



**STATE OF NEW JERSEY**

In the Matter of R.C., Department of  
Community Affairs

**DECISION OF THE  
CIVIL SERVICE COMMISSION**

CSC Docket No. 2023-357

Discrimination Appeal

**ISSUED:** February 22, 2023 **(HS)**

R.C., a Program Support Specialist 2, Assistance Programs with the Department of Community Affairs (DCA), appeals the determination of the Commissioner, which found that the appellant failed to present sufficient evidence to support a finding that she had been subjected to a violation of the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy).

The appellant filed a complaint with the Equal Employment Opportunity/Affirmative Action Office (EEO/AA) against senior management of DCA Housing and the ADA Coordinator alleging discrimination based on ancestry, national origin, and religion based on the denial of her ADA request to work from home, to not be tested for COVID-19, and to not wear a mask while at work. The appellant also alleged retaliation against S.S., Confidential Assistant (the ADA Coordinator); E.G., Deputy Division Director DCA; C.P., Administrator Employee Relations; and J.W., Assistant Commissioner. The EEO/AA conducted an investigation, during which it interviewed relevant parties and witnesses and reviewed relevant documentation submitted into the record. The appointing authority did not substantiate any violation of the State Policy.

On appeal to the Civil Service Commission (Commission), the appellant maintains that she made the appointing authority aware of the conflict between COVID-19 testing and her sincerely held religious beliefs and asked for an accommodation to work from home full-time, which was denied. She states that she was told that there is no religious exemption for testing and argues that the

appointing authority never demonstrated what undue hardship it would suffer. The appellant relates that the appointing authority advised that she would be unable to perform the essential functions of her job from home. The appellant insists that she had already worked from home for many months and performed her essential job functions successfully. She adds that her supervisor, F.E., Program Specialist 4, Socio-Economic Programs, advised management that he would be able to provide her with the information she needed to be able to complete one of her job functions from home for her to be accommodated. The appellant alleges that F.E.'s information was ignored and that no interactive process was held with her. She asserts that she had to use all her benefit time and go out on unpaid leave in order to observe her religious beliefs. The appellant highlights that per guidance from the U.S. Equal Employment Opportunity Commission, Title VII is violated when an employer explicitly or implicitly coerces an employee to abandon, alter, or adopt a religious practice as a condition of receiving a job benefit or privilege or avoiding an adverse employment action. For relief, the appellant seeks the return of all benefit time she had to use; reimbursement for all costs incurred during her unpaid leave (health, dental, and prescription premiums); and a written apology from the respondents.<sup>1</sup>

In response, the EEO/AA maintains that there was no way to accommodate the appellant since management reasoned that her work could not be done remotely on a full-time basis. Management believed that the appellant would not be able to fulfill the essential functions of her job from home despite what F.E. was alleged to have stated. The EEO/AA also maintains that the appellant did not establish a case of retaliation as her failure to follow established guidelines required immediate action on the part of DCA Housing and the ADA Coordinator; she was not subjected to adverse employment consequences for filing a discrimination complaint; and she used leave time while the instant complaint was being investigated. In support, the EEO/AA provides, among other things, copies of the witness statements. The appellant, in her statement, indicated the following, among other things:

I was . . . denied because I would be unable to perform essential functions of my job. I appealed the decision stating that the essential job functions they stated I can do from [home] and proved that when I worked from home for [20] months to accommodate DCA. There was one job function I could not do from home because DCA did not give me access to be able to do it from home, but [F.E.] could provide me the information for that job function when he accesses it for himself. [F.E.] told them he could provide me the information without it creating more work for him.<sup>2</sup>

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<sup>1</sup> The appellant also asked for her unpaid leave status to be removed and to be able to work from home until the testing requirement was lifted. Agency records indicate that the appellant returned to work on September 7, 2022, shortly after the testing requirement was lifted.

<sup>2</sup> F.E. was not interviewed.

S.S., in her statement, indicated, among other things, that DCA Housing “believed that she would not be able to fulfill the essential functions of her job from home.” The remaining witness statements were those of E.G., C.P., and J.W.

It is noted that the Appellate Division recently remanded a disciplinary appeal for further proceedings on the employee’s claim that the City of East Orange violated Title VII by suspending and terminating her employment and by failing to allow her to work from home as a reasonable accommodation for her religious-based refusal to undergo COVID-19 testing. The court determined that the motion record did not permit a summary decision on that claim as a matter of law. *See In the Matter of Carolyn Whitehead*, Docket No. A-0730-21 (App. Div. December 22, 2022).

### CONCLUSION

It is a violation of the State Policy to engage in any employment practice or procedure that treats an individual less favorably based upon any of the protected categories. *See N.J.A.C. 4A:7-3.1(a)3*. The protected categories include 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. *See N.J.A.C. 4A:7-3.1(a)*. A violation of this policy can occur even if there was no intent on the part of an individual to harass or demean another. *See N.J.A.C. 4A:7-3.1(b)*. Additionally, 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. *See N.J.A.C. 4A:7-3.1(h)*. The State Policy is a zero tolerance policy. *See N.J.A.C. 4A:7-3.1(a)*. The appellant shall have the burden of proof in all discrimination appeals. *See N.J.A.C. 4A:7-3.2(m)4*.


In the instant matter, a material dispute of fact exists that warrants granting a hearing at the Office of Administrative Law (OAL). The EEO/AA maintains that the appellant could not be accommodated to work from home full-time as management believed that the appellant would not be able to fulfill the essential functions of her job from home. The appellant disagrees with that assessment and counters that she had already worked from home for many months and performed her essential job functions successfully. According to the appellant, F.E., her supervisor (who was not interviewed), advised management that he would be able to provide her with the information she needed to be able to complete one of her job functions from home for her to be accommodated. Given this dispute, and the

similarity of the appellant's claim to that at issue in *Whitehead, supra*, this matter should be referred to the OAL for a hearing to determine whether proper procedures were followed in the handling of the appellant's accommodation request and, ultimately, whether she was subjected to a violation of the State Policy on the basis of her religion.

**ORDER**

Therefore, it is ordered that this matter be referred to the Office of Administrative Law for a hearing as a contested case.

DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 22<sup>ND</sup> DAY OF FEBRUARY, 2023



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