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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

CSC Docket No. 2016-967

Minor Discipline Appeal

ISSUED: MAY - 9 2017 (CSM)

P. F., a former Administrator of Plant Services,<sup>1</sup> Department of Human Services, appeals his three working day suspension.

By way of background, as a result of a finding that the appellant violated the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy), the appellant was served with a Preliminary Notice of Disciplinary Action (PNDA) proposing a three working day suspension for violation of a rule, regulation, policy, procedure, order or administrative decision, unwelcome sexual advances or conduct that had the effect of unreasonably interfering with the targeted employee's work performance or creating an unreasonably intimidating, hostile or offensive working environment which includes a generalized gender based remark or behavior and conduct unbecoming a public employee. Specifically, the appointing authority alleged that during meetings on February 3, 2012 and June 18, 2012 during meetings, the appellant exhibited looks of hostility, spoke loudly, was disrespectful, and was demeaning and argumentative toward J.C. based on her gender. A departmental hearing was conducted, the hearing officer upheld the charges and the appointing authority imposed a three working day suspension.

On appeal, the appellant asserts that the hearing officer's determination was based largely on the investigation of the Equal Employment Opportunity investigation records and two witnesses, who were no longer employees of the State, were not compelled to appear to testify at his departmental hearing. The appellant maintains that the absence of their testimony at his departmental hearing was

<sup>1</sup> The appellant has been removed from State service.

detrimental to his case. In a supplemental submission, the appellant states that he did not disagree with J.C. because of her gender. Rather, he asserts that he disagreed with her because she was wrong. In this regard, he claims that J.C. did not like the fact that his inquiry into the matter stemmed from his determining that two new employees J.C. approved for hiring were unemployable because their driver's licenses had been revoked. He also states that the EEO investigator never bothered to gather facts about the nature of the disagreement and notes that J.C. is no longer employed by the State and had to be "escorted off the premises." Additionally, the appellant provides selected excerpts from the transcript of the departmental hearing which he claims demonstrates that the testimony from F.M. was not credible. He also states that F.M. conspired with another employee to fabricate the charge that he made a disparaging gender based remark about J.C.

Although provided the opportunity, the appointing authority did not provide any additional information or argument for the Civil Service Commission (Commission) to review in this matter.

### CONCLUSION

*N.J.A.C. 4A:2-3.7(a)* provides that minor discipline may be appealed to the Civil Service Commission (Commission). The rule further provides:

1. The Commission shall review the appeal upon a written record or such other proceeding as the Commission directs and determine if the appeal presents issues of general applicability in the interpretation of law, rule or policy. If such issues or evidence are not fully presented, the appeal may be dismissed without further review of the merits of the appeal and the Commission's decision will be a final administrative decision.
2. Where such issues or evidence under (a)1 above are presented, the Commission will render a final administrative decision upon a written record or such other proceeding as the Commission directs.

This standard is in keeping with the established grievance and minor disciplinary procedure policy that such actions should terminate at the departmental level. In considering minor discipline actions, the Commission generally defers to the judgment of the appointing authority as the responsibility for the development and implementation of performance standards, policies and procedures is entrusted by statute to the administrative management of the Civil Service Commission. The Commission will also not disturb minor discipline proceedings unless there is substantial credible evidence that such judgments and conclusions were motivated by invidious discrimination considerations such as age,

race or gender bias or were in violation of Civil Service rules. *See e.g., In the Matter of Oveston Cox* (CSC, decided February 24, 2010).

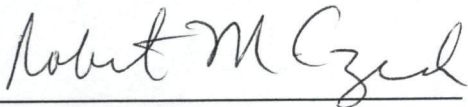
In this matter, the appellant has not established that the hearing officer's judgement and conclusions were motivated by invidious discrimination considerations. Initially, neither a hearing officer nor appointing authority can compel a witness to testify at a departmental level hearing. *See In the Matter of Adrian Ellison* (CSC, decided October 16, 2013) *aff'd on reconsideration* (CSC, decided April 23, 2014). Nevertheless, a review of the hearing officer's report demonstrates that his findings were based on the testimony of several other witnesses who could corroborate the allegations against the appellant. Thus, although two witnesses had resigned from State service and were unable to testify, including J.C., two witnesses who were in attendance at the February 3, 2012 meeting, J.D. and P.M., testified at the departmental hearing and corroborated that the allegation that the appellant engaged in gender based discrimination. Similarly, J.F. and F.M., who were at the June 18, 2012 meeting, testified at the departmental hearing and corroborated that the appellant engaged in gender discrimination. Further, the EEO investigation, which included the interview of C.P., as well as the testimony at the departmental hearing of F.M., corroborated that the appellant made a gender specific pejorative remark about J.C. after the June 18, 2012 meeting. Accordingly, there is no basis to disturb the appointing authority's decision to impose a three working day suspension in this manner.

### 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 3<sup>RD</sup> DAY OF MAY, 2017



Robert M. Czech  
Chairperson  
Civil Service Commission

Inquiries  
and  
Correspondence

Director  
Division of Appeals  
and Regulatory Affairs  
Civil Service Commission  
Written Record Appeals Unit  
P.O. Box 312  
Trenton, New Jersey 08625-0312

c: P. F.  
James Frey  
Records Center