B-139

STATE OF NEW JERSEY

In the Matter of C.C.,
Department of Human Services

CSC Docket No. 2016-1021

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

Discrimination Appeal

ISSUED: OCT 19 2016 (WR)

C.C., a Supervisor of Nursing Services with the Department of Human Services (DHS), appeals the determination of DHS's Assistant Commissioner of Human Resources, which determined that she violated the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy).

On November 30, 2011, B.S., a Head Cottage Training Supervisor, filed a discrimination complaint against the appellant, based upon her disability. Specifically, B.S. alleged that the appellant and her supervisor D.C., a Vocational Rehabilitation Counselor 2, denied B.S.'s requests for a reasonable accommodation to modify her shift, due to her disability, to facilitate her commute home after work. She also alleged that the appellant and D.C. treated her differently from a coworker by not allowing her to work a modified shift. Upon receipt of the complaint, DHS conducted an investigation which found the appellant and D.C. violated the State Policy. Specifically, DHS concluded that because the appellant and D.C. permitted the coworker to work a modified shift, no undue hardship could be claimed by allowing B.S. to work a modified shift. Additionally, DHS found that the appellant and D.C. failed to consult its Americans with Disabilities Act (ADA) Coordinator before denying B.S.'s request for a reasonable accommodation, as its disability accommodation policy demands. Consequently, the appellant received "oral counseling" and training.

On appeal to the Civil Service Commission (Commission), the appellant complains that she was not interviewed in person as part of the investigation. In support, she submits a copy of the interview conducted by email. She further

complains that neither she nor D.C. were asked why they allowed one employee to work a modified schedule but not B.S.[1] The appellant contends that her workplace's management decided there was an increased need for evening supervision, and accordingly adjusted a shift to run from 3:30 p.m. to 12:00 a.m. She claims that B.S. did not want to work this shift, despite knowing that those would be her hours when she was hired. The appellant complains that B.S. never raised any concerns about her hours to her, but rather raised them with D.C.

Nevertheless, the appellant disputes the finding that she denied B.S.'s request for a reasonable accommodation, as she and D.C. both allowed B.S. to use her leave time to leave work early until it "became a part of a pattern disruptive to operations." She claims that she also accommodated B.S. by allowing B.S. to use "clerical staff and human service tech staff [to] take her on various trips needed for her job." The appellant also asserts that between the time the request for an accommodation was filed and September 1, 2015, the Human Resources director and an employee relations officer left their positions and therefore, the appellant contends that she was left without guidance regarding B.S.'s "ADA form." Additionally, the appellant states that she was not aware of the need to consult the ADA Coordinator. As a remedy, the appellant requests that her "Record of Counseling and Oral Warning" be removed from her file, the findings of B.S.'s complaint be reversed and acknowledgement that no discrimination took place.

In response, the appointing authority contends that the appellant failed to meet her burden of proof in this matter and rebut its determination. It contends that the appellant does not specify how she would have benefitted from an in-person interview and claims that the appellant never requested an in-person interview during the investigation. It further asserts that its email interview is acceptable under its standard operating procedure. The appointing authority rejects the appellant's contention that it did not ask her or D.C. why they allowed one employee to work a modified schedule but not B.S. Rather, it states that it asked D.C. why one employee was able to work a modified schedule but not B.S. It also observes that it determined that it would not have created an undue hardship to grant B.S. an accommodation. Finally, the appointing authority reiterates that the appellant and D.C. had access to, but did not contact its Human Resources and Legal and Regulatory Affairs Departments, despite being required to do so.

CONCLUSION

N.J.A.C. 4A:7-3.1(a)3 provides that 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: race, creed, color, national origin, nationality, ancestry, age, sex/gender (including pregnancy), marital status,

[1] The appellant indicates that the other employee was permitted to work based on "operational need."

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:7-3.1(a)3 further provides that the policy pertains to all employment practices such as recruitment, selection, hiring, training, promotion, transfer, assignment, layoff, return from layoff, termination, demotion, discipline, compensation, fringe benefits, working conditions and career development.

The Commission has conducted a review of the record in this matter and finds that the appointing authority's conclusion that the appellant violated the State Policy is not substantiated by the record. Initially, the Commission notes its concern regarding the questions asked to the appellant during her email interview. Namely, it appears that, based on the record, the appointing authority did not ask the appellant enough appropriate questions for it to conclude that she violated the State Policy. For instance, the appointing authority did not inquire whether the appellant was aware that B.S. was a member of a protected category under the State Policy or whether B.S. asked her for a reasonable accommodation. Furthermore, as the appellant complains, the appointing authority did not ask her why one employee was permitted to work a modified schedule, but B.S. was not. Contrary to the appointing authority's claim, D.C.'s response on this matter has no bearing on whether the appellant discriminated against B.S. Nevertheless, the appointing authority determined that the appellant's failure to grant B.S. a reasonable accommodation was in violation of the State Policy. However, the appellant contends on appeal that B.S.'s request to work a modified schedule was denied because her early departure from work disrupted the operational needs of the workplace. In this regard, the appellant claims that her workplace's management decided there was an increased need for evening supervision, modified a shift to run from 3:30 p.m. to 12:00 a.m., and B.S. was hired to work this shift. Based on the foregoing, the appointing authority could not have established that the appellant violated the State Policy by discriminating against B.S. based upon her disability. Finally, while the Commission finds that the appellant has met her burden that she did not violate the State Policy, the Commission observes that this determination has no bearing on whether she violated the appointing authority's internal policies by not consulting its Human Resources and Legal and Regulatory Affairs Departments with regard to a determination as to whether an accommodation was appropriate.

ORDER

Therefore, it is ordered that this appeal be granted and the appellant's personnel record be corrected to reflect the Commission's finding that the allegations that she violated the State Policy were not substantiated.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 19th DAY OF OCTOBER, 2016

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