

B-23



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

In the Matter of B.G., Department of  
Human Services

Discrimination Appeal

CSC Docket No. 2017-245

ISSUED: **MAR 24 2017** (ABR)

B.G., a Quality Assurance Specialist, Health Services, with the Department of Human Services (DHS), appeals the determination of the Assistant Commissioner of Human Resources, DHS, which found that the appellant violated the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy).

L.F., Quality Assurance Specialist, Health Services, with the DHS, a Caucasian, filed a discrimination complaint with the DHS' Office of Equal Employment Opportunity (EEO) against the appellant, an African-American, on January 20, 2016, alleging that the appellant used the word "nigger" in the workplace.

In response to the complaint, the EEO conducted an investigation which consisted of eight interviews and the review of 11 relevant documents. The EEO found that a credible witness corroborated the allegation against the appellant. Consequently, the DHS found that the appellant violated the State Policy. As a result, corrective action was taken.<sup>1</sup>

On appeal to the Civil Service Commission (Commission), the appellant states that she does not recall using the word and suggests that L.F. filed the underlying complaint in an effort to retaliate against her. The appellant also

<sup>1</sup> The appellant was issued a written warning.

asserts that V.W., formerly a Quality Assurance Specialist, Health Services<sup>2</sup> with the DHS, an African-American, corroborated L.F.'s claims for the same reason. Specifically, she argues that L.F. sought to punish her for an April 2013 complaint that the appellant made to their supervisor about "childish and demeaning behavior in the office" by L.F. and V.W., including calling her names such as "slut" and "bourgeoisie" and moving her desk without her permission. The appellant claims that L.F.'s and V.W.'s behavior towards her became worse after the appellant met with her supervisor about those allegations. The appellant suggests that L.F. was not truly offended by her alleged remarks during the conversation at issue, as L.F. waited for some time to file the discrimination complaint. The appellant also claims that L.F. and V.W. "used many inappropriate phrases within the office while having private conversations; some offensive, some not." Finally, the appellant contends that the use of the "N-word is basically not a slur in the black community" and that her use of that word would fall under an "exception" against the "prohibition" of the usage of that term because "African-Americans (and certain others) can use the N-word for camaraderie purposes while non-African-Americans typically cannot."

In response, the EEO argues that its determination that the appellant violated the State Policy should be upheld, as it conducted a thorough investigation wherein two employees corroborated the allegation that the appellant referred to her nephew as "that fucking little nigger" several times during a cell phone conversation that they inadvertently overheard. The EEO notes that, on appeal, the appellant does not explicitly deny using the term and instead excuses her usage of it as acceptable because she is an African-American. It counters that the term is a derogatory race-based comment and as such, its usage in the workplace violates the State Policy, regardless of the identity of the person who utters it. The EEO adds that many African-Americans do not consider the usage of the word by other African-Americans to be acceptable. In that regard, the EEO notes that it has investigated several discrimination complaints by African-Americans about the utterance of that word by other African-Americans. Accordingly, the EEO contends that the record demonstrates an adequate basis for its finding that the appellant violated the State Policy.

## CONCLUSION

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. *See N.J.A.C. 4A:7-3.1(a)3*. The protected categories include 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

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<sup>2</sup> Agency records indicate that V.W. was provisionally appointed to the title of Quality Assurance Coordinator, effective January 21, 2017.

Armed Forces of the United States, or disability. *See N.J.A.C. 4A:7-3.1(a)*. It is a violation of the State Policy to use derogatory or demeaning references regarding a person's race, gender, age, religion, disability, affectional or sexual orientation, ethnic background or any other protected category. A violation of this policy can occur even if there was no intent on the part of an individual to harass or demean another. *See N.J.A.C. 4A:7-3.1(b)*. The State Policy is a zero tolerance policy. *See N.J.A.C. 4A:7-3.1(a)*. *N.J.A.C. 4A:7-3.1(a)* provides that the State Policy applies to both conduct that occurs in the workplace and conduct that occurs at any location which can reasonably be regarded as an extension of the workplace.

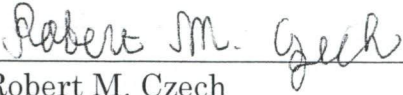
The Commission has conducted a review of the record in this matter and finds that an adequate investigation was conducted, that the relevant parties in this matter were interviewed and that the investigation established that the appellant violated the State Policy. While the appellant suggests that L.F. and V.W. fabricated their account of the appellant's remarks as a means of retaliating against her for an April 2013 complaint to their supervisor about L.F.'s and V.W.'s behavior, she offers no proof to support that allegation or her other claims about their behavior towards her. Additionally, the investigation revealed that multiple co-workers heard the appellant repeatedly refer to her nephew using a racial epithet during a telephone conversation and while the appellant merely indicates she did not recall doing so, she does not offer any evidence to corroborate her account of the underlying conversation. Finally, it is noted that an individual's conduct, rather than her intent, is controlling when determining whether the State Policy was violated. *See N.J.A.C. 4A:7-3.1(b)*. As such, even if the appellant believed that the use of the "N-word" was not a slur black community, her use of that racial epithet under these circumstances is sufficient to find that she violated the State Policy. Accordingly, the foregoing demonstrates that the EEO investigation was thorough and impartial and there is no basis to disturb the DHS' determination.

### 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 22<sup>ND</sup> DAY OF MARCH, 2017



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