

B-23

STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of M.F., Department of
Corrections

CSC Docket Nos. 2015-2995

Discrimination Appeal

ISSUED: **AUG 03 2015** (SLK)

M.F., a Senior Correction Officer with the Department of Corrections (DOC), appeals the attached decision of the Commissioner of the DOC, which found that the appellant did not 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).

By way of background, the appellant, a Hispanic male, filed a complaint alleging discrimination based on his race/color and sexual harassment. Specifically, the appellant alleged that K.K., a Correction Sergeant, called him into his office and began yelling at him, "Do you know why you are here? Should I fuck you in the ass?" Further, the appellant states that K.K. started screaming at him and then told him to "get the fuck out of my office." The appellant maintains that J.W., a Senior Correction Officer, was present during the entire incident. Further, the appellant claims that K.K. refers to African Americans and Hispanics as "N---rs" and "S--cs". The DOC's Equal Employment Division (EED) conducted an investigation into the matter which included interviewing J.W. and K.K. However, J.W. did not confirm the allegations and K.K. denied them. Therefore, it found no evidence to support the allegations.

On appeal, the appellant asserts that he did not receive a fair investigation. The appellant presents that K.S., an Assistant Superintendent 1 Corrections, conducted the investigation and claims that he protected K.K. and had a conflict of interest because they are both in the same fraternity. The appellant also maintains that J.W. did not tell the truth during the investigation and that he should have written a third party report regarding the alleged comments made by K.K. during the meeting, per union policy, but did not.

CONCLUSION

N.J.A.C. 4A:7-3.1 states, in pertinent part, that employment discrimination or harassment based upon a protected category, such as race and color, is prohibited and will not be tolerated.

N.J.A.C. 4A:7-3.1(c) states that it is a violation of the State Policy to engage in sexual harassment of any kind.

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 has not established that K.K. has violated the State Policy. During the course of the investigation, the investigator interviewed the only witness that was identified by the appellant, J.W., and the accused, K.K.. J.W. did not confirm the allegations and K.K. denied them. As such, the EED found no evidence to support the appellant's claims that he had been subjected to a violation of the State Policy.

The appellant also alleged that J.W. did not tell the truth during the investigation; however, the appellant has not provided any evidence to support this claim. Further, the issue as to whether or not J.W. should have provided a written report, per the union's policy, regarding what K.K. said during the alleged incident, is outside the jurisdiction of this agency. Similarly, the appellant's mere allegation, without any evidence, that K.C., an Assistant Superintendent 1 Corrections who was the investigator in this matter, protected K.K. because they may be in the same fraternity is not enough to support his claim that his allegations were not fairly investigated due to a conflict of interest. Additionally, the appellant has not presented any other potential witnesses or evidence that should have been considered as part of the investigation, but were not.

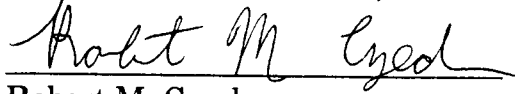
Accordingly, the Commission finds that the EED investigation was thorough and impartial. Therefore, the Commission finds that appellant failed to support his burden of proof and no basis exists to find a violation of the New Jersey State Policy Prohibiting Discrimination in the Workplace.

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 29th 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: M.F.
Leila Lawrence, Esq.
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

April 22, 2015

M. F. [REDACTED]
[Mailed to Home Address]


Dear Officer F. [REDACTED]

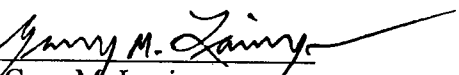
The Equal Employment Division (hereinafter "EED") has completed its review of your formal complaint wherein you allege that you have been subjected to discrimination/harassment based on race/color and sexual harassment by Sergeant K. [REDACTED] K. [REDACTED] (hereinafter "Sgt. K. [REDACTED]"). Specifically, you provided that on April 7, 2015, Sgt. K. [REDACTED] called you into the ACSU office. You contend that upon entering the office Sgt. K. [REDACTED] began yelling at you and said, "*Do you know why you are here? Should I fuck you in the ass?*" Additionally, you claim that Sgt. K. [REDACTED] routinely refers to African Americans and Hispanics as "*n. [REDACTED]*" and "*s. [REDACTED]*." In response to your formal complaint, an investigation was opened. Please be advised that the Department of Corrections takes all allegations of discrimination/harassment seriously and such conduct will not be tolerated by the Department. Please be further advised that at the conclusion of its investigation, the EED did not substantiate a violation of the *Policy Prohibiting Discrimination in the Workplace* by Sgt. K. [REDACTED]. The witness named by you did not confirm the allegations and Sgt. K. [REDACTED] denies same.

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., Director
Equal Employment Division
Office of Legal and Regulatory Affairs

APPROVED: 
Gary M. Lanigan
Commissioner

c: K [REDACTED] C [REDACTED] Assistant Superintendent/(ASL)

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