STATE OF NEW JERSEY
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW & PUBLIC SAFETY
DOCKET NO. EG22HB-64191

R. S.,	)	
	)	Administrative Action
Complainant,	)	
	)	**FINDING OF PROBABLE CAUSE**
v.	)	
	)	
Grace West Manor/Grace Louis, LLC, The Matrix Group, and Matrix New Jersey, LLC,	)	
	)	
Respondents.	)	

On December 13, 2012, Essex County resident R.S. (Complainant) filed a complaint with the New Jersey Division on Civil Rights (DCR) alleging that her former employers, Grace Louis, LLC, The Matrix Group, and Matrix New Jersey, LLC (collectively "Respondent"),[1] fired her because of her disability in violation of the New Jersey Law Against Discrimination (LAD), N.J.S.A.10:5-1 to -49. The DCR investigation found as follows.

Summary of Investigation

Respondent is a real estate company, which, during the relevant time, owned and operated Grace West Manor, a 12-story apartment complex located at 301 Turner Boulevard, Newark, New Jersey.

On or around May 11, 2007, Respondent hired Complainant to work as a full-time housekeeper/porter at Grace West Manor. Her duties included picking up trash, sweeping, mopping, vacuuming, and using industrial cleaning equipment to clean floors, windows, and common areas. Her immediate supervisor was Jorge Lopez. The Property Manager was Sandy Dipietroantonio.

Complainant speaks Spanish only. Lopez is bi-lingual. Dipietroantonio does not speak Spanish. So Lopez served as the communication link between non-English speaking employees and Dipietroantonio.

[1] Complainant identified Respondent as "Grace West Manor/Grace Louis, LLC/Cress Lewis, LLC," in her verified complaint. Based on correspondence from defense counsel, the caption is hereby amended to "Grace West Manor/Grace Louis, LLC, Matrix Group, and Matrix New Jersey, LLC."

Over the years, Complainant had some history of medical issues that caused her to miss work and/or seek a disability accommodation. For example, on or about July 14, 2009, she sustained a neck/shoulder injury at work. She submitted to Respondent a copy of a medical note stating that she was being treated for a neck strain. She was excused from work for two days.

In July 2009, she sustained a neck injury at work while using a mop. She submitted a doctor's note recommending that she be given a lighter mop to avoid further aggravating her injury. Respondent provided her with a lighter mop.

In January 2010, Complainant submitted to Respondent a copy of a medical note stating that she was being treated for Carpel Tunnel Syndrome and requesting that she be excused from work for one day.

In February 2010, she provided Respondent with a copy of a medical note requesting light duty pending a reevaluation of her Carpel Tunnel Syndrome. That same month, she provided Respondent with a copy of a medical note dated February 15, 2010, stating that she was cleared to return to work and requesting that she be placed on light duty while she considered surgery for her Carpel Tunnel Syndrome.

In or around February 2010, Complainant resigned due to her Carpel Tunnel Syndrome.

On August 16, 2010, Respondent rehired her to the housekeeper/porter position.

On November 1, 2011, Lopez issued a written reprimand to Complainant for excessive absenteeism. Complainant acknowledged receiving notice of the written reprimand.

On or about January 6, 2012, Complainant sought medical attention at Clara Maass Medical Center and received a doctor's note recommending that she not work from January 9, 2012 to January 11, 2012. From the hospital, Complainant sent a cellphone photograph of her bandaged hands to Lopez.

On January 9, 2012, Complainant contacted Lopez via telephone and told him that she could not see her doctor until Friday, January 13, 2012.

On January 16, 2012, Complainant contacted Lopez via telephone and told him that she could not return to work because of the side effects of her medication.

On January 18, 2012, Complainant was treated by her physician. She provided Respondent with a doctor's note stating that she was under a doctor's care from January 13, 2012 forward and was scheduled to be reevaluated on January 24, 2012.

On January 24, 2012, Complainant was reevaluated by her doctor. She provided Respondent with a doctor's note stating she had been a patient under care from January 13, 2012 to January 24, 2012, and that she was reevaluated for Carpal Tunnel Syndrome. The note

indicated that Complainant would be medically released to return to work on January 25, 2012 with no restrictions noted.

On January 25, 2012, Complainant returned to work. At the end of the day, Jorge Lopez informed Complainant she was fired per Dipietroantonio's instructions. The "Disciplinary Termination Action" notice stated, "[Complainant] did not report to work for 3 weeks; she was advised by Jorge Lopez that she needed to contact Sandy the Mgr., if there was a reason for these absences and to provid proff, no contact or calls was made." [*sic* throughout]. Complainant contends that discharging her for taking time off due to a disability violated the LAD.

Respondent denied the allegations of disability discrimination in their entirety. It denied that Complainant was "discharged because her alleged disability, to wit: Carpel Tunnel Syndrome." See Amended Answer to Verified Complaint, Sept. 23, 2015, p. 1. Instead, it argued that Complainant "was terminated on January 25, 2012 because of her failure to contact Sandy Dipietroantonio during her absence from work, in contravention of a clearly established and communicated company policy." Id. at 3.[2]

Dipietroantonio, who was no longer employed by Respondent at the time of her interview with DCR, acknowledged that Lopez served as the interpreter during her discussions with Complainant, and that Complainant was to report her absences to Lopez. Dipietroantonio stated that she was aware of Complainant's Carpal Tunnel Syndrome. Dipietroantonio acknowledged that she previously received notice that Complainant did not want to undergo surgery to address her condition despite her doctor's recommendation that she do so. Dipietroantonio recalled Lopez stating that Complainant was absent for a prolonged period of time. She stated that in response, she told Lopez that he needed to let Complainant know that she could not return to work without a doctor's note. She stated that she also told Lopez that Complainant needed to contact her if she was planning to not return to work at all. However, she told DCR that if Complainant was returning to work, she could do so without contacting Dipietroantonio. She stated that when Complainant returned to work on January 25, 2012, she provided a doctor's note explaining her absence. However, Dipietroantonio told DCR that the note did not indicate that Complainant was cleared to return to work. Dipietroantonio told DCR that the decision to discharge Complainant was made by the "corporate office," not her.

[2] Elsewhere, Respondent notes that "[u]pon information and belief, complainant was terminated on January 25, 2012 without performing any work that day." See Amended Answer to Verified Complaint, Sept. 23, 2015, p. 2. However, a paystub provided by Complainant supported her assertion that she completed an eight-hour shift that day.

During the investigation, Complainant produced a copy of the 2010 Edition of the Matrix Employee Handbook,[3] which was in effect during the relevant time. Its Return to Work Policy states:

> A "Return to Work Statement" is required for all employees who return from a medical leave of absence (absent more than four (4) consecutive work days) and for employees who are returning to work following an absence due to a serious health condition or surgical procedure. The completed "Return to Work Statement" is to be provided to the supervisor along with a copy faxed to the Corporate Office at (631) 979-3198.
>
> All information on the form must be legible, signed and dated by the physician. Any employee returning to work with job duty or work hour restrictions must contact the Property Manager or Supervisor.
>
> The "Return to Work Statement" may be used by employee's physician to "clear" that person to return to work, however a general work release provided by the physician may be substituted.

The Return to Work Policy does not indicate that an employee must contact the Property Manager during the employee's leave of absence. Instead, it states, "Any employee returning to work with job duty or work hour restrictions must contact Property Manager or Supervisor."

Respondent produced Complainant's leave requests dated January 6, 2012 and January 18, 2012. On the January 6, 2012 form, she requested to be excused from work on January 6, 2012. On the second form, she requested to be excused from work from January 9 to 20, 2012. Both forms mark, "Sick," as the reason for her absences. Both forms were approved by Dipietroantonio and Respondent's HR manager on January 20, 2018.

In response to DCR's document and information request, Respondent noted that on July 25, 2012, Complainant reported to work with a doctor's note. It produced several doctors' notes. Each is date-stamped January 25, 2012—i.e., Complainant's return to work date. Each requested that Complainant be excused from work between January 9 and 24, 2012 due to her disability. One of the notes states in part, "Above patient has been re-evaluated for Carpal Tunnel Syndrome and is able to return to work on 1-25-12." No restrictions were noted.

[3] Matrix New Jersey, LLC, is identified in a legal document produced by Respondent as the "sole member" and "managing member" of Grace Louis, LLC.

Analysis

At the conclusion of an investigation, DCR is required to determine whether "probable cause exists to credit the allegations of the verified complaint." N.J.A.C. 13:4-10.2. "Probable cause" for purposes of this analysis means a "reasonable ground of suspicion supported by facts and circumstances strong enough in themselves to warrant a cautious person in the belief that the [LAD] has been violated." Ibid.

A finding of probable cause is not an adjudication on the merits. It is merely an initial "culling-out process" in which DCR makes a threshold determination of "whether the matter should be brought to a halt or proceed to the next step on the road to an adjudication on the merits." Frank v. Ivy Club, 228 N.J. Super. 40, 56 (App. Div. 1988), rev'd on other grounds, 120 N.J. 73 (1990), cert. denied, 498 U.S. 1073 (1991). Thus, the "quantum of evidence required to establish probable cause is less than that required by a complainant in order to prevail on the merits." Ibid.

The LAD makes it unlawful to fire, refuse to hire, or otherwise discriminate in the terms, conditions, or privileges of employment based on disability. N.J.S.A. 10:5-12(a). In addition, New Jersey courts have "uniformly held that the [LAD] . . . requires an employer to reasonably accommodate an employee's disability." Potente v. County of Hudson, 187 N.J. 103, 110 (2006).

An accommodation is not required if the employer can demonstrate that it would impose an "undue hardship on its business." N.J.A.C. 13:13-2.5(b)(3). Factors to be considered when determining whether an accommodation would constitute an undue hardship include (a) the overall size of the employer's business with respect to the number of employees, number of types of facilities, and size of budget; (b) the type of the employer's operations, including the composition and structure of the employer's workforce; (c) the nature and cost of the accommodation needed; and (d) the extent to which the accommodation would involve waiver of an essential requirement of a job as opposed to a tangential or non-business necessity requirement. Ibid. The burden of proving undue hardship is on the employer. Ibid.; cf. Lasky v. Moorestown Twp., 425 N.J. Super. 530, 545 (App. Div. 2012), cert.. denied, 212 N.J. 198 (2012).

In this case, Respondent denies that Complainant was fired because of her Carpel Tunnel Syndrome, and suggests that there is an open question as to whether she actually suffered from the condition during the relevant time period. Respondent does not argue that allowing Complainant to take time off to treat her Carpel Tunnel Syndrome caused it to sustain an undue hardship.

For purposes of this preliminary disposition—based largely on documents produced by Respondent—DCR is satisfied that (i) Complainant had a disability for which she took medical leave; (ii) the January 25, 2012 discharge amounted to an adverse employment action for

purposes of the LAD; and (iii) Respondent was aware that Complainant was out on medical leave due to her disability. Respondent argued that Complainant's fatal offense was not communicating directly with Dipietroantonio per its company policy. However, that characterization of the company policy does not appear to be fully supported by the evidence. Moreover, Dipietroantonio acknowledged that because of the language barrier, Complainant communicated with her through her supervisor, Lopez. Dipietroantonio told DCR that she understood from Lopez that Complainant was out on leave due to her Carpel Tunnel Syndrome. Dipietroantonio also told DCR that Complainant was only required to contact her directly if she was planning to separate from Respondent, which was not the situation presented here. And even assuming arguendo that Respondent's policy was for employees to contact Dipietroantonio in these circumstances, the slight modification of the policy (e.g., allowing an employee with a disability to communicate through her supervisor) strikes DCR as a reasonable accommodation.

Lastly, there were assertions that Complainant did not provide medical documentation clearing her to return to work on January 25, 2012 and/or that she was supposed to work that day but did not do so. However, those assertions were contradicted by the evidence.

Based on the investigation, DCR is satisfied that the evidence supports a "reasonable ground of suspicion" to warrant a cautious person in the belief that Respondent fired Complainant for taking medical leave for her Carpet Tunnel Syndrome, and that such conduct under the specific circumstances presented here amounts to a failure to provide a reasonable accommodation and/or disparate treatment based on disability. Therefore, this matter will "proceed to the next step on the road to an adjudication on the merits." Frank, 228 N.J. Super. at 56. Should this matter not be resolved during the required conciliation process, N.J.S.A. 10:5-14, the matter will proceed to a plenary hearing where a fact-finder will hear live testimony and evaluate the evidence. N.J.A.C. 13:4-11.1(b).

DATE: Sept. 14, 2018

Craig Sashihara, Director
NJ DIVISION ON CIVIL RIGHTS