



STATE OF NEW JERSEY

In the Matter of A.K., Department of
Transportation

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

CSC Docket No. 2025-1227

Discrimination Appeal

ISSUED: March 19, 2025 (SLK)

A.K., a Business Development Representative 2 with the Department of Transportation, appeals the determination¹ of the Division of Equal Employment Opportunity/Affirmative Action (EEO/AA), Civil Service Commission (Commission), which was unable to substantiate that she was subject to a violation under the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy).

By way of background, A.K., a 72-year-old African-American² female, alleged that she was subject age, gender, identify/expression, and race discrimination by R.R., a 45-year-old Caucasian male who is a Program Specialist 4. Specifically, she alleged that he treats her differently than other employees by making “snarky” remarks, such as “my work binder is the only one that matters,” makes unpleasant bodily gestures to her, such as rolling his eyes to her, takes projects away from her, and encourages new employees not to go to her for guidance. R.R. denied making such comments to A.K. and making unpleasant bodily gestures. However, witness testimony confirmed that R.R. does occasionally make “snarky” comments and unpleasant gestures when there are disagreements between them, but the witnesses

¹ The determination letter indicates that it was dated November 26, 2024, and is identified as being “AMENDED.” The EEO/AA’s response to the subject appeal indicates that the letter was issued on November 27, 2024. It is noted that this is the same determination letter and there are not two separate determination letters to consider.

² Personnel records indicate that A.K. is a Hawaiian native but the appeal indicates that A.K. refers to herself as a black woman.

could not corroborate that this behavior was based on A.K.'s membership in a protected class. Therefore, the EEO/AA found that this behavior was not found to be discriminatory but based on a difference in opinions.

Additionally, A.K. alleged that R.R. took away cases from her out of anger. However, R.R. responded that he took the cases away because the cases were not being completed in a reasonable time as there was an almost a two-year backlog. Further, R.R. noted that there had been many communications about the backlog from applicants, upper management, and other officials, and it was crucial to get the cases completed. Moreover, witnesses confirmed that R.R. took the backlogged cases from A.K., but they could not corroborate that the cases were taken away due to anger or A.K.'s membership in a protective class. Additionally, a witness explained that additional staff had been hired and A.K. had not made significant progress on the backlog. Therefore, the EEO/AA determined that R.R. had a legitimate reason to remove the backlog from A.K.

Further, A.K. alleged that R.R. encouraged new employees to not go to her for guidance, which R.R. partially confirmed. R.R. explained that while the federal guidelines changed, A.K. was still attempting to operate under old regulations and guiding new employees in the wrong direction, and R.R. was telling new employees that they should follow his direction instead of A.K.'s. Therefore, the EEO/AA found that R.R.'s actions in this regard were not discriminatory and a legitimate business chain of command.

Lastly, A.K. alleged that R.R. referred to her as a "Black woman" during a mediation meeting. R.R. denied the allegation and indicated that in his response to A.K., he referred to himself as a "White male" when explaining how to view things from other people's perspective. R.R. denied using the phrase "Black woman" to describe A.K. or any other person, and witnesses did not recall R.R. using the phrase "Black woman" to describe A.K. or any other person. Therefore, the EEO/AA found this not to be discriminatory in nature.

On appeal, A.K. asserts that there was a conflict of interest concerning the investigation as the investigator previously worked with R.R. Further, regarding the mediation meeting, A.K. presents Q.T., an African-American female Program Specialist 4, as one of four people at the meeting including himself, who heard R.R. state, "How do you think I feel? I am a white guy and I have three black women coming at me." Therefore, A.K. questions how Q.T., and V.T-A., an African-American female who is in the Senior Executive Service, could not have heard this statement. Consequently, A.K. asserts that they decided it was in their best interest not to say anything. Moreover, A.K. believes that Q.T. should have recused herself from the meeting since she had a prior working relationship with R.R., and she also feels that Q.T. was derelict in her duties because although she was the coordinator of the meeting, she did not document it.

Referring to the finding that R.R.'s remarks and gestures toward her were based on disagreements between them, A.K. questions why said remarks and gestures were only being directed at her as she should be able to tell his supervisor the truth without being disparaged. Therefore, A.K. claim that her being signaled out created a hostile working environment. Additionally, A.K. contends that R.R.'s "black women" comment demonstrates his inability to accept constructive suggestions to improve working relationships and production.

Regarding the 185 backlog of cases that R.R. took back from her, A.K. describes in detail the extra effort she took to try and resolve the backlog with little to no support. She asks why she was expected to alleviate a backlog of 185 cases out of the over 600 cases that she already processed herself. Further, she states that she did not have a performance review or any other meeting that discussed her workload or performance. Therefore, A.K. believes that the only reason that these cases were removed was due to retaliation for her complaints about R.R.'s managerial behavior.

A.K. explains how she did not have any competent assistance to help with the backlog until January 2024, and even though R.R. started in January 2024, it was not until November 2024 did anyone indicate that they wanted to discuss the backlog. Also, it was not until December 2024 that there was a meeting about it, even though R.R. took the 185 cases away in August 2024. Further, she provides documentation demonstrating that others had appreciated his work. She asserts that when R.R. started as the unit supervisor, he knew nothing about what the unit did as he came from another area. Additionally, in February 2024, when A.K. learned that there were going to be new federal regulations, she immediately signed up for training which she attended in Washington D.C. in April 2024, and she notes that R.R. did not attend this training. However, when A.K. came back from the training, she met with R.R. to discuss the new changes. Therefore, A.K. asserts that after she received the new training, she was not the one directing employees in the wrong direction, and R.R.'s statements do not make sense. A.K. claims that it was R.R. who did not know what he was talking about but all she could do is advise her co-workers to follow R.R.'s chain of command. Additionally, A.K. claims that R.R. discriminated against her and created a hostile work environment by isolating her from other employees.

A.K. states that she will never work under R.R. again as she does not have any confidence that R.R. will not retaliate or discriminate against her. Additionally, she requests an independent review of the investigation as she believes that the investigation and findings are flawed.

In response, the EEO/AA presents that the investigation was not performed by the Department of Transportation as A.K. believes. Rather, it was conducted impartially by the Commission's Division of EEO/AA. Regarding the meeting where A.K. stated that Q.T. attended, the EEO/AA provides that no decision was made

concerning the allegations at that meeting. Instead, the complaint was sent to the Commission's EEO/AA for an investigation to avoid the conflicts.

Referring to R.R.'s unpleasant remarks and gestures, the investigation did corroborate this behavior. However, the investigation did not reveal that this behavior was based on A.K.'s membership in a protected class. Additionally, during A.K.'s interview, she stated that she did not recall any specific remarks made by R.R. concerning her membership in a protected class. Consequently, the investigation concluded that R.R.'s behavior was not discriminatory in nature and those issues could be addressed through the Department of Transportation's chain of command. Further, while the investigation confirmed that A.K. was the only one to handle the backlogged cases, the investigation did not find the removal of her caseload was based on her membership in a protected class. Instead, the investigation found that the cases were removed because she was not timely completing her work. Finally, the investigation revealed that R.R. explained that A.K. was attempting to apply outdated regulations and she encouraged employees to listen to her guidance instead of his. A.K. countered that she attended training about the new guidelines, and she was not following the old ones. Regardless, the investigation determined that R.R., as the unit supervisor, had a legitimate business reason for instructing employees to follow his direction, and there was no nexus linking R.R.'s directives regarding A.K. that was based on her membership in a protected class.

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 age, sex/gender, gender identify or expression, and race discrimination will not be tolerated.

N.J.A.C. 4A:7-3.2(e) provides, in pertinent part, if there report a complaint presents a conflict of interest, the complaint may be filed directly with the Division of EEO/AA. *N.J.A.C.* 4A:7-3.2(i) provides, in pertinent part, at the EEO/AA Officer's discretion, a prompt, thorough, and impartial investigation into the alleged harassment or discrimination will take place. *N.J.A.C.* 4A:7-3.2(n)1 provides that the burden of proof shall be on the appellant.

Initially, regarding A.K.'s belief that there was a conflict of interest concerning the investigation, the record indicates that the investigation was conducted by the Commission's EEO/AA and not the Department of Transportation to specifically avoid any potential conflicts of interest. As such, the Commission finds that the investigation was impartial in compliance with *N.J.A.C.* 4A:7-3.2(i).

Regarding A.K.'s allegation that R.R. made "snarky" remarks and unpleasant bodily gestures, while the investigation corroborated the behavior, there were no witnesses or other evidence that corroborated that the reason for this behavior was based on A.K.'s membership in a protected class. Instead, the witnesses indicated that this behavior occurred when there were disagreements between the parties. Therefore, while this behavior may have been inappropriate, this behavior is best described as a disagreement between co-workers which 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).³

Concerning A.K.'s allegation that R.R. removed cases from A.K.'s backlog and he encouraged employees to not seek guidance from her in order to isolate, retaliate, or otherwise discriminate against her based on her membership in a protected class, the investigation revealed that R.R. removed cases from her backlog because her cases were not being timely completed, and he indicated that A.K. was guiding employees to complete cases using outdated regulations, which are legitimate business reasons for his actions. While A.K. disagrees with these decisions, as previously stated, disagreements among coworkers cannot sustain a violation of the State Policy. Further, A.K. has not presented any witnesses or other documentary evidence that corroborates that the actions were taken due to A.K.'s membership in a protected category. Mere speculation, without evidence, is insufficient to support a State Policy violation. *See In the Matter of T.J.* (CSC, decided December 7, 2016).

Finally, A.K. alleged that R.R. stated during a mediation meeting which included A.K. and two other African-American women, "How do you think I feel? I am a white guy and I have three black women coming at me." It is noted that neither witness at the meeting corroborated that R.R. referred to any of the women as "black women" at the meeting. Instead, the investigation revealed that R.R. denied the allegation and indicated that in his response to A.K., he referred to himself as a "White male" when explaining how to view things from other people's perspective. As this was a reference about himself expressing how he was feeling in the situation, the Commission finds that this statement was not a violation of the State Policy in this context.

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.

³ The Department of Transportation still has the option of addressing this behavior as it deems appropriate.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 19TH DAY OF MARCH, 2025

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