

B-32

STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of A.M, Department of
Human Services

CSC Docket Nos. 2015-2316

Discrimination Appeal

ISSUED: **OCT 22 2015** (SLK)

A.M., a former Human Services Assistant¹, Department of Human Services, Woodbine Developmental Center (WDC), appeals the attached decision of the Director, Office of Equal Employment Opportunity (EEO), which found sufficient evidence to support a finding that she violated the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy).

By way of background, J.A., a female Cottage Training Supervisor, filed a complaint on October 1, 2014 with the EEO alleging discrimination based on gender. Specifically, J.A. alleged that A.M. referred to her as a "Bitch." The EEO conducted an investigation which consisted of interviews with witnesses as well as a review of written statements. The investigation revealed that on October 1, 2014, J.A. signed out for a break and notified her staff that she was leaving. Shortly thereafter, J.A. observed A.M. and two additional staff leave the building to go on break while she was sitting in her car. When J.A. returned from her break, A.M. had not yet returned. Approximately 30 minutes later, A.M. arrived at the cottage to sign in and J.A. asked her to sign in according to the time that was noted on the clock. A.M. indicated that J.A. had signed her out and she refused to sign in. When J.A. asked her again to sign in, A.M. stated, "Fuck you bitch, I'm not signing anything because you should not have signed me out to begin with." Based on its interviews with the witnesses, the EEO found that the appellant violated the State Policy. Additionally, the EEO determined that the appellant failed to cooperate in the investigation since she did not attend or respond to a letter that scheduled an interview.

¹ A.M. was laid off effective January 9, 2015. Therefore, there was no administrative or disciplinary action that was taken against her.

On appeal, A.M. asserts that she was not provided a fair hearing. A.M. presents that she was not interviewed by the EEO as to what occurred on September 29, 2014². A.M. claims that she never received any paperwork nor did she receive a phone call or any other message regarding a hearing or an interview. A.M. also indicates that she filed a counter-complaint against J.A.; however, the appointing authority has not provided her any updates regarding the progress of her complaint. A.M. requests that this investigation be re-opened.

In response, the EEO presents that the investigator interviewed three employees and reviewed six documents and J.A.'s allegation against A.M. was corroborated by two credible witnesses. It provides that its records do not reflect an incident involving A.M. on September 29, 2014 or that A.M. filed a counter-complaint against J.A. However, its records do reflect that it investigated J.A.'s October 1, 2014 complaint and that on November 17, 2014 it sent a letter to A.M.'s last known address scheduling her for an interview on December 1, 2014. The EEO indicates that A.M. neither attended the interview nor responded to the letter. Further, there is no record that the letter was returned as undeliverable. Accordingly, the EEO asserts that A.M. failed to cooperate in the investigation.

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 sex/gender, is prohibited and will not be tolerated. *N.J.A.C.* 4A:7-3.1(b) provides that it is a violation of this policy to use derogatory or demeaning references regarding a person's race or gender. A violation of this policy can occur even if there was no intent on the part of an individual to harass or demean another.

N.J.A.C. 4A:7-3.2(i) provides that at the EEO/AA Officer's discretion, a prompt, thorough, and impartial investigation into the alleged harassment or discrimination will take place.

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 appellant violated the State Policy. J.A. alleged that A.M. called her a "Bitch" in response to J.A.'s request that she sign in according to the time on the clock after A.M. returned late from a break. According to the Merriam-Webster on-line dictionary, one of the definitions of "Bitch" is "a malicious, spiteful, or overbearing woman – sometimes used as a generalized term of abuse." Clearly, in the context of the situation, the term was being used in this derogatory manner and is a violation of the State Policy. See *In the Matter of*

² The investigation indicates that the incident in question occurred on October 1, 2014.

Judith Sisti (MSB, decided February 28, 2007) (Use of the terms “dumb blonde” and “blonde witch” were gender-related and derogatory, thereby violating the State Policy). A.M. argues that she did not receive a fair hearing since she was not interviewed by the investigator. However, the investigation consisted of three employee interviews and six employee written statements, including A.M.’s written statement, and two of these employees corroborated that the appellant made the statement. Since the appellant has not refuted these allegations on appeal, interviewing A.M. would not change the determination that she violated the State Policy. Accordingly, the Commission finds that the investigation was thorough and impartial and that appellant failed to support her burden of proof that she did not violate the State Policy.

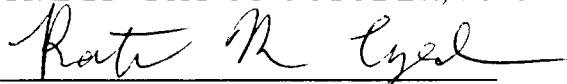
In reference to the allegation that the appellant failed to cooperate in the investigation, the EEO indicates that it mailed A.M. a notice on November 17, 2014 to her last known address scheduling her for an interview with the investigator on December 1, 2014. As the notice was not returned as non-deliverable, the EEO found that she failed to cooperate in the investigation since she did not attend the December 1, 2014 interview or otherwise respond. Other than her assertion that she did not receive the notice scheduling her for an interview, the appellant has not submitted any evidence, such as a sworn statement indicating that she did not receive the notice, in support of her claim. Therefore, the appellant failed to support her burden of proof that she did not receive the notice and the determination that she failed to cooperate in the investigation was proper.

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 21st DAY OF OCTOBER, 2015



Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Henry Maurer
Director
Division of Appeals
and Regulatory Affairs
Civil Service Commission
Written Record Appeals Unit
P.O. Box 312
Trenton, New Jersey 08625-0312

Attachment

c: A.M
Rachael Gervais
Chris Mongon
Mamta Patel
Joseph Gambino



State of New Jersey
DEPARTMENT OF HUMAN SERVICES
PO Box 700
TRENTON NJ 08625-0700

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

January 14, 2015

JENNIFER VELEZ
Commissioner

Ms. McCoy

DHS File No. 5462-2014
CSC File No. 2014633

Dear Ms. McCoy:

On October 1, 2014, J. Adams, a Cottage Training Supervisor (CTS) at Woodbine Developmental Center (WDC) filed a Letter of Complaint against you alleging discrimination based upon gender. Specifically, she alleged that you referred to her as a "Bitch."

The Department of Human Services (DHS) neither condones nor tolerates any form of discriminatory behavior in the workplace. Therefore, the Office of Equal Employment Opportunity (EEO) conducted an investigation of the complaint.

The allegation was corroborated by two credible witnesses. In addition, you failed to cooperate in the investigation. You were notified that an interview was scheduled for December 1, 2014, and you did not attend or respond to a letter sent to you.

Based on the results of the investigation, it has been determined that you violated the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy). Consequently, the appropriate administrative and/or disciplinary action will be taken.

If you disagree with this determination, you have the right to file an appeal with the Merit System Board within twenty (20) days of your receipt of this letter. The appeal must be in writing, state the reason(s) for the appeal, and specify the relief requested. Please include all materials presented at the department level and a copy of this determination letter with your appeal. The appeal should be submitted to the Merit System Board, P.O. Box 312, Trenton, N.J. 08625-0312.

Advisory, Consultative, Deliberative and Confidential Communication

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However, if it is determined that disciplinary action will be taken, the procedures for the appeal of disciplinary action must be followed.

Please be advised that pursuant to P.L. 2010, c.26, effective July 1, 2010, there shall be a \$20 fee for appeals. Please include the required \$20 fee with your appeal. Payment must be made by check or money order only, payable to the NJ CSC. Persons receiving public assistance pursuant to P.L. 1947, c. 156 (C.44:8-107 et seq.), P.L. 1973, c.256 (C.44:7-85 et seq.), or P.L. 1997, c.38 (C.44:10-55 et seq.) and individuals with established veterans preference as defined by N.J.S.A. 11A:5-1 et seq. are exempt from these fees.

At this time, I would like to remind you that the State Policy prohibits retaliation against any employee who files a discrimination complaint or participates in a complaint investigation. Furthermore, this matter remains confidential and the results of the investigation should not be discussed with others.

Should you have any questions, please contact the DHS Office of EEO at (609) 292-2816 or 292-5807.

Sincerely,



Edward M. McCabe
Director, Office of EEO

EM

C: Chris Mongon, Assistant Commissioner HR
Robert Armstrong, CEO
Mamta Patel, CSC
John Coffman, QAC

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