SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2039-21

OTTAMISE EZEKIEL,

Complainant-Appellant,

v.

LAWRENCEVILLE ORAL SURGERY, P.C., and EARL CUBBAGE, DDS, individually,

Respondents-Respondents.

Submitted May 30, 2023 – Decided June 22, 2023

Before Judges Haas and Mitterhoff.

On appeal from the New Jersey Division on Civil Rights, Department of Law and Public Safety, Docket No. EL07SB-65266.

Koller Law, LLC, attorney for appellant (David M. Koller, on the brief).

Szaferman, Lakind, Blumstein & Blader, PC, attorneys for respondents Lawrenceville Oral Surgery, PC and Earl Cubbage (Daniel S. Sweetser, on the brief).

Matthew J. Platkin, Attorney General, attorney for respondent New Jersey Division on Civil Rights (Donna Arons, Assistant Attorney General, of counsel; Geoffrey R. Gersten, Deputy Attorney General, on the brief).

PER CURIAM

Appellant Ottamise Ezekiel appeals from the final determination of the Director of the Division on Civil Rights ("DCR") finding no probable cause to substantiate appellant's complaint that her employer, respondents Lawrenceville Oral Surgery, P.C. ("Lawrenceville") and Earl Cubbage, D.D.S., had discriminated against her on the basis of her sex. We affirm.

We discern the following facts from the record. On August 25, 2015, appellant filed a complaint with DCR, alleging that respondents subjected her to sexual harassment and constructively discharged her in violation of the New Jersey Law Against Discrimination ("LAD"), N.J.S.A. 10:5-1 to -49. In her complaint, appellant alleged that Cubbage, a Doctor of Dental Surgery at Lawrenceville, made inappropriate sexual comments about her and other employees, told inappropriate sexual jokes, discussed pictures of naked women in adult magazines, and made inappropriate comments about female patients. Appellant also alleged that Cubbage aided and abetted Lawrenceville in creating a sexually hostile work environment and constructively discharging her.

Following receipt of appellant's complaint, DCR conducted an investigation. Appellant, who is female, was hired as an oral surgery assistant with respondents' practice in November 2013, and was responsible for sedating patients, administering local anesthesia, and sterilizing, and cleaning the facility. In her interview with DCR, appellant stated that Cubbage began sexually harassing her in 2014 and claimed that the harassment began with Cubbage making general sexual comments, showing her sexually explicit pictures on his computer, and making lewd comments about the pictures. After about two weeks, Cubbage's comments became more specific and appellant claims that he began massaging her and brushing up against her. Specifically, appellant told the DCR investigator that Cubbage made references to a "camel" when appellant sat with her legs open and said, "I see a crack," when she bent over. Appellant further alleged that Cubbage told her that she had "nice titties, nice rack" in front of a co-worker, to which the co-worker responded that if appellant showed Cubbage her breasts, she would probably get a raise. Appellant indicated that the inappropriate comments were constant, but the harassment generally occurred in the afternoons after Cubbage's wife left the office.

Appellant stated that she reported Cubbage's conduct numerous times to office manager and asked that she ensure that Cubbage stop touching her. Although appellant did not provide DCR with any details regarding either the timing of her complaints or the behavior she identified, appellant claimed that everyone in the office knew about the sexual harassment.

On June 27, 2014, appellant left work intending to quit because of a fear she developed that Cubbage would "grab her or rape her," although appellant did not identify any recent act or action that precipitated this fear, nor did she offer any evidence that she reported her safety concerns to the manager or Cubbage's wife. In her interview with DCR, appellant stated that she told the manager "I'm not coming back," and that the manager responded, "Don't quit, let them fire you."

On June 28, 2014, the manager telephoned appellant to inform her that she was being discharged for walking off the job. When interviewed by DCR, the manager indicated that she received a call from Cubbage on June 27th to discuss appellant's termination, indicating that appellant was not getting along with other employees.

Appellant provided the names of witnesses to the DCR investigator, that she claimed personally witnessed the harassing conduct and would corroborate

her allegations. DCR subsequently contacted those individuals, as well as other current and former employees who worked during the same time period as appellant, the manager, and Cubbage's wife. All of the witnesses denied seeing Cubbage make inappropriate sexual comments or jokes or otherwise inappropriately touch any employee or patient. One current employee, who has been with Cubbage for over eighteen years, indicated that they would not have stayed had they seen or heard of any type of harassment. DCR further interviewed the employee that appellant indicated witnessed Cubbage's June 14 comment of "nice titties, nice rack" and who allegedly suggested that appellant would receive a raise if she showed her breasts to Cubbage. This employee indicated that they had worked with Lawrenceville for eight years but had recently left to pursue another job. That witness said that they had worked closely with Cubbage and never heard him make any sexual comments or sexually harass anyone, including appellant. In addition, the witness told the investigator that appellant "did not like taking orders from [Cubbage's wife] and was not completing her job duties effectively."

In her interview with DCR, Cubbage confirmed that appellant was terminated because she was insubordinate and did not complete her job duties. Further, the manager denied receiving any complaints from appellant and went

on to say that she had never witnessed or received a complaint about Cubbage "making inappropriate sexual comments or otherwise sexually harassing the employees or patients" in her eighteen years with Lawrenceville.

At the conclusion of the investigation, on October 23, 2019, DCR set forth its findings of the investigation, issuing a Finding of No Probable Cause ("NPC"), which it sent to the parties in November 2019. Following concerns raised by appellant that she was not properly served with the NPC, DCR reopened the investigation on August 5, 2021 and gave the parties the opportunity to submit additional evidence no later than August 16, 2021.

On August 16, 2021, respondents filed a letter brief supporting the Finding of NPC, which was copied to all parties. On September 13, 2021, appellant sent a letter indicating that she had no additional information to submit.

On January 22, 2022, DCR issued a second Finding of NPC, reaffirming its October 23, 2019 findings that probable cause did not exist to credit appellant's allegations. DCR confirmed that, in addition to interviewing appellant, the manager, and Cubbage's wife, they also interviewed the witnesses identified by appellant, none of whom corroborated appellant's allegations, heard inappropriate comments, or witnessed inappropriate behavior. In fact, some of these witnesses affirmatively contradicted certain allegations that

appellant indicated that they had witnessed. Having reviewed the entirety of the record, DCR "did not find sufficient evidence to support a reasonable suspicion that [appellant] was subjected to a hostile work environment, that she was sexually harassed, or that she was constructively discharged."

On appeal, appellant disputes the investigative findings and asserts that the Director should have concluded that there was probable cause to support her allegations. We disagree.

Our review of an administrative agency decision is limited. Clowes v. Terminix Int'l, Inc., 109 N.J. 575, 587 (1988). "The court must survey the record to determine whether there is sufficient credible competent evidence in the record to support the agency head's conclusions." Ibid. "'[A]n appellate court will reverse the decision of the administrative agency only if it is arbitrary, capricious[,] or unreasonable or it is not supported by substantial credible evidence in the record as a whole.'" In re Taylor, 158 N.J. 644, 657 (1999) (quoting Henry v. Rahway State Prison, 81 N.J. 571, 581 (l980) (modification in original)).

We have carefully reviewed appellant's arguments in light of the record and applicable law and find them to be without sufficient merit to warrant extended discussion in a written opinion. Rule 2:11-3(e)(1)(E). Appellant's

arguments essentially seek to have us re-evaluate the evidence and reach a conclusion contrary to that of the Director. To that end, appellant has emphasized what she perceives to be inconsistencies and errors in the investigator's findings. However, it is not our function to canvas the facts in order to decide what conclusion we might have reached if we were deciding the matter in the first instance. Clowes, 109 N.J. at 588.

We find that the report and recommendation adopted by the Director were neither arbitrary, nor unreasonable. DCR fully reviewed and considered the complete record in this case, including appellant's interview testimony, interviews with seven current and former employees of Lawrenceville, including some identified by appellant as witnessing the alleged harassing conduct. Based on the entirety of the record, including the lack of corroboration of any of appellant's claims, the Director of the DCR made a finding of NPC. We are satisfied the record provides "sufficient credible evidence" to support the Director's conclusions. Close v. Kordulak Bros., 44 N.J. 589, 599 (1965).

Affirmed.