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State of New Jersey
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION ON CIVIL RIGHTS
P.O. BOX 089
Trenton, NJ 08625-0089

JOHN J. HOFFMAN
Acting Attorney General

CRAIG SASHIHARA
Director

November 9, 2015

Frederick Langston
1480 US Highway 46 West
Parsippany, NJ 07054

Jennifer Barna, Esq.
Epstein Becker & Green
One Gateway Center, 13th floor
Newark, NJ 07102

Re: Frederick Langston v. Tiffany & Company
OAL Docket No. CRT 15897-13
DCR Docket No. EP29WB-63832

Dear Mr. Langston and Ms. Barna:

For the reasons discussed below, the initial decision that Administrative Law Judge (ALJ) Kelly J. Kirk issued on September 23, 2015, is hereby affirmed.

On May 2, 2013, Frederick Langston (Complainant) filed a verified complaint with the New Jersey Division on Civil Rights (DCR) alleging that his former employer, Tiffany and Company (Respondent), discriminated against him based on disability and race, in violation of the New Jersey Law Against Discrimination (LAD), N.J.S.A. 10:5-1 to -49. On July 9, 2013, Respondent filed an answer denying the allegations of discrimination in their entirety. During DCR's ensuing investigation, Complainant asked DCR to transmit the matter to the Office of Administrative Law (OAL) for an administrative hearing without reaching a probable cause determination. Accordingly, DCR ceased its investigation and transmitted the case to the OAL on November 1, 2013, pursuant to N.J.A.C. 13:4-11.1.

On May 15, 2014, Respondent filed a motion for summary judgment. Complainant did not file a response. On June 11, 2014, Complainant participated in a telephone conference with ALJ Kirk, Respondent's counsel, and the deputy attorney general (DAG) monitoring the matter for DCR. During that conference call, Complainant represented that he had not filed or perfected service of his opposition papers but would do so by June 20, 2014.

On June 24, 2014, ALJ Kirk notified the parties that she never received Complainant's opposition papers. She stated that if she did not receive his submission by June 28, 2014, she would deem Respondent's motion for summary judgment to be unopposed.



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On February 4, 2015, ALJ Kirk notified the parties and DAG that she still had not received Complainant's opposition to the motion. She extended the deadline to February 18, 2015.

On September 23, 2015, having not received opposition to the motion, ALJ Kirk issued an initial decision granting Respondent's motion and dismissing the verified complaint. In separate letters, OAL and DCR advised the parties of their right to file exceptions to the initial decision. No exceptions were filed.

Upon reviewing the initial decision, OAL file, and Respondent's moving papers including its workplace policies, DCR discovered an issue that does not affect the outcome of the motion to dismiss. In particular, DCR is concerned that Respondent's policies may not afford reasonable accommodations for temporary or short-term disabilities. Even disabilities of a short duration may trigger an employer's obligation to provide reasonable accommodations that will not impose an undue hardship on the employer's operations. See N.J.A.C. 13:13-1.3 (disability includes an employee "who has been a person with a disability at any time"); Viscik v. Fowler Equipment Co., 173 N.J. 1, 28 (2002) (noting that the LAD's protections are not limited to protecting people with "severe" or "immutable" conditions).

Because this matter was transmitted to OAL for a hearing before DCR completed its investigation, DCR has not had an opportunity to address this concern with Respondent. Because the ALJ's analysis assumed that Complainant's medical condition constituted a disability under the LAD and addressed Respondent's obligation to reasonably accommodate that medical condition, any issue regarding Respondent's policies would not change the outcome of Complainant's individual claims. Thus, DCR affirms that based on the undisputed material facts, the verified complaint should be dismissed. DCR will separately address with Respondent the remaining questions regarding its disability accommodation policies and procedures, to ensure that they comply with the LAD.

The LAD states that any person who is dissatisfied with a final order of an agency may appeal to the Appellate Division of the New Jersey Superior Court. N.J.S.A. 10:5-21. Any such appeal must be filed within 45 days from the date of service of the decision or notice of the action taken. R. 2:4-1(b).

Very truly yours,

Craig Sashihara, Director
NJ DIVISION ON CIVIL RIGHTS

c: Hon. Kelly J. Kirk, ALJ
OAL Clerk
Farrng-Yi Foo, DAG