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STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

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

CSC Docket No. 2016-829

Discrimination Appeal

ISSUED: **DEC 17 2015** (CSM)

A.K., an Engineer in Charge of Maintenance 1 with the Department of Corrections (DOC), appeals the attached determination of the Commissioner that the appellant did not present sufficient evidence to support a finding that he had been subjected to a violation of the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy).

The appellant, a Caucasian male, filed a complaint with the DOC's Equal Employment Division (EED) alleging that E.D., an African-American female, targets him for disparate treatment based on the fact that he is Caucasian but gives favorable treatment to African-American employees. Specifically, the appellant asserted that E.D. accused him on multiple occasions of not following through on assignments, ordered him to complete a fence for which he did not have administration approval, threatened to transfer him, required him to submit daily reports describing his work assignments, ordered all maintenance calls to be directed to a subordinate, excluded him from a CHANGE meeting, issued him a letter of counseling, appointed another staff member as the Project Manager for the Shaker System project, took credit for one of his ideas, accepted the opinion of a Hispanic staff member instead of him regarding a plumbing matter, and reprimanded him for failing to replace a light. The EED investigated the matter, which included interviewing witnesses and reviewing documentation, and found that while E.D. has a stern management style, it was unable to substantiate the appellant's claims that she targeted Caucasian employees for disparate treatment.

On appeal, the appellant states that E.D. discriminated against him when she spoke to him on the phone and berated him by way of e-mail. Further, the

appellant asserts that E.D. called his credibility into question when she insinuated that he was negligent in the performance of his duties by delaying the installation of a fence simply because A.E., an Investigator, who made the request for a fence, is African-American and said he had prior approval. The appellant questions how the witnesses could state that they were certain that E.D. never discriminated against Caucasian males, that there was no evidence that he failed to complete assignments, that she did not offer, but threatened to transfer him, and that she never explained why a subordinate was to attend the CHANGE meetings.

In response, the EED states that its investigation did not find any evidence to substantiate the appellant's claim that E.D. targets Caucasian males. Rather, the witnesses who were interviewed during the investigation, who are male, female, and of varying races, including African-American, stated that E.D. had a very stern management style and did not target any particular race or gender. The investigation also determined that E.D. consistently applied her stern management style to all staff. Therefore, since the investigation did not reveal any evidence that he was targeted because of his membership in a protected category, the EED was unable to substantiate a violation of the State Policy.

CONCLUSION

N.J.A.C. 4A:7-3.1(a) provides that under the State Policy, 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 (including 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. Additionally, the appellant shall have the burden of proof in all discrimination appeals. *See N.J.A.C.* 4A:7-3.2(m)(3).

The Commission has conducted a review of the record and finds that the appellant has not established that he was discriminated against based on his race. Initially, *N.J.A.C.* 4A:7-3.2(m)1 requires that employees filing State Policy appeals which raise issues for which there is another specific appeal procedure utilize those procedures. Therefore, since the appellant was reprimanded for failing to replace a light and failing to ensure handicapped equipment in the area was being properly utilized, he must pursue his appeal through the disciplinary process. Regardless, the investigation clearly determined that there was no evidence that E.D. targeted Caucasian males for adverse treatment. Rather, due to concerns about following through with work assignments, E.D. implemented a daily tour report system in order to track work projects. Requiring the appellant to advise management of the status of ongoing work projects does not evidence that the appellant was being singled out for disparate treatment on the basis of his race. Further, the

investigation found that the evidence did not substantiate that E.D. authorized the repair of the fence only because A.E. is African-American. While the appellant contends that he was threatened with a transfer, witnesses confirmed that E.D. suggested that the appellant transfer to another facility if he could not follow her instructions. Regarding having a subordinate attend the CHANGE meetings, the individual selected to attend had a prior history with the Central Reception and Assignment Facility (CRAF) maintenance department since 1996 and the appellant had only been assigned to CRAF since 2012. Finally, while the appellant questions how the witnesses could state that they were certain that E.D. never discriminated against Caucasian males, the investigation indicated that the witnesses only denied that she targeted Caucasian males for adverse treatment and has a stern management style which does not target any specific protected category under the State Policy. The appellant has not proffered any evidence to rebut the credibility of these witnesses.

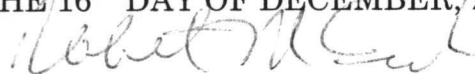
Accordingly, the Commission finds that the EED's investigation was thorough and impartial, and the record supports a finding that there was no violation of the New Jersey State Policy Prohibiting Discrimination in the Workplace.

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 16TH DAY OF DECEMBER, 2015



Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

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

Attachment

c: A.K.
Leila Lawrence, Esq.
Mamta Patel
Joseph Gambino



State of New Jersey
DEPARTMENT OF CORRECTIONS
WHITTLESEY ROAD
PO Box 863
TRENTON NJ 08625-0863

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

GARY M. LANIGAN
Commissioner

July 6, 2015

A [REDACTED] K [REDACTED]
[Mailed to Home Address]

Dear Mr. K [REDACTED]:

The Equal Employment Division (hereinafter "EED") has completed its review of your formal complaint in which you alleged that you have been subjected to discrimination/harassment based on race/color and sex/gender by Administrator E [REDACTED] D [REDACTED] (hereinafter "Administrator D [REDACTED]"). Please be advised that the EED did not substantiate a violation of the *Policy Prohibiting Discrimination in the Workplace* by Administrator D [REDACTED].

Moreover, you provided that you are the Engineer In Charge of Maintenance at the Central Reception & Assignment Facility (hereinafter "CRAF"). You alleged that Administrator D [REDACTED] targets you for disparate treatment based on the fact that you are a Caucasian male. You contended that she is African American and gives favorable treatment to African American employees. Specifically, you alleged the following: (1) on multiple occasions, Administrator E [REDACTED] has accused you of not following through with assignments; (2) on September 4, 2014, because Special Investigations Division Senior Investigator A [REDACTED] E [REDACTED] (hereinafter "SI E [REDACTED]"), who is African American, made the request, Administrator D [REDACTED] ordered you to complete a fence, despite the fact that you did not have approval from CRAF administration at the time of SI E [REDACTED] request; (3) on September 8, 2014 during the morning briefing, you were engaged in a discussion about the Shaker System, the security fence, with Administrator E [REDACTED] during which she threatened to transfer you; (4) after the September 8, 2014 meeting, your office was placed under scrutiny by Administrator D [REDACTED] and you were required to submit daily tour reports describing work assignments; (5) on September 10, 2014 during a meeting with Administrator D [REDACTED] and your subordinate Assistant Engineer K [REDACTED] R [REDACTED] (hereinafter "Mr. E [REDACTED]"), Administrator D [REDACTED] ignored you and directed all maintenance related questions to Mr. R [REDACTED]; (6) shortly after the September 10, 2014 meeting, Administrator D [REDACTED] advised you that Mr. E [REDACTED] would be attending the CHANGE meeting to address any maintenance issues instead of you; (7) on September 15, 2014, Administrator E [REDACTED]

provided you with a Letter of Counseling as a result of your discussion with her at the September 8, 2014 morning briefing; (8) following the CHANGE meeting, Administrator [REDACTED] appointed Mr. R [REDACTED] as the Project Manager for the Shaker System project; (9) at the CHANGE meeting, Administrator D [REDACTED] took credit for your idea of using funds from the Business Office to fund the Shaker System project; (10) with regard to a plumbing matter, Administrator E [REDACTED] accepted the opinion of an Hispanic maintenance staff member rather than your recommendation; and (11) on November 7, 2014, Administrator D [REDACTED] reprimanded you for failing to replace a light in the Medical/Dental area, and for failing to ensure that the handicapped equipment in the area was being utilized properly, despite the fact that you advised her that a work order for same had not been submitted.

Please be further advised that the Department of Corrections takes all allegations of violations of the *Policy*, seriously, and such conduct will not be tolerated by the Department. In response to your formal complaint, the EED conducted an extensive investigation. However, there was no evidence, through witnesses or otherwise, to corroborate the allegation that Administrator [REDACTED] targeted you for disparate treatment due to your race/color or sex/gender. Several witnesses and Administrator D [REDACTED] were interviewed for this investigation. The witnesses denied that Administrator [REDACTED] targeted Caucasian males for adverse treatment, and further provided that she has a stern management style which does not target any specific protected category recognized under the *Policy*. Further, Administrator D [REDACTED] denied engaging in behavior which violated the *Policy* and specifically denied the allegations of disparate treatment in your complaint. Additionally, with regard to the allegation that Administrator [REDACTED] accused you of now following through with work assignments, Administrator U [REDACTED] advised that on several occasions, such as the issues in the Medical/Dental area, assignments were incomplete, and it was for this reason that a daily tour report system was implemented in order to track the work and its completion. With regard to the fence incident involving SI [REDACTED], while the investigation confirmed that CRAF administration had not provided prior authorization for the repair, the evidence did not substantiate the allegation that Administrator D [REDACTED] only ordered said repair because SI [REDACTED] is African American. Further, with regard to the Shaker System, witnesses confirmed that at the September 8, 2014 meeting, you engaged in a very heated exchange with Administrator D [REDACTED] about the system. Witnesses also confirmed that you were so upset with Administrator D [REDACTED] that she suggested that perhaps you should transfer to another facility if you could not follow her instructions and the witnesses also provided that former CRAF Associate Administrator C [REDACTED] suggested that you step into the hallway with her in attempt to diffuse the exchange. Administrator Davis advised that this is the reason you received the September 15, 2014 Letter of Counseling. Additionally, Administrator D [REDACTED] advised that she selected Mr. R [REDACTED] to attend the CHANGE meeting to address maintenance related questions because he had a history with the CRAF maintenance department since he had been assigned there since its opening in 1996, whereas you have only been assigned to CRAF since 2012. Also, witnesses present at the CHANGE meeting were interviewed for this investigation and denied that Administrator D [REDACTED] took credit for your Shaker System funding idea. They further advised that Mr. R [REDACTED] is the only person who fielded questions from the Department's executive staff regarding the system. With regard to your remaining allegations, Administrator U [REDACTED] denied same and the investigation did not confirm them.

Based on the foregoing, the EED did not substantiate a violation of the *Policy Prohibited Discrimination in the Workplace* by Administrator Davis.

If you wish to appeal this determination, you must submit a written appeal to the New Jersey Civil Service Commission, Division of Merit System Practices & Labor Relations, Written Record Appeals Unit, P.O. Box 312, Trenton, New Jersey 08625-0312, postmarked or delivered within twenty (20) days of your receipt of this determination. The burden of proof is on the Appellant. Your appeal must include a copy of this determination, the reason for the appeal and the specific relief requested. Please be advised that pursuant to P.L. 2010, c. 26, effective July 1, 2010, there shall be a \$20 fee for appeals. Please include a check or money order along with your appeal, payable to NJCSC. Persons receiving public assistance and those qualifying for NJCSC Veterans Preference are exempt from this fee.

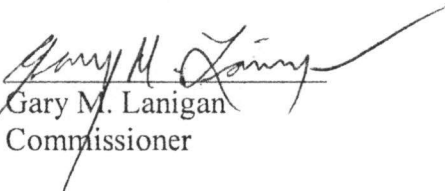
At this time, the EED also reminds you that the *Policy Prohibiting Discrimination in the Workplace* prohibits retaliation against any employee who files a discrimination complaint or participates in a complaint investigation or opposes a discriminatory practice. Furthermore, this matter remains confidential and the results of the investigation must not be discussed with others.

Sincerely,



Leila Lawrence, Esq., Director
Equal Employment Division
Office of Legal & Regulatory Affairs

APPROVED:



Gary M. Lanigan
Commissioner

c: Michael Angelo, Associate Administrator/ASL

CRAF 14:09.001

