

STATE OF NEW JERSEY
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION ON CIVIL RIGHTS
DCR DOCKET NO. EL11HB-65285

L.V.,)	
)	
Complainant,)	<u>Administrative Action</u>
)	
v.)	FINDING OF PROBABLE CAUSE
)	
CleanTex,)	
)	
Respondent.)	

On May 12, 2015, L.V. (Complainant) filed a verified complaint with the New Jersey Division on Civil Rights (DCR) alleging that her former employer, CleanTex (Respondent), fired her because of an actual or perceived disability, in violation of the New Jersey Law Against Discrimination (LAD), N.J.S.A. 10:5-1 to -49. DCR's investigation found as follows.

Respondent describes itself as a provider of linen and laundry services for healthcare facilities throughout New Jersey, New York, Pennsylvania, and Connecticut. Its corporate office is located in Linden, and it has plants in Trenton, Irvington, and Brooklyn.

On or about April 6, 2015, it hired Complainant, a 26 year-old Trenton resident, to work as a full-time production worker in its Trenton plant. Her responsibilities included using machines to fold and package fitted sheets and bed pads for hospital rooms.

On April 15, 2015, Complainant went to the hospital emergency room for a severe headache and was diagnosed as having a brain tumor. She alleges that when she reported to work the next day, April 16, 2015, she provided a doctor's note clearing her to work without restrictions and listing her diagnosis, "Brain Tumor (Unspecified)." She alleges that she was sent home on Friday, April 17, 2015, and when she returned on Monday, April 20, 2015, General Manager Paul Lare told her that she had been fired for performance reasons. She alleges that the actual reason she was fired was because of her brain tumor.

Respondent denied the allegations of disability discrimination in their entirety. General Manager Lare told DCR that he decided to fire her on April 17, 2015, because of her subpar performance. He claimed that he made the decision to fire her before he knew of her medical condition. During the course of the DCR investigation, Lare sent an email to HR Coordinator Roger Pace (in Respondent's corporate office), through Office Manager Angelina Mora (Trenton plant), which noted in part:

On 4-17-2015 [Complainant] came to talk to me and asked my [sic] why she was terminated and I told her that it was because of low performance. She then and only then stated to to [sic] me that she had gone to the doctors and said she may have a tumor, and she handed me a note from doctor . . . The note had no restriction on it. I informed her that she was be [sic] terminated based on her performance and only her performance. She then left my office. She only worked for the company 1 week.

See Email from P. Lare to Office Manager Aneolina Mora, Re: [L.V.], July 8, 2015, 3:46 p.m.

In support of its assertion that Complainant's performance was subpar, Respondent produced a document that purports to show that Complainant had the lowest production totals out of thirteen employees from April 6, 2015 (i.e., her first day of work) to April 10, 2015.

Complainant's immediate supervisor, Juan Rodriguez, told DCR that Complainant was always happy and seemed like she wanted to work, but sometimes arrived late and her production numbers were lower than her peers. He felt that she needed to improve her productivity. He noted that new employees receive a couple of weeks of training.

Angelina Mora worked as the full-time office manager during the relevant time period. She was responsible for payroll, data entry, and hiring paperwork. Her desk was situated just outside Lare's office during the relevant time. Mora told DCR that she told Lare on April 16, 2015 (either verbally or via text message on a company cell phone) that Complainant went to the emergency room and was diagnosed with a brain tumor. Mora stated, "On April 16 or 17, 2015, Mr. Lare told me that [Complainant]'s brain tumor was a liability. All of these conversations and events occurred prior to Mr. Lare informing [Complainant] that she was terminated on April 17." See Certification of Angelina Mora, Aug. 20, 2016. Mora told DCR that it was common practice to document any sort of performance warning, even if it was verbal, in an employee's personnel file.

Respondent produced what it purported to be Complainant's personnel file. There was no indication in the file that Complainant ever received a verbal or written warning about her performance.

Analysis

The LAD is "remedial legislation" designed to root out the "cancer of discrimination," Hernandez v. Region Nine Housing Corp., 146 N.J. 645, 651-52 (1996). In enacting the law, the New Jersey Legislature declared that "discrimination threatens not only the rights and proper privileges of the inhabitants of the State but menaces the institutions and functions of a free democratic State." N.J.S.A. 10:5-3; see also L.W. v. Toms River, 189 N.J. 381, 399 (2007) (noting "[f]reedom from discrimination is one of the fundamental principles of our society").

Because of the LAD's remedial purpose, courts have adhered to the Legislative mandate that the statute be "liberally construed," N.J.S.A. 10:5-3, by consistently interpreting the LAD "with that high degree of liberality which comports with the preeminent social significance of its purposes and objects." Andersen v. Exxon Co., 89 N.J. 483 (1982); Zive v. Stanley Roberts, Inc., 182 N.J. 436, 446 (2005).

The LAD makes it illegal to fire or otherwise discriminate against an employee in the "terms, conditions or privileges of employment" based on disability. N.J.S.A. 10:5-4.1; N.J.S.A. 10:5-12(a).¹ Our courts have long recognized that persons who are *perceived* as suffering from a particular disability are as much within the protected class as those who actually have the disability. See, e.g., Andersen v. Exxon Co., 89 N.J. 483, 446 (1982); Cowher v. Carson & Roberts, 425 N.J. Super. 285, 294-96 (App. Div. 2012); Rogers v. Campbell Foundry Co., 185 N.J. Super. 109, 122 (App. Div. 2012), cert. denied, 91 N.J. 529 (1982).

At the conclusion of an investigation, the DCR Director is required to determine whether "probable cause" exists to credit a complainant's allegation of discrimination. N.J.A.C. 13:4-10.2. For purposes of that analysis, probable cause 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, but merely an initial

¹ New Jersey law also requires employers to provide such reasonable accommodations that will enable an employee with a disability to perform the essential functions of the position, unless the required accommodations will impose an undue hardship on the employer's operations. N.J.A.C. 13:13-2.5.

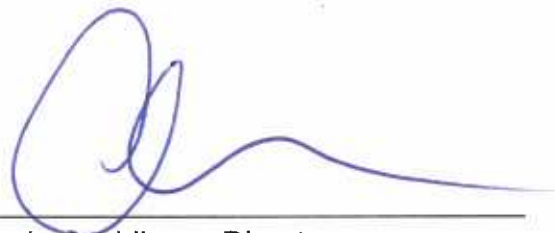
“culling-out process” whereby the Director makes a threshold determination of “whether the matter should be brought to a halt or proceed to the next step on the road to an adjudication on the merits.” Frank v. Ivy Club, 228 N.J. Super. 40, 56 (App. Div. 1988), rev’d on other grounds, 120 N.J. 73 (1990), certif. den., 111 S.Ct. 799. 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.

Here, Respondent does not dispute that Complainant is a person with an actual or perceived disability, or that she was fired approximately eleven days after she began working, or that the personnel decision was made within days after Complainant was diagnosed with a brain tumor. However, it argues that its decision to fire her was motivated solely by performance issues, as opposed to some sort of discriminatory animus. In support of that position, it notes that General Manager Lare—who made the decision—was not aware of Complainant’s medical condition until after he decided to fire her. However, its former office manager directly contradicted that assertion. Additionally, there is no indication in Complainant’s personnel file that she received any warnings about her job performance, or that she was provided with what appears to the customary training period prior to being terminated.

Based on the investigation, the Director is satisfied at this threshold stage of the process that there is enough to support a “reasonable ground of suspicion” that Respondent fired Complainant—despite being told that she was medically cleared to work without restriction—because of concerns about a perceived disability, i.e., a brain tumor that Respondent viewed as a potential “liability.” Accordingly, the Director finds that PROBABLE CAUSE exists to credit the allegations of discrimination, so as to move this matter “to the next step on the road to an adjudication on the merits.” Frank, supra, 228 N.J. Super. at 56.

DATE:

11-17-16



Craig Sashihara, Director
NJ DIVISION ON CIVIL RIGHTS