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STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of E.H.,
Department of Human Services

CSC Docket No. 2014-475

Discrimination Appeal

ISSUED: APR 07 2015 (DASV)

E.H., a Supervisor of Chaplaincy Services with Greystone Park Psychiatric Hospital, Department of Human Services (DHS), appeals the attached determination of the former Chief of Staff of DHS, finding that she had violated the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy).

K.E., a Chaplain and an African-American male, filed a complaint against the appellant, a Caucasian female. As indicated in the attached determination, K.E. claimed that the appellant subjected him to discrimination and retaliation based on his race, national origin, gender, and religion on several occasions. In response, the appointing authority conducted an investigation, which included interviewing five employees and reviewing 15 documents. The investigation substantiated only one allegation. Specifically, it was found that the appellant referred to K.E.'s African heritage as a possible cause for alleged insubordination. The appellant "admitted making those or similar comments." K.E.'s other allegations could not be substantiated.¹

On appeal to the Civil Service Commission (Commission), the appellant denies that she made any reference to K.E.'s African heritage as a possible cause for

¹ K.E. filed an appeal with the Civil Service Commission regarding his complaint. K.E.'s new allegation about an alleged confidentiality breach was remanded to the appointing authority for investigation, but the remainder of his appeal was denied. See *In the Matter of K.E.* (CSC, decided April 1, 2015). It is noted that should the remand result in an additional finding of a State Policy violation against the appellant, she may file an appeal at that time.

alleged insubordination. She indicates that K.E. has not been disciplined for insubordination and she would never have made such a statement for pejorative reasons. Rather, in her supervisory role, if she did ask such questions, it would be in order to help her clarify K.E.'s understanding of his role as Chaplain. In other words, the appellant states that she asked K.E. "clarifying questions regarding his ethnicity and religion and the role of men and women for clinical supervision, not because of cultural bias." Moreover, in January 2013, the appellant indicates that a conflict developed with respect to K.E.'s understanding of her supervision. K.E. then filed a complaint directly after he was removed from patient care until certain issues were clarified. The appellant notes that she did not act in isolation in that regard. Rather, she acted in conjunction with her supervisor and the Employee Relations Officer. The appellant asserts that K.E.'s complaint was filed as a defensive tactic in order to "vindicate him against his poor clinical decision making."

Additionally, the appellant appeals the fact that she did not receive certain investigative materials. In that regard, she submits a copy of an email she sent to the Office of Equal Employment Opportunity requesting the documentation in which she supposedly admitted making the substantiated statement "or similar comments." The Office of Equal Employment Opportunity replied that it does not release copies of statements. Furthermore, the appellant provides clarifying information as to her hiring of K.E., her letter of recommendation for his Professional Board Certification, his Performance Assessment Reviews (PARs), his job performance issues with regard to treatment teams, her clinical supervision, and her department and disciplinary action. In summary, the appellant indicates that she has been supportive of K.E. throughout his employment. He has received "perfect" PARs, but has some issues with his job performance. Thus, the appellant maintains that, based on the foregoing, she did not subject K.E. to discrimination. In support of her appeal, the appellant presents copies of her recommendation for K.E.'s Board Certification, K.E.'s interview form with the appellant's positive comments to hire him, K.E.'s acknowledgement of his "re-education" of the "Visitors to Employee Policy" by the appellant, a Notice of Written Reprimand issued against K.E., a Preliminary Notice of an Official Written Reprimand served on K.E., and K.E.'s PARs from 2010 to 2013 with ratings of commendable and exceptional. The appellant requests that her record be cleared of negative remarks that may have been placed into her "public file due to this situation."

In response, the appointing authority relies on its July 31, 2013 determination, which it maintains arrived at the correct conclusions. The appointing authority explains that the appellant was interviewed and her statements were documented in a typewritten statement which she reviewed and signed. She was also provided with the opportunity to make corrections. In the statement, the appointing authority reports that the investigator questioned the appellant as to whether she made a statement to the effect that she thought K.E.'s insubordination was a result of his African culture, wherein "leadership is a thing of

the male." The appellant responded, "Probably." Moreover, later in the interview, the appellant stated that she "could have made these statements but if [she] did, there was no discriminatory or racial intent." The appointing authority maintains that the appellant's statements represent a stereotype based on national origin. Therefore, it concluded that a violation of the State Policy occurred, and the appellant was sent to a Prevention of Discrimination class.

CONCLUSION

N.J.A.C. 4A:7-3.1(a) provides that under the State Policy, discrimination or harassment based upon the following protected categories are prohibited and will not be tolerated: 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. To achieve the goal of maintaining a work environment free from discrimination and harassment, the State of New Jersey strictly prohibits the conduct that is described in this policy. This is a zero tolerance policy. This means that the State and its agencies reserve the right to take either disciplinary action, if appropriate, or other corrective action, to address any unacceptable conduct that violates this policy, regardless of whether the conduct satisfies the legal definition of discrimination or harassment. Additionally, *N.J.A.C.* 4A:7-3.1(b) states that it is a violation of this 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 set forth in (a) above. A violation of this policy can occur even if there was no intent on the part of an individual to harass or demean another.

Moreover, *N.J.A.C.* 4A:7-3.1(e) provides that supervisors shall make every effort to maintain a work environment that is free from any form of prohibited discrimination/harassment. Supervisors shall immediately refer allegations of prohibited discrimination/harassment to the State agency's Equal Employment Opportunity/Affirmative Action Officer, or any other individual designated by the State agency to receive complaints of workplace discrimination/harassment. A supervisor's failure to comply with these requirements may result in administrative and/or disciplinary action, up to and including termination of employment. For purposes of this section and 3.2, a supervisor is defined broadly to include any manager or other individual who has authority to control the work environment of any other staff member (for example, a project leader).

The Commission has reviewed the instant matter and finds that the appointing authority's determination was proper. Although on appeal the appellant denies that she referred to K.E.'s African heritage as a possible cause for alleged

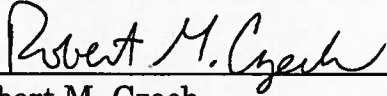
insubordination, her interview statement suggests otherwise. It is noted that interview statements do not represent privileged work product or confidential investigative materials. The statement represents the appellant's interview which she reviewed and signed. Thus, upon request, the Office of Equal Employment Opportunity Commission was not prohibited from releasing the statement. Nonetheless, the Commission does not generally compel production of investigative materials, especially if it clear that an appellant has had a full opportunity to present evidence and arguments on his or her behalf and the Commission has a complete record before it upon which to render a fair decision on the merits of an appellant's complaint. *See In the Matter of Juliann LoStocco, Department of Law and Public Safety*, Docket No. A-0702-03T5 (App. Div. October 17, 2005); *In the Matter of Salvatore Maggio* (MSB, decided March 24, 2004). In the present case, the appointing authority provided specific information from the appellant's interview statement which supports its conclusion. The appellant does not dispute this information. The appellant's arguments on appeal also suggest her reference to K.E.'s African heritage, in that she attempts to explain questions she may have asked K.E. in that regard. Therefore, the Commission is satisfied that the appellant has had a full opportunity to present her case, and the release of her interview statement is unnecessary. Moreover, while the appellant may not have intended to make a discriminatory comment, as noted above, a violation of the State 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)*. Further, it is noted that while the appellant attempts to explain the circumstances surrounding the filing of K.E.'s complaint and his motivation for filing, the fact remains that the investigation confirmed a violation of the State Policy. The Commission does not find any contrary information to reverse the finding that the appellant uttered statements in violation of the State Policy. It is emphasized that the appellant is a supervisor and is obligated to make every effort to maintain a work environment that is free from any form of prohibited discrimination/harassment. *See N.J.A.C. 4A:7-3.1(e)*. Accordingly, the Commission upholds the determination that the appellant violated the State Policy and finds that the appointing authority appropriately required, under the circumstances presented, the appellant's attendance at a Prevention of Discrimination class.

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 1ST DAY OF APRIL, 2015



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Attachment

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