



STATE OF NEW JERSEY

In the Matter of C.V., Department of
Labor and Workforce Development

CSC Docket No. 2025-705

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

Discrimination Appeal

ISSUED: November 27, 2024 (SLK)

C.V., a Manager 1 Vocational Rehabilitation Services with the Department of Labor and Workforce Development, appeals the determination of a Chief of Staff, which was unable to substantiate that she was subjected to a violation of the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy).

By way of background, C.V., a Caucasian female, alleged that she was subjected to gender and race discrimination. Specifically, C.V. described an incident where she assigned S.T., an African American male who is a Senior Clerk and currently serving an indefinite suspension¹, additional work. In response, S.T. said, "Who are you to give me work?" to which another employee, C.N., a Head Clerk², responded, "She is the manager!" After C.V. returned to her office, S.T. made a phone call while walking up and down the aisle and said, "Two white women are harassing me, get my attorney on the phone." The investigation confirmed that S.T. made the statement in question, and S.T. had expressed that he believed that he was being scrutinized, assigned additional job responsibilities, and being harassed based on his race. Therefore, the investigation found that S.T.'s comment was in response to a

¹ The appointing authority indicates that S.T. was suspended without pay on March 5, 2024, and instructed to undergo an Independent Medical Exam. However, S.T. did not comply with the Independent Medical Exam request and has not returned to work. Further, on March 6, 2024, the appointing authority sent S.T. a letter requesting an interview; however, he did not reply.

² Personnel records indicate that C.N. is a Native American while S.T. refers to her as one the two "white women" who are harassing him.

good faith opposition and verbal complaint regarding a perceived discriminatory practice and not a violation of the State Policy. Additionally, the investigation found that there was no corroborating evidence concerning C.V.'s allegation that S.T. created a hostile work environment for female employees. C.V. also alleged that L.F., a Caucasian male Division Director, Human Capitol Strategies, subjected her to less favorable treatment based on race and gender. Specifically, C.V. alleged that L.F. prohibited her from exercising her managerial authority to independently rate S.T.'s performance evaluation because she is a Caucasian female and S.T. is an African American male. The investigation revealed that the Office of Labor Relations (OLR) had reasonable grounds to instruct C.V. of a potential retaliation claim against her based on information it received as the record demonstrated that S.T. engaged in protected activity and the OLR's advice that C.V. should not complete S.T.'s performance evaluation was based on legitimate non-discriminatory business reasons.

On appeal, C.V. believes that the determination was based on omitted and incorrect information, and she was discriminated against. She presents that L.F. stated that S.T. could not receive a failing performance evaluation due to his race and veteran status and not race and gender as indicated in the determination. C.V. highlights that she was unaware of S.T.'s veterans status. Therefore, she contends that L.F.'s direction towards her was more about L.F.'s concerns than S.T.'s work performance. She states that S.T. proved incapable of performing his work duties and engaged in threatening or harassing behavior to instill fear or discourage persons from making him work. C.V.'s provides that she did not ask S.T. to perform "additional" work but just work. She explains that S.T.'s failure to perform his duties caused the other person who held the same title in the office to have additional work.

C.V. highlights there were five incidents in the past year where S.T. did not perform his assigned duties, and in the past, S.T.'s managers would give up on assigning him duties. C.V. explains that S.T. originally performed more receptionist type duties. However, as the need for those duties lessened and there was a greater need for typing duties, which are duties consistent with his Senior Clerk title, he was assigned typing duties. However, she explains in detail, despite being afforded typing training, how he failed to perform his duties by making mistakes, barely doing any work, inputting incorrect or making-up information, and other performance issues. C.V. also notes that it is surprising that S.T. had so much difficulty with typing as he claimed that he had a background in computers. Further, she describes how S.T. would threaten, intimidate, and harass his coworkers. She emphasizes that she only asked S.T. to perform his duties and not "additional" duties as indicated in the determination. Moreover, in response for her asking for help with this situation, L.F. and the OLR advised her not to fail him on his performance evaluation as it might look like race and veteran status discrimination because she is a Caucasian female. Therefore, she questions how she is supposed to hold a non-performing employee accountable as L.F. never gave her any alternative on how to handle the situation.

Consequently, C.V. contends that L.F. was discriminating against her based on race and gender. She reiterates that S.T.'s race or veteran status played no role in his earning a failing performance evaluation. She argues that if S.T.'s statement was not discriminatory, then why did he mention "white women" as there were other times where he would simply just say "get my lawyer on notice or get my lawyer on alert" without referencing race.

In response, the appointing authority presents that C.V. alleged that she was subjected to color, race, and sex/gender discrimination. Specifically, she alleged that L.F. restricted her from performing her supervisory duties by preventing her from competing S.T.'s performance evaluation even though S.T. was not performing his duties and on track to fail his performance evaluation. According to C.V., S.T. was assigned duties aligned with his current title, Senior Clerk, rather than his former title Receptionist.³ However, even after S.T. was appointed as a Senior Clerk, he was still being evaluated as a Receptionist. C.V. claimed that S.T. was insubordinate and engaged in aggressive behaviors such as clenching fists and making verbal statements such as "don't try me today," "go back to your desk," and "who are you to give me work?" whenever additional work was assigned. It presents that a witness confirmed an incident where S.T. responded to an additional work assignment by retorting, "Who are you to give me work?" and C.N. responded, "C.V. is the manager!" After C.V. returned to her office, a witness confirm that S.T. made a phone call and stated, "Two white woman are harassing me, get my attorney on the phone."

The appointing authority provides that complaints about S.T. were submitted to the OLR to address the behaviors which were investigated and substantiated. C.V. indicated she was seeking advice from the OLR about a Personal Improvement Plan for S.T. but was advised to not do progressive discipline as there was an open OLR complaint against S.T. L.R. advised C.V. that the potential of her actions may violate the policy on retaliation as the evidence demonstrated that S.T. reported to L.R. that he believed that he was the target of disparate treatment by C.V. because of his race as S.T. believed that C.V. was scrutinizing his work and assigning him duties outside his responsibilities. The appointing authority notes that retaliation occurs when an adverse action is taken against an employee who has engaged in a protected activity such as complaining about discrimination. Therefore, the appointing authority indicates that it is reasonable to believe that L.R. provided C.V. with a legitimate business reason to forgo issuing S.T. a failing performance evaluation. The appointing authority asserts that S.T.'s statement, "Two white woman are harassing me, get my attorney on the phone," constituted a perceived good faith opposition and verbal complaint that the amassing additional work assignments were a form of harassment based on his race. Moreover, while S.T.'s statement identified a protected category, white women, the statement does not appear to be derogatory or offensive creating a hostile working environment.

³ Personnel records indicate that S.T. began his employment as a Clerk before being promoted to Senior Clerk.

CONCLUSION

N.J.A.C. 4A:7-3.1(a) provides, in pertinent part, that the State of New Jersey 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 the following protected categories are prohibited and will not be tolerated: 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.

N.J.A.C. 4A:7-3.2(m)4 provides that the burden of proof shall be on the appellant in all discrimination appeals.

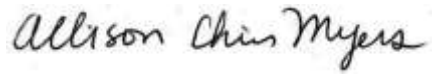
In this matter, the record indicates that S.T. had a perceived good faith belief that he was being discriminated against by C.V. Therefore, while the Civil Service Commission (Commission) makes no determination as to the validity of S.T.'s belief, his statement that "Two white women were harassing him" in this context is not violation of the State Policy, as the mere statement that describes one's good faith belief that one is being discriminated against, even if such a belief is ultimately without merit, is not a violation of the State Policy. Similarly, while the Commission makes no comment as to whether L.R. provided C.V. good advice, the record revealed that L.R. had a legitimate business reason for advising C.V. not to perform S.T. performance evaluation, that she could potentially be subjecting herself to a claim of retaliation under the State Policy if she failed S.T. on his performance evaluation, and C.V. disagreed with L.R.'s handling of the situation. However, disagreements between co-workers cannot sustain a violation of the State Policy. *See In the Matter of Aundrea Mason* (MSB, decided June 8, 2005) and *In the Matter of Bobbie Hodges* (MSB, decided February 26, 2003).

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 27TH DAY OF NOVEMBER, 2024



Allison Chris Myers
Chairperson
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: C.V.
Ricardo Morales
Division of EEO/AA
Records Center