

STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

In the Matter of S.F., Department of  
the Treasury

CSC Docket No. 2017-3823

Discrimination Appeal

ISSUED: **SEP 08 2017** (SLK)

S.F., a Pension Benefits Specialist 3 with the Department of the Treasury, appeals the decision of the Director, Division of Administration, which did not substantiate her allegation to support a finding that she had been subject to a violation of the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy).

By way of background, S.F.'s complaint specifically alleged that, "I have been subjected to harassment, unfair and differential treatment by my supervisor(s) since my return from a medical leave of absence in October 2016. I was informed in December 2016 that I cannot be out even an hour more without pay or I will be disciplined. I believe I have been discriminated against based on disability in violation of the Americans with Disabilities Act (ADA)." The investigation revealed that her supervisors held meetings concerning S.F.'s use of leave without pay and recommended disciplinary action based on her chronic and excessive absenteeism, abuse of sick leave and insubordination. The investigation found that S.F. had not submitted any medical documentation to Human Resources that specified that she was a person with disabilities. Further, S.F. did not request a workplace accommodation until after she received notice from her supervisors that disciplinary action was being recommended. Moreover, the investigation found no corroborating witnesses or documentation to support S.F.'s allegation that her supervisor, N.M., a Pensions Benefits Specialist 1, had knowledge of her being disabled.

On appeal, S.F. states that she is repeatedly called into meetings to discuss her leave time and her being "caught" talking or using a cellphone. She asserts that

the entire department/bureau talks, has visitors, and uses cellphones and earbuds. S.F. claims that her supervisor pointed to her head, after she was informed about her disability due to a brain injury, and told her nothing sinks in. She indicates that she has been given less training than her coworkers have. S.F. alleges that she has been harassed and discriminated by her supervisor and her chief due to her disability, singled out, and is working in a toxic, hostile workplace. She submits documentation that states she submitted medical documentation to support her absences.

In reply, the Equal Employment Opportunity Officer (EEO) indicates that the investigation included an interview of S.F., a review of position statements from her supervisors, and a review of human resources records including S.F.'s time and leave records. The investigation revealed that N.M.'s and L.B.'s, a Chief Divisions of Pensions, meetings with S.F. concerning the benefit time she was utilizing without pay was part of their supervisory responsibilities. As S.F. returned from her medical leave of absence on October 14, 2016 after having exhausted all of her Family and Medical Leave Act (FMLA) entitlement hours as well as her regular sick hour entitlements, the EEO determined that it was not unreasonable that her supervisors would meet with her to advise her of the amount of time she used without pay and the consequences that would result if her actions continued. However, starting one week after she returned from her leave of absence, S.F. continued to be absent from work without pay for eight days despite the warning. Consequently, S.F. was issued a final written warning on November 23, 2016 and was advised by memorandum, dated December 7, 2016, that disciplinary action was being requested. She was further advised that continued absenteeism would lead to formal disciplinary action. The EEO highlights that S.F. did not submit any medical documentation to Human Resources that specified she is a person with disabilities and the investigation did not reveal any corroborating witnesses or documentation indicating that N.M. had knowledge of S.F.'s alleged disability. Additionally, the EEO states that S.F. did not request a workplace accommodation until January 12, 2017, which was after she received notice from her supervisors that disciplinary action had been recommended. The EEO notes that the accommodation was a request to allow her to change her shoes for slippers as needed and there was never a request for management to adjust S.F.'s time and leave to accommodate her disability. With respect to S.F.'s allegations of differential treatment regarding her talking with coworkers and using her cellphone, the investigation revealed that her supervisors treated her like any other coworker and that L.B. issued a memorandum to all staff in January 2016 and 2017 concerning chatter, earbuds, and cellphones. Further, S.F. and her coworker were both reprimanded about talking with each other.

## CONCLUSION

*N.J.A.C.* 4A:7-3.1(a) states, in pertinent part, that employment discrimination or harassment based upon a protected category, such as disability, is prohibited and will not be tolerated. Moreover, *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 S.F. has not established that she has been subjected to a violation of the State Policy. A review of the records indicates that, after S.F. returned from a leave of absence on October 14, 2016, her supervisors advised her that she exhausted her sick time and that she would be subject to discipline if she continued to be absent. The Commission notes that supervisors advising a subordinate on the status of their leave benefits and the consequences of taking leave after having exhausted their sick time is not harassment, but a fundamental supervisor responsibility. However, despite the warning, S.F. continued to take time off as early as a week after the meeting. Thereafter, S.F.'s supervisors issued a final written warning on November 23, 2016 and then notified her in writing on December 7, 2016 that disciplinary action was being recommended. On February 7, 2017, S.F. was served with a Preliminary Notice of Disciplinary Action due to chronic and excessive absenteeism.

In a letter dated March 3, 2017, S.F., for the first time,<sup>1</sup> asked for a workplace accommodation regarding taking breaks at work, flextime, the ability to work from home, and the ability to attend medical appointments without facing discipline. After receiving a March 23, 2017 letter from Human Resources requesting medical documentation for her accommodation request, S.F. submitted two letters from doctors in April 2017 in support of her accommodation request. In other words, although S.F. was advised that she exhausted her sick time and was warned on several occasions that she would be subject to discipline if she continued to be absent, she continued to be absent on a regular basis. Additionally, despite S.F.'s claim that she provided documentation to support her absences, she has not provided any evidence that she requested a workplace accommodation to enable her to be absent due to her medical condition or any medical documentation to support this request until after she received her disciplinary notice on February 7, 2017. Consequently, S.F. has not provided one scintilla of evidence that her supervisors discriminated or harassed her based on her disability.

Additionally, S.F. has not provided any corroborating witnesses or documentation to support her claims that she received less training than coworkers,

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<sup>1</sup> The record indicates that her January 12, 2017 request for accommodation was regarding the ability to wear slippers and not a request for an accommodation regarding the ability to take time off due to her disability claim.

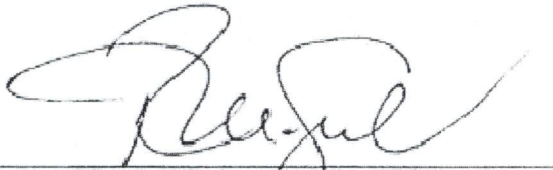
that she was singled out, that her supervisor pointed to her head or mocked her, or she was otherwise differentially treated due to her disability. Mere speculation, without evidence, is insufficient to substantiate a State Policy violation. *See In the Matter of H.F.* (CSC, decided April 19, 2017). Accordingly, the Commission finds that the investigation was prompt, thorough and impartial and S.F. has not met her burden of proof.

### 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 6<sup>th</sup> DAY OF SEPTEMBER, 2017




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Robert M. Czedh, Chairperson  
Civil Service Commission

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