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STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

In the Matter of J.P., Department of  
Corrections

CSC Docket No. 2015-1225

Discrimination Appeal

ISSUED: JUL 20 2015 (LDH)

J.P., a Senior Repairer<sup>1</sup> with the Department of Corrections (DOC), appeals the attached determination of the Commissioner, DOC, which found that the appellant failed to present sufficient evidence to support a finding that he had been subjected to a violation of the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy).

The appellant filed a discrimination complaint with the appointing authority's Equal Employment Division (EED) alleging that he had been discriminated against and harassed because of his disability. In addition, he alleged that his supervisor, B.O., Engineer in Charge of Maintenance, harassed and retaliated against him because the appellant had filed grievances against him. Also, he alleged that S.J., Associate Administrator, and V.A., Administrator, subjected him to disparate treatment and retaliation in that they did not properly enforce the footwear policy on all employees but issued him a five day suspension.<sup>2</sup>

<sup>1</sup> The appellant was provisionally appointed, pending promotional examination procedures to the title of Senior Repairer, effective May 30, 2015, from his permanent title of Repairer.

<sup>2</sup> The appellant also claimed that in violation of the New Jersey Conscientious Employee Protection Act (CEPA), he was subjected to retaliation. Specifically, the appellant alleged that he was ordered to clear the metal detector without having to remove his footwear which was incompatible with Occupational Safety and Health Administration (OSHA) regulations. The EED found no evidence to substantiate this allegation under CEPA. However, the Commission does not have jurisdiction over CEPA claims, and thus, this claim will not be addressed in this matter.

In response to this complaint, the EED conducted an investigation and determined that the appellant had failed to substantiate a violation of the State Policy. The EED investigation was unable to substantiate any of the appellant's allegations because there was no evidence, through witnesses or otherwise, to confirm the allegations made by the appellant. In addition, the investigation found that the respondents did not know of the appellant's disability. The EED found that the appellant was disciplined for a legitimate reason, failure to adhere to the footwear policy. In this regard, the footwear policy requires that all employees in the appellant's title wear OSHA compliant work boots and not remove the boots when he or she walks through the metal detector. The appellant was given a written warning that sneakers were unacceptable footwear. Subsequently, the appellant was reprimanded for wearing sneakers to the workplace. Nevertheless, the EED referred the matter to the Special Investigations Division to determine if the footwear policy was being properly enforced for all employees.

On appeal to the Civil Service Commission (Commission), the appellant argues that he never claimed that he was subjected to a violation of the State Policy because of his disability. Rather, he argues that he was singled out as the appointing authority's new footwear policy was only being enforced with respect to him. He states that he is no longer allowed to wear steel-toed boots but instead must wear OSHA compliant work boots. He claims that he was never told about this change in policy and that many employees who do not adhere to the footwear policy are not disciplined. Moreover, he argues that he should be able to recover lost wages for his suspension. He maintains that he has complied with the new footwear policy and in support he submits a receipt for new footwear. Lastly, he states that he was assaulted by B.O. on August 21, 2013 when B.O. poked his index finger and middle finger into the appellant's chest.

In response, the EED relies on the determination letter and reiterates that the investigation did not reveal that the appellant was subjected to a violation of the State Policy. The EED contends that its determination was supported by the evidence and not arbitrary, capricious or unreasonable. Also, the EED reiterates that there was no evidence to support a violation of the State Policy against B.O., S.J., or V.A. Lastly, the EED argues that the appellant has not provided any basis for his appeal. Thus, it maintains that the appellant's appeal should be denied.

## CONCLUSION

Initially, the State Policy provides that it is a violation of the 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)*. Moreover, the appellant shall have the burden of proof in all discrimination appeals. See *N.J.A.C. 4A:7-3.2(m)3*. Although the EED indicated in its determination letter that the appellant claimed that he was discriminated against due to his disability, on appeal the appellant denies ever making such a claim. Therefore, the allegations that the appellant presents do not fall within the purview of the State Policy because they fail to provide a nexus to a protected category. Moreover, under the State Policy, a retaliation claim **must** be based upon one of the protected classes listed in the State Policy and be in reference to a previously filed discrimination complaint or participation in an EED investigation. See *In the Matter of V.B.* (CSC, decided March 7, 2012) (Although there was no prior Equal Employment Opportunity (EEO) complaint between the appellant and the Associate Administrator, the appellant's report of protected actions to the Associate Administrator was sufficient to trigger the protections of the State Policy regardless of whether the complaint was processed by the EEO). Here, there was no record of a prior filing of an EED complaint or any involvement in a previous EED investigation by the appellant to sustain a retaliation allegation.

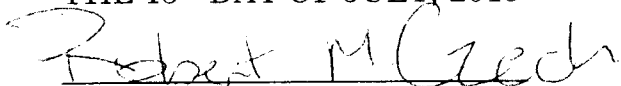
Regardless, the Civil Service Commission (Commission) has conducted a review of the record in this matter and finds that an adequate investigation was conducted by the EED, and that the appellant has failed to present sufficient evidence to support a finding that he was subjected to a violation of the State Policy. Though the appellant may have initially claimed that he was discriminated against due to his disability, the investigation revealed that the respondents did not know of the appellant's disability. Additionally, the investigation revealed that the appointing authority disciplined the appellant based on a legitimate reason, namely his failure to adhere to the footwear policy. Despite the appellant's receipt for his purchase of OSHA complaint work boots, he has not shown that he wore the boots prior to being disciplined. Further, the record reveals that he was given written notice that the next time he failed to comply with the footwear policy, it would result in a suspension. Moreover, the appellant has not provided any evidence to the contrary on this issue. Rather, other than his mere allegations, the appellant has failed to present any evidence which establishes that his suspension or the respondents' conduct was discriminatory in any way. Thus, the appellant's claim of discrimination and harassment is without merit. Accordingly, based on the foregoing, no basis exists to find a violation of the New Jersey State Policy Prohibiting Discrimination in the Workplace.

**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 15<sup>th</sup> DAY OF JULY, 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: J.P.  
Leila Lawrence  
Mamta Patel  
Joseph Gambino



State of New Jersey  
DEPARTMENT OF CORRECTIONS  
WHITTLESEY ROAD  
PO Box 863  
TRENTON NJ 08625-0863

CHRIS CHRISTIE  
Governor

KIM GUADAGNO  
Lt. Governor

GARY M. LANIGAN  
Commissioner

October 1, 2014

J. P. [REDACTED]  
[Mailed to Home Address]

Dear Mr. P. [REDACTED]:

The Equal Employment Division (hereinafter "EED") has completed its review of your two formal complaints of retaliation by Engineer-In-Charge-Of-Maintenance B. O. [REDACTED] (hereinafter "Mr. O. [REDACTED]"), Associate Administrator S. J. [REDACTED] (hereinafter "Mr. J. [REDACTED]") and Administrator V. A. [REDACTED] (hereinafter "Ms. A. [REDACTED]"). It is noted that during the course of the EED investigation you added the allegation that you were subjected to discrimination/harassment due to a disability by Mr. O. [REDACTED]. Further, you allege in your complaint that you were subjected to retaliation after engaging in a protected activity. Accordingly, this matter was also reviewed for any violations of the New Jersey Conscientious Employee Protection Act (hereafter "CEPA"). Please be advised that the EED did not substantiate a violation of the *Policy Prohibiting Discrimination in the Workplace* or CEPA by the Respondents. However, this matter is being returned to Edna Mahan Correctional Facility (hereinafter "EMCF") for administrative review. Additionally, the matter was referred to the Department's Special Investigation Division for review.

Please be further advised that you submitted that you are a Repairer assigned to EMCF. You allege that Mr. O. [REDACTED] is your supervisor. Specifically, you allege that Mr. O. [REDACTED] targeted you for disparate treatment. You contend that you used to report to work in steel-toe work boots and would remove them in order to clear the metal detector. You allege that you were advised that the metal detector policy had changed, and that you were required to clear the metal detector without removing your footwear. Accordingly, you were now being required to wear work boots that did not contain a steel-toe. You claim that in response to this change in policy, you began wearing sneakers to work. It is your contention that other employees assigned to the Maintenance Unit also wear sneakers to work. Further, you claim that sometime in May 2014, you were told that your sneakers were not appropriate Personal Protection Equipment ("PPE"), as per Occupational Safety & Health Administration regulations (hereinafter "OSHA").

Thereafter, you filed a grievance regarding your inability to wear steel-toe shoes, and your grievance was denied by Ms. A [REDACTED]. It is your claim that after engaging in the protected activity of filing a grievance, Mr. O [REDACTED] and the EMCF administration began to target you for retaliation. Additionally, on June 3, 2014, you submitted that you met with Mr. O [REDACTED], Ms. A [REDACTED] and Mr. J [REDACTED]. At said meeting, you were advised that you needed to purchase boots that were in compliance with OSHA regulations, and that failure to do so would result in discipline. On June 17, 2014, while wearing sneakers, you were called to administration and questioned regarding same. On the same date, you claim that you were targeted for retaliation when you were later served with a charge for insubordination with a sanction of a five-day suspension. Lastly, you claim that the fact that other employees in the unit wear sneakers daily and have not been subjected to discipline is evidence that you are being singled out for retaliation.

Moreover, the Department of Corrections takes all allegations of violations of the *Policy* seriously and such conduct will not be tolerated by the Department. Please be advised that in order to establish the claim of retaliation pursuant to the *Policy*, there must be an EED history between you and the Respondents. A search of the EED database and inquiry during the investigation revealed that there is no EED history between you and the Respondents. As such, the claim of retaliation was not established. Additionally, during your interview with the EED Investigator, you provided that while you are dyslexic, you have never reported to Mr. O [REDACTED] that you have a disability. As such, the claim that you were subjected to discrimination/harassment based on a disability was not confirmed.

Further, with regard to CEPA, the statute provides that an employee is protected from retaliation for engaging in the following protected activity:

- (1) disclosing (or threatening to disclose) to a supervisor or a public body an employer's act, policy or practice that the employee reasonably believes is illegal, fraudulent or criminal;*
- (2) providing information to, or testifying before, a public body investigating an employer's act, policy or practice that the employee reasonably believes is illegal, fraudulent or criminal; and*
- (3) objecting to or refusing to participate in an activity, policy or practice the employee reasonably believes is illegal, fraudulent or criminal, or is incompatible with a clear mandate of public policy concerning public health, safety or welfare or protection of the environment.*

The investigation did not reveal any evidence, through witnesses or otherwise, to confirm the allegation that you were subjected to retaliation pursuant to CEPA. Rather, the investigation revealed that in order to comply with OSHA regulations, certain positions, including Repairer, require that employees wear PPE - work boots. The investigation further revealed that for the safety and security of the facility, all employees are required to clear the metal detector without having to remove their footwear. The

evidence revealed that, you were advised on numerous occasions to wear the proper OSHA compliant footwear. However, you failed to comply. The evidence further revealed that, on June 17, 2014, you were called to EMCF administration where it was noted that you were, again, wearing sneakers. When asked by Ms. A [REDACTED] why you were not compliant with the directive to wear OSHA compliant footwear, you replied, "*Money does not grow on trees. I will purchase boots when I'm ready.*" Consequently, you were properly charged with insubordination. It is also noted that at your disciplinary appeal hearing, you produced evidence that you purchased OSHA compliant work boots on June 4, 2014, the day after your first meeting with administration about the issue. However, you did not wear them to work. Finally, the Respondents were interviewed for this investigation. They each deny engaging in behavior which violates the *Policy*, and deny targeting you for disparate treatment.

Based on the foregoing, please be advised that the EED investigation did not substantiate a violation of the *Policy Prohibiting Discrimination in the Workplace* or CEPA by the Respondents. However, this matter is being returned to EMCF for administrative review.

If you wish to appeal this determination, you must submit a written appeal to the New Jersey Civil Service Commission, Division of Merit System Practices & Labor Relations, Written Record Appeals Unit, P.O. Box 312, Trenton, New Jersey 08625-0312, postmarked or delivered within twenty (20) days of your receipt of this determination. The burden of proof is on the Appellant. Your appeal must include a copy of this determination, the reason for the appeal and the specific relief requested. 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 a check or money order along with your appeal, payable to NJCSC. Persons receiving public assistance and those qualifying for NJCSC Veterans Preference are exempt from this fee.

At this time, the EED also reminds you that the *Policy Prohibiting Discrimination in the Workplace* prohibits retaliation against any employee who files a discrimination complaint or participates in a complaint investigation or opposes a discriminatory practice. Furthermore, this matter remains confidential and the results of the investigation must not be discussed with others.

Sincerely,



Leila Lawrence, Esq., Assistant Director  
Equal Employment Division  
Office of Legal & Regulatory Affairs

APPROVED: 

Gary M. Lanigan  
Commissioner

c: Helen Adams, Assistant Superintendent/ASL

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