B-117'.



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION OF THE CIVIL SERVICE COMMISSION

In the Matter of N.S., Department of Human Services

CSC Docket No. 2016-1965

Discrimination Appeal

ISSUED: NOV 2 3 2016 (WR)

N.S., a Senior Food Service Handler at the Woodbine Developmental Center (Woodbine), Department of Human Services (DHS), appeals the attached determination of DHS's Assistant Commissioner for Human Resources, stating 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).

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The appellant, a female, filed a discrimination complaint alleging that D.S., a male Senior Food Service Handler, kissed her on the mouth and grabbed her genitalia on two separate occasions. In response, the appointing authority conducted an investigation, which included interviewing seven witnesses and reviewing 13 documents, and determined that there was an insufficient basis to find that she had been harassed in violation of the State Policy.

On appeal to the Civil Service Commission (Commission), the appellant alleges that "nepotism was involved in the investigation" and accuses her supervisor of retaliating against her. She claims that she reported the alleged retaliation, but no action was taken. The appellant also states that D.S. assaulted her and requests that D.S. be removed from Woodbine, as she currently works with him.

In response, DHS claims that the appellant does not provide specifics with regard to her nepotism claim. Regardless, it notes that it does not have jurisdiction over her nepotism claim, as it does not implicate the State Policy. DHS also claims that the appellant was interviewed on June 22, 2015 regarding her claim that her

supervisor, R.B., a Head Cook 2, purposely reassigned "another employee from the pot sink to housekeeping, so that [the appellant] and the employee who were working on diets would have to work harder" in retaliation of her complaint. It states that she also claimed that R.B. made her sweep the floor, which she conceded was part of her normal duties. DHS states that the appellant otherwise "denied that there had been ongoing unreasonable conduct by [R.B.] towards her." Finally, DHS states that D.S. was not removed from Woodbine because it was not able to substantiate the appellant's discrimination claims due to a lack of evidence.

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. N.J.A.C. 4A:7-3.1(b) states in part a violation of this policy can occur even if there was no intent on the part of an individual to harass or demean another. Further, 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 by this policy. 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. See N.J.A.C. Moreover, the appellant shall have the burden of proof in all 4A:7-3.1(h). 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 a adequate investigation was conducted. DHS interviewed many witnesses and reviewed numerous documents as part of its investigation, but was not able to substantiate the appellant's allegations of sexual harassment and retaliation due to a lack of evidence. Apart from her bare assertions on appeal, the appellant offers no evidence to support her allegations of nepotism, retaliation or harassment. Therefore, the appellant has failed to meet her burden of proof in this matter. See N.J.A.C. 4A:7-3.2(m)3. Accordingly, under these circumstances, no basis exists to find a violation of the State Policy.

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 23rd DAY OF NOVEMBER, 2016

Robert M. Czech

Chairperson

Civil Service Commission

Inquiries and

Correspondence

Director
Division of Appeals
and Regulatory Affairs
Civil Service Commission
Written Records Appeals Unit
P.O. Box 312

Trenton, New Jersey 08625-0312

Attachment

c: N.S.

Christina Mongon Mamta Patel Records Center