



STATE OF NEW JERSEY

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

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

CSC Docket No. 2025-1804

Discrimination Appeal

ISSUED: July 23, 2025 (SLK)

D.H., a Supervising Family Service Specialist 2 with the Department of Children and Families, appeals the determination of a Deputy Commissioner, which substantiated that she violated the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy).

By way of background, the determination letter indicated that it was alleged that that D.H. retaliated against the Complainant by ignoring his emails and refusing to work with him after they both filed complaints with the Office of Equal Employment Opportunity/Affirmative Action (EEO). D.H. responded that she was not aware that the Complainant filed a discrimination complaint against her. However, D.H. disclosed that she filed a complaint against him. Further, D.H. denied intentionally ignoring him and not replying to his emails. However, she explained that as the training supervisor, she is very busy most of the time. Additionally, D.H. acknowledged that she sent the Complainant an April 5, 2024, email where she wrote, "Yes I am first buddy, and I will not work with you." D.H. explained that she noticed that she was scheduled to work a Special Response Unit (SPRU) shift with the Complainant, and when she found out, she experienced a traumatic response. Based on the investigation, it was found that D.H. violated the State Policy.

On appeal, D.H. asserts that the determination letter does not explain how she retaliated against the Complainant as she had no prior knowledge of his discrimination complaint when she filed her complaint as she filed her complaint

before his. Additionally, D.H. denies the allegation that she ignored the Complainant's emails and refused to work with him after they both filed discrimination complaints. She explains that she first learned of the Complainant's complaint when sitting with the EEO investigator. D.H. presents that she informed the investigator that she only had knowledge of her complaints that were filed on January 22 and 23, 2024. She indicates that the January 22, 2024, complaint was filed with the Local Office Manager (LOM) and the SPRU Coordinator. Further, she provides that she filed the same complaint with the EEO on January 23, 2024, which then referred it to the Office of Employee Relations (OER).

D.H. presents that on May 13, 2024, she met with the investigator which was the first time she became aware of the Complainant's April 6, 2024, EEO complaint. Further, D.H. explained to the investigator that she did not intentionally not respond to the Complainant's emails as she did not always have an opportunity to respond. Moreover, she advised the investigator that he could check with other supervisory staff as that action was not exclusive to the Complainant as she does not respond to every email, regardless of the sender, as she is very busy as a training supervisor and is not always in front of a computer to respond. Also, she notes that she informed the investigator that as a training supervisor, her responsibilities differ from a regular supervisor, and she is very involved with training the trainees and other responsibilities. However, D.H. emphasizes that the investigator did not ask her for witnesses.

Concerning the allegation that she did not want to work with the Complainant and her email stating so, D.H. asserts that the investigator ignored her reasons as stated in her complaint where she indicated her concerns about unsafe working conditions that were created by the Complainant. She explains that on January 19, 2024, she worked with the Complainant on a SPRU shift, and the Complainant made several gestures with his hands that intimidated her. Further, D.H. presents that the Complainant demanded that she walk in the dark in a poorly lit parking garage in Trenton where unhoused men gather. Also, she explains that the Complainant expected her to walk up a slippery icy driveway to get to him even though he was in a State issued vehicle and could come get her. Moreover, D.H. asserts that since she refused, his demeanor and attitude became aggressive, which she told him made her feel unsafe. D.H. asserts that the Complainant ignored and disputed her concerns. After she asked him to stop several times, she states that he made her feel even more unsafe. Therefore, D.H. provides she called her supervisor, which led to the Complainant beginning to yell that she was escalating, and he did not feel safe, which she describes as gaslighting. She reiterates that she was only acting to protect her safety.

D.H. explains that the email to the Complainant about not wanting to work with him was related to her SPRU duties, which was her second job with the agency, which includes off-hour visits to families. She states that these duties are a teamed

response, which includes driving together and trust with your partner to be able to do a most difficult job safely and effectively. D.H. presents that by policy, she needed to find a replacement for the shift as a shift cannot be uncovered, which she did, and the Complainant was immediately notified. She indicates that when all this transpired, including the email, she was on the phone with the SPRU Coordinator, and this information was provided to the investigator.

D.H. asserts that she and her union representative found the investigation was extremely biased as the investigator revealed at the outset that he believed the Complainant's complaint. Additionally, she claims that the investigator was aggressive in his tone and language towards her and dismissive of her responses. D.H. provides that she felt "re-victimized," which she states is something that an impartial investigator should not do. D.H. indicates that following the first meeting with the investigator on May 15, 2024, she filed a complaint regarding the investigator to his superior, outlining her concerns, long before the "flawed" determination was issued. She claims that she received superficial responses stating that the matter would be looked into; however, she never received a follow-up response.

In response, the appointing authority presents that while working at the Mercer South Local Office (MSLO), the Complainant, a Supervising Family Service Specialist 2, filed several complaints against D.H. and other staff at the MSLO. On September 28, 2023, the Complainant forwarded an email to his superiors informing them that he filed EEO complaints of harassment and intimidation against multiple employees, including D.H., based on race. On March 6, 2024, the Complainant filed an EEO complaint against D.H. stating that D.H. "made comments about his work ethic and...yelled at him." Further, on April 6, 2024, the Complainant filed a retaliation complaint against D.H. and two other employees alleging that D.H. treated him differently during an interaction that took place on January 19, 2024, where she "demanded that he pick her up," downstairs in the State parking lot. The Complainant also alleged that D.H. intentionally ignored his emails and refused to work with him after he reported his concerns to the EEO.

Concerning the January 19, 2024, incident, the investigation confirmed that both D.H. and the Complainant acknowledged that there was an incident on that date while working a SPRU shift. The Complainant stated that during the shift, D.H. became "combative and unprofessional" after he attempted to pick her up in a State vehicle. The Complainant explained that they typically met upstairs in the State parking lot, and D.H. yelled, pointed a finger in his face, and demanded that he pick her up from the downstairs State vehicle parking lot. D.H. explained that there was snow that day, and they were instructed to not park in the upper level of the parking garage due to the snow removal efforts. However, D.H. stated the Complainant parked in the upper deck even after being instructed not to do so. Further, she indicated that she asked the Complainant to meet her on the lower deck, but he

intentionally parked on the ramp leading into the garage. Thereafter, on or around January 23, 2024, D.H. filed a complaint with the EEO regarding the incident. However, she did not present that she was discriminated against based on a protected class. Further, during the investigation, the investigator reminded the parties against retaliating against anyone who partakes in an EEO investigation. Additionally, during the meeting, D.H. shared that the Complainant likes to “have control” over people and is dismissive and likes to be in charge of situations. After she filed her complaint, D.H. asked to move away from D.H. and stopped communicating with him. Also, D.H. noted that she was informed by the LOM that her desk could not be moved “because of the optics” and there was no space. She acknowledged that she was advised that she would need to be professional when communicating with the Complainant. D.H. also contacted the OER to file a complaint against the Complainant regarding the January 19, 2024, incident. The OER noted that matter did not implicate the Workplace Violence Policy and deferred to the LOM’s and SPRU Coordinator’s decision not to schedule them to work together.

Referring to the retaliation complaint, the Complainant alleged that D.H. intentionally ignored his emails. The Complainant forwarded a March 22, 2024, email where he inquired about the status of a transportation request that involved her. D.H. denied that she intentionally ignored or did not reply to his emails noting she replied to his emails “for the most part.” She acknowledged that she may not have replied to some emails, but stated it was not intentional as she was very busy most of the time with her training supervisor duties. The Complainant also alleged that D.H. refused to buddy with him after they were assigned to partner on a SPRU case. The complainant presented an April 5, 2024, email from him to D.H. where he stated that he was confirming that she was first buddy for a shift the next day, and she replied, “Yes I am first buddy, and I will not work with you.” D.H. explained that when she noticed that she was scheduled to work with the Complainant, she experienced a traumatic response where she was “hyperventilating and tried to calm herself down by talking it through with the SPRU coordinator at the time.”

The appointing authority presents that the investigation found that the parties engaged in protected activity as D.H. filed a January 23, 2024 complaint regarding the January 19, 2024, incident and the Complainant filed a March 6, 2024, complaint against D.H. Subsequently, D.H. requested to move her office and stopped communicating with the Complainant. However, D.H. was advised that her office could not be moved, and she needed to be professional when communicating with the Complainant. D.H. also shared that she was offered to participate in mediation. Further, D.H. replied to the April 5, 2024, email indicating that she refused to work with the Complainant. D.H. expressed her belief that she thought that her email was professional and argued that someone covered the shift so the Complainant was not at a loss. D.H. noted that sent the email in a state of fear, and it was her response in the moment. Based on the timing of the email, the investigation concluded that the parties’ written statement supported that the Complainant was treated differently.

The appointing authority highlights that the parties filed protected EEO complaints and then D.H. took an adverse action by refusing to work with him. Therefore, the investigation found a casual connection. The investigation also considered that D.H. acknowledged that she had received a directive to remain professional, and she was informed that she was informed about the appointing authority's zero-tolerance policy for retaliation. It emphasizes that a person who brings a complaint of discrimination can also be found to retaliate against the person who is the subject of the complaint.

In reply, D.H. presents that the appointing authority's response indicates that the Complainant filed EEO complaints against her on September 28, 2023, due to race. However, she states that she was never advised of this complaint, including when she met with the investigator for the first time on May 13, 2024, she only learned of the retaliation complaint. Therefore, she argues that the record does not support the Complainant's retaliation complaint. D.H. also questions how she can, an African American woman, discriminate against the Complainant, an African American male. Further, she presents that she worked all her shifts with the Complainant on January 19, 2024, where most employees refused to do so. She states that prior to that incident, she had no reason to decline to work with him unless there was a scheduling conflict.

D.H. states that in contrast to her not being notified about the Complainants complaints, the Complainant was made aware of her complaints. She notes that while she accepted the opportunity to mediate the matter, the Complainant refused. Thereafter, on March 6, 2024, in retaliation for her January 22, 2024, complaint, the Complainant filed his complaint. She reiterates her position that her actions with respect to the Complainant were based on concern for her safety.

Concerning the January 19, 2024, incident, D.H. highlights that it was not a typical day where they could meet in the upper deck due to snow removal efforts. She notes that on January 15, 2024, staff was advised that all cars should be parked on the lower level due to the snow, and all staff received reminders of this on January 18, 2024. Further, everyone in the SPRU, including the Complainant, parked their car on the lower level on January 19, 2024, and SPRU vehicles were also parked there as well. She states that the Complainant, while in a State vehicle, disregarded this directive and was upstairs. She states that she simply advised the Complainant that she would not drive her personal vehicle upstairs because it was unsafe. D.H. denies that she pointed her finger in the Complainant's face as they were not even in the same place when they were having a text conversation. D.H. explains that on January 23, 2024, she had a brief phone call with the investigator regarding her EEO complaint, where she acknowledged that she did not know if the Complainant's actions toward her were based on her membership in a protected class, but she indicated that his actions made her feel unsafe. In response, the EEO found that the complaint

did not implicate the State Policy as there was no alleged action based on her membership in a protective class, and the complaint was forwarded to the OER.

Regarding the allegation that D.H. ignored the Complainant's emails, D.H. states that the Complainant's office was next to hers, and he knew that she was extremely busy. He also knew that she could not respond to every email due to the large volume of emails that she received, but she made herself available to anyone who wanted to speak with her. D.H. notes that she was also the head of the office's wellness committee. She asserts that if the investigator spoke to witnesses, he could have confirmed that she was not able to respond to every email. D.H. submits emails that were within the same time as the one the Complainant attached to demonstrate that she did respond to his emails.

Concerning the April 5, 2024, email, D.H. presents that she was not assigned to work with the Complainant as she was scheduled to work with another SPRU worker. She presents that in early April 2024, the Complainant sent an email to the SPRU to inquire as to who was assigned to buddy with him, and she emphasizes that they were not assigned to work together per the SPRU Coordinator's directive. However, the worker assigned to buddy with the Complainant gave her shift to another SPRU worker, who then gave her shift to the Complainant. Thereafter, the SPRU coordinator was the one to reach out to her to advise her that the Complainant was working the shift, which caused her to hyperventilate. Subsequently, she explains that she responded to the Complainant's email via her cell phone while she sat in her car. Moreover, D.H. emphasizes that the SPRU Coordinator was on the phone with her the entire time, talking through what she was going through, and she was able to calm down to attempt to identify three or four people who would agree to work with the Complainant. She indicates that everyone she reached out to refused to work with him, until one person agreed, but under the condition that she cover an overnight shift that would run into another one of her shifts, which she accepted, even though this was inconvenient. She asserts that her handling of the situation was in accordance with policy. She reiterates that she refused to work with the Complainant solely due to her anxiety and fear for her safety due to the January 19, 2024, incident. D.H. argues that since she did not know about the Complainant's complaints at that time, she was the one being retaliated against because her complaint was filed in January 2024, and he had full knowledge of it. She asserts that the Complainant fabricated claims to report against her in retaliation. Additionally, she reiterates that she never stopped communicating with the Complainant as they were both supervisors and it was necessary for them to communicate.

CONCLUSION

N.J.A.C. 4A:7-3.1(h) provides that retaliation against any employee who alleges that she or he 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. 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 be the subject of other retaliation.

N.J.A.C. 4A:7-3.2(n)1 provides that the burden of proof shall be on the appellant.

In this matter, the record indicates that there was a January 2024 incident where D.H. and the Complainant disagreed with each other's actions. Further, D.H. indicated that she did not feel safe working with the Complainant based on this incident. This led to D.H. filing an EEO complaint against the Complainant. Although the EEO did not investigate D.H.'s complaint because she did know if the Complainant's actions were based on her membership in a protected class, the parties' superiors determined that they would not be scheduled to work together on SPRU shifts. Thereafter, on April 5, 2024, despite not being initially scheduled to work together, after coworkers exchanged shifts, the Complainant and D.H. were scheduled to "buddy" together during an SPRU shift. The Complainant then emailed D.H. to confirm that she was working with him, and she replied, "Yes I am first buddy, and I will not work with you." Further, per policy, D.H. exchanged shifts with another coworker, and the Complainant was able to "buddy" with someone else for that shift. However, in response to the April 5, 2024, incident, on April 6, 2024, D.H. filed a retaliation complaint D.H. Thereafter, in May 2024, while meeting with the EEO investigator, D.H. learned for the first time that Complainant filed a retaliation complaint against her alleging that she did not answer his emails and refused to work with him in retaliation for previous EEO complaints that he filed against her in September 2023 and March 2024 based on alleged adverse treatment due to race. D.H. also first learned of these other complaints at the meeting.

Based on the timing of the April 5, 2024, email, the investigation concluded that the parties' written statements supported that the Complainant was treated differently. The appointing authority highlights that the parties filed protected EEO complaints and then D.H. took an adverse action by refusing to work with him. Therefore, the investigation found a casual connection. The investigation also considered that D.H. acknowledged that she had received a directive to remain professional, and she was informed about the appointing authority's zero-tolerance policy for retaliation. It emphasizes that a person who brings a complaint of discrimination can also be found to retaliate against the person who is the subject of the complaint.

However, the Civil Service Commission (Commission) disagrees with the appointing authority's determination. While it is true that a person who brings a complaint of discrimination can also be found to retaliate against the person who is

the subject of the complaint, in this case, the record indicates that D.H. did not learn about the Complainant's retaliation complaint as well as his other State Policy complaints against her until May 2024; which was after the subject April 5, 2024, email where she refused to work with the Complainant on a SPRU shift. This is also after the time where the Complaint alleged that D.H. did not respond to her emails. Therefore, the record does not support the appointing authority's conclusion that the timing of the Complainant's State Policy complaints against D.H. supports a "casual connection" that her treatment towards the Complainant was based on his filing prior that EEO complaints. Further, even if D.H. was aware of the Complainant's prior State Policy complaints, without any other supporting evidence that the reason for alleged adverse treatment was based on a prior State Policy complaint, mere timing alone is insufficient to support a finding of retaliation.

Moreover, while the Commission makes no judgment as to whether D.H. was justified in her refusal to work with the Complainant, the record indicates that D.H. refused to work with him due to her feeling unsafe and anxiety with working with him stemming from the January 2024 incident and not in retaliation for any prior State Policy complaint. It is also noted that the parties' superiors had already determined that they should not work together on a SPRU shift, so D.H.'s refusal to work with the complainant was not adverse treatment but in alignment with the policy as set forth by their superiors. Further, per policy, D.H. secured a replacement, and the Complainant did not miss a SPRU shift. At most, the adverse treatment that the Complainant suffered from D.H.'s April 5, 2024, response email was a lack of professionalism in her tone. However, there is nothing in the record suggests that the tone of her email was based on retaliation. Instead, the record indicates that it was based on her fear and anxiety of working with the Complainant due to safety concerns, whether those concerns were justified or not.

Additionally, while the Commission makes no finding as to whether it was appropriate for D.H. not to respond to every email from the Complainant and other employees, D.H. presents that she did respond to some of the Complainant's emails, and she does not respond to every email from all coworkers due to being too busy as a training supervisor. Further, the appointing authority has not presented any evidence to counter D.H.'s statements. Therefore, there is nothing in the record to support the finding that D.H.'s failure to respond to every email from the Complainant was in retaliation for any prior State Policy complaints. Accordingly, the Commission finds that D.H. has met her burden of proof that her actions towards the Complainant were not based on retaliation for the Complainant's prior State Policy complaints or any other involvement that he may have had concerning a State Policy complaint. As such, that determination shall be removed from her personnel file.

One final issue needs to be addressed. D.H. questions how she, an African American woman, can discriminate against the Complainant, an African American

male. However, it is noted that the mere fact that a person is a member of the same protected class as another person does not signify that it is impossible for one to discriminate against another based on that membership in a protected class. In other words, a person who is the same race as another person can still discriminate or retaliate against that person due to race.

ORDER

Therefore, it is ordered that this appeal be granted.

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 23RD DAY OF JULY, 2025



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: D.H.
Sybil R. Trotta, Esq.
Division of EEO/AA
Records Center