



**STATE OF NEW JERSEY**

**FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION**

In the Matter of D.F., Department of  
Health

CSC Docket No. 2021-373

Discrimination Appeal

**ISSUED: MARCH 26, 2021 (SLK)**

D.F., an Agency Services Representative 3 with the Department of Health (DOH), appeals the determination of the Chief of Staff, which was unable to substantiate her allegation that she was subject to discrimination or retaliated against in violation of the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy).

By way of background, D.F. alleged that K.J., Supervising Management Improvement Specialist, Facilities Management and the DOH’s Americans with Disabilities Act (ADA) Committee discriminated and retaliated against her. Additionally, D.F. alleged that “adverse actions” were taken for her filing complaints with the Public Employees Occupational Safety and Health (PEOSH) regarding alleged poor conditions at the DOH and Agriculture Building (H&A Building). Further, she alleged that T.D., Program Manager, Office of Vital Statistics and Registry, treated her in a disparate manner.

Specifically, D.F. alleged that following an inspection by PEOSH in November 2017, a sticky note with “HR Director” and a phone number written on it, was placed on the trunk of her car 13 days after the inspection. Also, she alleged that she was reassigned out of the unit that she had worked for over 10 years by T.D. in February 2018, while her co-worker was reassigned out of the unit on a six-month temporary basis for a “cool down period.” Additionally, D.F. alleged that in May 2018, she was

sent for a Fitness for Duty Evaluation and that K.J. “had a lot to do” with sending her for the evaluation. Further, she alleged that in March 2019, K.J. mentioned a bedbug situation in the H&A Building and was questioning her and in a conversation mentioned the word “gun.” D.F. forwarded this information to the Governor’s Office. Finally, D.F. alleged that she was denied an accommodation by the ADA committee and K.J. for an air purifier that she requested for her work area. She indicated that a co-worker was permitted to bring in a personal humidifier to place on her desk for a chronic bloody nose and D.F. clarified that her disability is “non-stop sinus infections.”

Regarding the sticky note, after the Office of Employee Relations (OER) investigated that matter, the Office of Diversity and Equity Services (ODES) determined that no information was found that implicated the State Policy. Concerning her reassignment, the investigation found that she was reassigned for legitimate business reasons. Relating to the Fitness for Duty Evaluation, the investigation revealed that the evaluation was warranted due to legitimate business concerns. Referring to the bedbugs/gun conversation, the ODES determined that the issues had no nexus to a protected category that implicated the State Policy.

Regarding her claim that she was denied an ADA accommodation, the investigation revealed that that the ADA Committee, which consists of both DOH and Department of the Treasury (Treasury) professionals, denied D.F.’s request to use an air purifier, but approved her request to wear a daily use disposable N95 dusk mask. The request for an air purifier was denied after an indoor air quality test completed by PEOSH indicated that the air quality was within normal parameters with no visible signs of mold. Additionally, the private laboratory that D.F. hired also concluded that mold and fungi level in her work were “Not Elevated.” Further, Treasury’s Industrial Hygienist reported that personal air filters or purifiers would not be effective within the large working environment. Also, the investigation noted that K.J. was not a member of the ADA Committee and did not have the authority to approve an accommodation. It found that K.J.’s response to D.F.’s request which expressed concern about how such devices could impact the electrical load and that she could pursue her request through the ADA Committee followed Treasury’s regulations. Moreover, K.J. denied that he discriminated or retaliated against D.F. and explained that the Division of Property Management and Construction (DPMC) and the Fire Marshal have cracked down on the use of electrical devices and heaters during their inspection at the H&A Building which violate DMPC regulations. Also, K.J. was out of his purview when he advised that an employee could temporarily place a “very small personal humidifier” on the employee’s desk for her bleeding nose and has since been advised to refer all requests for electrical devices regarding medical conditions to the ADA Committee, which he did. Accordingly, the investigation did not substantiate that the ADA Committee or K.J. violated the State Policy.

On appeal, D.F. states that prior to her filing PEOSH complaints regarding the poor working conditions in the H&A Building, she had contacted her union and expressed her complaints about what she saw in the mailroom. She said that she saw puddles on the floor and things sitting on crates. D.F. indicates that she also noticed old rusty pipes and falling debris on tables where others worked. She then filed PEOSH and Health and Safety complaints in September 2017. Thereafter, R.F. from Treasury and R.E. from Health and Safety approached her cubicle in a hostile manner and demanded that she be the area of concern. However, she indicates that she refused because of the way they approached her, and she reached out to her union and human resources. She believes co-workers were interviewed and R.F. was reassigned from Ewing after her investigation. D.F. explains that in November 2017, PEOSH arrived unannounced regarding her first complaint of asbestos and mold. Then, 13 days later, a post-it was placed on her car saying "HR Director "with a phone number. She states that she showed the State Registrar the post-it note the next day and then, on February 28, 2018, she was permanently reassigned to the Record Modification Unit by T.D. on the day she returned to work after being sick because of the building. D.F. indicates that she was scheduled for a phone interview as part of a position classification review in April 2018 before she was reassigned.

D.F. presents that in January 2018, T.D. asked her what K.J. was about and she replied that he was very smart when it comes to human resources and she replied that maybe she would use that to her advantage. Thereafter, D.F. went on extended leave and when she returned, she was told to hand over any stamps. Further, she was advised that she was no longer in the Modification Unit and would be placed in the call center. D.F. notes that she never received any notice concerning her transfer. She states that she did not understand how T.D. reassigned T.M. after she failed her Performance Assessment Review (PAR), and T.M.'s reassignment was after receiving notice and was only for a six-month cool down, when her reassignment was without notice and permanent. D.F. believes that T.D. treated her differently because she would have fought it and K.J. probably advised her to just internally walk her out and say it was for operational reasons. She claims T.D. called T.M. the "N-Word" although she acknowledges that she does not have proof of this from a third-party. D.F. also claims that T.D. said derogatory things about others.

D.F. indicates that on January 30, 2019, she requested that facilities management be asked if she could bring in a personal humidifier on her desk because of non-stop sinus infections; however, she was advised that facilities management cannot grant that type of request and that she make the request to the ADA Committee. However, the ADA Committee denied that request on June 27, 2018 and March 22, 2019. She states that she noted that K.J. copied others on the ADA Committee regarding her accommodation request but did not copy those committee members when her co-worker asked for an accommodation on December 24, 2017.

D.F. presents that when PEOSH came to inspect the building regarding mold, insects and moisture, the inspector was standing in water in the mechanical room, but did not issue a violation. She notes that she passed the Fitness for Duty Evaluation on May 14, 2018. She claims that she “knew” K.J. was responsible for sending her for the evaluation because, as she was walking out of the building, he was looking at her. D.F. believes that K.J. hoped that she would fail the evaluation because DOH wanted to have grounds to fire her. She argues that the timeline shows that she was discriminated and retaliated against for a protected act and her rights were violated.

D.F. requests that she be compensated for her mental anguish, stress, and that her sick, vacation and administrative leave time be reinstated. She also request that all her write-ups be removed from her personal and work files and that she receive a letter of apology from DOH. She states she will handle her physical damage and the damage done to her health separately. D.F. also requests that she be provided a copy of the Safety Data Sheets/Material Data Sheets for the Balsam of Peru/Iodopropynyl Butylcarbamate, case #44406-53-6, substance No. 3708 as she asked for this information in 2019, but it has not been provided. She states that the refusal to provide this information interferes with her healthcare.<sup>1</sup>

In reply, regarding the note, the ODES presents that D.F. advised the OER that she believed that the note was a “a message” to her. However, the OER explained to D.F. that the Department of Labor and Workforce Development (Labor) has no authority over DOH employees and the note could have accidentally been attached to her vehicle. D.F. contacted the State Police and it advised that it would not investigate, including reviewing security camera footage, because no crime was committed. She also asked that Facilities Management not be involved in reviewing security footage as she believes that it would delete it. Therefore, the OER reviewed the footage and no individuals were seen placing the post-it on her vehicle and there was no information related to this allegation that implicated the State Policy.

Concerning D.F.’s reassignment, the investigation revealed that T.D. indicated that D.F. was reassigned from the Modification Unit because she “was not able to maintain her workload.” As D.F. left the unit unwillingly, T.D. stated that she and two other supervisors discussed how the reassignment would be in her best interest as D.F. was calling out sick a lot, falling behind in her work and that it would be better for her to be reassigned to a unit with less responsibility and workload. D.F. indicated to T.D. she wanted her reassignment to occur after a telephone desk interview which was a potential way for her to receive a promotion; however, T.D. advised that she could not wait because D.F. was falling behind in her work. The ODES presents that D.F.’s appeal submission includes a January 25, 2018 written

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<sup>1</sup> D.F. submits an undated doctor’s note that indicates that she has severe sensitivity to Balsam of Peru and Iodopropynyl Butylcarbamate as she has severe allergic contact dermatitis, and which recommends that she work from home until she is relocated to her new office.

warning from T.D. detailing numerous instances of D.F. not keeping up with her workload. Therefore, the ODES found that the reassignment from the Modification Unit to the Call Center was for legitimate business reasons and D.F. is only speculating that T.D. had contacted K.J.

Referring to the Fitness for Duty Evaluation, the ODES presents that a 2015 complaint filed by D.F. regarding asbestos on the fifth floor was investigated. It indicates that although asbestos floor tiles were found in the building, there was no evidence that the asbestos was disturbed to cause airborne particles to pose a health risk. After being provided documentation that there was no airborne asbestos, D.F. made repeated complaints regarding asbestos and mold in the following years. She also took her own air samples to be tested for mold, which came back with no elevated levels of mold in the work environment. On February 25, 2018, D.F. applied for Family and Medical Leave Act (FMLA) leave with her doctor advising that she was unable to perform certain functions of her job because she was “unable to concentrate.” Further, her doctor indicated that she would benefit from work that required less concentration. However, the investigation revealed that D.F.’s duties as an Agency Services Representative 2 required full concentration and attention to detail to perform the essential duties of her job. The OER documented an incident where D.F. alleged to be receiving harassing phone calls at work from a woman she suspected of being the wife of a man she was dating and D.F.’s unwillingness to accept that the DOH phone system at the time was unable to identify this call received from the outside as determined by the State Police. D.F. also filed a complaint regarding the note incident. Therefore, the ODES presents that the decision to send D.F. for a Fitness for Duty Evaluation was based on a series of factors between 2015 and 2018 which included her irrational behavior in the workplace, poor job performance, and her physician’s statements. Therefore, the ODES found that the decision to send her to a Fitness for Duty Evaluation was based on legitimate business concerns. The ODES highlights that in the psychological and neurocognitive evaluation report which D.F. supplied in her appeal, the doctor reported that although D.F. has the ability to function on the job, there were psychological observations that could contribute to continual complaints by D.F. regarding asbestos and mold in the air “despite apparent contradictory evidence” that the air quality was within normal parameters.

With respect to the bedbugs/gun conversation, the OER determined that K.J.’s questions were inappropriate, and the matter was discussed with him through appropriate administrative action. However, the ODES found that these allegations did not implicate the State Policy.

In reference to disability discrimination, the ODES presents that since 2015, D.F. made over 10 complaints regarding asbestos, mold, health concerns and allegations of coverups regarding the air quality in the work environment at DOH. It indicates that although the 2015 complaint investigation identified asbestos, the

floor tiles were not “friable,” easily crumbled or reduced to powder, and no airborne asbestos was detected. The ODES indicates that D.F. has been unwilling to accept the findings of DOH and PEOSH that there are no air quality issues. The DOH was advised by Labor that D.F. filed a July 20, 2018 complaint alleging discrimination and retaliation under the PEOSH Act. D.F. alleged that she was not approved for her ADA reasonable accommodation to have an air purifier at her desk and that she was denied the use of an air humidifier at her desk by K.J., who had allowed another employee an air humidifier on their desk two years earlier. The investigation revealed that the ADA Committee, which is comprised of professionals from both the DOH and Treasury, after reviewing an Indoor Air Quality survey that was completed for the Office of Vital Statistics and Registry which indicated that the error quality measurements were within normal parameters, advised D.F. that she would be allowed to wear a N95 dust mask to work, but that the requests for air purifiers by her workstation were denied. Additionally, PEOSH performed a walkthrough of the area in question which found some discoloration, but no mold growth and recommended that no action be taken. Further, D.F. had a private lab perform a mold analysis which resulted in a finding of “not elevated.”

The ODES notes that K.J. is not a member of the ADA Committee and does not have authority to approve ADA accommodation requests. Regarding K.J.’s 2017 response to another employee’s request to bring in a “very small personal humidifier” due to nose bleeds, K.J. advised “technically no” in response to her request, expressed some concerns about the power load of such devices, but did advise that if the device could be plugged into a surge suppressor that should not carry much of a power load and “hopefully” the device would not trip the electrical circuit breaker, that she could bring in the device. The ODES notes that the employee never actually brought in a humidifier to work. Thereafter, in January 2019, K.J. responded to D.F.’s request to bringing a “small humidifier” to place on her desk by stating “technically no...” and she could pursue her request through an ADA accommodation. The investigation found that K.J.’s response to D.F.’s request complied with Treasury’s regulations and K.J. denied discriminating or retaliating against her. Further, K.J. explained that over the last several years that Treasury and the Fire Marshal were cracking down on electronic devices which violated regulations. Moreover, the investigation found that K.J. was out of his purview when he initially advised the other employee that she could temporarily place a “very small personal humidifier” on her desk and has since been advised to refer all requests to use all electronic devices for medical use to the ADA Committee, which he did. Therefore, the investigation was unable to substantiate a violation of the State Policy.

In reply, D.F. states that the harassing phone calls that she received had nothing to do with her complaints regarding the working conditions in the old building. She presents that she kept receiving harassing phone calls at work where she was called derogatory names. D.F. recorded the calls and discovered the identity of the caller, a retired employee. She forwarded the calls to the police and the caller

confessed. D.F. filed harassment charges against the caller and the caller was scheduled to appear in court in early 2017.

Concerning her exposure to asbestos, in 2017 in the stairwell, work was being done where she saw an asbestos sign in an area that was not blocked off. She indicates that she smelled a strong stench and felt irritation upon inhalation so she filed a report with human resources. She presents that she requested that the stairwell be tested for asbestos, but her request for a test was denied. D.F. also indicates that there was work done in 2015 where she had concerns about asbestos which resulted in carpet being laid on top of the asbestos floor tiles so that it would not be disturbed and to ensure that fibers did not become airborne.

Regarding the water on the basement floor in 2017, she noticed wet walls, rusty pipes and falling debris. She informed her union and she was forwarded forms to complete and file her complaint. Thereafter, R.E. from Health and Safety and R.F. from Treasury approached her in a hostile manner and asked her to show them the water in the basement. She says that although she did not have a problem showing them, because she did not like the way they approached her, she requested that her union be present. Thereafter, in September, R.E. emailed her a form and in November, PEOSH came to her building unannounced. Shortly after PEOSH's visit, she found the post-it note on her car. D.F. reached out to human resources and the State Police to have them view video footage to see who placed the note. However, the State Police declined to view it. Initially, Facilities Management was going to review it; but she requested that it not be present because she remembered K.J. and M.K. being nearby at the time of the incident. The OER viewed the footage, and it indicated that her vehicle was out of a view for a short period of time and there was no other angle, and it closed the matter.

D.F. presents that in November 2017, T.D. sent her an email telling her to come see her with all her work and she then placed her work in a file cabinet. T.D. then assigned her work that needed to be completed that day. D.F. indicates that she was getting non-stop sinus infections, multiple headaches and severe sinus pressure which made it hard to do her work. She states that she was out sick in January 2018, and when she returned, she received a written warning from T.D. about her work even though T.D. was holding her work and assigning her work to be completed every day. D.F. explains that she was completing her assignments in February then she was out due to her sinus infections. Upon return at the end of February, T.D. sent her an email to come see her with her modification stamps and she was escorted to meet with certain personnel who advised her about an internal reassignment to the call center. D.F. states that she never told T.D. that she should have waited until her classification review phone interview or that she refused to leave the Record Modification Unit. She reiterates that it does not make sense that another employee who failed her PAR was given notice about a reassignment, when she was not, and the other employee's reassignment was only for six months. She questions why she

was not taken to human resources like the other employee and she believes that T.D. just found it easier to permanently reassign her and say it was for operational reasons.

D.F. indicates that in April 2018, she emailed Facilities Management inquiring about placing an air purifier near her workstation. Facilities Management responded by indicating that it does not supply such devices and she could request an ADA accommodation and K.J. and Dr. N.S. were copied on the email. Thereafter, she completed the form for the request and, in June 2018, she received a denial from C.C. who sits on the ADA Committee along with Dr. N.S. as the denial indicated that the air quality in the office space was within the normal range. Then, in January 2019, she asked if she could bring a small humidifier for her desk. K.J. said technically no since no device could be added to the electrical load unless approved by management. Further, K.J. indicated that it was his understanding that prior tests indicated that the air quality did not support bringing in additional devices and she could request an accommodation and Dr. N.S. was copied on this reply. D.F. notes that K.J. approved a similar request from a co-worker in December 2017 and this co-worker did not need to provide medical documentation because she had not filed complaints with PEOSH. She indicates that in February 2019, she requested an air purifier at her desk along with wearing a mask. In her request, D.F. included a letter from an infectious disease doctor and her ears, nose and throat doctor indicating that she needs an air purifier. However, C.C. informed her that while she can wear a N95 mask, she was denied the request for an air purifier due to the air quality survey taken in June 2018. She states that while K.J. claimed in 2019 that he denied her request due to concerns about the electrical load, he approved another employee to have a small refrigerator and microwave while she was denied a small air purifier at her desk due to a medical condition.

D.F. states that in May 2018, she was emailed a Fitness for Duty advising her that she had a July 2018 appointment to see a psychiatrist because DOH indicated that it was worried about her irrational behavior and overall well-being, which was then changed to an earlier meeting with a different doctor in May. She presents that she willingly participated in the seven-hour evaluation. Thereafter, it took 10 months to obtain the report which mentioned depression and fear of someone hurting her. D.F. confirms that she does fear K.J. and T.D. because they are spiteful and vindictive, and she believes that K.J. is the one who sent her for the evaluation so that there would be ground to terminate her if she failed. She says that there was also another employee who complained about the air and temperature in the building and that employee was sent for an employee evaluation and eventually ended up retiring early because she could not deal with the conditions of the building.

D.F. presents that in March 2019, a memo was sent regarding a bedbug treatment due to the discovery of bedbugs in the building. She states that she took bug traps from DOH's exterminator after attending an information session. D.F.



indicates that the traps were not being replaced with new traps and then K.J. returned the traps to the State Registrar who then gave them back to her. While K.J. was replacing the traps, he started asking her inappropriate questions and if she had a gun. D.F. then reported the incident to human resources.

Additionally, D.F. submits the email from K.J. denying her request for an air filter. She states that she requested data sheets for the paints used on the walls for the past five years. R.E. forwarded five different data sheets and she received the same from Sherman Williams. D.F. compared the data sheets and certain ingredients are missing from the sheets provided by R.E., which she submits for comparison. She presents that regarding her complaint due to a finding of mold on the interior of a wall, Dr. N.S. and R.E. stated that a visual inspection did not indicate that the area was still moist, and no discoloration was detected. However, D.F. submits a photo to show that discoloration is still present and states that the recommended preemptive measure to address this issue never took place. She states that the mold was not present when PEOSH inspected in August 2018, but was present during R.E.'s October 2018 inspection. D.F. presents that a January 2019 inspection of the vent and air quality revealed some discoloration on the wall and stated no mold growth and Health and Safety did not recommend any action, but it did recommend action in its October 2018 memo. D.F. indicates that Dr. N.S.'s January 2019 memo to PEOSH had the wrong image attached of the wall in question. She presents that she advised her union in April 2019 that the wrong image was attached and she attaches images to show that the water damaged walls were never addressed. D.F. asserts that the chemicals listed on the data sheets were the chemicals that were listed as the cause of her contact dermatitis, as determined by her allergist, and these chemicals played a part in her chronic sinusitis and rhinitis. She states that R.E. emailed her in June 2020 indicating that he searched the 2018 Right To Know survey and since it did not reveal any chemicals that she is requesting, no data sheets would be provided to her, and the matter is closed. D.F. indicates that she has a doctor's appointment with a specialist and the Right To Know fact sheets and Safety Data sheets on the chemicals Iodopropynyl Butylcarbamate and Balsam of Peru are needed to assist the specialist with her medical care.

## CONCLUSION

*N.J.A.C.* 4A:7-3.1(a) states, in pertinent part, that the State of New Jersey is committed to providing every State employee and prospective State employee with a work environment free from prohibited discrimination or harassment. Under this policy, employment discrimination or harassment based upon disability is prohibited.

*N.J.A.C.* 4A:7-3.1(h) provides that retaliation against any employee who alleges that she or he was the victim of discrimination/harassment, provides information in the course of an investigation into claims of discrimination/harassment in the workplace, or opposes a discriminatory practice, is

prohibited by this policy. No employee bringing a complaint, providing information for an investigation, or testifying in any proceeding under this policy shall be subjected to adverse employment consequences based upon such involvement or be the subject of other retaliation. Following are example of prohibited actions taken against an employee because the employee has engaged in activity protected by this subsection:

1. Termination of an employee;
2. Failing to promote an employee or select an employee for an advancement appointment;
3. Altering an employee's work assignment for reasons other than legitimate business reasons;
4. Imposing or threatening to impose disciplinary action on an employee for reasons other than legitimate business reasons; or
5. Ostracizing an employee (for example, excluding an employee from an activity or privilege offered or provided to all other employees).

Under the ADA, the term "reasonable accommodation" means: (1) modifications or adjustments to a job application process that enable a qualified applicant with a disability to be considered for the position such qualified applicant desires; (2) modifications or adjustments to the work environment, or to the manner or circumstances under which the position held or desired is customarily performed, that enable a qualified individual with a disability to perform the essential functions of that position; or (3) modifications or adjustments that enable a covered entity's employee with a disability to enjoy equal benefits and privileges of employment as are enjoyed by its other similarly situated employees without disabilities. A reasonable accommodation may include, but is not limited to: (1) making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and (2) job restructuring: part-time or modified work schedules; reassignment to a vacant position; acquisition or modifications of equipment or devices; appropriate adjustment or modifications of examinations, training, materials, or policies; the provision of qualified readers or interpreters; and other similar accommodations for individuals with disabilities. *See 29 C.F.R. § 1630.2(o) (1999).*

Further, the ADA requires that, where an individual's functional limitation impedes job performance, an employer must take steps to reasonably accommodate, and thus help overcome the particular impediment, unless to do so would impose undue hardship on the employer. *See 29 C.F.R. § 1630.2(p).* Such accommodations usually take the form of adjustments to the way a job customarily is performed, or to the work environment itself. This process of identifying whether, and to what extent, a reasonable accommodation is required should be flexible and involve both the employer and the individual with the disability. No specific form of accommodation

is guaranteed for all individuals with a particular disability. Rather, an accommodation must be tailored to match the needs of the disabled individual with the needs of the job's essential function. The ADA does not provide the "correct" answer for each employment decision concerning an individual with a disability. Instead, the ADA simply establishes parameters to guide employers in how to consider, and to take into account, the disabling condition involved. *See* 29 *C.F.R.* § 1630.2(o) and 29 *C.F.R.* § 1630.9.

It is noted that in providing an accommodation, an employer does not have to eliminate an essential function or fundamental duty of the position. This is because a person with a disability who is unable to perform the essential functions, with or without a reasonable accommodation, is not a "qualified" individual with a disability within the meaning of the ADA. *See* 29 *C.F.R.* 1630.2. *See also* *Ensslin v. Township of North Bergen*, 275 *N.J. Super.* 352, 361 (App. Div. 1994), *cert. denied*, 142 *N.J.* 446 (1995) (No reasonable accommodation of Police Sergeant's disability would permit him to perform essential functions of job, and thus the township did not violate the New Jersey Law Against Discrimination by terminating the Sergeant after he was rendered paraplegic in skiing accident); *Albertson's Inc. v. Kirkingburg*, 527 U.S. 555 (1999) (Truck driver with monocular vision who failed to meet the Department of Transportation's visual acuity standards was not a "qualified" individual with a disability under the ADA).

*N.J.A.C.* 4A:7.3-2(m)4 states, in pertinent part, that the appellant shall have the burden of proof in all discrimination appeals.

Initially, it is noted that D.F. requests that she be compensated for her mental anguish, and stress; however, even if she were successful, the Civil Service Commission does not award compensation in response to State Policy appeals. Similarly, any complaints about improper punishment and loss of sick, vacation, and administrative leave should have been pursued through the appropriate procedures at the time of those incidents.

In this matter, D.F. presents that she has a disability, contact dermatitis allergy, which led her to making complaints about the air quality and mold in her building, which impacted her health. She alleges that she received an "adverse action" due to these requests in violation of the State Policy and that her requests for reasonable accommodations to lessen the impact on her health were denied in violation of the ADA.

Specifically, D.F. claimed that shortly after PEOSH investigated her claims about the air quality in the building, a note that said "HR Director" and a phone number was placed on her car, which she implies was meant to intimidate or otherwise harass her. However, the investigation revealed that there was no footage and no individuals who were seen placing the note on her vehicle and D.F. has offered

no evidence regarding this allegation. Therefore, ODES correctly determined that there was no information to substantiate this allegation of how that note implicates the State Policy.

D.F. also alleged that she was permanently reassigned by T.D. and K.J. from the Modification Unit to the Call Center in February 2018 without notice and prior to a scheduled phone interview for a position classification review which was scheduled for April 2018, which she implies was in retaliation for her complaints related to her disability. In support, she claims that another employee, who had a poor performance review, received notice for her reassignment, which was only for a six-month temporary basis for a “cool down period.” However, the investigation revealed that D.F. was reassigned because she “was not able to maintain her workload,” and was often calling out sick. Further, ODES presents that D.F.’s appeal submission includes a January 25, 2018 written warning from T.D. detailing numerous instances of her not keeping up with her workload. Additionally, D.F. provided no evidence that T.D. contacted K.J. about the reassignment. Therefore, there is no evidence in the record that D.F.’s reassignment was based on retaliation for her complaints that were related to her disability, and ODES rightfully determined that it was unable to substantiate that this allegation violated the State Policy. Moreover, the Commission notes that no prior notice of a reassignment is required. Finally, the fact that the other employee received notice while the appellant did not does not establish that the reassignment was not for legitimate business reasons or was otherwise discriminatory or retaliatory in violation of the State Policy.

Referring to D.F.’s allegation that in May 2018 she was sent for a Fitness for Duty evaluation and that K.J. “had a lot to do” with it, implying that K.J. had her sent in retaliation for her complaints related to her disability, the investigation revealed that the decision to send D.F. for a Fitness for Duty evaluation was based on a series of factors between 2015 and 2018 which included her irrational behavior in the workplace, poor job performance, and her physician’s statements as described above. The ODES highlighted that in the psychological and neurocognitive evaluation report which D.F. supplied in her appeal, the doctor reported that although D.F. has the ability to function on the job, there were psychological observations that could contribute to continual complaints by D.F. regarding asbestos and mold in the air “despite apparent contradictory evidence” that the air quality was within normal parameters. Accordingly, the record reveals that the decision to send her to a Fitness for Duty evaluation was based on legitimate business concerns.

Concerning the bedbug/gun conversation, while the OER determined that K.J.’s questions were inappropriate, without evidence that the behavior was based on D.F.’s membership in a protected class, it is not a State Policy violation. No such nexus has been substantiated. Further, D.F.’s argument that the timeline shows that she was discriminated and retaliated against is insufficient to support a finding that

K.J.'s actions violated the State Policy without any confirming evidence that his actions were based on her membership in a protected class.

Additionally, D.F. alleged that she was denied a reasonable accommodation by the ADA committee and K.J. for an air purifier and/or a small personal humidifier in her work area due to "non-stop sinus infections." However, the record indicates that both internal and external tests found that there was no evidence of air quality, mold, or asbestos issues that created health concerns. Further, Treasury's Industrial Hygienist indicated that personal air filters or purifiers would not be effective within the large working environment that she was in. Moreover, due to Treasury regulations and Fire Marshal concerns about the power load, K.J. appropriately was referring recent inquiries regarding the use of electrical devices due to medical conditions to the ADA Committee, and the ADA Committee rejected the request based on the aforementioned reasons, although it did approve her request to wear a N95 mask. Therefore, under these circumstances, the ADA Committee's rejection of the request was reasonable, and K.J. and the ADA Committee's actions did not violate the State Policy.

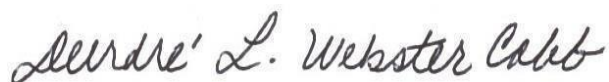
Concerning D.F.'s requests for additional data sheets related to her contact dermatitis allergy, the records indicates that DOH's Occupational Health Consultant, R.E., supplied the information that he had and that he only denied requests for data sheets where no products in the workplace included the compounds that she requested. Regardless, there is no evidence that these actions were discriminatory or retaliatory in violation of the State Policy.

### ORDER

Therefore, it is ordered that this appeal be denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 24<sup>TH</sup> DAY OF MARCH, 2021



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Deirdre L. Webster Cobb  
Chairperson  
Civil Service Commission

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