicates that per the documentation supplied with the appellant's complaint, they considered themselves nonbinary at least as of June 2023 and wanted to be addressed as T. The appellant did not want to be referred to as Miss/Ms./Mrs./Missus/Mister. The appellant cited to a specific incident on or about July 12, 2023 where G.B. allegedly harassed them by calling them B. and spelling their name out to emphasize the same. DHS conducted a series of interviews, summarized below.

The appellant claimed that their coworkers refused to call them T., and this caused the appellant emotional distress. At the July 12, 2023 meeting, G.B. refused to use T. when addressing the appellant and spelled out the name B. to make it a point that was how the appellant was to be addressed.

G.B. confirmed that she absolutely referred to the appellant as B. She felt that was the appellant's name and meant no disrespect with it. She knew it was an issue, but her supervisor, A.P.,¹ specifically told her to use B. when addressing the appellant. She did not consider the formal name B. to have anything to do with sex, sexual orientation, or any protected class. It was simply the appellant's name.

A.P. provided largely consistent information. He acknowledged calling the appellant B. He thought this was appropriate as it was the appellant's name. He even discussed the issue with his supervisor, who confirmed B. should be used as it was the appellant's formal name. A.P. felt there could be confusion on documents if T. was written as opposed to B., as the reader may not realize it was the same person. The same was true for certain documents that were initialed. He felt someone reading the initials T.L. as opposed to B.L. may not know who that person was since there was no one with the initials T.L. working a particular shift. A.P. confirmed the use of the name B. was not intended to be disrespectful. It was not based on the appellant's sexual preference or orientation. It was simply the appellant's given name.

S.P. provided similar information. She recalled being instructed by A.P.² to use the name B. when talking to the appellant. This was not considered any type of slur or based on any kind of animosity. It was S.P.'s understanding this was the appellant's name and the name to be used on any written documentation or when

¹ A.P. is referred to using a shortened version of his first name.

² A.P. is again referred to using a shortened version of his first name.

addressing them. No one intended any disrespect. No one was calling the appellant B. for any reason other than that it was their name.

E.M. recalled the appellant requesting others not use their given name of B. but did not conclude this was based on the appellant's identifying as nonbinary, which was relatively new. He agreed the simplest solution was to have others refer to the appellant as T. if, for no other reason, as a professional courtesy.

DHS further indicates that on December 4, 2023, the appellant forwarded two audio recordings from what appeared to be some kind of staff meetings. The voices, which appeared to be primarily female, could not be identified. The spirit of the conversation seemed good natured although all of the details could not be made out due to the quality of the recording. The appellant is clearly referred to as B. and seemed to get upset.

In reply, the appellant states that they had previously submitted a notarized statement addressing the fact that they identify as nonbinary. Per the appellant, A.P.,³ S.P., and G.B. refused to address them by their preferred name T. They insisted on calling the appellant Miss, Ms., Mr., or Sir when the appellant respectfully requested to be addressed by their preferred name. The appellant states that they filed the complaint as it is not equal if their coworkers' preferred names are used and respected and theirs is not even though the appellant has had no issue with being addressed with the preferred name, unless the appellant was handling legal issues in human resources. The appellant states their belief that it would only be right for the parties to be held accountable for what they have done. The appellant states that "[e]very building [they] go to [their] coworkers laugh and mock [their] name."

CONCLUSION

It is a violation of the State Policy to engage in any employment practice or procedure that treats an individual less favorably based upon any of the protected categories. *See N.J.A.C. 4A:7-3.1(a)3*. The protected categories include race, creed, color, national origin, nationality, ancestry, age, sex/gender, 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. *See N.J.A.C. 4A:7-3.1(a)*. A violation can occur even if there was no intent on the part of an individual to harass or demean another. *See N.J.A.C. 4A:7-3.1(b)*.

Supervisors shall make every effort to maintain a work environment that is free from any form of prohibited discrimination/harassment. A supervisor is defined broadly to include any manager or other individual who has authority to control the

³ The appellant notes the shortened version of A.P.'s first name.

work environment of any other staff member (for example, a project leader). *See N.J.A.C. 4A:7-3.1(e)*.

The State Policy is a zero tolerance policy. *See N.J.A.C. 4A:7-3.1(a)*.

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

The Commission has conducted a review of the record in this matter and finds that the appellant has established that they were discriminated against in violation of the State Policy. The investigation found that the appellant considered themselves nonbinary as of June 2023 and wanted to be addressed as T. The appellant did not want to be referred to as Miss/Ms./Mrs./Missus/Mister. The appellant claimed that their coworkers refused to call them T., and this caused the appellant emotional distress. The appellant also provided audio recordings where they seemed to get upset after clearly being referred to as B. Respondents G.B., A.P., and S.P. provided similar information in the investigation, namely that they addressed the appellant as B. as that was the appellant's name and they meant no disrespect. DHS concluded that it could not substantiate the appellant's claim of discrimination based on gender identity or expression. The Commission does not agree. The appellant identified as nonbinary, did not want to be referred to as Miss/Ms./Mrs./Missus/Mister, and wanted to be addressed as T. When G.B., A.P., and S.P. continued to address the appellant as B. and did not address them using their preferred name of T., the appellant was treated less favorably based upon their gender identity or expression.⁴ That G.B., A.P., and S.P. did not mean to disrespect the appellant is beside the point because a State Policy violation can occur even if there was no intent on the part of an individual to harass or demean another. *See N.J.A.C. 4A:7-3.1(b)*. Additionally, the Commission does not find that E.M. violated the State Policy. Accordingly, the Commission remands this matter to DHS so that it may take appropriate action with respect to G.B., A.P., and S.P. based on their violations of the State Policy, as well as any further remedies that may be appropriate under the circumstances.

ORDER

Therefore, it is ordered that this appeal be granted and that the personnel records of G.B., A.P., and S.P., respectively, reflect the Civil Service Commission's finding that the allegations that they violated the New Jersey State Policy Prohibiting Discrimination in the Workplace were substantiated as set forth above. It is further ordered that this matter be remanded to the Department of Human Services for appropriate action as set forth above.

⁴ The Commission takes no issue with the legitimate concerns, expressed by A.P., that there may be confusion on documents if T. or T.L. was written as opposed to B. or B.L. Although, there is nothing in the record to establish that A.P. requires all subordinates to provide their given name or initials on such documents, or that there is a departmental policy requiring such,

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 14TH DAY OF AUGUST, 2024

Dolores Gorczyca

Dolores Gorczyca
Presiding Member
Civil Service Commission

Inquiries
and
Correspondence

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

c: B.L.
Pamela Conner
Leonard C. Leicht, Esq.
Division of Equal Employment Opportunity/Affirmative Action
Records Center