



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

In the Matter of T.N., Department of  
Corrections

CSC Docket No. 2023-221

Discrimination Appeal

ISSUED: March 20, 2024 (EG)

T.N., a Correctional Police Lieutenant<sup>1</sup> with the Department of Corrections (DOC) appeals the determinations of the Director of the Equal Employment Division (EED), stating that the appellant failed to present sufficient evidence to support findings that she had been subjected to violations of the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy) or that she had been subjected to reprisal.

The appellant, a Caucasian female, filed a complaint with the EED on August 27, 2021, in which she alleged Administrator D.L.<sup>2</sup> discriminated against her due to color, gender, race and retaliated against her. Specifically, the appellant claimed that D.L. assaulted her by slapping her upper arm. Additionally, the appellant claims that D.L. had her investigated. Further, the appellant alleged that D.L. took action against her because she had brought to his attention a violation of the inmate drug policy upon testing positive for illicit substances and for questioning an incidence of prohibited undue familiarity between a staff member and an inmate.

In response to the appellant's complaints, the EED issued a determination letter dated July 7, 2022. It indicated that because the appellant had not indicated that D.L. retaliated against her based on her color, gender, race, or because she had

<sup>1</sup> At the time the discrimination complaint was filed, the appellant was serving as a Correctional Police Sergeant.

<sup>2</sup> D.L. retired from State service, effective July 31, 2022.

filed a prior EED complaint against him, her allegations did not implicate the State Policy. Therefore, no violation of the State Policy was found. However, it determined that the appellant's allegations did implicate the New Jersey Conscientious Employee Protection Act (CEPA). In this regard, the EED found that upon investigating the matter, that it could not substantiate a violation of CEPA by D.L. Specifically, it indicated that it interviewed individuals with relevant knowledge and reviewed pertinent documentation. The EED stated that D.L. was interviewed and denied the allegations. It found no evidence that D.L. had investigated the appellant. Further, the Department's Special Investigation Division (SID) investigated the allegation that D.L. assaulted the appellant but did not find sufficient evidence to uphold this claim. SID interviewed witnesses and reviewed video and could not corroborate the appellant's claim that she had been hit by D.L. Moreover, the investigation found that D.L. did not take any action against the appellant for bringing the two violations to his attention. D.L. merely questioned the appellant as to why she did not take action to isolate the inmate when he tested positive for an illicit substance as she was authorized to do. Furthermore, the investigation determined that there was no basis for the appellant's claim of undue familiarity, as there had been no prior relationship between staff and the inmate.

On appeal, the appellant argues that D.L. did launch an investigation into her actions regarding her not isolating the inmate who tested positive for illicit drugs. In this regard, she argues that she acted appropriately in reporting the incident up the chain of command. Additionally, the appellant contends that she was retaliated against for reporting the undue familiarity because her internet access was revoked, and she was ordered to stay away from the staff member she reported. Further, the appellant asserts that SID did not perform a proper investigation into her claims of assault because it did not review the proper video evidence of the assault or of her reaction afterwards. The appellant also raises concerns about a Workers' Compensation claim and provides numerous details and arguments concerning a five working day suspension she received for having violated the State Policy. Moreover, the appellant gives details into how she felt and reacted to seeing D.L. after the assault and before his retirement.

In response, the EED reiterates its prior determination that the appellant had failed to provide a sufficient nexus between the alleged conduct and her membership in a protected category under the State Policy. Thus, it argues that her complaint did not warrant an investigation under the State Policy. However, the EED did investigate her claims under CEPA. In this regard, the EED determined that the appellant did not meet her burden in showing that she was retaliated against under CEPA. It asserts that the appellant's reporting of an inmate not being moved and of possible undue familiarity between an inmate and civilian teacher were neither a report of a violation of law nor a clear expression of public policy. Therefore, it asserts that the appellant's actions did not rise to the level of protected activity under CEPA. Further, the EED contends that the appellant's allegations of retaliatory actions

included an internal review, loss of certain internet privileges, and being ordered to stay away from an employee. The EED argues that even if these allegations are true, they do not rise to the level of retaliation under CEPA.

## CONCLUSION

*N.J.A.C. 4A:7-3.1(a)* states, in pertinent part, that the State of New Jersey is committed to providing every State employee and prospective State employee with a work environment free from prohibited discrimination or harassment. Under this policy, employment discrimination or harassment based upon certain specifically named protected categories are prohibited.

*N.J.A.C. 4A:7-3.1(h)* provides, in pertinent part, that retaliation against any employee who alleges that she or he was the victim of discrimination/harassment, provides information in the course of an investigation into claims of discrimination/harassment in the workplace, or opposed a discriminatory practice, is prohibited by this policy.

*N.J.A.C. 4A:7-3.1(i)* provides that the burden is on the complainant to articulate a sufficient nexus between the alleged conduct to a protected category pursuant to the State Policy.

*N.J.A.C. 4A:7.3-2(i)* provides that at the EEO/AA Officer's discretion, a prompt, thorough, and impartial investigation into the alleged harassment or discrimination will take place.

*N.J.S.A. 11A:2-24* and *N.J.A.C. 4A:2-5.1(a)* provides that an appointing authority shall not take or threaten to take any reprisal action against an employee in the career, senior executive or unclassified service in retaliation for an employee's lawful disclosure of information on the violation of any law or rule, governmental mismanagement or abuse of authority.

*N.J.A.C. 4A:2-5.2(a)* provides that an employee may appeal a reprisal or political coercion action to the Commission within 20 days of the action or the date on which the employee should reasonably have known of its occurrence.

*N.J.A.C. 4A:2-1.4(c)* provides that the burden of proof shall be on the appellant.

Initially, it is noted that the appellant had filed a separate appeal with the Civil Service Commission (Commission) concerning a finding that she violated the State Policy. In a letter dated July 25, 2022, this agency informed the appellant that pursuant to *N.J.A.C. 4A:7.3-2(n)*, because a five working day suspension was recommended, she would have to raise all arguments regarding that matter in her disciplinary proceedings and dismissed her appeal. Similarly, the Commission will

not now review any evidence or arguments concerning the finding that she violated the State Policy or the five working day suspension, as those should be addressed as part of the disciplinary process.

In addition, the appellant has raised issues regarding delays and approval of a Workers' Compensation benefits. The Commission does not have jurisdiction to review such issues. These matters should be addressed to the Division of Labor and Workforce Development, Division of Workers' Compensation.

In the instant matter, the EED determined that a discrimination investigation was not warranted because the appellant had failed to provide a sufficient nexus between the alleged conduct and her membership in a protected category under the State Policy. *See N.J.A.C. 4A:7-3.1(a)*. *See also, N.J.A.C. 4A:7-3.2(i)*. The EED does not have the authority to investigate complaints that are not based on one's membership in a protected class as defined by the State Policy. On appeal, the appellant has also not demonstrated such a nexus. Therefore, the EED correctly determined that it could not substantiate the appellant's allegations under the State Policy. However, the Commission accepted the appellant's appeal as an allegation of reprisal. *See N.J.A.C. 4A:2-5.1* and *See N.J.A.C. 4A:2-5.2*. In general, to present a *prima facie* case of reprisal, an appellant must satisfy the "Wright Line" test articulated by the New Jersey Supreme Court in *Matter of Bridgewater Tp.*, 95 N.J. 235 (1984), which states that an appellant has the burden of showing that he was engaged in a protected activity, that the employer knew of the activity and was hostile to it and that such activity or disclosure of information was a substantial motivating factor in the appointing authority's action against the employee. Only after such a showing by an appellant does the appointing authority bear the burden of showing that the action taken was not retaliatory. *See also, Wright Line*, 251 NLRB 1083 (1980); *Mount Healthy City School District Bd. of Educ. v. Doyle*, 429 U.S. 279 (1977); *In the Matter of Jadwiga Warwas* (MSB, decided February 27, 2008).

In this matter, the EED did investigate the appellant's CEPA claim that D.L. engaged in retaliatory conduct against her for reporting a violation of the inmate drug policy upon testing positive for illicit substances and for questioning an incidence of prohibited undue familiarity between a staff member and an inmate. However, the EED was unable to substantiate those claims. It found that D.L. merely questioned the appellant as to why she did not take action to isolate the inmate when he tested positive for an illicit substance as she was authorized to do. Additionally, it determined that there was no basis for the appellant's claim of undue familiarity, as there had been no prior relationship between staff and the inmate. Moreover, an SID investigation could not substantiate the appellant's claim that D.L. struck her in the upper arm. Furthermore, the EED has indicated that the appellant's reporting of an inmate not being moved and of possible undue familiarity between an inmate and civilian teacher were neither a report of a violation of law nor a clear expression of public policy, and therefore, did not rise to the level of protected activity under CEPA.

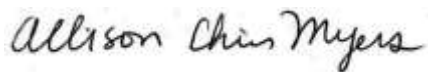
Furthermore, the EED stated that the appellant's allegations of retaliatory actions included an internal review, loss of certain internet privileges, and being ordered to stay away from an employee. It argued that even if these allegations are true, they did not rise to the level of retaliation under CEPA. The Commission agrees, that even under the more expansive definition of reprisal in *N.J.S.A. 11A:2-24* and *N.J.A.C. 4A:2-5.1(a)*, her actions were not protected activity. Moreover, even if they were, the retaliatory actions are all actions that would otherwise fall under an appointing authority's discretionary authority. Therefore, as the appellant has failed to provide any evidence other than her statements, mere speculation, without corroboration, is insufficient for finding that she presented a *prima facie* case of reprisal.

### 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 20<sup>TH</sup> DAY OF MARCH, 2024




---

Allison Chris Myers  
Chairperson  
Civil Service Commission

Inquiries  
and  
Correspondence

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

c: T.N.  
Chiqueena A. Lee, Esq.  
Division of Equal Employment Opportunity/Affirmative Action  
Records Center