



STATE OF NEW JERSEY

In the Matter of A.P., State Parole
Board

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

CSC Docket No. 2024-1423

Discrimination Appeal

ISSUED: July 24, 2024 (HS)

A.P., a Parole Lieutenant with the State Parole Board (SPB), appeals the determination of the Chairman, which found that the appellant failed to present sufficient evidence to support a finding that she had been subjected to a violation of the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy).

The appellant, a Hispanic female, filed a complaint with the Office of Equal Employment Opportunity and Affirmative Action (EEO/AA) against respondent J.G., an employee of a private vendor utilized by the New Jersey State Association of Chiefs of Police (Association) for training, alleging discrimination based on gender and ethnicity. The appellant alleged that while attending a training at Stockton University sponsored by the Association and conducted by the private vendor, the respondent singled the appellant out in class several times. Specifically, the appellant allegedly was singled out based on her gender and ethnicity in front of the class, where she was the only minority female in attendance. The respondent stated to the class, which was in attendance for leadership training, that “everyone was a leader with the exception of [the appellant]” and that she was “just a supervisor based on [her] current assignment.”

The EEO/AA conducted an investigation, during which individuals with relevant knowledge were interviewed and relevant documentation was reviewed and analyzed, and found no corroboration for the allegations. Based on witness statements, the investigation revealed that the respondent did make the comments

during the class. However, witness statements provided that the respondent was making the distinction between leaders and supervisors and had knowledge by the appellant's own statement in front of the class that she was not currently supervising anyone and that was the reason she was singled out and that the comments were not discriminatory in nature. The witnesses indicated that the respondent's repetition of the comment to make his point was excessive and unnecessary and that his demeanor was brash and unprofessional, but this did not implicate the State Policy. As such, the Chairman did not substantiate any violations of the State Policy based on a protected category. However, as a result of the investigation, the SPB notified the Association of its findings and requested that the respondent not conduct anymore training for the agency to prevent any future unpleasant experiences for other employees.

On appeal to the Civil Service Commission (Commission), the appellant insists that the respondent's comments were demeaning and humiliating. She recounts that all attendees had name plates in front of them so the respondent could see her Hispanic surname, and she states that she looks Hispanic as well. The appellant maintains that only she can speak to her victim impact. She states her belief that her testimony and victim impact held no weight in the determination process. The appellant also contends that the respondent violated the State's policy against workplace violence. She further asserts that by the EEO/AA's own admission, there was a lack of familiarity on how to handle an investigation like this. The appellant therefore "appeal[s] to the [Commission] to have someone knowledgeable and experienced in these types of investigations take a look at this." In support, the appellant provides, among other things, a copy of her discrimination complaint.

In response, the EEO/AA indicates that the investigation revealed that four other SPB employees attended the training and were interviewed as witnesses. All four corroborated that the respondent was presenting a lesson on leadership; that the objective of his course was to distinguish between "leaders and supervisors/managers;" and that the main point the respondent was attempting to make was that "leaders" lead or supervise individuals, while supervisors/managers supervised things. For example, one witness stated that the respondent was making a point that "supervisors manage things and leaders manage people," and another witness stated that the respondent was "trying to make an example between a leader and a manager. The point he was trying to make was that leaders supervise individuals and that managers are more administrative in nature and don't generally supervise people." The four employees also corroborated the fact that the appellant was the only individual in the class who did not supervise anyone at the time. This information was presented in the beginning to the class as the respondent had everyone introduce themselves and state their supervisory responsibilities and the number of people they supervised. The appellant stated in front of the class that she was in charge of managing evidence and had no one under her supervision at the moment due to promotions. Further, the four employees did not find the respondent's

comments to be discriminatory toward females or Hispanics but attributed the comments to his personality. For example, multiple employees stated either that there was “no reference to” or “the context was not in reference to” females or Hispanics.

Additionally, the EEO/AA disputes that it admitted to a lack of familiarity on how to handle the investigation. Rather, the EEO/AA explains that there was an admitted lack of familiarity as to what remedies could occur in the event the allegations were substantiated as the respondent was an employee of a private company. The EEO/AA consulted with this agency regarding possible remedies. The EEO/AA noted that the complaint was not substantiated, but the investigation had corroborated that the respondent’s demeanor was brash and unprofessional. This agency advised that while the SPB could not take any disciplinary action in regard to a non-employee, the SPB could send a letter to the Association making them aware of what transpired and the negative assessments that were provided of the respondent’s conduct of the training course. The SPB then notified the Association accordingly in a December 20, 2023 letter. The Association in turn acknowledged the SPB’s notification and indicated in a January 9, 2024 letter that it had addressed the concerns in a “proactive manner” and that “the [respondent] will no longer be instructing in any capacity in any of our professional development courses or programs.”

The EEO/AA adds that in response to being asked how she wanted to see her complaint resolved, the appellant noted that her experience was personally unpleasant and that she did not want anybody else to go through that. The appellant also suggested that “if the [SPB] sends more people to his training it will become agency liability.” The EEO/AA notes that as a result of the complaint and the subsequent notification to the Association, the respondent is no longer permitted to instruct such training courses and that the relief sought by the appellant was achieved. In support, the EEO/AA provides copies of the appellant’s interview statement; the SPB’s December 20, 2023 letter to the Association; and the Association’s responding January 9, 2024 letter.

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)*. The State will not tolerate harassment or discrimination by anyone in the workplace including, among

others, persons doing business with the State. The State Policy applies to conduct that occurs in the workplace and conduct that occurs at any location that can be reasonably regarded as an extension of the workplace (any field location, any off-site business-related social function, or any facility where State business is being conducted and discussed). See *N.J.A.C.* 4A:7-3.1(a)1. 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 a thorough investigation was conducted and that the investigation failed to establish that the appellant was discriminated against in violation of the State Policy. Documents were appropriately analyzed, and individuals were interviewed in investigating the allegations prior to concluding that there was no violation of the State Policy. As noted, multiple witnesses in the investigation corroborated that the respondent's main point in the training was to distinguish between "leaders," who lead or supervise individuals per his philosophy, and supervisors/managers, who supervise things; that the appellant was the only class attendee who was not supervising any individual at the time; and that the respondent's comments were unrelated to females or Hispanics. The appellant has presented no substantive evidence to call these witnesses' credibility into question. While the appellant insists that the respondent's comments were demeaning and humiliating and that her victim impact was not considered, rude or unprofessional behavior, regrettable as it may be, cannot sustain a violation of the State Policy in the absence of a nexus to a protected category. See *In the Matter of Aundrea Mason* (MSB, decided June 8, 2005) and *In the Matter of Bobbie Hodges* (MSB, decided February 26, 2003). In addition, the EEO/AA adequately clarified that it did not admit to a lack of familiarity on how to handle the investigation. Rather, the EEO/AA only admitted to a lack of familiarity as to what remedies could occur in the event the allegation was substantiated given that the respondent was an employee of a private company, and it sought guidance on the issue. Though the complaint was not substantiated, the SPB still advised the Association of its concerns involving the manner in which the respondent had conducted the training, and the Association was responsive to those concerns. Accordingly, the investigation was thorough and impartial, and there is no basis in the record to disturb the Chairman's determination.

Finally, although the appellant alleged a violation of the State's policy against workplace violence, neither this agency nor the Commission has jurisdiction to review workplace violence complaints. Executive Order No. 49 (Whitman, April 17, 1996) states that this agency:

shall recommend strategies for prevention, action and reaction to incidents of workplace violence and provide each department, office, division or agency of State government with technical assistance and/or consultative services in order to implement this policy.

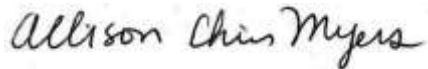
However, this Executive Order does not empower this agency or the Commission to review the actions of appointing authorities in the investigation of such incidents. *See In re Edward F. Millerick and Cynthia I. Mitchell*, Docket Nos. A-2676-00T5 and A-6318-00T5 (App. Div. January 2, 2003).

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 24TH DAY OF JULY, 2024



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