



STATE OF NEW JERSEY

In the Matter of M.L.
Civil Service Commission

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC Docket No. 2016-1453

Minor Discipline Appeal

ISSUED: **NOV 29 2016** (SLK)

M.L.¹, a Human Resource Consultant 2 with the Civil Service Commission (Commission), appeals her written reprimand.

By way of background, the appellant filed a complaint with the Division of Equal Employment Opportunity and Affirmative Action (EEO/AA) on March 27, 2015, alleging that her supervisor, N.B., a Human Resource Consultant 5, subjected her to workplace harassment and bullying. After conducting a complaint intake investigation, in correspondence dated April 2, 2015, the EEO/AA advised the appellant that she did not claim that any of the alleged actions were as a result of a protected class or retaliation as defined by the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy). Therefore, since the EEO/AA did not have jurisdiction over the matter, it referred the matter to the appointing authority's Office of Human Resources to determine if further action was necessary.

Subsequently, on September 14, 2015, the appointing authority issued a Notice of Official Reprimand (Official Reprimand) against the appellant due to her error rate and related issues after previously counseling her about these matters. The appellant's appeal of her Official Reprimand and request to be reassigned to another unit were denied. Thereafter, the appellant appealed this minor disciplinary action to the Commission. On October 29, 2015, after reviewing the documentation in support of her Official Reprimand, the appellant filed a second

¹ Initials are being used in this matter as it involves complaints filed by the appellant alleging that she was subjected to a violation of the State Policy.

complaint with the EEO/AA claiming that this documentation was evidence to support her claim that the Official Reprimand was in retaliation for her original discrimination complaint against N.B. On November 10, 2015, the Commission's EEO/AA Officer responded to the appellant's second complaint, concluding that there was no evidence to support her allegation and denying her reassignment request. However, since the appellant raised allegations of retaliation in her minor disciplinary appeal, the appellant's complaint and the November 10, 2015 determination were forwarded to the Commission to be considered as deemed appropriate. Although the EEO/AA Officer advised her that she could appeal the November 10, 2015 determination, the appellant has not filed an appeal on that matter with the Commission.

On appeal, the appellant maintains that the alleged workplace harassment and bullying was documented in the EEO/AA's April 2, 2015 determination. The appellant submits medical documentation indicating that she suffered work-related stress and illness. Further, the appellant submits additional documentation to support her belief that her Official Reprimand was unfair.

In response, the appointing authority submits documentation to support its reasons for issuing the Official Reprimand against the appellant. It asserts that she was counseled by her superiors on August 20, 2015 regarding her error rate and was advised that she should seek help if she had any questions with assignments or procedures. Further, the appointing authority emphasizes that the decision to issue formal progressive discipline against the appellant on September 14, 2015 was not N.B.'s decision alone and was made in consultation with the Assistant Division Director, Division Director and the appointing authority due to the appellant's continued problems with assignments and procedures.

In reply, the appellant presents that when she met with N.B. and the Assistant Director on August 20, 2015 to discuss her mistakes, although N.B. stated that she was going to be written up, the Assistant Director indicated that a formal write up was not necessary. However, on September 14, 2015, she was informed that she would be receiving an Official Reprimand. Thereafter, on September 15, 2015, she was placed on sick leave by her doctor due to work-related stress and anxiety. After she received a copy of the documentation submitted to human resources by N.B. pertaining to the Official Reprimand, she requested to be reassigned out of the unit based on N.B.'s alleged retaliation against her. The appellant maintains that when she looked through the paperwork supporting her discipline, she saw documents with "snide remarks" against her, which dated back to April 14, 2015, after the EEO/AA's April 2, 2015 determination. She represents that at no time during her meeting with her superiors in August and September was there any discussion regarding any incidents prior to August and the Official Reprimand does not reference mistakes prior to August. Therefore, she does not believe that the documentation supports her discipline and contends that it was

only put together to enable N.B. to take disciplinary action against her in retaliation for her EEO claim.

It is noted for the record that the EEO/AA Officer's November 10, 2015 determination advised the appellant that there was no allegation that N.B. made any statement that would indicate she was aware of the appellant's EEO claim. Further, the Official Reprimand outlined a number of work related incidents that occurred after the August 20, 2015 counseling date and five months after her original claim of harassment. Moreover, it was noted that the documentation revealed several emails from the appellant's supervisor related to work assignments and directives. The EEO/AA Officer determined that these emails were indicative of a supervisor regularly monitoring employee performance and communicating work expectations. In this regard, although the emails dated back to April 2015, the appellant was not disciplined on issues that occurred prior to the August 20, 2015 meeting and there is no mention of an EEO claim in these emails. Further, the appellant received notice of her work mistakes prior to the issuance of the Official Reprimand and the reprimand documented specific incidents regarding her performance. As such, the EEO/AA Officer determined that there was no evidence to suggest the Official Reprimand was in retaliation for her filing a discrimination complaint.

Although provided the opportunity, the appellant did not submit any additional information or argument regarding the November 10, 2015 determination letter.

CONCLUSION

N.J.A.C. 4A:2-3.7(a) provides that minor discipline may be appealed to the Commission. The rule further provides:

1. The Civil Service Commission shall review the appeal upon a written record or such other proceeding as the Commission directs and determine if the appeal presents issues of general applicability in the interpretation of law, rule or policy. If such issues or evidence are not fully presented, the appeal may be dismissed without further review of the merits of the appeal and the Commission's decision will be a final administrative decision.
2. Where such issues or evidence under (a)1 above are presented, the Commission will render a final administrative decision upon a written record or such other proceeding as the Commission directs.

This standard is in keeping with the established grievance and minor disciplinary procedure policy that such actions should terminate at the

departmental level. In considering minor discipline actions, the Commission generally defers to the judgment of the appointing authority as the responsibility for the development and implementation of performance standards, policies and procedures is entrusted by statute to the administrative management of the Civil Service Commission. The Commission will also not disturb minor discipline proceedings unless there is substantial credible evidence that such judgments and conclusions were motivated by invidious discrimination considerations such as age, race or gender bias or were in violation of Civil Service rules. *See e.g., In the Matter of Oveston Cox* (CSC, decided February 24, 2010).

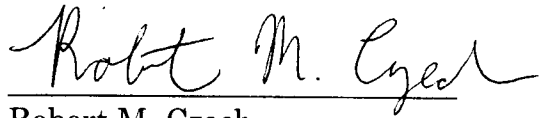
In this matter, the appellant has not established that her receipt of an Official Reprimand was in retaliation for her filing an EEO complaint. Specifically, the EEO/AA's April 2, 2015 determination letter is not evidence that the appointing authority's discipline was motivated by invidious discrimination. Instead, it simply re-states the appellant's allegations against N.B. and indicates that the EEO/AA determined that her allegations do not touch the State Policy. Therefore, since the appellant's concerns did not touch the State Policy but did evidence workplace personnel issues, the EEO/AA properly referred the matter to Human Resources for review. Further, the fact that the appellant suffered illness that she alleged was caused by workplace harassment is not evidence that the appointing authority's discipline was motivated by invidious discrimination. Moreover, the fact that the appellant believes that the appointing authority's discipline was unfair is also not evidence that her discipline was motivated by invidious discrimination considerations. Indeed, a review of the documentation that was submitted in support of its Official Reprimand does not indicate that N.B. was aware that the appellant filed an EEO claim. Accordingly, there is no basis to disturb the appointing authority's decision to issue an Official Reprimand in this manner.

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

& Regulatory Affairs

Civil Service Commission

Written Record Appeals Unit

P.O. Box 312

Trenton, New Jersey 08625-0312

c:

M.L.

Ann McClaskey

Parthenopy A. Bardis

Mamta Patel

Records Center

