

New Jersey Division on Civil Rights  
Office of the Attorney General



# Director's Orders Compendium

# 2006

# CIVIL RIGHTS

**JON S. CORZINE**  
Governor

**STUART RABNER**  
Attorney General

**J. FRANK VESPA-PAPALEO**  
Director, NJ Division on Civil Rights

**KATHLEEN CONNORS RYAN v. FREEHOLD REGIONAL HIGH SCHOOL DISTRICT**

Complainant Kathleen Connors Ryan alleged that the Freehold Regional High School District (Respondent) refused to hire her because of her gender and in reprisal for asserting her rights under the New Jersey Law Against Discrimination (LAD) and the New Jersey Family Leave Act (FLA). Following an administrative hearing, the administrative law judge (ALJ) concluded that Respondent was motivated by gender discrimination and reprisal for Complainant's prior FLA claim in rejecting Complainant for hire. The ALJ Awarded Complainant backpay, and compensation for pain and humiliation. The ALJ also ordered Respondent to hire Complainant for the next available similarly situated position, and to continue backpay until hire.

By order dated November 10, 2005, the Director adopted the ALJ's conclusion that Respondent refused to hire Complainant in reprisal for her prior FLA claim, but found insufficient evidence in the record to support the ALJ's conclusion that Respondent was also motivated by gender discrimination. The Director imposed a statutory penalty and awarded Complainant pain and humiliation damages, but reduced the ALJ's recommended award. The Director then requested supplemental information from the parties to calculate the backpay award and counsel fees. After receiving stipulations from the parties regarding the amount of backpay and counsel fees, the Director issued a supplemental order awarding Complainant \$25,000 in pain and humiliation damages, \$305,025.28 in backpay, and awarding \$25,717.5 in counsel fees.

**DCR Docket No.:**  
EN12WE-46074-E**OAL Docket No.:**  
CRT 6101-03**D.O. Issued:**  
January 11, 2006**VINCENT PALMIERI v. FEDEX EXPRESS, INC.**

Complainant Vincent Palmieri filed a verified complaint with the New Jersey Division on Civil Rights (Division) alleging that FedEx Express, Inc. (Respondent), terminated his employment in reprisal for his prior verbal and written complaints alleging that Respondent discriminated against him based on his sex. After an administrative hearing, the Honorable Bruce Gorman, Administrative Law Judge (ALJ), issued an initial decision dismissing the complaint. The ALJ concluded that Complainant failed to present sufficient evidence of a causal connection between Complainant's internal sex discrimination complaint and Respondent's decision to issue its third warning letter to him and terminate his employment.

After considering the parties' exceptions and replies, the Director adopted the ALJ's recommended dismissal of the complaint, but modified the analysis. The Director noted that Complainant argued that Respondent subjected him to reprisal for two separate actions: an internal written complaint alleging sex discrimination, and an earlier verbal claim of sex discrimination. The Director concluded that Complainant presented sufficient evidence to meet a threshold showing for a prima facie case of reprisal for both the verbal and written complaints, but concluded that Complainant failed to show that Respondent's non-discriminatory reasons for taking disciplinary action against him were untrue, or were pretext for unlawful reprisal.

**DCR Docket No.:**  
EA19JB-49392-E**OAL Docket No.:**  
CRT 2821-04**D.O. Issued:**  
May 11, 2006

**TAMARA HIDALGO v. CAMDEN CITY POLICE DEPARTMENT**

Complainant Tamara Hidalgo filed a verified complaint with the New Jersey Division on Civil Rights alleging that during her training as a police officer recruit, the Camden City Police Department (Respondent) differentially treated and harassed her, and terminated her employment after she sustained a shoulder injury, all based on perceived disability/obesity. Complainant also filed complaints with the Police Training Commission and the Merit System Board relating to the same incidents, and the Honorable John R. Futey, Administrative Law Judge (ALJ) concluded that the Police Training Commission held the predominant interest in these matters. After an administrative hearing, the ALJ dismissed the complaint, and the Police Training Commission adopted the recommended dismissal. The Merit System Board then

issued a final decision regarding Complainant's separation from employment, concluding that disciplinary removal from employment was unduly harsh, and should be modified to a resignation in good standing.

The Director adopted the ALJ's recommended dismissal of Complainant's disability discrimination claims, concluding that Complainant was not treated less favorably than others because of perceived disability/obesity, and that Respondent reasonably arrived at the conclusion that Complainant's shoulder injury precluded job performance.

**DCR Docket No.:**  
ED08HM-44575**OAL Docket No.:**  
CRT 02913-01**D.O. Issued:**  
June 5, 2006**EDWARD M. MESA v. HUDSON COUNTY SHERIFF'S DEPARTMENT**

Complainant, a retired Hudson County Sheriff's Officer, filed a verified complaint with the Division alleging that Respondent unlawfully subjected him to reprisal in violation of the Law Against Discrimination. Respondent filed an answer denying any violation of the LAD. Following an investigation, the Director of the Division on Civil Rights issued a finding of probable cause crediting Complainant's allegation that he was treated differently as a result of his filing a prior discrimination complaint in 1973; specifically, that he was not issued a replacement retired officer's identification card after his original card had been either lost or stolen. Following an administrative hearing, the administrative law judge (ALJ) issued an initial decision dismissing the complaint. The ALJ concluded that the testimony provided at the hearings did not indicate any intention to deprive Complainant of any right or otherwise take reprisals against him, and that other similarly situated retirees had not received more favorable treatment.

The Director adopted the ALJ's dismissal of the complaint, with some modifications. The Director concluded that the ALJ erred in finding that the Sheriff was unaware of Complainant's prior discrimination complaint. Notwithstanding, the Director also found that Complainant failed to establish a prima facie case of unlawful reprisal, as the adverse action was not sufficiently severe or pervasive enough to alter Complainant's employment in a material manner, and that there was insufficient causal connection between the protected activity and the adverse action due to a lack of temporal proximity. Finally, the Director concluded that even if Complainant had established a prima facie case, Respondent articulated legitimate, non-discriminatory reasons for the adverse action that Complainant was unable to establish as pretextual. For these reasons, the Director adopted the ALJ's initial decision.

**DCR Docket No.:**  
EJ06JK-49036-E**OAL Docket No.:**  
CRT 11689-04**D.O. Issued:**  
July 13, 2006

**LOTTIE WILLIAMS v. STATE SHUTTLE/TOP TEN LEASING, INC.  
LOTTIE WILLIAMS v. STATE SHUTTLE/TOP TEN LEASING, INC., ATTORNEY  
FEE ORDER**

This case involved a complainant who claimed he was denied reinstatement to his position as a bus driver because he had contracted Acquired Immune Deficiency Syndrome (AIDS). Mr. Williams was hired by the respondent to drive buses and limousines, but after three months of satisfactory performance, he became ill and took a leave of absence for what was first diagnosed as hepatitis or mononucleosis. One year later, Mr. Williams produced a doctor's note that advised the respondent that he could return to his job driving buses on a part time basis, four to five times a week. Nevertheless, he was never called back. Mr. Williams died some six months later, and his wife Lottie substituted as the complainant. The Administrative Law Judge (ALJ) who heard the case concluded that, although the complainant demonstrated that Mr. Williams had contracted AIDS, and that therefore he was protected by the LAD, the complainant did not prove Mr. Williams was denied employment because of his disability. Instead, the ALJ credited the respondent's explanation that Mr. Williams was not rehired because he failed to follow the respondent's procedure for getting bus driver assignments by calling in to the office to inquire about available jobs. Therefore, the ALJ dismissed the complaint.

The Director reversed the ALJ's dismissal and concluded that the respondent failed to recall Mr. Williams because of his serious illness. The Director first found that Mr. Williams had a covered disability that was known to the respondent. Even though there was some dispute about whether the respondent specifically knew Mr. Williams had AIDS (and there was substantial evidence that it did), the Director concluded that the respondent certainly knew that Mr. Williams had a serious illness covered by the LAD. Furthermore, the Director concluded that Mr. Williams' failure to call in to the respondent's office was not the true reason he was not reinstated. The record established that Mr. Williams had presented his medical clearance to return to work, and had twice visited the respondent's facility to ask why he had not received bus driving assignments. He was never given an assignment or told why he had not been called back. Moreover, the evidence was clear that there was a shortage of bus drivers and the respondent was always looking for experienced drivers. Based on the entire record, the Director concluded that Mr. Williams was denied reinstatement because of his disability in violation of the LAD, and he awarded the complainant over \$12,000 in back pay and emotional distress. The entire Director's order can be read on the Division's website.

**DCR Docket No.:**  
EV09HB-43181-E**OAL Docket No.:**  
CRT 06188-04**D.O. Issued:**  
August 17, 2006