



STATE OF NEW JERSEY

In the Matter of T.C., Department of
Labor and Workforce Development

CSC Docket No. 2024-808

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

Discrimination Appeal

ISSUED: January 17, 2024 (SLK)

T.C., an Interviewer with the Department of Labor and Workforce Development, appeals the determination of a Chief of Staff, which substantiated that she violated the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy).

By way of background, during an April 14, 2023, meeting it was alleged that T.C., a Hispanic/Latino female, made the comment “The only minority boy in the office got the promotion.” Complainant 1, who was not the subject of the alleged comment, filed a complaint indicating that she was subjected to third party harassment based on race as she overheard an unwelcome offensive statement based on membership in a protected category which created a hostile work environment. Complainant 1 indicated that she was offended by the comments stating that traditionally the use of the term “boy” when referencing an African-American man is known to be racist and that also the use of the word “minority” means less than to her. Further, the investigation revealed one witness who confirmed that T.C. made the statement in question and also supported the conclusion that the comment was offensive and derogatory in nature. Moreover, a second witness confirmed that T.C. made the statement, but asserted that the comment was likely a joke. T.C. denied making the comment.

The investigation noted that although the comment did not disclose the subject’s race, the term “minority boy” referenced the subject’s race, which is a

protected category. Further, the determination found that the comment was demeaning because it insinuated that the employee did not earn the promotion and only was promoted because he is a minority male. Thus, the investigation determined that the comment created a hostile work environment based on race. Further, the term “boy” refers to the fact that the subject, who was the only male in the unit, was male. The investigation found that referring to an adult male as a boy is reasonably perceived as demeaning and offensive and that the comment created a hostile work environment based on sex/gender. However, the investigation did not find that the comment met the standard of discrimination based on color because the comment did not specifically indicate skin color and noted that membership in a minority group includes a variety of skin complexities. Therefore, the investigation found that T.C. made the alleged comment, which violated the State Policy based on race and sex/gender.

On appeal, T.C. states that J.F., an Interviewer who is a Hispanic/Latino African-American female, is the one who accused her of making the comment, is creating a hostile working environment. She claims that J.F. has placed all coworkers in a hostile working environment with her intolerant and unprofessional behavior. T.C. presents that J.F. has complained about T.C.’s supervisor, S.L., an Employment Supervisor 1 who is an African-American female, and had an argument with another coworker, V.D., an Interviewer who is a Caucasian female, in front of customers. T.C. asserts that the allegations against her are fiction as she denies making the alleged comment. She states that throughout her career, including working 23 years in the airline business with people from all over the world, she has never disparaged a coworker. She suggests that her coworkers, including V.D., G.C., an Employment and Training Specialist 1, who is a Hispanic/Latino female, or any manager and supervisor can vouch for her professionalism.

In reply, the appointing authority presents that Complainant 1 alleged third party harassment against T.C. based on color, race, and sex/gender. Further, Complainant 2, H.B., a Business Representative 2 Veterans’ Services who is an African-American male, who was the subject of the comment and the only minority male in the unit at the time, followed-up on the complaint filed by Complainant 1 and was added as a complainant. It provides that Complainant 1 provided two witnesses. Further, the investigation revealed the first witness confirmed that T.C. made a similar comment as alleged, “Our minority boy is not going to be with us.” Additionally, the second witness affirmed that she attended the meeting in question but was evasive during the interview and stated that she did not recall the comment being made, but added that if the comment was made, it was a joke. Moreover, that witness’ statements vacillated when she at first stated that she did not hear anyone make a derogatory comment and then later comments she may have heard the comment. That witness was then able to recall the statement verbatim and did so unprompted by the investigator. Although the first witness recalled the comment differently than the one reported, Complainant 1 and both witnesses recalled the use

of the words “minority boy” which formed the crux of the offensive language. During T.C.’s interview, she denied making the comment and she did not indicate that the subject promotional process was biased. She replied, “I did not say that” and “Oh my God, I am the only Latino here!” However, T.C. was unable to provide any evidence that she did not make the comment. Therefore, the investigation found that the witnesses corroborated that T.C. made the alleged or similar comment in violation of the State Policy. Regarding T.C.’s claim that J.F. has created a hostile working environment, she has not alleged that the claim was based on membership in a protected class. Therefore, if T.C. wants to make this claim, she would need to file it with the appointing authority’s Office of Labor Relations.

In reply, T.C. asserts that it is evident that J.F. falsely accused her of making a discriminatory comment towards H.B. during the April 2023 meeting when the then manager, S.L., informed the team about H.B.’s promotion. She states that S.L. made the announcement and then the meeting moved on with the agenda. Further, H.B. departed a few minutes after the announcement was made. T.C. states that meeting ended around 4:30 p.m. and then everybody, including herself left. She provides that she did not stop to talk to anyone, which is why she did not provide the investigator any witnesses. However, she now presents two other individuals as witnesses regarding what happened at the meeting. T.C. contends J.F. created these comments and others like H.B. believed her. She argues that the appointing authority’s reply clearly indicates that the statements from witnesses were not accurate and vacillated. T.C. indicates that she recently spoke with her manager to stop J.F. from her negative and hostile behavior which is impacting the whole team. She asserts that other employees are also complaining about J.F.

CONCLUSION

N.J.A.C. 4A:7-3.1(a) provides, in pertinent part, the State is committed to providing every State employee and prospective State employee with a work environment free from prohibited discrimination or harassment. Under this policy, forms of employment discrimination or harassment based upon race, color, and sex/gender age will not be tolerated.

N.J.A.C. 4A:7-3.1(a)2 provides that this policy also applies to third party harassment. Third party harassment is unwelcome behavior involving any of the protected categories referred to in (a) above that is not directed at an individual but exists in the workplace and interferes with an individual's ability to do his or her job. Third party harassment based upon any of the aforementioned protected categories is prohibited by this policy.

N.J.A.C. 4A:7-3.2(n)1 provides that the burden of proof shall be on the appellant.

In this matter, J.F. made the allegation that she was subjected to third party harassment based on the alleged comment T.C. made about H.B.'s promotion. Further, J.F. presented two witnesses. One of the two witnesses unequivocally confirmed that T.C. made the comment while the second witness vacillated at first, but ultimately also confirmed that T.C. made the comment. Further, while T.C. states in her response that J.F. made a false accusation which H.B. must have believed, the record indicates that the witnesses, which included H.B., indicated to the investigator that they directly heard the comments. Further, J.F., H.B. and the other witness all indicated that T.C. commented that "minority boy" was used in reference to H.B. receiving a promotion. Additionally, even if the witnesses which T.C. did not present to the investigator, which she now provides on appeal, would deny that they heard T.C. make the comment, this would not negate J.F.'s, H.B.'s and the other witness' corroboration that they heard the comment. Similarly, coworkers, managers, and supervisors who could potentially vouch for T.C.'s good character, would not negate J.F.'s, H.B.'s and the other witness' corroboration that they heard the comment. Therefore, the record indicates that T.C. more likely than not made the alleged comment. Moreover, the alleged comment is a violation of the State Policy as the term "minority boy" in the context of an African-American male receiving a promotion is a derogatory statement on the subject's race and gender/sex, which violates the State Policy. Further, the comment was also third party harassment as even though the comment was not directed to J.F., it was unwelcome behavior involving protected categories that interfered with J.F.'s ability to do her job. The Civil Service Commission (Commission) notes that there is no record regarding H.B.'s color and the Commission need not decide whether the comment also violated the State Policy based on color as it has been found to violate the State Policy for the aforementioned reasons. Regarding T.C.'s allegation that J.F. is creating a hostile environment, she has not alleged that J.F.'s alleged behavior is based on anyone's membership in a protected class. Therefore, if she wishes to pursue this complaint, she should contact the appointing authority's office of human resources.

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 17TH DAY OF JANUARY, 2024

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