



**STATE OF NEW JERSEY**

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

In the Matter of B.W., Department of  
Education

Discrimination Appeal

CSC Docket No. 2022-473

**ISSUED:** December 7, 2022 **(EG)**

B.W., an Education Program Development Specialist 3 with the Department of Education (DOE) appeals the determination of the Acting Chief of Staff for the DOE, stating that the appellant failed to present sufficient evidence to support findings that she had been subjected to violations of the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy).

The appellant filed a complaint dated October 21, 2021 with the Office of Equal Employment and Affirmative Action (EEO/AA) for the DOE alleging that she had been discriminated against based on a disability. She indicated that she felt she had been denied equal accommodations to work remotely even though her doctor had prescribed remote work as an accommodation for her disability. The appellant added that because there was no policy concerning remote work, no worker would be granted an accommodation to work remotely regardless of need or lack of undue hardship to the employer. In addition, she claimed that she was informed that she would need to use her own paid leave time which she had been using. Further, the appellant stated that forced her to exhaust her leave time which would force her into an unpaid leave status.

In response to the appellant’s complaints, the EEO/AA issued a determination letter dated January 11, 2022, indicating that its investigation of the appellant’s allegations did not substantiate a violation of the State Policy. Specifically, the EEO/AA stated that it conducted a thorough and impartial investigation into the

appellant's claims. It indicated that the appellant's allegations were filed against P.G., a Personnel Assistant, and K.S., a former Employee Relations Coordinator. It listed the appellant's allegations as the following: she was not provided a comfortable environment in which to discuss her disability; although her doctor prescribed work from home, the DOE's lack of a work from home policy denied her equal accommodations compared to other DOE employees who have worked from home; permitting employees with Covid-19 disabilities to work from home but denying her request was discrimination based on disability; the Americans with Disabilities Act (ADA) determination letter denying her request did not align with the reasons provided by P.G. and K.S. for her request being denied; P.G.'s representation that "no worker" can work from home is belied by the fact that some DOE's employees are working from home and that work from home is authorized as an ADA accommodation; she was not provided with an interactive process to try to find an effective reasonable accommodation and P.G. indicated that the request was going to be denied before their meeting started; the Office of Human Resources failed to acknowledge pre-existing knowledge of her disability; the offer of an ergonomic workstation was not a new accommodation as she already had a "sit station" and the offer of using her own time was not an accommodation; DOE did not explain how permitting her to work from home would pose an undue hardship; permitting her to work from home does not pose an undue hardship as others are working from home due to their disabilities; and the Office of Human Resources failed to consult with her supervisor on the appropriateness of her request to work from home.

Initially, the EEO/AA stated that P.G.'s and K.S.'s actions in not making her feel comfortable; being careless in providing reasons that her request was denied did not align with the ADA letter she received; P.G.'s comment before the meeting; P.G. failing to recall the appellant already had an ergonomic chair; and that her supervisor was not consulted are all failures that did not constitute employment discrimination or decisions based on her disability. It concluded that at worst, these failures highlight the need for those responsible for the ADA process to be intimately familiar with the ADA and its requirements and need to exercise the utmost care when processing requests and meeting with employees to discuss highly sensitive situations.

The EEO/AA also indicated in its determination letter that the ADA certification submitted by the appellant's physician did not specifically state that the appellant was unable to drive to work. Additionally, it found that her physician only indicated that the appellant should be allowed to work from home so that she could lay down when her medical issues were exacerbated. It noted that the appellant indicated during the investigation that she did not lay down at work but stated that she felt she could lay down but never did. The EEO/AA concluded that based on the appellant's own statement that she did not need to lay down during the work day, and the fact that the need to lay down was the sole basis provided by her physician's recommendation for her to work from home, there was no credible basis or medical

documentation which supported granting the work from home accommodation request. Further, it found that while the appellant claimed that her stated reason for requesting the accommodation was her inability to drive to/from work, no medical documentation indicating such a limitation. Based on these conclusions, the EEO/AA found no reason to examine whether the appellant's accommodation request was unreasonable. Finally, it stated that while the investigation did not substantiate a violation of the State Policy, to the extent that certain information provided during the course of the investigation warranted attention, appropriate action would be taken.

On appeal, the appellant argues that she was discriminated against based on her disability. She argues that there was no mention in the determination letter that workers were being permitted to work from home due to Covid-19 related issues. Additionally, she asserts that her doctor's medical recommendation for her to work from home was completely ignored and she was never told that more medical information was needed. The appellant reiterates her claims that what the Office of Human Resources told her did not match up with the written denial she received and that she was told her request would be denied before her meeting about her accommodation request. She also asserts that she found it a conflict of interest that K.W., the EEO/AA Officer, oversaw the Office of Human Resources. Further, she requests that her accommodation be approved and that the leave time she had to use because of her medical issues be restored. Finally, the appellant provides a packet of information which includes, among other items, numerous emails, a memorandum from the Governor's Office dated August 10, 2021, outlining the Phase 3 Return to the Office policies, an organizational chart, and her discrimination complaint.

In response, the EEO/AA asserts that although K.W was approved on September 8, 2021, to serve as the Acting Executive Director for the Office of Human Resources, her appointment was only temporary and ended September 24, 2021. During this period she did not serve as or take action as the DOE's EEO/AA Officer. In addition, the EEO/AA reaffirmed its findings and conclusions set forth in the determination letter. It reiterates that the appellant's physician's basis for recommending that she work from home was so that she could lay down to recover when her medical issues required it. In this regard, it asserts that the appellant in her own statements/admissions indicated that she did not need to lay down during the work day and as such there was no credible basis or documentation submitted which supports granting her work from home accommodation request.

In reply, the appellant argues when asked if 'Do I lay down during the workday?' she explained that she did need to lay down during the work day because of the level of pain she felt. She also indicated that because of this pain she laid down at the end of each work day and it presented a hardship for her to care for her young children. The appellant asserts that the reason that she did not lay down during the work day was because she did not have an accommodation that would allow her to do

so when she was in pain. Additionally, the appellant reiterates her argument that she was told that the reason her accommodation was denied was because no one could work from home. She also reiterates that what she was verbally told was different from the written denials she received. Further, the appellant indicated that in a second ADA packet that her doctor completed, he did indicate that the daily commute exacerbates her symptoms and prescribed her working from home to alleviate her symptoms.

## CONCLUSION

*N.J.A.C.* 4A:7-3.1(a) provides that under the State Policy, discrimination or harassment based upon the following protected categories are prohibited and will not be tolerated: race, creed, color, national origin, nationality, ancestry, age, sex/gender (including pregnancy), marital status, civil union status, domestic partnership status, familial status, religion, affectional or sexual orientation, gender identity or expression, atypical hereditary cellular or blood trait, genetic information, liability for service in the Armed Forces of the United States, or disability. *N.J.A.C.* 4A:7-3.1(c) provides that it is a violation of this policy to engage in sexual (or gender-based) harassment of any kind, including hostile work environment harassment, quid pro quo harassment, or same-sex harassment.

In the instant matter, the Civil Service Commission (Commission) has conducted a review of the record and finds that an adequate investigation was conducted. Specifically, the relevant parties were interviewed and the appropriate records were reviewed. The EEO/AA reviewed the medical documentation submitted by the appellant's physician and determined that the only basis provided by her physician to justify a work from home accommodation was her need to lay down when her medical issues acted up. The appellant has not provided any argument or evidence disputing this fact. Further, the EEO/AA has indicated that during her meetings with P.G. and K.S. and during her interview with the EEO/AA Officer, the appellant stated that she did not lay down at work, that she did not need to lay down during the work day and that she felt like she could lay down if she wanted to. On appeal, the appellant did indicate that she explained to the Office of Human Resources that she did need to lay down during the work day because of the level of pain she felt and that the reason that she did not lay down during the workday was because she did not have an accommodation that would allow her to do so when she was in pain. However, while the appellant makes this assertion, she provides no evidence that such a statement was made and does not directly dispute the EEO/AA assertions in this regard.

The appellant makes repeated arguments on appeal that she was verbally given different explanations for her accommodation request denial than what was explained in the denial letters. The EEO/AA reviewed this claim and determined that the staff working on accommodation requests needed to be more familiar with

the ADA rules and to exercise more care when dealing with such sensitive matters. While it is worrisome that the staff may have been providing inaccurate or incorrect reasons for the denial of her request, the written denial letters are the official basis for the denial of her requests and is what is reviewed on appeal. Thus, the fact that she may have been incorrectly told by staff that she was denied because no one could work from home is irrelevant in the face of a document that provided a different non-discriminatory basis for her denied accommodation request.

The appellant has also raised a possible conflict of interest in K.W. being the EEO/AA Officer and the head of the Office of Human Resources. However, the EEO/AA explained that K.W. was head of the Office of Human Resources on an acting basis and for a period of less than three weeks. Additionally, K.W. was not acting as the EEO/AA Officer during that period. Moreover, the appellant has not provided any substantive arguments or evidence that K.W.'s short appointment as the head of the Office of Human Resources negatively influenced that outcome of her discrimination complaint.

Further, on appeal the appellant asserts that while filling out a second ADA packet, her physician did indicate that the daily commute exacerbates her symptoms and prescribed her working from home to alleviate her symptoms. This presents a new basis for an accommodation that is outside the scope of this present appeal and should be reviewed by the appointing authority. If, thereafter, she is further denied an accommodation, and the appellant files another discrimination complaint based on that denial, and that complaint be denied, the appellant may file another appeal with the Commission to review that matter.

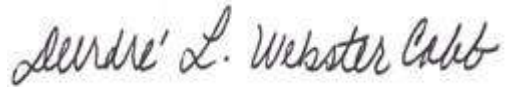
The determinations made by the EEO/AA were well reasoned, fully explained, and based on a thorough investigation. Moreover, the appellant has not provided any dispositive evidence in support of her contentions that he was subjected to a violation of the State Policy. Therefore, the appellant has not sustained her burden of proof in this matter. Accordingly, based on the foregoing, no basis exists to find a violation of the New Jersey State Policy Prohibiting Discrimination in the Workplace.

### **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 7<sup>TH</sup> DAY OF DECEMBER, 2022



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