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STATE OF NEW JERSEY

DECISION OF THE CIVIL SERVICE COMMISSION

In the Matter of V.W., Department of Human Services

Discrimination Appeal

CSC Docket No. 2017-96

ISSUED: APR 10 2017 (ABR)

V.W., a Quality Assurance Coordinator with the Department of Human Services (DHS), appeals the determination of the Assistant Commissioner of Human Resources, DHS, which found that the appellant violated the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy).

M.P., a female, formerly a Quality Assurance Coordinator, filed a discrimination complaint with the DHS' Office of Equal Employment Opportunity (EEO) against the appellant on December 18, 2015, alleging, in relevant part, that the appellant, a female, referred to L.F., a female Quality Assurance Specialist, as a "bitch."<sup>1</sup>

In response to the complaint, the EEO conducted an investigation which consisted of eight interviews and the review of 11 relevant documents. The EEO found that a credible witness corroborated the allegation against the appellant. Consequently, the DHS found that the appellant violated the State Policy. As a result, corrective action was taken.<sup>2</sup>

On appeal to the Civil Service Commission (Commission), the appellant denies that she made the alleged comment and argues that the EEO did not sustain its burden of proof, as only one witness out of eight who were interviewed

<sup>1</sup> The EEO notes that M.P. raised other allegations against the appellant and another individual, which were not corroborated in the course of its investigation and which are not within the scope of this appeal.

<sup>2</sup> The appellant was issued a written warning.

corroborated the allegation, and the one corroborating witness "could be considered a friend or sympathizer of [M.P.]" She contends that M.P. filed her EEO complaint in retaliation for the appellant testifying against M.P. during a disciplinary hearing which resulted in M.P.'s removal, effective December 21, 2015. The appellant contends that the timing of M.P.'s complaint demonstrates that she filed it in retaliation for the appellant testifying against her, as the appellant was alleged to have made the disparaging remark in October 2015, but M.P. did not file her complaint with the EEO until December 18, 2015.

In response, the EEO argues that its determination that the appellant violated the State Policy should be upheld, as it conducted a thorough investigation wherein "[o]ne employee who [the EEO investigator] regarded as credible corroborated the allegation" that the appellant called L.F. a "bitch." The EEO stresses that other witnesses' failure to corroborate the claim of M.P. and a supporting witness does not mean that the appellant did not make the alleged comment. The EEO submits that in cases such as this, it is entirely appropriate for an investigator, who has no stake in the outcome of the investigation, to assess the credibility of the witnesses. Accordingly, the EEO contends that the record demonstrates an adequate basis for its finding that the appellant violated the State Policy.

### CONCLUSION

Discrimination appeals are treated as reviews of the written record. *See N.J.S.A. 11A:2-6(b)*. Hearings are granted in those limited instances where the Commission finds that a material and controlling dispute of facts exists that can only be resolved by a hearing. *See N.J.A.C. 4A:2-1.1(d)*.

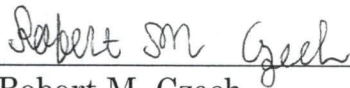
In the instant matter, material disputes of fact exist which warrant granting a hearing at the Office of Administrative Law (OAL). The appellant maintains that M.P. filed a complaint with the EEO as a means of retaliating against her for testifying against M.P. in a removal proceeding and she claims that the witness who corroborated M.P.'s allegation did so because he or she could have been a "friend or sympathizer" of M.P. In its response, the EEO states that "[o]ne employee who [the EEO investigator] regarded as credible corroborated the allegation." The EEO has not indicated whether it considered the corroborating witness' alleged relationship to M.P. or that witness' possible motivation in supporting M.P.'s statement. Furthermore, the EEO has not elaborated upon its investigator's basis for finding that witness credible and according his or her testimony significant weight despite the failure of seven other employees to corroborate M.P.'s allegation. Under these circumstances, the Commission finds that disputed issues of material fact exist which cannot be determined on the written record, thereby requiring a hearing in the matter where an Administrative Law Judge (ALJ) may evaluate evidence and

assess the credibility of the witnesses. Therefore, the Commission grants a hearing at the OAL.

**ORDER**

Therefore, it is ordered that this matter be referred to the Office of Administrative Law for a hearing as a contested case.

DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 5<sup>TH</sup> DAY OF APRIL, 2017



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