



STATE OF NEW JERSEY

**FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION**

In the Matter of K.R., Department of
Health

CSC Docket No. 2020-80

Discrimination Appeal

ISSUED: OCTOBER 25, 2019 (SLK)

K.R., an Assistant Director of Nursing Services 1, Psychiatric with the Department of Health (DOH), appeals the decision of the Chief of Staff, which did not substantiate her allegations 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, K.R., a female, filed a complaint with the Office of Diversity and Equity Services (ODES) alleging that D.P., a male Director of Nursing Services 1, Psychiatric, engaged in sexual harassment, gender discrimination, and retaliation against her. Specifically, she alleged that D.P. consistently displayed personal interest in her by talking to her excessively, taking up her time, discussing her divorce and children and gazing at her in a sexual manner. Additionally, K.R. alleged that D.P. treated her differently because she refused to flirt with him and she did not respond in the way he expected females to respond. Further, she alleged that when she was dismissive of D.P.'s advances, he became hostile towards her, treated her unfairly, singled her out, and wrote her up without merit. Concerning sexual harassment, the investigation revealed that D.P. denied the allegation and K.R. was unable to provide any corroborating witnesses. Regarding gender discrimination, the investigation found D.P. denied the allegations and he had legitimate concerns about K.R.'s attendance issues. With respect to retaliation, the investigation revealed that D.P. denied the allegations, and the disciplinary action that was taken against K.R. was for legitimate business

reasons due to her attendance issues. Accordingly, the investigation was unable to substantiate that K.R. had been subject to a State Policy violation.

On appeal, K.R. submits e-mails to support her claim that D.P. was dismissive, rude, and maligned and falsely accused her in his communications with her. She asserts that males, women who flirt with him, and even quiet women are treated well by D.P., but a female who asks a question, requests a rationale, volunteers an opinion or dares to defend herself is doomed. K.R. states that even though she is an excellent employee, she never receives any positive feedback from D.P. K.R. indicates that many of her witnesses are no longer employed by the appointing authority. She believes that D.P. was not enthusiastic about offering her a promotion to her current title even though she received the top score on the test. K.R. claims that the issues that she had regarding flextime and other time and attendance issues were unfair because the policies were only explained to her one and one-half years after she started in her current position. She asserts that she was horrified by the e-mail communication with D.P. concerning the flextime policy where he responded, "too bad it doesn't meet YOUR needs" and he ordered her to stop communicating with him or she would face an insubordination charge. Further, D.P. claims that the charges that were issued to her in a Preliminary Notice of Disciplinary Actions (PNDA) concerning attendance issue were sickening to her and unfair, which caused her trauma.

In response, the ODES presents that the first PNDA issued against K.R. indicates that she falsified her timesheet 17 times between November 3, 2017 and January 18, 2018. Additionally, a second PNDA was issued to K.R. for falsifying her timesheet 17 times between January 25, 2018 through July 29, 2018. There were also other time and attendance related issues and falsifications related to these issues on the two PNDAs. Subsequently, K.R. filed a State Policy complaint against D.P. as she felt that she was being retaliated against by him. However, the investigation was unable to substantiate her claims. Specifically, nine female witnesses were interviewed and none observed D.P. sexually harassing K.P. or treating female employees in a flirtatious manner. No witnesses confirmed her allegations that D.P. leered at her in the past or looked her body up and down. Additionally, the witness that K.R. alleged told her that women who flirt with D.P. make out well, denied making that comment. Further, K.R. indicated that another witness heard the comment about flirtatious women, but that witness denied ever hearing that comment. Additionally, the woman who was alleged to have unbuttoned her shirt in the presence of D.P. to be flirtatious with D.P., denied ever having done this. Moreover, the witness that K.R. presented as having seen the other witness unbuttoning her shirt to flirt with D.P., denied ever seeing this. Finally, concerning the allegation that the PNDAs issued against her were due to retaliation by D.P., the investigation revealed that there was no evidence to support this claim. Specifically, D.P. legitimately asked K.R. to provide documentation as to why she was not at work on certain days. Further, K.R.'s electronic swipe cards

showed that she was often coming in late and not documenting her actual hours worked. Therefore, the disciplinary charges were legitimately issued against her. Still, out of an abundance of caution, D.P. received training on the State Policy.

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 gender is prohibited. *N.J.A.C.* 4A:7-3.1(c) provides, in pertinent part, that sexual or gender-based harassment is prohibited. *N.J.A.C.* 4A:7-3.1(h) provides, in pertinent part, the retaliation against any employee who files a State Policy complaint is prohibited. *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.

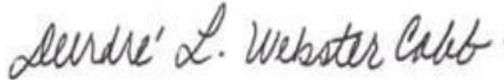
In this matter, the ODES interviewed nine woman concerning the allegations that D.P. sexually harassed, leered or looked at K.R.'s body up and down. However, no witness corroborated these allegations. Similarly, none of these witnesses indicated that D.P. was treating female employees in a flirtatious manner. Additionally, K.R.'s identified witnesses denied the allegations that they either said that women who flirt with D.P. do well, that they heard this comment, that a woman unbuttoned her shirt to flirt with D.P., or that a witness observed a woman unbuttoning her shirt to flirt with D.P. Further, numerous witnesses confirmed that K.R. had attendance issues. Moreover, the investigation revealed that D.P. did not retaliate against K.R. by having PNDAs issued to her due to attendance issues as the electronic swipe cards indicated that she did have attendance issues. It is also noted that retaliation under the State Policy is for retaliatory actions that are in response to a State Policy complaint. In this case, the PNDAs were issued before K.R. filed the State Policy complaint and, therefore, her "retaliation" allegation does not touch the State Policy. Further, while K.R. might not have liked the manner in which D.P. communicated with her about flextime and other attendance issues in the e-mails she presented, disagreements between co-workers cannot sustain a violation of the State Policy. *See In the Matter of Aundrea Mason* (MSB, decided June 8, 2005) and *In the Matter of Bobbie Hodges* (MSB, decided February 26, 2003). Moreover, while K.R. clearly disagrees with D.P.'s supervising style and interpersonal skills when dealing with her, she has presented no evidence to show a nexus between those and the State Policy. In other words, K.R. has not produced one scintilla of evidence, such as a witness or document, that corroborates that D.P. sexually harassed her, treated her differently because she was a woman, or retaliated against or harassed her by having PNDAs issued against her. Mere speculation, without evidence, is insufficient to substantiate a violation of the State Policy. *See In the Matter of T.J.* (CSC, decided December 7, 2016). Therefore, the Civil Service Commission finds that the ODES' investigation was prompt, thorough and impartial and K.R. 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 23rd DAY OF OCTOBER, 2019



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