



STATE OF NEW JERSEY

**FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION**

In the Matter of A.E., Department of
Children and Families

Discrimination Appeal

CSC Docket No. 2017-3596

ISSUED: APRIL 2, 2018 (ABR)

A.E., a Child Care Quality Assurance Inspector 2 with the Department of Children and Families (DCF), appeals the determination of the Director, Office of Administration, DCF, 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).

By way of background, on March 17, 2017, the appellant filed a complaint with the DCF’s Office of Equal Employment Opportunity and Affirmative Action (EEO/AA), alleging that on December 14, 2016, she overheard S.M., a Quality Assurance Specialist, Health Services, DCF, say “what a fucking retard” in a conversation with J.K., a Child Care Quality Assurance Inspector 2, at Cinnaminson House, a youth residential treatment home. The appellant maintained that J.K. proceeded to gesture to S.M. that the appellant was present, and that S.M. thereafter apologized to the appellant for the comment.

The EEO/AA investigation found that the appellant had been assigned to “shadow” J.K. in the field. The EEO/AA confirmed that the appellant, S.M. and J.K. were together at Cinnaminson House. The EEO/AA indicated that S.M. denied making the inappropriate comment and J.K. did not corroborate the appellant’s allegation and there were no other witnesses to the alleged incident. Therefore, based upon the foregoing, the EEO/AA did not substantiate a State Policy violation against S.M.

On appeal, the appellant argues that both S.M. and J.K. lied when they denied that S.M. made the offensive comment. In that regard, the appellant states that S.M. was present for approximately 80 percent of the inspections where the appellant “shadowed” J.K. The appellant claims that J.K.’s and S.M.’s friendship led J.K. to lie to the EEO/AA when she denied that S.M. uttered the remark at issue. The appellant also submits two letters from her personal psychologist, who details their discussions during several sessions beginning in December 2016. The appellant’s personal psychologist states that during their sessions, the two discussed the appellant’s concerns about EEO/AA complaints that two coworkers had filed against her and her claim that one of those coworkers had referred to a resident in a facility they were visiting as “a fucking retard.” The appellant’s personal psychologist also indicates that the appellant was worried about her obligation to report hearing that remark, as she feared that reporting the aforementioned comment might create more problems. The appellant’s personal psychologist also proffers that the appellant was concerned about her job security.

In reply, the EEO/AA states that it was unable to corroborate the appellant’s allegation against S.M., as S.M. denied making the alleged comment and J.K., the only other witness, denied hearing it as well. The EEO/AA maintains that the statements of the appellant’s psychologist would not have changed its findings in the instant matter, as it does not alter the fact that the only witness to the underlying incident did not corroborate the appellant’s claims. Moreover, the EEO/AA submits that the appellant did not report the alleged comment for more than three months, waiting until March 17, 2017 to do so. Furthermore, it asserts that the date the appellant filed the instant EEO/AA complaint coincided with her learning that a disciplinary action was being brought against her based upon alleged inappropriate comments she had made in violation of 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 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. *See N.J.A.C. 4A:7-3.1(b)*. The appellant has the burden of proof in all discrimination appeals. *See N.J.A.C. 4A:7-3.2(m)4*.

The Commission has conducted a review of the record in this matter and finds that an adequate investigation was conducted and that the investigation failed to establish that S.M. made a comment which violated the State Policy. At the outset, the appellant does not dispute the EEO/AA's finding that she, S.M. and J.K. were the only individuals present when the alleged remark was made. The appellant maintains that she overheard S.M. make a derogatory remark during a conversation with J.K. at Cinnaminson House and she contends that both falsely denied the incident to an EEO/AA investigator. The appellant submits letters from her personal psychologist in support of her claim that S.M. uttered the comment at issue. However, the arguments and documentation she submits do not appear to provide the Commission with any information that was not considered by the EEO/AA. Notably, the letters from the appellant's psychologist relay the appellant's own statements and perceptions about the alleged incident and the EEO/AA's investigation. They do not independently corroborate the appellant's claims, as they do not offer the account of a person who witnessed the underlying incident or otherwise had direct knowledge that would speak to the accuracy of S.M.'s and J.K.'s statements to the EEO/AA. Moreover, the information the appellant provides on appeal does not establish that the EEO/AA's investigator's credibility determinations were improper. Accordingly, the appellant has failed to sustain her burden of proof and there is no basis to disturb the determination of the Director, Office of Administration, DCF.

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 27TH DAY OF MARCH, 2018



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