

STATE OF NEW JERSEY
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION ON CIVIL RIGHTS
DCR DOCKET NO. EL11HB-65848

John Dunn,)
)
Complainant,) Administrative Action
)
v.) **FINDING OF PROBABLE CAUSE**
)
Trane U.S. Inc.,)
)
Respondent.)

On March 21, 2016, Trenton resident John Dunn (Complainant) filed a verified complaint with the New Jersey Division on Civil Rights (DCR) alleging that Trane U.S. Inc. (Respondent) discriminated against him based on disability, in violation of the New Jersey Law Against Discrimination (LAD), N.J.S.A. 10:5-1 to -49. The DCR investigation found as follows.

Findings of the Investigation

Respondent, which describes itself as a business of Ingersoll Rand, operates a heating, ventilation, and air conditioning manufacturing facility located at 2231 East State Street, Trenton.

On or about October 16, 2015, it hired Complainant to work at the Trenton facility as an Assembly Operator Trainee for \$12/hr., with an understanding that after a year, he would receive a \$1/hr. increase. Complainant worked approximately 40 hours a week. Respondent produced what it purported to be the relevant written job description, which noted in part: “Essential tasks and physical function - Assemblers safely perform highly repetitive work to strict quality standards.” See Job Description, Assembler, Job Code 5000, 7000.¹

Complainant alleged that on Friday, February 26, 2016, he became short of breath while working on the assembly line. Complainant alleged that when Production Leader (PL) Supervisor Michael Perez angrily asked him why he was not keeping up with his work, he

¹ The job description states that typical tasks include using power pneumatic and hand tools; loading and unloading onto conveyor and carts; hanging and unhangng parts; brazing and soldering; operating machines and presses; operating fork trucks and hoists; and performing quality checks and tests. See Job Description, Assembler, Job Code 5000, 7000.

replied that he was out of breath because of his asthma. He alleged that Perez and other supervisors were aware of his medical condition. He said that he told Perez that if he had his asthma inhaler, he would be fine and asked to be allowed to go home—which is less than three miles from the plant—to retrieve it. He stated that Perez became more agitated by the request.

He said that Perez ordered him to stop working and to get his belongings (i.e., a backpack and lunch), and escorted him down a hallway to double doors that lead to the employees' entrance/exit. Complainant said that Perez told him to wait there and returned to the assembly floor. Complainant stated that he waited for over thirty minutes but Perez never returned. He was still having difficulty breathing. He said that he began asking other staff members what he should do. Complainant said that a Floor Safety Supervisor told him to leave because it appeared that Perez was not coming back. Complainant said that he spoke to the guards who told him that he should just come back on Monday.

Complainant reported to work on Monday, February 29, 2016, with his asthma inhaler, only to discover that his access badge had been deactivated. He stated that a security guard called a human resources (HR) employee, Jason Perelman, for an explanation. He said that Perelman did not answer the phone, so the guard told Complainant to go home and try to reach Perelman later. Complainant said that between February 29 and March 21, 2016, he called Perelman multiple times and left messages but never received a call back. Complainant concluded that he had been fired based on his disability, in violation of the LAD.

Respondent denied the allegations of disability discrimination in their entirety. It claimed that it fired Complainant because he walked off the job without informing Perez. It denied having any knowledge that Complainant had asthma. It argued, "Complainant never informed the Company of any alleged disability and his alleged disability played no part in the decision to end his employment." See Response to Document and Information Requests, Jun. 14, 2016, p. 3. Elsewhere it argued, "The Company was not aware at any time of his discharge that Complainant had a disability." *Id.* at 2.

Perez told DCR that on February 26, 2016, he noticed that Complainant was not keeping up on the assembly line. Perez stated that Complainant never mentioned that he was working slowly because of his asthma. Perez said that he told Complainant to stop working, go to the front of the facility, and wait for him. He said that he planned to give Complainant a "pep talk" to help him speed up his work. Perez claimed that when he went to the front of the building ten minutes later, Complainant was not there. He said that he looked for Complainant in the cafeteria and other areas, and learned from the guard that Complainant left the building. Perez stated that because Complainant left without permission, he filled out paperwork initiating Complainant's discharge. Perez stated that at no point that week did Complainant tell Perez that he was having difficulty working because of his asthma. In fact, Perez claimed that he did not even know that Complainant had asthma.

HR Generalist Perelman told DCR that on February 26, 2016, Perez asked that Complainant be discharged for leaving work without permission. Perelman said that he immediately deactivated Complainant's access card. He stated that if Complainant had tried to re-enter the building with a deactivated card, the guards would have notified Perelman, which never occurred. He said that he terminated Complainant's employment effective March 2, 2016. Respondent claimed that it notified Complainant of his termination via certified mail dated March 2, 2016.² Perelman stated that Complainant never tried to contact him to discuss his employment. He stated that he had no prior knowledge that Complainant had asthma.

L.W., an employee who worked on the assembly line, said that she was present on February 26, 2016, when Perez became angry because Complainant was not completing his work fast enough. L.W. stated that Complainant was noticeably out of breath during the shift, including when Perez approached him. L.W. stated that Perez instructed Complainant to go home. L.W. stated that Perez and the nurses who work at the Trenton facility knew about Complainant's asthma, and that he frequently used his asthma inhaler at work. She said that Perez once accused Complainant of using an electronic cigarette inside the plant and was prepared to fire him but Complainant showed Perez that the item he believed to be an electronic cigarette was actually an asthma inhaler.

Kris Wildmann, who worked as a nurse at the facility, told DCR that she had notes in Complainant's medical record showing that Complainant requested to leave work early on February 23, 2016, because he forgot his asthma inhaler and was having an asthma attack. She denied having any other records regarding his asthma.

S.S. told DCR that he was working on the assembly line with Complainant on February 26, 2016. He said that Perez walked Complainant into a back room where the latter retrieved his backpack, and then escorted Complainant to the front of the building and returned without Complainant. S.S. stated that Respondent always has a supervisor escort an employee out of the building when the employee is being fired. S.S. said that supervisors otherwise do not escort employees to the exit.

During the course of the investigation, Respondent acknowledged that its nurse's office had a record of Complainant being asthmatic, which was recorded in his pre-employment physical. See Email from Michael J. Thompson, Sr., Corporate Counsel, Ingersoll Rand, to DCR, Aug. 8, 2016 ("The pre-employment physical indicates, under the "Medications" section, that [Complainant] has an asthma inhaler."). In addition, Respondent noted that Complainant's medical file contained a medical department pass dated February 23, 2016, "which indicates that [Complainant] asked to leave work . . . [and] has the word 'asthma' written on it." Ibid.

² Respondent produced a copy of the letter, which was sent return receipt requested. See Letter from Trane HR Generalist Amanda Bialon to Complainant, Mar. 2, 2016. Respondent did not produce a signed receipt indicating that Complainant received the letter.

Respondent told DCR that employees are not allowed to leave their work stations without permission from their Group Leader or their Production Leader. It also stated that employees need permission from their Group Leader or Production Leader to go to the nurse's station or leave the plant during work hours. Respondent provided records showing that Complainant left early from work on February 23, 2016. It noted that there were no records explaining why he did so but stated that he was not punished for doing so.

Analysis

At the conclusion of an investigation, the DCR Director is required to determine whether “probable cause exists to credit the allegations of the verified complaint.” N.J.A.C. 13:4-10.2. “Probable cause” for purposes of this analysis means a “reasonable ground of suspicion supported by facts and circumstances strong enough in themselves to warrant a cautious person in the belief that the [LAD] has been violated.” Ibid.

A finding of probable cause is not an adjudication on the merits. It is merely an initial “culling-out process” whereby the Director makes a threshold determination of “whether the matter should be brought to a halt or proceed to the next step on the road to an adjudication on the merits.” Frank v. Ivy Club, 228 N.J. Super. 40, 56 (App. Div. 1988), rev'd on other grounds, 120 N.J. 73 (1990), cert. den., 498 U.S. 1073. Thus, the “quantum of evidence required to establish probable cause is less than that required by a complainant in order to prevail on the merits.” Ibid.

The LAD makes it unlawful to fire or otherwise discriminate against an employee in the terms, conditions, or privileges of employment based on his or her actual or perceived disability. N.J.S.A. 10:5-12(a). In addition, an employer must make a “reasonable accommodation to the limitations of any employee or applicant who is a person with a disability, unless the employer can demonstrate that the accommodation would impose an undue hardship on the operation of its business.” N.J.A.C. 13:13-2.5(b); Tynan v. Vicinage 13 of Superior Court, 351 N.J. Super. 385, 400 (App. Div. 2002).

The LAD defines a disability as a “physical disability, infirmity, malformation or disfigurement which is caused by bodily injury, birth defect, or illness . . . or any mental, psychological or developmental disability, including autism spectrum disorders, resulting from anatomical, physiological, or neurological conditions which prevents the normal exercise of any bodily or mental functions or is demonstrable, medically or psychologically, by accepted clinical or laboratory diagnostic techniques.” N.J.S.A. 10:5-5.

Our Supreme Court has declared that the above definition is “very broad in its scope.” See Clowes v. Terminix Int'l, 109 N.J. 575, 593 (1988). The Court found that the term “disability” is “deserving of a liberal construction” because the LAD is “remedial social legislation.” Id. at 590. Thus, for example, although a federal statute—the Americans with Disabilities Act—defines “disability” as an impairment that “substantially limits one or more of

her major life activities,” the LAD has no such requirement. See Gimello v. Agency Rent-A-Car Systems, 250 N.J. Super. 338, 358 (App. Div. 1991); see e.g., Andersen v. Exxon Co., 89 N.J. 483, 495 (1982) (“We need not limit this remedial legislation to the halt, the maimed or the blind. . . . There is simply no basis for limiting its coverage to so-called severe disabilities.”).

For purposes of this threshold disposition, the Director is satisfied that Complainant was an employee with a disability who was fired by Respondent. Complainant alleges that because of his condition, he was not working as fast as Perez desired, and that Perez became angry when he asked to be allowed to go home and retrieve his inhaler. It appears that Complainant made the same request three days earlier.

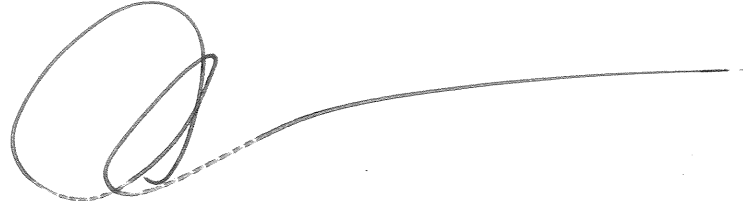
Respondent argues that the personnel decision was completely unrelated to Complainant’s disability. It claims that it fired Complainant for leaving the worksite without authorization. Perez acknowledges that he told Complainant to wait for him at the employee entrance/exit but said that he only did so to give him a “pep talk.” He maintained that he was unaware of Complainant’s condition.

The Director finds that the weight of the evidence favors Complainant’s version of events. One witness stated that Perez knew that Complainant suffered from asthma and used an asthma inhaler prior to the February 26, 2016 incident. That witness stated that Complainant was noticeably out of breath when Perez angrily approached Complainant on February 26, 2016, and told him stop working. Moreover, it appears that Complainant asked to be allowed to go home early because of an asthma attack three days before the February 26, 2016 incident.

Another witness stated that Perez escorted Complainant to the employee entrance/exit on February 26, 2016, and noted that Respondent always has a supervisor escort an employee out of the building when the employee is being fired but does not do so when an employee leaves work for any other reason. Moreover, the witness corroborated Complainant’s claim that Perez instructed him to retrieve his personal belongings. If Perez simply wanted to give Complainant a “pep talk” rather than discharge him, it seems unlikely that he would make Complainant gather his personal items and escort him to the employee exit.

Respondent’s assertion that it had no knowledge of Complainant’s asthma was contradicted by documentation in Respondent’s possession and its own medical staff. It appears that Complainant made medical and HR personnel aware of his disability on multiple occasions, including notations on his pre-employment physical examination that confirm that he had asthma and used an inhaler. And Respondent’s responses to DCR’s inquiries suggests that either Complainant’s Production Leader or his Group Leader should have known that Complainant had an asthma attack on February 23, 2016, because someone had to authorize Complainant to go to the nurse’s station and also to leave early that day.

Based on the above, the Director is satisfied that there is “reasonable ground of suspicion . . . to warrant a cautious person” to believe that Respondent decided to fire Complainant after he complained that his disability was impacting his ability to perform his job functions. N.J.A.C. 13:4-10.2; N.J.S.A. 10:5-12(a). The Director also finds that there is reasonable ground of suspicion to warrant a cautious person to believe that Respondent’s conduct amounted to a failure to provide a reasonable accommodation, and hereby amends the verified complainant to conform to the evidence presented. N.J.A.C. 13:4-2.9. Stated differently, the Director is satisfied at this preliminary stage of the process that the matter should “proceed to the next step on the road to an adjudication on the merits.” Frank, supra, 228 N.J. Super. at 56.



DATE: 1-11-18

Craig Sashihara, Director
NJ DIVISION ON CIVIL RIGHTS