



STATE OF NEW JERSEY  
 OFFICE OF THE ATTORNEY GENERAL  
 DEPARTMENT OF LAW & PUBLIC SAFETY  
 DIVISION ON CIVIL RIGHTS  
 DCR DOCKET NO.: EU13HB-53590  
 REFERRAL NO.: 17E200800139

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JOYCE BAKER )  
 and )  
 CHINH Q. LE, DIRECTOR, )  
 NEW JERSEY DIVISION ON CIVIL RIGHTS,) )  
 Complainants, )  
 v. ) **FINDING OF PROBABLE CAUSE**  
 WOMAN TO WOMAN, )  
 Respondent. )

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Consistent with a Verified Complaint filed on December 5, 2007, and assigned Docket Number EU13HB-53590, the above-named respondent has been charged with unlawful discrimination based on disability, within the meaning of the New Jersey Law Against Discrimination (N.J.S.A. 10:5-1, et seq.) and specifically within the meaning of N.J.S.A. 10:5-4 and 10:5-12(a).

Chinh Q. Le, Esq. (Director) is the Director of the Division on Civil Rights and, in the public interest, has intervened as a Complainant in this matter pursuant to N.J.A.C. 13:4-2.2(e).

**SUMMARY OF COMPLAINT**

Complainant alleged that she was discriminated against based upon her disability/pinched nerve in her back and extreme pain in her right foot. To support her claim, Complainant alleged that she was denied a reasonable accommodation, docked one day's pay and discharged from her employment.

**SUMMARY OF RESPONSE**

Respondent denied that Complainant was discriminated against for any unlawful reason, including disability. Respondent asserted that Complainant did not have a bona fide disability and further added that she had not requested an accommodation. Respondent also stated that Complainant was terminated for having too many absences and for insubordination.

**JOYCE BAKER VS. WOMAN TO WOMAN**  
**Docket No.: EU13HB-53590**

**BACKGROUND**

Respondent operates a medical practice with two separate locations: 46 Main Street in Sparta, and 576 State Route 94 in Columbia, New Jersey. Complainant was hired as a receptionist on May 8, 2006 for the Columbia location, and for the Sparta office when needed. Complainant was discharged on September 6, 2007.

Chinh Q. Le (Director) is the Director of the Division on Civil Rights and, in the public interest, has intervened as a complainant in this matter pursuant to N.J.A.C. 13:4-2.2 (e).

**SUMMARY OF INVESTIGATION**

This investigation revealed sufficient evidence to support a reasonable suspicion that Complainant was subjected to unlawful discrimination. The investigation established that although Complainant had provided Respondent with a doctor's note indicating that she could not drive more than thirty miles at one time and made a request for an accommodation, Respondent failed to engage in the interactive process and subsequently discharged her.

The investigation revealed that on August 2, 2007, Complainant provided Respondent with a physician's note indicating that, due to her foot condition, Complainant could not drive more than thirty miles at one time. On August 2, 2007, Respondent's Office Manager Lisa Bracklin spoke to Complainant over the phone at the Columbia office and advised her that on August 3, 2007 she had to go to the Sparta office. Complainant advised Respondent that she was experiencing a lot of foot pain and was not able to go. Ms. Bracklin advised Complainant that she did not care, and that if Complainant did not go to the Sparta location Ms. Bracklin would not allow her to work on the following day (August 3, 2007). A telephone interview conducted by the Division's Investigator with Complainant's co-worker, Carol Todd, confirmed that Respondent's Office Manager had advised Complainant that she did not care about Complainant's medical problem and that she would not allow her to work the next day.

During the Fact Finding Conference conducted by the Division, Respondent asserted that in accordance with the note submitted by Complainant, she was restricted from driving in excess of thirty miles. This meant that Complainant was not precluded from driving to the Sparta office, since it was less than thirty miles from the Columbia office. According to Respondent, its accommodation allowed Complainant to travel from her home to the Columbia office, rest for a half hour, and then proceed to the Sparta office, which was approximately 27 miles with a time of 38 minutes. The investigation, specifically a Mapquest internet search, revealed that the total distance between Respondent's two locations is 28.66 miles. However, Complainant refuted this by stating that she would take back roads which required a lot of stop-and-go traffic thus causing her additional foot

**JOYCE BAKER VS. WOMAN TO WOMAN**  
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pain. She further stated that the ride from the Sparta office to her home in Saylorsburg, Pennsylvania was in excess of thirty miles (approximately 66 miles with a time of one hour and 21 minutes, according to Mapquest). Complainant also maintained that she was asked to and did travel to the Sparta office two more times in August 2007, as directed by Respondent.

The investigation further disclosed that on September 6, 2007, Respondent's Office Manager Lisa Bracklin asked Complainant to work in the Sparta office the following day, September 7, 2007. Complainant again explained that she could not drive and further advised Ms. Bracklin that she had another doctor's note that limited her driving to no more than thirty minutes at a time, as opposed to the original doctor's note restricting her driving to no more than thirty miles at a time. Complainant suggested to Ms. Bracklin that she ask her co-worker Carol Todd to take the Sparta assignment instead. According to both Complainant and Ms. Todd, however, Ms. Bracklin called Complainant back and advised her that she was being terminated for too many absences.

**ANALYSIS**

At the conclusion of the investigation, the Division is required to make a determination whether "probable cause" exists to credit a complainant's allegation of discrimination. Probable cause has been described under the New Jersey Law Against Discrimination (LAD) as a reasonable ground for suspicion supported by facts and circumstances strong enough to warrant a cautious person to believe that the law was violated and that the matter should proceed to hearing. 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., 111 S.Ct. 799. A finding of probable cause is not an adjudication on the merits but, rather, an "initial culling-out process" whereby the Division makes a preliminary determination of whether further Division action is warranted. Sprague v. Glassboro State College, 161 N.J. Super. 218,226 (App.Div.1978). See also Frank v. Ivy Club, supra, 228 N.J. Super. at 56. In making this decision, the Division must consider whether, after applying the applicable legal standard, sufficient evidence exists to support a colorable claim of discrimination under the LAD.


In the instant case, the investigation disclosed that Complainant provided Respondent with a doctor's note specifying that she could not drive in excess of thirty miles. While Complainant stated that she told Ms. Bracklin on September 6, 2007 that she had a second doctor's note limiting her to driving no more than thirty minutes at a time, Respondent terminated Complainant on September 6, 2007, before she could actually provide the note. Although the distance between Respondent's locations was less than thirty miles, 28.66 miles to be exact, Respondent failed to take into account that Complainant's trip home was over 66 miles. It also failed to consider any alternative accommodation by engaging in an interactive process with her. Lastly, the investigation disclosed that Respondent refused to allow Complainant to work on August 3, 2007, a regularly scheduled work day, because she had advised Respondent of her inability to go to the Sparta office on August 2, 2007. Respondent thereby reduced Complainant's hours and deemed Complainant's refusal to be insubordinate behavior.

**JOYCE BAKER VS. WOMAN TO WOMAN**  
**Docket No.: EU13HB-53590**

**FINDING OF PROBABLE CAUSE**

It is, therefore, determined and found that Probable Cause exists to credit the allegations of the complaint.

10/26/09  
Date

  
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Chinh Q. Le, Esq., Director  
New Jersey Division on Civil Rights

STATE OF NEW JERSEY  
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-vs- )  
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WOMAN TO WOMAN, )  
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Respondent. )

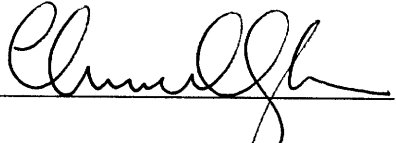
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DATE *10/26/09*  
DEPARTMENT OF LAW & PUBLIC SAFETY  
DIVISION ON CIVIL RIGHTS

BY *Waluke Spence*

**AMENDMENT TO VERIFIED COMPLAINT**

I, Chinh Q. Le, Esq., as the Director of the New Jersey Division on Civil Rights, hereby intervene as a complainant in the above referenced matter pursuant to N.J.A.C. 13:4-4.2 (b) and hereby amend the caption of the Verified Complaint, received and filed on December 5, 2007, to read as follows:

JOYCE BAKER AND DIRECTOR )  
CHINH Q. LE, ESQ. )  
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Complainants, )  
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-vs- )  
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WOMAN TO WOMAN, )  
)  
)  
)  
Respondent. )



CHINH Q. LE, DIRECTOR,  
Division on Civil Rights

STATE OF NEW JERSEY )  
) SS:  
COUNTY OF )

Sworn to and subscribed before me  
this *26<sup>th</sup>* day of *October* *2009*  
*Leona Draughn*

LEONA DRAUGHN  
NOTARY PUBLIC OF NEW JERSEY  
My Commission Expires 11/01/2012