



STATE OF NEW JERSEY

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

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC Docket No. 2023-357
OAL Docket No. CSV 02127-23

ISSUED: DECEMBER 18, 2024

The appeal of R.C., Program Support Specialist 2, Assistance Programs, Department of Community Affairs, of the determination which found that she failed to present sufficient evidence that she had been subjected to a violation of the New Jersey State Policy Prohibiting Discrimination in the Workplace, was heard by Administrative Law Judge William T. Cooper, III (ALJ), who rendered his initial decision on November 15, 2024. Exceptions were filed by the appellant and a reply was filed on behalf of the appointing authority.

Having considered the record and the ALJ's initial decision, and having made an independent evaluation of the record, including a thorough review of the exceptions and reply, the Civil Service Commission (Commission), at its meeting on December 18, 2024, adopted the ALJ's Findings of Facts and Conclusions and his recommendation to deny the appeal.

The Commission makes the following comment. The ALJ's decision in this matter is thorough and comprehensive. Moreover, as indicated above, the Commission has thoroughly reviewed the exceptions filed by the appellant and finds them unpersuasive as they do not provide a basis to question or discount the ALJ's findings and conclusions. The Commission, therefore, affirms the initial decision in its entirety.

ORDER

The Civil Service Commission orders that the appeal be denied and dismisses the appeal of R.C.

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 18TH DAY OF DECEMBER, 2024

A handwritten signature in black ink that reads "Allison Chris Myers". The signature is written in a cursive, flowing style.

Allison Chris Myers
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Nicholas F. Angiulo
Director
Division of Appeals and Regulatory Affairs
Civil Service Commission
P.O. Box 312
Trenton, New Jersey 08625-0312

Attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSV 02127-23

AGENCY DKT. NO. 2023-357

IN THE MATTER OF R. C.
DEPARTMENT OF COMMUNITY AFFAIRS.

R. C., appellant, pro se

Elizabeth Davies, Deputy Attorney General, for respondent Department of
Community Affairs (Matthew J. Platkin, Attorney General of New Jersey,
attorney)

Record Closed: October 1, 2024

Decided: November 15, 2024

BEFORE **WILLIAM T. COOPER III**, ALJ:

STATEMENT OF THE CASE

Appellant, R.C., a program support specialist 2 employed by the New Jersey Department of Community Affairs (DCA), appeals the determination of the Equal Employment Opportunity/Affirmative Action Office that she failed to substantiate that she had been subjected to a violation of the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy).

PROCEDURAL HISTORY

On February 22, 2023, the Civil Service Commission (CSC) issued an order referring this matter to the Office of Administrative Law (OAL) as a contested case to determine "whether the proper procedures were followed by the DCA in the handling of R.C.'s accommodation request and, ultimately, whether she was subjected to a violation of the State Policy on that basis."

The matter was transmitted to the OAL, where it was filed as a contested case on March 8, 2023. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -23.

A plenary hearing was conducted on July 24, 2024. The record remained open for the parties to submit closing statements. Post-hearing submissions were received on October 1, 2024, and the record closed.

FACTUAL DISCUSSION AND FINDINGS

Testimony

For Respondent

S.S. is currently the deputy chief of staff at the DCA. Previously, she worked as chief of operations and as the Americans with Disabilities Act (ADA) coordinator. As the ADA coordinator, S.S. handled requests for accommodations due to a disability, and she explained that these requests involve an interactive process. The interactive process is utilized to determine if an accommodation can be provided to an employee who needs an accommodation.

S.S. outlined that she talks to management and the employee to determine if the employee can fulfill the essential functions of their job while providing them with an accommodation. S.S. stressed that the interactive process requires communication between the employer and employee to discuss the employee's disability, the essential functions of their job, and if an accommodation can be provided. The interactive process

can take place in person, over the phone, or by electronic mail, as long as there is communication. It typically begins when an employee reaches out to S.S. or another supervisor. The employee would then fill out a form that includes personal medical information.

The re works in the Division of Housing and Community Resources. The Division of Housing and Community Resources handles millions of dollars and provides emergency assistance, including Section 8 housing, homelessness prevention services, and rental assistance. During the pandemic, appellant was required to wear a mask in the building and could remove it when she was alone in her office. The mask mandate applied to all State employees.

S.S. identified R-1 as email correspondence that was following up to see if appellant was wearing her mask after it was reported that she was in the building maskless. In response, appellant submitted a medical note to her supervisor, F.E., on October 22, 2020, that indicated that she could not wear a mask. S.S. indicated that this was the first accommodation request she received for the appellant. S.S. explained that because it did not provide a medical disability, the note was insufficient. According to S.S., when she advised the appellant of the deficiency, appellant stated that she was not disabled and did not need to provide medical documentation.

Appellant did not provide additional medical documentation to further support her October 22, 2020, accommodation request until January 2022. At that time, S.S. received a note that provided a medical diagnosis. S.S. explained that appellant's requests then changed from a medical to a religious accommodation, then back to medical, and then "kind of intertwined." On several occasions, the appellant asked to be permitted to wear a face shield, but that request was denied based on Centers for Disease Control (CDC) recommendations. S.S. also testified that she was advised that the appellant was wearing a mask prior to and after requesting a medical accommodation. According to S.S., the appellant never told her that she had a religious objection to wearing a face mask prior to appellant's religious-accommodation request in August 2021.

S.S. went through the interactive process, but appellant's religious-

accommodation request occurred during the same time testing and vaccination mandates were being rolled out. With the new mandates, the appellant could not enter the building without being tested or vaccinated. S.S. engaged in the interactive process with the appellant predominantly through email. They spoke on the phone, but the conversations were hostile, so S.S. chose to communicate through email. S.S. explained that the interactive process was to allow S.S. to hear from the appellant and hear what she had to say about the accommodation request. When she inquired what the appellant was seeking as an accommodation, S.S. noted that it changed from not wanting to wear a mask to being allowed to work from home.

S.S. explained that in appellant's original medical request in 2020 she asked to wear a face shield, but her request was denied because the medical documentation was insufficient. Then, in August 2021, she submitted a religious-accommodation request stating that due to her longstanding religious beliefs she could not wear a face mask or shield and could not be vaccinated or tested. Because the mandate from the Governor's Office prevented individuals from entering the building without being tested or vaccinated, and the appellant also stated that her long-held religious beliefs forbid her from getting the vaccine or being tested, the only accommodation option S.S. could consider was if the appellant could work from home.

A letter dated October 18, 2021, denying the religious-accommodation request not to wear a mask when entering the building was sent to R.C. (R-8.)

During the pandemic, DCA employees worked from home but adjusted their duties, since no one was really able to work to full capacity. In February 2022 the office was coming back to work full time, and the administration was trying to get offices back to business as usual. S.S. reached out to the Division on several occasions to see if appellant could fulfill her essential job functions from home. On February 15, 2022, S.S. held a Microsoft Teams¹ meeting, at which time the appellant's job duties were discussed in detail, and it was determined that she had to come to the office to perform the essential functions of her job. S.S. identified specific job functions that the appellant could not

¹ Microsoft Teams is a Microsoft hub for team collaboration.

perform from home, such as staff supervision, since appellant could not receive and evaluate the work of lower-level clerical staff if she wasn't present in the office. Further, the appellant would not have access to Citrix and the New Jersey Comprehensive Financial System (NJCFIS) to review balances available for spending or access documents she needed. According to S.S., no one at the meeting believed that the appellant could perform the essential functions of her job from home, including F.E.

A letter dated February 18, 2022, denying the religious-accommodation request not to wear a mask while in the building and/or not to be tested or vaccinated was sent to R.C. (R-9.)

On February 22, 2022, S.S. held a second Teams meeting to ensure that the information that was provided was correct and that there was no way that the appellant could perform the essential functions of her job from home. The second meeting resulted in the same conclusion, that appellant could not perform the essential functions of her job working from home. S.S. also had reviewed the appellant's ePAR² to confirm what the division managers were reporting to her and that the appellant's job duties were listed in her ePAR evaluation. An email confirming this decision was sent to R.C. on February 22, 2022. (R-10.)

C.P. is employed by the State of New Jersey in the DCA as an administrator in employee relations in the Office of Human Resources. He provides counsel and advice to managers and supervisors regarding State and federal employment laws and statewide policies. At the beginning of the pandemic, C.P. was assigned to the COVID-19 Response Team. The Response Team was created after the Governor's March 18, 2020, memo instructing State employees to work from home. The team was created to properly respond to questions from division management and employees. The team also provided updates of any policy changes and produced a broadcast to keep the employees fully informed. C.P. was required to be familiar with the issues related to the COVID-19 virus and the policies and practices related to COVID-19 issued by the Governor, the Department of Health, and the CDC.

² The State's employee performance-appraisal and development program.

After the initial shutdown, only employees designated as essential were permitted into the building. The appellant was designated as an essential employee on March 18, 2020, at the beginning of the pandemic. Masking requirements and social-distancing requirements were implemented for individuals entering the building. Vaccination and testing requirements came later. Employees were required to provide proof of vaccination status or be tested for COVID-19. The masking requirement was lifted in March 2022, and the testing requirement ended at the end of August 2022. C.P. explained that when employees were initially sent home, the State Government was not operating at 100 percent, and many employees could only perform some of their job functions from home. Once employees returned to the office, however, they were expected to perform 100 percent of their duties.

C.P. recalled attending Teams meetings regarding the appellant's accommodation request. He recalled that no one at the meetings said that the appellant could perform the essential functions of her job from home, and if they had the accommodation would have been granted.

E.G. testified that she has worked for the DCA for thirty-one years and presently holds the title of deputy director of the Division of Housing and Community Resources. She supervises the Division managers and assistant directors and the employees that are under them, which includes F.E. She testified that the appellant works in the Energy System Program.

E.G. recalled attending two meetings, which included S.S. and F.E., to discuss whether the appellant could work from home. At these meetings they determined that there were essential functions of appellant's job duties that she could not perform from home. The group did not feel that the appellant could supervise lower-level employees remotely, and, further, the appellant did not have computer access to specific servers or the ability to print necessary documents. E.G. recalled asking the appellant's direct supervisor, F.E., to confirm if the appellant could work from home. According to E.G., he vacillated back and forth but never stated that the appellant could perform her job functions from home. The decision was made by the group that the appellant's requested

accommodation could not be granted.

For Appellant

F.E. is employed by the DCA as the program manager for the Low-Income Home Energy Assistance Program. F.E. testified that he believed the appellant could work from home to accommodate her religious exemption. He testified that he was “not really” involved in discussions regarding her job duties and request for an accommodation to work from home. F.E. admitted that he was involved in a conversation about it and that he stated, “Yes, I don’t see anything that she is involved in that she wouldn’t be able to do from home.” (T105:5–14.³) F.E. confirmed that appellant was designated as an essential employee to access the office during the pandemic so that she had access to documents they needed in case of an audit.

On cross-examination, F.E. admitted that during the pandemic the appellant had to go to the office every Friday and every other Tuesday to print and scan documents. F.E. also admitted that the appellant used NJCFS to check account balances and to prepare check and credit runs and vouchers for approval. Further, F.E. confirmed that while working from home, neither he nor the appellant had access to NJCFS.

According to F.E., E.G. and S.S. came to his office and asked him if appellant could work from home. He testified that he told them she could work from home and then answered specific questions they had regarding obtaining account balances and NJCFS access. F.E. testified that he remembered a meeting to discuss if appellant could work from home. He indicated that when he was asked if there was anything that the appellant could not do from home, he replied that there were no limitations. The group inquired about access to NJCFS, and he explained to them that he could easily give her the balances if needed.

When asked if he stated at the Teams meetings that the petitioner could work from home, he responded, only if his managers asked him. (T115:21–116:13.) He based his

³ “T” stands for the transcript of the hearing conducted on July 24, 2024.

opinion that petitioner could work from home on the fact that she worked from home during the lockdown. F.E. was presented with R-15, an email where management confronted F.E. about showing the appellant preferential treatment. F.E. allowed appellant to work from home for two consecutive weeks, but he had signed her time sheet indicating that she was in the office. F.E. dismissed the allegation as an error and admitted that he allowed appellant to willfully work from home, but he could not recall the specific time sheet.

R.C. has been employed at the DCA for fifteen years. During the initial shutdown, appellant worked from home but came into the office a day or two each week to print her reports and then scan them into the system. Appellant admitted that she wore a mask in the beginning of the pandemic but said she found it difficult to breathe with the mask on, referencing her medical issue. Appellant testified that she would not wear her mask but would put a cloth over her face when she entered the building in order to make everyone else feel safe.

She testified that she presented a note to S.S. from her primary-care doctor in support of her initial accommodation request not to wear a mask. Appellant admitted that she was advised that the note was not sufficient. However, by the time she was able to contact her primary-care doctor, she discovered he had died of cancer. Appellant testified that she then prayed for guidance, “[a]nd that’s when I was like maybe I need to do a religious exemption because it does go against my beliefs, also, but I had never had—never had to use my religion for anything at work or any policy, or anything like that. Like nothing has ever conflicted with my beliefs at work until it came to this stuff.” (T142:16–21.) When confronted with the fact that she had previously worn a mask even though it was against her religious beliefs, she testified that “the religion came into play after I prayed and—asked God about it.” (T150:14–18.) The appellant admitted that she had an opportunity to explain her job duties to S.S. and C.P. and explain what accommodations she was seeking in her email exchanges.

Credibility

When the testimony of witnesses is in disagreement, it is the obligation and responsibility of the trier of fact to weigh the credibility of the witnesses in order to make factual findings. Credibility is the value that a fact finder gives to the testimony of a witness. The word contemplates an overall assessment of the story of a witness in light of its rationality, internal consistency, and manner in which it “hangs together” with other evidence. Carbo v. United States, 314 F.2d 718, 749 (9th Cir. 1963). The term has been defined as testimony that must proceed from the mouth of the credible witness and must be such as our common experience, knowledge, and common observation can accept as probable under the circumstances. State v. Taylor, 38 N.J. Super. 6, 24 (App. Div. 1955); see also Gilson v. Gilson, 116 N.J. Eq. 556, 560 (E. & A. 1934). A fact finder is expected to base decisions on credibility on his or her common sense, intuition, or experience. Barnes v. United States, 412 U.S. 837 (1973). Credibility does not depend on the number of witnesses and the finder of fact is not bound to believe the testimony of any witness. In re Perrone, 5 N.J. 514 (1950).

The testimony of S.S., C.P., and E.G. was competent and detailed. They described how the DCA was able to navigate through the pandemic and continue to meet its obligations to state residents. Each of these witnesses answered questions directly and without hesitation. S.S. detailed the interactive process that she followed in processing appellant's accommodation request. The process involved seeking input directly from the appellant, confirming her job duties through ePAR, and convening meetings to discuss the request with C.P., an administrator in the Office of Human Resources; E.G., the division manager; and F.E., the appellant's direct supervisor. According to S.S., C.P., and E.G., it was agreed by the group that the requested accommodation could not be granted because the appellant could not accomplish her essential job functions from home. Specifically, it was determined that appellant could not supervise lower-level employees remotely and did not have computer access to specific State servers or the ability to print necessary documents. Further, S.S., C.P., and E.G. were all consistent that there was no objection from F.E. at the meetings when it was determined that the accommodation could not be granted. S.S. was diligent in communicating the denials and detailing the reasons for same.

I found S.S., C.P., and E.G. to be credible witnesses.

F.E. testified that he felt that appellant could perform her essential job functions from home. He admitted that the appellant would not have computer access to specific State servers or the ability to print necessary documents. F.E. indicated that he could provide required information and/or account balances as needed to appellant. Although he may have disagreed with the decision, his testimony supported the respondent's claim that they engaged in an interactive process in the handling of R.C.'s accommodation request.

Appellant also testified in a clear, calm, and competent manner. She stated her reasons for both the medical and religious requests for an accommodation. However, her testimony confirmed the interactive process employed by respondent to determine if her requested accommodation could be granted. The appellant obviously disagreed with the final decision but could not support her claim that this decision was rendered in an arbitrary or capricious manner. Further, the appellant offered no evidence to support the claim that she was subjected to a violation of the State Policy. Her argument was simply that because her request for an accommodation was denied, she was somehow discriminated against.

Although I found the appellant credible, her testimony and the evidence she submitted do not support her claims that an interactive process was not followed and that she was discriminated against because of her religious beliefs.

Findings

Based on the credible evidence submitted as well as the testimony of the witnesses at the hearing, I **FIND** the following as **FACT**:

The appellant submitted multiple requests for an accommodation: first, claiming that she had a medical condition that prevented her from wearing a mask while at work; and second, that her religious beliefs prevented her from wearing a mask and being

vaccinated and/or subject to medical testing. The only accommodation the appellant would accept was to work from home. S.S. properly conducted an interactive process in order to determine if the requested accommodation could be granted. The interactive process conducted by S.S. involved seeking input directly from the appellant, confirming her job duties through ePAR, and convening meetings to discuss the request with C.P., an administrator in the Office of Human Resources; E.G., the division manager; and F.E., the appellant's direct supervisor. S.S. diligently apprised the appellant of the denials, and the reasons for same on October 18, 2021, February 18, 2022, and February 22, 2022. The appellant and F.E. disagreed with the conclusion reached, but both confirmed that their input was sought, and that the respondent conducted an interactive process in reviewing the accommodation requests. Finally, there was no evidence submitted to support the appellant's claim that she was either discriminated against or retaliated against because of her religious beliefs.

LEGAL ANALYSIS AND CONCLUSIONS

At issue is whether the proper procedures were followed by the DCA in the handling of R.C.'s accommodation request and, ultimately, whether she was subjected to a violation of the State Policy on that basis.

New Jersey courts have developed an independent test to determine whether an employer failed to engage in the interactive process:

To show that an employer failed to participate in the interactive process, a disabled employee must demonstrate: (1) the employer knew about the employee's disability; (2) the employee requested accommodations or assistance for her disability; (3) the employer did not make a good faith effort to assist the employee in seeking accommodations; and (4) the employee could have been reasonably accommodated but for the employer's lack of good faith.

[Tynan v. Vicinage 13 of the Super. Ct. of N.J., 351 N.J. Super. 385, 400-01 (App. Div. 2002).]

The interactive process itself under the NJLAD has been borrowed from the federal regulations under the ADA and consists of an informal interaction between the employer and the employee identifying potential reasonable accommodations geared to the individual employee's situation. Ibid.; Victor v. State, 401 N.J. Super. 596, 612–13 (App. Div. 2008). During the interactive process, however, “both employer and employee bear responsibility for communicating with one another to ‘identify the precise limitations resulting from the disability and potential reasonable accommodation that could overcome those limitations.’” Jones v. Aluminum Shapes, 339 N.J. Super. 412, 422 (App. Div. 2001) (citation omitted). The burden is first upon the employee to request assistance, and then upon the employer to come up with potential accommodations. Tynan, 351 N.J. Super. at 400.

The State of New Jersey prohibits discrimination in the workplace on the basis of religion. N.J.A.C. 4A:7-3.1(a). “It is a violation of this policy to engage in any employment practice or procedure that treats an individual less favorably based upon any of the protected categories.” N.J.A.C. 4A:7-3.1(a)(3).

Here, the appellant submitted multiple requests for an accommodation: first, claiming that she had a medical condition that prevented her from wearing a mask while at work; and second, that her religious beliefs prevented her from complying with vaccination and testing requirements. There was no indication that the employer had any prior knowledge of the appellant's medical disability or religious beliefs. Moreover, the appellant failed to timely provide the necessary medical documentation to support her medical disability and why the accommodation was necessary. The only accommodation appellant would accept was to work from home. The credible evidence supports the respondent's position that it acted in good faith by utilizing a robust interactive process to determine that the requested accommodation could not be granted.

Accordingly, I **CONCLUDE** that the proper interactive process was followed by the respondent in the handling of appellant's accommodation requests. Further, I **CONCLUDE** that the appellant has failed to present any credible evidence that she was treated any differently than any other State employee or was retaliated against because of her religious beliefs.

ORDER

I **ORDER** that the appellant's appeal is **DISMISSED**, and that respondent's action denying appellant's request for accommodation is **AFFIRMED**.

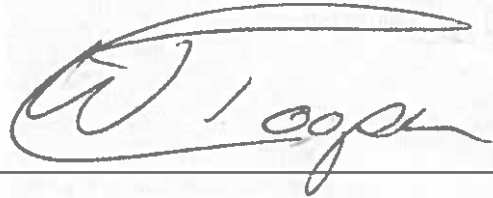
I hereby **FILE** my initial decision with the **CIVIL SERVICE COMMISSION** for consideration.

This recommended decision may be adopted, modified, or rejected by the **CIVIL SERVICE COMMISSION**, which by law is authorized to make a final decision in this matter. If the Civil Service Commission does not adopt, modify, or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **DIRECTOR, DIVISION OF APPEALS AND REGULATORY AFFAIRS, UNIT H, CIVIL SERVICE COMMISSION, 44 South Clinton Avenue, PO Box 312, Trenton, New Jersey 08625-0312**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

November 15, 2024

DATE

A handwritten signature in black ink, appearing to read "W. T. Cooper III", is written over a horizontal line.

WILLIAM T. COOPER III, ALJ

Date Received at Agency:

Date Mailed to Parties:

WTC/sb

APPENDIX

List of Witnesses

For Appellant:

F.E.

R.C.

For Respondent:

S.S.

C.P.

E.G.

List of Exhibits Admitted

For Appellant:

- P-1 Religious Exemption Request 8/18/21
- P-2 ADA Determination Letter/Religious Exemption 10/18/21
- P-3 Emails regarding Religious Exemption
- P-4 Medical Exemption
- P-5 ADA Determination Letter/Medical Exemption 2/18/22
- P-6 Emails regarding Medical Exemption
- P-7 Union Attorney Request for Reconsideration
- P-8 Discrimination Complaint to the DCA
- P-9 Discrimination Complaint determination from the DCA
- P-10 Appeal letter to the CSC
- P-11 CSC decision

For Respondent:

- R-1 Emails DCA-133, DCA-134
- R-2 Emails from S.S. to R.C.

- R-3 Emails DCA-90, DCA-91, DCA-92
- R-4 Request for Religious Accommodation
- R-5 Email re: 8/18/21 email
- R-6 Meeting re: R.C. 2/15
- R-7 Meeting re: R.C. 2/22
- R-8 Denial not to wear mask
- R-9 Determination to work from home
- R-10 2/22/22 Emails from R.C. to S.S.
- R-11 ePAR of R.C.
- R-12 11/15/21 email from R.C. to S.S.
- R-14 7/12/22 Email from R.C. to S.S.
- R-15 Email re: time sheets