



STATE OF NEW JERSEY
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION ON CIVIL RIGHTS
DOCKET NO.: EG14-HB61198
REF AGCY NO: 17E201000127

NEREIRA BERROSPI JUARES and
CHINH Q. LE, DIRECTOR,
NEW JERSEY DIVISION ON CIVIL
RIGHTS,

Complainants,

-v-

ROYAL ALUMINUM COMPANY, INC.,

Respondent.

FINDING OF PROBABLE CAUSE

Consistent with a Verified Complaint filed on January 15, 2010, the above-named Respondent has been charged with unlawful discrimination within the meaning of the New Jersey Law Against Discrimination (N.J.S.A.10:5-1, et seq.) and specifically within the meaning of N.J.S.A.10:5-12(a), of the New Jersey Law Against Discrimination.

Chinh Q. Le is the Director of the Division on Civil Rights and, in the public interest, has intervened as a Complainant in this matter pursuant to N.J.A.C. 13:4-2.2 (e).

SUMMARY OF COMPLAINT:

Complainant alleged that Respondent denied her a reasonable accommodation and discharged her because of her disability (crushed left hand). Complainant, who is employed by Respondent, alleged that in late-October 2009, her work glove got caught in a machine and her left hand was crushed. Complainant alleged that on November 4, 2009, Respondent's "medical resource"¹ released her to return to work with the restriction of "light duty work". Complainant alleged that there was available work that she could perform with this restriction, but that Respondent nevertheless discharged her on November 6, 2009.²

¹ Complainant used the term "medical resource" in the verified complaint. Based on the investigation, it appears this was Respondent's assigned treatment clinic.

² Although Complainant alleged that she returned to work on November 7, 2009, and was discharged on November 13, 2009, the investigation revealed that she actually returned to work on November 5, 2009, and was discharged the following day.

SUMMARY OF RESPONSE:

Respondent denied discriminating against Complainant for any unlawful reason including disability. Respondent asserted that Complainant was discharged prior to the end of her probationary period because she lacked the ability to perform the tasks assigned to her.

BACKGROUND:

Respondent is a company that manufactures insulated glass units in Newark, Essex County, New Jersey. Respondent hired Complainant as an assembler on October 27, 2009, and discharged her on November 6, 2009.

SUMMARY OF INVESTIGATION:

The investigation disclosed sufficient evidence to support a reasonable suspicion that Complainant was denied a reasonable accommodation and discharged because of her disability.

As previously stated, Respondent hired Complainant on or about October 27, 2009, as an assembler in its glass department. In that capacity, Complainant was required to wash the glass, assemble the glass, and add aluminum grids between the glass, among other things. During the Division's Fact Finding Conference, Complainant reported that on October 30, 2009, she accidentally got her gloved left hand caught in the machine on which she was working. As a result, Respondent had Complainant taken to its assigned treatment facility, Universal Industrial Clinic.

The investigation revealed that Complainant was diagnosed at the clinic with a left hand crush injury. According to Complainant, she was instructed by the physician to remain out of work until November 2, 2009, at which time she had a follow-up appointment at the clinic. Complainant stated that she was in considerable pain as her hand was extremely swollen and severely bruised.

The investigation disclosed that on November 2, 2009, Complainant returned to the clinic where she was re-evaluated. Complainant stated that the treating physician recommended she remain out of work an additional three (3) days due to the severe swelling and bruising of her hand. On Wednesday, November 4, 2009, Complainant was seen at the clinic and told that she could return to work on "light duty."

At the conference, Jeff Papa, Respondent's Vice President, confirmed that he spoke with a representative from the clinic, who told him that Complainant was being returned to work with a "light duty" restriction. On this same date, Complainant stated that she provided Respondent with a doctor's note indicating that restriction.

There was no dispute that Respondent provided Complainant with "light duty" work on Thursday, November 5, 2009, and Friday, November 6, 2009. Mr. Papa stated that the glass

department has multiple work stations with multiple tasks for products assembly. Complainant was assigned work that consisted of applying spacers between the glass and filling them with small balls or pebbles that absorb moisture as well as sliding a wool pile inside the vinyl. Complainant agreed that the tasks did not involve any lifting, and that she was able to perform the tasks.

Complainant stated that after completing her work day on Friday, November 6, 2009, Mr. Papa called her into his office and told her she was being discharged. Complainant stated that Mr. Papa told her that there was not a lot of work for her and that she should just go home.

At the conference, Mr. Papa denied telling Complainant that there was not enough work. Mr. Papa stated that he instead told Complainant, through an interpreter, that it was not working out, and that although Respondent did have work available, it did not have work for her. Mr. Papa stated that Respondent had Complainant slated for discharge prior to her injury. He stated that he determined that based on her level of productivity before her injury, Complainant was not compatible to work in the factory.

Complainant disputes Mr. Papa's alleged reasons for the discharge. She stated that no one ever addressed any problems with her regarding work performance or productivity. She further stated that she worked in tandem with another employee who worked at the same pace.

Mr. Papa agreed that no one addressed any work performance problems with Complainant. Additionally, Mr. Papa acknowledged that Respondent has no documentation to indicate that Complainant's work performance and/or productivity was unacceptable.

In answer to the verified complaint and at the conference, Mr. Papa argued that Respondent did not violate the LAD. He contended that Complainant did not belong to a protected class at the time of her discharge, in that her injury cannot be defined as a disability. In addition, Mr. Papa contended that Complainant was scheduled for termination at the end of the work day on October 30, 2009, but as she was injured that day, Respondent made sure to attend to her medical needs.

Further, Respondent asserted it discharged Complainant under the terms of the collective bargaining agreement with the employee union, the IBT (International Brotherhood of Teamsters). Specifically, Respondent maintained that under the agreement, the probationary term is set for 90 days during which time probationary employees can be discharged at the discretion of the employer.

ANALYSIS:

At the conclusion of the investigation, the Division is required to make a determination whether "probable cause" exists to credit a complainant's allegation of discrimination. Probable cause has been described under the New Jersey Law Against Discrimination (LAD) as a reasonable ground for suspicion supported by facts and circumstances strong enough to warrant a cautious person to believe that the law was violated and that the matter should proceed to hearing. Frank v. Ivy Club, 228 N.J. Super. 40, 56 (App. Div. 1988), rev'd on other grounds, 120 N.J. 73 (1990), cert.

den., 111 S.Ct. 799. A finding of probable cause is not an adjudication on the merits but, rather, an “initial culling-out process” whereby the Division makes a preliminary determination of whether further Division action is warranted. Sprague v. Glassboro State College, 161 N.J. Super. 218, 226 (App. Div. 1978). See also Frank v. Ivy Club, *supra*, 228 N.J. Super. at 56. In making this decision, the Division must consider whether, after applying the applicable legal standard, sufficient evidence exists to support a colorable claim of discrimination under the LAD.

In this case, contrary to Respondent’s argument, there is sufficient evidence to support a reasonable suspicion that Complainant has established that she is a person with a disability. Within the meaning of the LAD, the term “disability” is broadly construed and is not limited to “severe” or “immutable” disabilities. Indeed, the LAD specifically defines disability to include a “physical disability, infirmity, malformation, or disfigurement which is caused by bodily injury. . . .” N.J.S.A. 10:5-5 (q). Here, Complainant injured her left hand while at work, received medical treatment, and approval to return to work with a “light duty” limitation.

There is also sufficient evidence to support a reasonable suspicion that Respondent discharged her because of her disability. Complainant returned to work five days after her injury with a medical restriction from Respondent’s clinic that she perform only light duty assignments. Under the LAD, Respondent was required to provide reasonable accommodations for Complainant’s disability. In this case, Respondent did so by assigning Complainant to light duty tasks for two days. At the end of the second day, Respondent discharged Complainant, purportedly because it believed Complainant’s job performance was unsatisfactory. Based on the totality of the information disclosed during this investigation, however, the reason Respondent gave the Division for discharging Complainant does not appear to be credible.


First, Respondent, by its own admission, never spoke with Complainant about her alleged poor performance, nor did it keep any records which would suggest that Complainant’s performance was less than satisfactory. Second, although Respondent claims that it had already formed the intention to discharge Complainant on the day she had been injured, at that point, Complainant had only worked with Respondent for two full days; it seems unlikely that Respondent would have been able to evaluate her capabilities fully to make a termination decision in such a short period of time. Third, Mr. Papa acknowledged at the Fact Finding Conference that there *was* work, but none for Complainant. That statement, together with Respondent’s assertion of its belief that Complainant was not disabled within the meaning of the law, suggests that Respondent was simply unwilling to provide Complainant with the reasonable accommodation to which she was entitled. Accordingly, it appears that Respondent, rather than continuing to accommodate Complainant, discharged her because of her disability.³

³ Respondent’s response that it was fully within its rights to terminate an employee within the 90 day probationary period under the terms of its contract with IBT is irrelevant to the charge made in this complaint. Respondent has an independent responsibility to comply with the LAD, *i.e.*, not to discriminate against a person because of her disability.

FINDING OF PROBABLE CAUSE:

It is, therefore, determined and found that **Probable Cause** exists to credit the allegations of the complaint.

06/24/10
Date


CHINH Q. LE, DIRECTOR
DIVISION ON CIVIL RIGHTS