



**STATE OF NEW JERSEY**

**DECISION OF THE  
CIVIL SERVICE COMMISSION**

In the Matter of B.O., Department of  
Labor and Workforce Development

CSC Docket No. 2024-1615

Discrimination Appeal

**ISSUED: April 29, 2026 (SLK)**

B.O., an Assistant Disability Insurance Supervisor (Assistant Supervisor) with the Department of Labor and Workforce Development (Labor), represented by Keri Reid McNally, Esq., appeals the determination of the Chief of Staff, stating that there was insufficient evidence to support a finding that the appellant had been subjected to a violation of the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy).<sup>1</sup>

By way of background, the appellant suffered a spinal injury in January 2022 and had been provided an accommodation to work full-time remotely. Thereafter, in December 2023, Labor’s Americans with Disabilities Act Unit (ADA Unit) denied the appellant’s request to continue to work remotely full-time until June 2024. After an investigation by Labor’s Office of Diversity and Compliance (ODC), Labor’s Chief of Staff issued a January 16, 2024 determination letter, noting that there was no evidence to suggest that the appellant had not been performing the essential functions of her position. Further, the determination found that there was no evidence to suggest that the requested accommodation created an undue hardship on the department characterized by significant difficulties or expenses. However, the determination stated that the ADA provides that approved leave under the federal

<sup>1</sup> Along with appealing the determination of the Chief of Staff, the appellant has requested interim relief regarding a denied accommodation. The within matter was held in abeyance for a period of time as both parties indicated that they were going through the interactive process and attempting to negotiate a solution. However, the parties reached an impasse, and the matter has now been forwarded to the Commission for its review.

Family and Medical Leave Act (FMLA) is considered a reasonable accommodation, and employers are not required to provide an employee's requested accommodation so long as the employer offers an effective alternative accommodation. In this case, the determination asserted that Labor provided the appellant with the use of FMLA leave time as an effective alternative accommodation. The determination noted that the appellant had a total of 60 days or 420 hours of FMLA leave time remaining and the appellant could telework two days a week under the State's Model Telework Program.<sup>2</sup> Therefore, the determination provided that the appellant could use intermittent FMLA leave time for required days in the office. Consequently, the determination found that there was no violation of the State Policy because the appellant had been provided with the ability to use FMLA leave, which was an effective alternative accommodation.

On appeal, the appellant presents that she successfully worked remotely from December 2020 until January 2022 in response to the COVID-19 pandemic. After suffering a severe neurological condition, the appellant took medical leave. Thereafter, she was approved to work full-time remotely in January 2023 until February 1, 2024. However, her request to continue to work full-time remotely thereafter was denied, which led to the subject appeal. However, it is noted that Labor has allowed the appellant to continue to work full-time remotely subject to the Civil Service Commission's (Commission) determination in this matter.

The appellant contends that the ability to work full-time remotely is a reasonable accommodation as she can perform the essential functions of her position remotely without causing Labor an undue hardship. She notes that most Labor employees worked remotely from March 2020 until sometime in 2022 due to the COVID-19 pandemic. Further, most employees continue to work on a hybrid schedule, working three days a week in the office and two days at home. The appellant asserts that in January 2022, Labor unilaterally and without a legitimate business reason, removed her supervisory responsibilities as she believes that there is no reason why she cannot review, evaluate, monitor, and supervise others' work processes and product remotely. She claims that Labor has failed to articulate the undue hardship that her working remotely causes. The appellant cites case law examples where the courts have indicated that working remotely is not an undue burden to the employer. She notes that courts have shown increasing openness to remote work since the COVID-19 pandemic. The appellant emphasizes that the determination letter stated that there was no evidence that she had not been performing the essential functions of her position and there was no evidence that her remote work created an undue hardship for Labor. However, she argues that the determination letter then unexpectedly rejected her request as Labor provided her a

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<sup>2</sup> It is noted that, effective November 3, 2025, the Telework Program: State Service was codified at *N.J.A.C. 4A:6-7*. *N.J.A.C. 4A:6-7.2(b)* provides that each appointing authority shall institute a telework program that takes into consideration operational needs while ensuring eligible employees have access to the program. Operational needs are at the discretion of the appointing authority.

reasonable accommodation by allowing her to use her remaining 60 days of FMLA leave time on her required in-office days. However, the appellant claims that this accommodation is ineffective and unreasonable as it would place a burden on her and her unit as she would still have a full-time workload but only two days per week to tackle this workload. Moreover, once she exhausts her FMLA leave and paid time-off, she would be forced to take either unpaid leave, resign, or retire, which would also be a hardship for the unit. The appellant requests that she continue her full-time work accommodation and be awarded “lost wages for any time periods she is forced to use unpaid leave” and “reasonable attorney’s fees and costs she has incurred in having to fight, every step of the way, for this accommodation.”

In response, Labor, represented by Jana R. DiCosmo, Deputy Attorney General, argues that the use of leave time is an effective alternative accommodation where the appellant can complete office functions when she is able to do so and use leave time when she is unable. It asserts that the use of FMLA time is considered a reasonable accommodation and employers are not required to provide an employee’s requested accommodation so long as the employer offers an effective alternative accommodation. Further, Labor notes that the courts have held that an employer should not be penalized for temporarily removing an employee’s required duties for an extended period to provide accommodation beyond that which is required under the law. Labor argues that this matter is distinguishable from cases that the appellant submits that support fully remote work as an accommodation as Labor has reassigned duties to another employee which requires an in-person presence. Labor submits a statement from a supervisor who was interviewed as part of the ODC’s investigation. The supervisor explains how work related to the mail must be completed in person; that all Assistant Supervisors respond to and distribute mail to Claims Examiners; that this work cannot be done remotely; how an Executive Assistant 4 did the in-person work for the appellant; and there are no titles within the unit that have work that can be done fully remote.

Additionally, Labor states that a significant portion of the appellant’s work has been completed by other employees because much of her unit’s work requires notations on physical paper documents and cannot be completed online. Further, it indicates that because the appellant is working fully remote, her direct reports have been assigned to other supervisors, increasing their workloads. Moreover, Labor maintains that at first, the reassignment of the appellant’s work was manageable. However, it contends that overflow work in Labor increased significantly due to legislative pressure to process claims more quickly. Additionally, Labor asserts that workflow per employee increased even more when four employees left.

Moreover, Labor presents that the parties have engaged in a lengthy interactive process with the goal of establishing a graduated return-to-work schedule for the appellant, where she would work one day in the office per week for one month, then two days in the office per week for an additional month, and finally three days

in the office per week in compliance with the telework program. It indicates that additional accommodations that would allow the appellant to return to the office were proposed such as use of a wheelchair, ridesharing services, public transportation, or having a family member drive her to work. Labor emphasizes that having the appellant work fully remote was always intended as being temporary. Unfortunately, the appellant's health has not recovered and has only deteriorated. Further, it provides that in September 2025, the appellant informed Labor that she could not return to work as anticipated. However, Labor states that due to its increase in workload and decrease in Labor's total supervisory staff, it cannot continue to permit the appellant to work at home indefinitely. Labor submits case law that indicates that an employer is not required to allow an employee to work remotely when such an arrangement does not enable the employee to perform all essential functions as is the case here. Labor states that the appellant has refused to accept any of the reasonable accommodation offers and it is not obligated to continue to provide her full-time remote work when doing so has created an undue hardship. Therefore, it contends that its denial of the appellant's request for permanent full-time remote work is based on legitimate business necessity and not the result of any discriminatory animus.

Additionally, Labor submits a certification from an Administrative Analyst 4 who works in the role of an executive assistant to the Director of the Temporary Disability Insurance (TDI) and Family Leave Insurance (FLI) Unit.<sup>3</sup> The Administrative Analyst 4 explains how processing claims involves paper forms that are modified by pen and physically mailed out from the office and how this is an essential function for the appellant's title. She represents that she has been responsible for processing the paper documents generated from the appellant's cases and how she is no longer able to do so as she is struggling to manage her current duties in the Director's Office. Further, she states that training subordinate staff is also an essential function of the appellant's position. Trainees benefit from having one-on-one training and the appellant cannot provide in-person training and feedback because she works from home. She also indicates that the appellant's supervisory functions cannot be completed solely remotely because supervision of physical paperwork requires an in-person presence, which has led to the reassignment of subordinates to other supervisors. She provides that the reassignment of subordinate staff has been overwhelming for the unit as there have been nine recent newly hired trainees and 48 trainees have been hired since 2021. Finally, she asserts that the TDI/FLI Unit is struggling to meet legislative demands for quicker production due to

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<sup>3</sup> Labor is reminded that, pursuant to *N.J.A.C. 4A:3-3.4*, no person shall be appointed or employed under a title not appropriate to the duties to be performed nor assigned to perform duties other than those properly pertaining to the assigned title which the employee holds, unless otherwise provided by law or these rules. Thus, while she may be primarily performing the duties of her title, the appointing authority should ensure that the Administrative Analyst 4 is assigned duties appropriate to her title.

staffing issues as she notes that four individuals have left the office since the appellant began working full-time remotely.

In reply, the appellant describes how her medical condition has deteriorated, which does not allow her to return to the office. She presents that commuting to the office is only one of the barriers that she faces, and not even the most significant one, as to why she cannot return to the office. Specifically, the appellant indicates that she is at significant risk for falls, which puts herself and others at risk. She explains that the risk of falls is greater outside of her home, as the environment is not as familiar as her home. Additionally, the appellant provides that the dysfunction in her arms and legs makes it prohibitively difficult to use a wheelchair. Moreover, she states that her doctor is against her venturing outside without company.

The appellant asserts that Labor unilaterally removed the essential functions that it now asserts that she cannot perform remotely. She maintains that she can perform the essential functions of her job, which were the duties that she performed before suffering her injury in January 2022. However, the appellant claims that Labor unilaterally changed her job in two material ways because of her remote work accommodation. She states that prior to her injury, she oversaw one of her two division's two "web units," which handled web-based disability claims rather than paper claims, where most of the work is paperless. However, the appellant provides that when she returned to work in April 2023, her web claim work was reassigned to other staff, and she was given a special assignment to work with paper claims. She states that she expressed concern about the physical handling and mailing; however, she was told not to worry about this as other staff would handle the paperwork. Further, the appellant questions whether handling and mailing physical documents are an "essential function" of her job title as the Administrative Analyst 4 certified that modifying and mailing claims related to letters are essential functions for all employees who process claims. Moreover, even if these are essential functions of her current position, she states that this is solely because Labor decided to assign her to a paper-based claims unit when she started remote work.

In addition, the appellant indicates that the other material change that Labor made to her job duties relates to supervisory functions. She notes that she supervised subordinates before her medical leave on a fully remote basis throughout 2021. However, the appellant provides that during her leave, Labor reassigned her subordinates, and upon her return, it chose not to restore her supervisory duties. Therefore, she argues that the claim that she cannot supervise staff while working full-time remotely is speculative as this has not been tested during her remote work accommodation. Moreover, the appellant highlights that she successfully supervised subordinates while working full-time remotely when offices were closed due to the COVID-19 pandemic. Therefore, she believes that her physical presence in the office is not an essential function of her supervisory responsibilities. Additionally, she provides an example of how she is still currently assisting with training subordinates.

The appellant further asserts that she could support her division by performing other Assistant Supervisor duties that the hybrid assistants may not have the bandwidth to perform. For example, she reports that there is a large caseload of fraud claims that is understaffed, and this is work that must be performed by an Assistant Supervisor that does not involve the supervision of a team and can be performed fully remote. However, she states that instead of assigning her this responsibility, this caseload has been assigned to a different Assistant Supervisor, who also does not supervise a team of subordinates. Consequently, the appellant argues that the hardships that Labor is experiencing because of her remote work accommodation are self-imposed and do not constitute “undue hardships.” Finally, the appellant contends that permanent remote work can be a reasonable accommodation under appropriate circumstances. She highlights case law to support this assertion.

## CONCLUSION

*N.J.A.C.* 4A:7-3.1(a) provides, in pertinent part, the State is committed to providing every State employee and prospective State employee with a work environment free from prohibited discrimination or harassment. Under this policy, forms of employment discrimination or harassment based upon disability will not be tolerated. *N.J.A.C.* 4A:7-3.2(n)1 provides that the burden of proof shall be on the appellant.

Initially, it is noted that nowhere in the ADA or in relevant case law is jurisdiction over ADA claims extended to State agencies. However, the Commission may review ADA issues collaterally, when they are implicated in an appeal properly before the Commission, such as in a disciplinary action or in a discrimination appeal. *See Matter of Allen*, 262 *N.J. Super.* 438, 444 (App. Div. 1993); *In the Matter of John Soden* (MSB, decided September 10, 2002) (noting that jurisdiction was proper when the ADA was implicated as a defense to a disciplinary removal properly before the former Merit System Board); *In the Matter of Michael Giannetta* (MSB, decided May 23, 2000) (the former Merit System Board may apply the ADA in deciding an issue concerning removal from an eligible list). Thus, to the extent that the appellant had requested interim relief of a denied accommodation under the ADA, the Commission does not have primary jurisdiction to adjudicate that request.

However, with regard to discrimination matters, *N.J.A.C.* 4A:7-3.3(a) allows employees in the State career, senior executive and unclassified services who claim unlawful discrimination under the State Policy, codified at *N.J.A.C.* 4A:7-3.1 *et seq.*, to appeal such action to the Commission using the procedures set forth in *N.J.A.C.* 4A:7-3.3. *Compare, In the Matter of Michael Tidswell* (MSB, decided August 9, 2006) (Appellant’s request for a reasonable accommodation remanded to the appointing authority for further investigation regarding possible violations of the State Policy). Therefore, in this matter, as the appellant appeals from the determination of the

Chief of Staff who rendered a decision pursuant to the State Policy, the Commission may apply the ADA in deciding whether that determination is in contravention with the State Policy.

In that regard, 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).

In this matter, the record indicates that the appellant supervised staff while working remotely full-time due to the COVID-19 pandemic. Further, her work involved web-based claims which involved minimal in-office paperwork. Thereafter, in January 2022, the appellant took medical leave due to a serious health condition. Upon her return in January 2023, the appellant was provided an accommodation which allowed her to continue to work remotely on a full-time basis for a certain period. However, she was reassigned to a paper-based claims unit. Although she expressed concerns, she was advised at that time that her unit would take care of the in-person duties. Additionally, although she still held the title of Assistant Supervisor, because of concerns about her ability to supervise subordinates who need to perform in-person paperwork, her subordinates were reassigned to other supervisors.<sup>4</sup> Subsequently, she requested that her accommodation to work remotely full-time be extended. However, the ADA Unit denied her request. Instead, it offered that the appellant could telework two days per week and use FMLA leave on an intermittent basis to cover her three in-office days.

In response, the appellant appealed the ADA Unit's determination claiming that she had been subjected to disability discrimination in violation of the State Policy. After the ODC's investigation, Labor issued the January 14, 2024, determination that found that there was no evidence to suggest that the appellant had not been performing the essential functions of her position. Further, the determination found that there was no evidence to suggest that the requested accommodation created an undue hardship on the department characterized by significant difficulties or expense. Instead, Labor concluded that the ADA Unit's offering the appellant to use intermittent FMLA leave time was an effective reasonable accommodation in compliance with the ADA and that the appellant had not been subjected to a State Policy violation. Presumably, this accommodation was considered effective under the belief that the appellant would recover from her medical condition and that she would be able to return to the office at some point. However, at this juncture, it does not appear the appellant is able to return to the office. Accordingly, this matter has now been presented to the Commission for its review, and upon its review, the Commission is constrained to remand this matter to Labor for further investigation.

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<sup>4</sup> It is noted that, as the job specification for the appellant's title indicates that it is a supervisory title, it is inappropriate for Labor to reassign her supervisory duties indefinitely while she serves in the title.

Initially, the record indicates that despite Labor's determination, it has allowed the appellant to continue to work remotely on a full-time basis while they engaged in an interactive process to try to settle this matter. Moreover, over two years have passed since Labor's determination and there are now different circumstances. Despite the initial determination, Labor is now contending that the appellant cannot perform her essential duties and her working remote full-time is an undue burden as described above. However, the record is unclear if the same circumstances that Labor now contends are an undue burden that existed at the time of the determination or if there are new circumstances which have caused the situation to become unduly burdensome to Labor since that time. It is noted that the mere fact that the telework program required in-person work for three days per week does not prohibit Labor from allowing full-time remote work as a reasonable accommodation under the ADA when an employee can perform the essential duties of the position remotely and said accommodation does not create an undue burden. *See In the Matter of J.R.* (CSC, decided October 11, 2023) and *In the Matter of S.P.* (CSC, decided November 1, 2023).

Therefore, the question remains as to whether the appellant can work remotely full-time while performing the essential functions of her position without it being an undue burden on Labor. Further, the appellant's appeal has raised questions which have not been addressed by Labor in this matter. When the appellant returned from her medical leave, she was reassigned from a web-based claim unit to a paper-based claim unit. Can she be reassigned back to a web-based unit and perform the essential duties of her position without it being an undue burden to Labor? Further, in reviewing the examples of work for the Assistant Supervisor job specification, several different units are mentioned. If the appellant cannot be reassigned to a web-based claim unit within her current unit, is there another unit within Labor where she can fully work remotely without it being an undue burden to Labor? If the appellant cannot be reassigned to a web-based claim unit or another unit, she should nevertheless perform supervisory duties based on her title. It is noted that the record indicates that she had been a successful remote supervisor although that was in a web-based unit and not a paper-based unit. Additionally, even if she cannot be reassigned, are there duties, such as fraud claims or other duties as the appellant suggests, that would not require her to perform in-person duties that would relieve other supervisors of duties that would be appropriate for an Assistant Supervisor? Consequently, the Commission cannot determine based on the existing record whether the appellant has been discriminated against due to her disability in violation of the State Policy, and what remedy, if any, she is entitled to under the State Policy without these questions being explored by way of further investigation.

Accordingly, the Commission remands this matter back to Labor for further investigation to consider the questions raised by the Commission in this matter and the possibility of new circumstances. Moreover, it is directed that Labor complete the additional investigation and issue a new written determination within 60 days of

issuance of this decision, setting forth the investigation's findings and whether such findings support a violation of the State Policy. Should an adverse determination be rendered, the appellant shall be provided a right to appeal to the Commission and need not submit an appeal fee as the Commission has remanded this matter to the appointing authority.

**ORDER**

Therefore, it is ordered that this appeal be remanded to the Department of Labor and Workforce Development for further investigation consistent with this decision. Additionally, it is ordered that the Department of Labor and Workforce Development complete its investigation and issue a written determination within 60 days of issuance of this decision.

DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 29<sup>TH</sup> DAY OF APRIL, 2026



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Mary Cruz  
Acting Chairperson  
Civil Service Commission

Inquiries  
and  
Correspondence

Dulce A. Sulit-Villamor  
Director  
Division of Appeals and Regulatory Affairs  
Civil Service Commission  
Written Record Appeals Unit  
P.O. Box 312  
Trenton, New Jersey 08625-0312

c: B.O.  
Keri Reid McNally, Esq.  
Kathleen Asher  
Ebonik Gibson  
Jana R. DiCosmo, DAG  
Records Center  
Division of Equal Employment Opportunity and Affirmative Action