

complaint against R.F. did not touch the State Policy and R.F. was not on duty on the date of this incident. Therefore, R.F. was not interviewed as part of this investigation. Further, P.D. alleged that Lieutenant J.S. was someone who was aware of P.D.'s State Policy complaint against R.F. and had knowledge regarding the allegations in this matter. However, the investigation revealed that J.S. had left the facility before P.D. discovered the Schedule. Further, J.S. denied having any knowledge regarding who was responsible for changing the "C" to a "G." P.D. also gave her opinion that Sergeant R.H. was the one responsible for this incident because of his alleged "racist" conduct, but P.D. did not offer any specifics. Moreover, all of the named witnesses denied having any knowledge regarding who changed the "C" to a "G." As the EED could not identify who committed the act in question nor that the act was specifically directed towards P.D., the EED issued a determination that it was unable to substantiate a violation of the State Policy.

On appeal, P.D. questions how this incident could not be found to be a violation of the State Policy. She insists that the discriminatory change from a "C" to a "G" was intentional and directed towards her. P.D. submits a copy of the Schedule, which show that the "C" was changed to a "G." P.D. believes that J.S. is responsible for this act as she has had prior issues with him. Further, she states that as a Control Sergeant, she always knows what is going on in her area so she does not believe that those in charge of the area do not know the identity of who performed this act and, if they do not know, she believes that they are engaging in deliberate indifference. P.D. asserts that the investigation should have included a handwriting analysis. P.D. seeks time off and monetary compensation for her time out of work due to this incident and other monetary damages for the suffering that she has endured from this incident.

Although given the opportunity, the EED has not submitted a response to this appeal.

CONCLUSION

N.J.A.C. 4A:7-3.1(a) states, in pertinent part, that employment discrimination or harassment based upon a protected category, such as race, color and sex/gender, is prohibited and will not be tolerated. *N.J.A.C.* 4A:7.3-2(m)4 states, in pertinent part, that the appellant shall have the burden of proof in all discrimination appeals.

The Civil Service Commission (Commission) has conducted a review of the record in this matter and finds that the act in question is clearly a violation of the State Policy. A review of the Schedule indicates that it was changed from "N|C's" to "N|G's". Without some logical or believable explanation, the change to "N|G's" on the Schedule can only be reasonably interpreted as a derogatory reference to African-Americans. A review of the EED's determination does not indicate that

there was any question regarding the authenticity of the change or that there was some other non-discriminatory reason for the change. Further, even though the EED could not substantiate the identity of who made the changed notation or whether the changed notation was specifically directed towards P.D., this notation is still a derogatory reference about African-Americans and therefore is a violation of the State Policy.

In reference to the EED's investigation concerning who made the derogatory change to the Schedule, the Commission finds that its investigation was thorough and impartial. P.D. specifically identified J.S. and R.H. as either having committed the act or at least having knowledge as to who committed the act. However, the EED indicated that it interviewed these witnesses and other witnesses identified by P.D., as well as P.D., and none of the witnesses admitted to performing the act or indicated that they had any knowledge as to who performed the act. Further, P.D.'s opinion that R.H. committed the act could not be substantiated as P.D. did not provide any specific evidence that he committed the act and none of the witnesses had any knowledge that R.H. or anyone else committed the act. Mere speculation, without evidence, is insufficient to substantiate a violation of the State Policy. *See In the Matter of T.J.* (CSC, decided December 7, 2016). Further, although P.D. identified R.F. as someone who the EED should interview due to her allegation that R.F. had issues with her work, the investigation revealed that R.F. was not on duty on the day of the act and therefore it was reasonable that it did not interview him for this incident. With regard to P.D.'s comment that the EED should have performed a handwriting analysis, under *N.J.A.C.* 4A:7-3.2(i), the EED had discretion as to how it conducted its investigation and given that it interviewed all identified witnesses or gave a reasonable explanation as to why one witness was not interviewed, its approach to how it conducted the investigation was in compliance with this rule.

However, in light of the fact that the Commission has found that a violation of the State Policy occurred and the perpetrator of this violation has not been identified, the Commission orders that the appointing authority provide training regarding the State Policy to P.D.'s identified witnesses, any other individuals who it identifies as possibly having been involved, and any other employees it deems appropriate. With respect to P.D.'s request for time off and monetary damages, the Commission does not award such remedies for State Policy violations as the purpose of the State Policy is to be remedial in nature to stop the behavior and deter its reoccurrence. *See N.J.A.C.* 4A:7-3.1(g)2.

ORDER

Therefore, it is ordered that this appeal be granted in part and it be noted that a violation of the State Policy has occurred. Further, the appointing authority is directed to provide appropriate training on the State Policy as described above.

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 27th DAY OF MARCH, 2018



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