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STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of P.F., Department of
Human Services

Discrimination Appeal

CSC Docket No. 2014-2508

ISSUED: APR 02 2015 (HS)

P.F., an Administrator of Plant Services with the Department of Human Services, appeals the attached determination of the Acting Equal Employment Opportunity (EEO) Director, which did not substantiate any of the appellant's allegations but found sufficient evidence that the appellant had violated the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy).

The appellant filed a complaint with the Office of EEO against J.J., a Coordinator of Plant Services and Preventative Maintenance, F.M., an Engineer-in-Charge of Maintenance 3, B.B., an Electrician, P.M., an Occupational Safety Consultant 1, and B.T., a Media Technician 1, alleging discrimination on the bases of nationality and national origin. The appellant alleged that the respondents surveilled him with a CCTV camera because he is Dominican and referred to him with derogatory remarks about Puerto Ricans. In addition, the appellant alleged that P.M. made a derogatory remark about him being Dominican. In response, the EEO conducted an investigation and determined that the appellant's allegations were unsubstantiated. Specifically, the EEO noted in its determination letter that the appellant admitted that B.T. did not discriminate against him and that he believed the surveillance was due to his prevention of thefts rather than his nationality or national origin. The EEO noted that the video indicated that the camera was trained on the appellant for 20 seconds, which was consistent with the respondents' contention that this was done to test the camera after a repair. The EEO further noted that nothing on the appellant's computer screen was legible on the video and that there was no evidence that he had been targeted for surveillance based on his nationality or national origin. The EEO also found insufficient

evidence to support the allegation that the respondents had made disparaging remarks about Dominicans or Puerto Ricans since the respondents denied making the comments and no credible witnesses corroborated them. However, P.M. alleged that the appellant made derogatory remarks about Puerto Ricans. The EEO substantiated P.M.'s allegation. In this regard, three witnesses corroborated the allegation that the appellant, who is Dominican-American, had referred to himself as a "dumb Puerto Rican" or words to that effect, and thus the appellant was determined to have violated the State Policy.

On appeal to the Civil Service Commission (Commission), the appellant argues that he has solid evidence that the appointing authority did not provide the EEO's investigators with the true facts in the matters investigated.

In response, the EEO states that it interviewed 12 employees and reviewed 11 related documents. The EEO reiterates that the appellant admitted during the investigation that the video surveillance was due to his stopping thefts rather than his nationality or national origin. His allegations that J.J., F.M. and B.B. had referred to him with derogatory remarks about Puerto Ricans and that P.M. had made a derogatory remark about his being Dominican were denied by the respondents and no witnesses substantiated the allegations. However, credible witnesses did substantiate P.M.'s allegation that the appellant made derogatory remarks against Puerto Ricans. In this regard, the EEO notes that three witnesses stated that they had heard the appellant, who is not Puerto Rican, make comments such as "That's just the Puerto Rican in me" when he made a mistake, "I'm Puerto Rican; I don't speak English" and "What do you expect, I'm Puerto Rican" when he did not understand something. In closing, the EEO contends that its investigation was complete and thorough.

In reply, the appellant requests a hearing and argues that he was deprived of his due process rights to present critical evidence and to attack the credibility of individuals who bore a significant bias and hostility against him. The appellant vehemently denies making any improper or discriminatory statements and contends that he has witnesses to whom the EEO never spoke and who support his denials. He further argues that the EEO's response merely repeats the results of a flawed investigation that should not be accepted without a hearing that impartially assesses the evidence and the credibility of witnesses.

CONCLUSION

Initially, the appellant requests a hearing in this matter. However, discrimination appeals are generally treated as reviews of the written record. See *N.J.S.A. 11A:2-6b*. Hearings are granted in those limited instances where the Commission determines that a material and controlling dispute of fact exists which can only be resolved through a hearing. See *N.J.A.C. 4A:2-1.1(d)*. No material issue

of disputed fact has been presented which would require a hearing. *See Belleville v. Department of Civil Service*, 155 N.J. Super. 517 (App. Div. 1978).

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 also 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 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)*. Moreover, the appellant shall have the burden of proof in all discrimination appeals. *See N.J.A.C. 4A:7-3.2(m)4*.

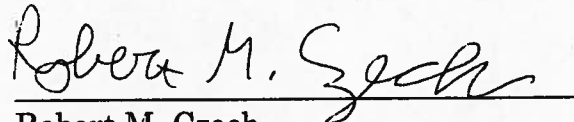
The Commission has conducted a review of the record in this matter and finds that an adequate investigation was conducted and that the relevant parties in this matter were interviewed. The EEO appropriately analyzed the available documents and conducted several interviews in investigating the allegations at issue. The EEO appropriately concluded that the appellant's allegations were not substantiated. In this regard, the appellant acknowledged that the camera surveillance stemmed from his prevention of thefts rather than his inclusion in a protected category as would be required for that action to have implicated the State Policy. Moreover, no witnesses substantiated the allegations that the respondents had used derogatory language in reference to the appellant. However, several credible witnesses did corroborate the allegation that the appellant had made derogatory references about Puerto Ricans. While the appellant claims that he has evidence that demonstrates the appointing authority did not share pertinent information with the EEO investigators, he offers no specifics in this regard. Moreover, although he claims that he has other witnesses who support his denials, he does not identify those witnesses nor does he explain how the information these witnesses possess would have materially altered the outcome of the investigation. Accordingly, the investigation was thorough and impartial, and no basis exists to disturb the EEO's 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 1ST DAY OF APRIL, 2015



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Attachment

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