



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Penelope Mauer,
Department of Human Services

Administrative Appeal

CSC Docket No. 2016-2850

ISSUED: NOV 23 2016 (WR)

Penelope Mauer, an Assistant Social Work Supervisor Psychiatric, at the Ann Klein Forensic Center (Ann Klein), Department of Human Services, petitions the Civil Service Commission (Commission) for relief, pursuant to *N.J.S.A.* 11A:2-24 and *N.J.A.C.* 4A:2-5.1, from alleged reprisal from her employer.

In her petition to the Commission, the appellant claims that, over her objections, she was moved from unit 3 to unit 6 at the Anne Klein Forensic Center. The appellant states that she was told that her move “had nothing to do with” her, but rather was due to a conflict between two employees in unit 6. However, she claims that when her supervisor informed her of the move, he also told her that she should not have contacted the Patient Services Compliance Unit (PSCU)¹ about possible patient abuse.² Thus, the appellant contends that she was moved from unit 3 to unit 6 in retaliation for her complaints of patient abuse to the PSCU. The appellant further argues that this is a broader problem at Ann Klein, as “several discipline heads have given staff the directive not to contact PSCU about what has been seen as patient abuse and to rather ‘keep it in house.’”

In response, the appointing authority contends that its policies permit employees to be assigned to any unit due to its operational needs. In the present matter, it asserts that “burnout” of staff in the Social Work Department has been

¹ According to the appointing authority, the PSCU is an independent group that oversees that quality patient services are maintained and investigates complaints to the contrary.

² The appellant states that she has documentation of this conversation, but does not submit it in her petition.

identified as problematic, especially among the staff on the units with the highest patient acuity: units 1, 2, 3, and 4. To combat staff “burnout,” the appointing authority states that in September 2015 it began moving all of its staff between the highest acuity units to the lower acuity units and *vice versa*. Thus, the appointing authority claims that the its motivation behind the reassignments is the wellbeing of staff and is not focused on one individual and therefore, the appellant’s reassignment was not punitive or retaliatory. Moreover, it observes that there was no change to the appellant’s job function, shift, location or supervisor.

Regarding the appellant’s claim that her supervisor told her not to make complaints to the PSCU, the appointing authority clarifies that the supervisor actually informed her that “nursing and medical” should be contacted first to ensure the patient is safe, prior to making a call to PSCU.

CONCLUSION

N.J.A.C. 4A:2-5.1 generally provides that an appointing authority shall not take or threaten to take any reprisal action against employees in retaliation for an employee’s lawful disclosure of information on the violation of any law or rule, governmental mismanagement or abuse of authority or on the employee’s permissible political activities or affiliations. *See also, N.J.S.A.* 11A:2-24. In *Katherine Bergmann v. Warren County Prosecutor*, Docket No. A-5665-01T5 (App. Div. December 1, 2004), it was determined that an employee asserting a cause of action under *N.J.S.A.* 11A:2-24 is required to prove the following elements:

- 1) The employee “reasonably believed” in the integrity of the disclosure at the time it was made, meaning the employee had no reasonable basis to question the substantive truth or accuracy of the content of the disclosure just prior to communication (it is here that the term “reasonable belief” is borrowed from the Conscientious Employee Protection Act (CEPA), *N.J.S.A.* 34:19-1, *et seq.*, to define what is the substantive content of a “lawful disclosure”);
- 2) The employee disclosed the information to a source “reasonably” deemed an appropriate recipient of such information just prior to communication (here, the term “reasonably” is used to describe the perceived proper channels through which a “lawful disclosure” should be communicated);
- 3) There is a connection, or nexus, between the disclosure and the complained of action (this is a standard cause-and-effect showing by the employee). *Carlino v. Gloucester City High School*, 57 F. Supp.

2d 1, 35 (D.N.J. 1999); *Kolb v. Burns*, 320 N.J. Super. 467, 476 (App. Div. 1999).

Only after the employee satisfies the criteria above does the appointing authority bear the burden of showing that the action taken was not retaliatory. See *Wright Line*, 251 NLRB 1083 (1980); *Mount Healthy City School District Bd. of Educ. v. Doyle*, 429 U.S. 274 (1977).

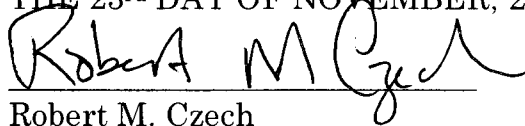
Using the test as enumerated above, the appellant has failed to present a *prima facie* case of reprisal. Although the appellant meets the first and second prong of the test, she has failed to satisfy the third prong of the test. The appellant has also not presented any documentation evidencing that there was a causal link between her complaints to the PSCU and her move from unit 3 to unit 6. In this regard, the appointing authority has indicated that all of its staff was moved between units as a measure to combat "burnout." Accordingly, the appellant has failed to present a *prima facie* case of reprisal.

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



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