



STATE OF NEW JERSEY

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

In the Matter of M.G., Department of
Human Services

CSC Docket No. 2020-422

Discrimination Appeal

ISSUED: OCTOBER 25, 2019 (SLK)

M.G., a Cottage Training Supervisor with Hunterdon Developmental Center, appeals the decision of the Department of Human Services' 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, M.G., who is Hispanic, filed a complaint with the Equal Employment Opportunity Office (EEO) alleging that she was subject to disability and race discrimination by A.B., a non-Hispanic Cottage Training Supervisor, W.R., a non-Hispanic Head Cottage Training Supervisor, A.F., a non-Hispanic Habilitation Plan Coordinator and W.S.¹ Additionally, M.G. alleged that W.R. retaliated against her. Specifically, M.G. alleged that A.B. contradicted her concerning taking a client to the gym and raised her voice, A.B. made a comment about M.G. having family leave and never being at work, W.R. told A.B. about M.G.'s family leave, A.F., W.S., and A.B. ate pizza in an office while M.G. worked, A.B., A.F., and W.S. shunned M.G. by stopping conversations or leaving when she entered the room, M.G.'s car was vandalized, M.G. filed a complaint against W.R. for harassment 10 years ago, A.B. falsely alleged to the police that M.G. vandalized her truck, and W.R. refused to allow M.G. to decorate for Christmas. The investigator conducted six interviews and reviewed two related documents.

¹ W.S. is not listed in personnel records nor does the determination letter indicate a title for her.

However, the investigation was unable to substantiate any allegations that the respondents took any alleged actions against M.G. based on her race or disability nor was there any retaliation for a prior State Policy complaint.

On appeal, M.G. complains that the investigator was not the one originally assigned to the case. Further, she complains that she was not advised that the investigator was going to change. M.G. asserts that the investigation did not follow the proper procedures. She submits the Judiciary's EEO Complaint Procedures Manual (Manual) to support her claim. M.G. presents specific acts of discrimination that she alleges that she was subject to that were not addressed by the investigator. She highlights that the investigation indicates that there were six interviews and she believes that five of the six were the four respondents and herself. Therefore, since there was only one other interview, she claims that all potential witnesses were not interviewed. M.G. states that contrary to the investigator's statement, she had not previously filed a complaint. Instead, she was a witness for the appointing authority five times. M.G. finds it ironic that her testimony was acceptable when it was on behalf of the appointing authority, but now she is not believed. She explains how the investigator mischaracterized her allegations. Specifically, M.G. denies stating that A.B. raised her voice during an altercation because she is Hispanic (allegation 1). Concerning W.R.'s claim that he did not know the reason for her FMLA (allegation 2), she presents that she advised the investigator that W.R. stated during a meeting that he was going to closely monitor FMLA and review the reason for FMLA, which is kept in a database. M.G. denies that she claimed that she was discriminated against due to her ethnicity by the respondents who were eating pizza in the office (allegation 3). She highlights that the investigator's evidence for not substantiating her claim that the respondents snubbed her (allegation 4) was based on the respondents' denials. M.G. denies that she claimed that W.R. refused to permit her to decorate for Christmas due to her ethnicity (allegation 7); however, M.G. said during her interview with the investigator that Christmas decorations, including clients' personal ones, were discarded. She believes that the investigator failed to exhaust all lines of potential evidence as required by the Manual. Therefore, she questions how the investigation can be considered thorough and unbiased. M.G. requests that a new investigator be assigned, and her complaint be re-investigated.

In response, the EEO indicates that M.G. acknowledged that the alleged retaliation was not for involvement in a prior discrimination complaint or investigation. She presents that A.B. denied raising her voice due to M.G. being Hispanic and there was no other evidence to substantiate this allegation. The EEO states that A.B., as part of her duties, processed time sheets, so she could see who had taken FMLA. However, A.B. denied knowing the reason why M.G. took FMLA and W.R. denied telling A.B. the reason. The respondents denied that they ate pizza without M.G. due to her ethnicity and M.G. did not provide any evidence to indicate otherwise. Similarly, the respondents denied shunning M.G. Both M.G.

and A.B. had their cars vandalized. M.G.'s car was vandalized at her home in Easton, Pennsylvania. Local police investigated that matter, and no one was charged. M.G. attributed that damage to C.W., but the only evidence she provided was that C.W. dates A.B. A.B.'s car was scratched, and she attributed that to M.G., but did not have any evidence. Therefore, the investigation could not link any vandalism to employment discrimination. M.G. claimed that W.R.'s actions were in retaliation for a non-State Policy harassment complaint that she filed against him 10 years ago. W.R. denied that he refused M.G. the ability to decorate for Christmas and only discarded old, unserviceable decorations. W.R. denied making any remarks about Africans being bad employees. M.G. provided two individuals who she felt were the victims of discrimination by W.R. One individual was a black male and the other was a mixed-race male. The mixed-raced male indicated that he was not the victim of discrimination by W.R. The other alleged victim was on extended leave and the phone number on record was disconnected. Further, another witness, a Guatemalan native, who worked with all the respondents, denied that she was ever a victim of discrimination and stated that she never saw anyone discriminate against M.G. Additionally, the EEO explains that the reassignment of this matter to a different investigator was due to legitimate business reasons to minimize delay and complete the investigation in a timely manner. The EEO highlights that the Manual that M.G. presents is for the Judiciary and does not govern its investigations. Further, the investigation was thorough and unbiased; however, there was insufficient evidence to substantiate the allegations. The EEO indicates that it recently received a copy of M.G.'s complaint with the Division on Civil Rights which has additional allegations that were not presented to it. Therefore, it is currently investigating these additional allegations. The EEO argues that M.G. has failed to meet her burden of proof in this matter.

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 race and disability are 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, initially it is noted that on appeal, M.G. denied making some of the allegations that certain actions were taken due to her race or disability. Therefore, those actions are mere disagreements between co-workers and do not touch 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). Additionally, the EEO indicates that it has become aware of new allegations by M.G. that were not originally presented. Therefore, those allegations were not part of this investigation and the EEO is currently investigating the new allegations.

Further, the EEO was not bound by the procedures in the Judiciary's Manual. Moreover, the EEO was entitled to reassign the investigator based on its legitimate business needs.

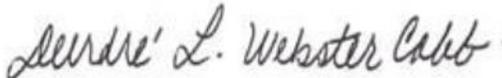
Concerning the allegations that were presented for this investigation, the investigator interviewed M.G., the respondents, a mixed-race male who M.G. identified as an alleged additional victim of W.R., and an additional witness, a Guatemalan native who worked with the respondents. The other alleged victim of discrimination by W.R. was on leave and his phone number on file was disconnected. The respondents all denied the allegations, the one reachable alleged additional victim indicated that he was not discriminated against by W.R., and the other witness denied ever being a discriminated by the respondents or having witnessed M.G. being subjected to any discrimination. Although M.G. states that not all potential witnesses were interviewed, she has not named any specific potential available witnesses that were not interviewed. The EEO also reviewed two documents and M.G. has not presented any documents that indicate that the respondents took any action based on her race or disability. Therefore, there is no evidence that the investigation was insufficient as M.G. claims. Additionally, as M.G. had not filed a prior State Policy complaint, the alleged retaliation by W.R. is not considered retaliation under the State Policy. In other words, M.G. has not produce one scintilla of evidence, such as a witness or document, that corroborates any alleged violation of the State Policy. 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 EEO's investigation was prompt, thorough and impartial and M.G. 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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