

**STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION ON CIVIL RIGHTS
DCR DOCKET NO. EC24HB-67445**

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COMPLAINANT,)	
)	
v.)	Administrative Action
)	
Laurel Brook Rehabilitation & Healthcare Center,)	FINDING OF PROBABLE CAUSE
)	
RESPONDENT.)	
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On May 1, 2019, [REDACTED].¹ (Complainant) filed a verified complaint with the New Jersey Division on Civil Rights (DCR) alleging that Laurel Brook Rehabilitation & Healthcare Center (Respondent) discriminated against the Complainant based on disability, in violation of the New Jersey Law Against Discrimination (LAD), N.J.S.A. 10:5-1 to -49. Respondent denied the allegation of discrimination in its entirety. DCR’s investigation found as follows.

SUMMARY OF INVESTIGATION

Respondent offers subacute rehabilitative and skilled nursing care to patients at its facility in Mount Laurel, New Jersey. On July 28, 2011, Respondent hired Complainant as a cook in its Korean Program; Complainant speaks Korean. On or about March 14, 2019, Respondent discharged Complainant.

In the verified complaint, Complainant alleged that Respondent initially approved her for a medical leave from October 14, 2018 to January 13, 2019, and later granted her an extension of her leave through April 8, 2019. However, Complainant alleged that on March 14, 2019, when she was attempting to arrange her return to work, Respondent’s Human Resources Director Gloria Keyes discharged her, falsely claiming that she had failed to complete paperwork and had therefore “resigned.” On this basis, Complainant alleged that Respondent violated the LAD by failing to provide her with a reasonable accommodation for her disability and discharging her based on disability.

In its response to the complaint, Respondent denied discriminating against Complainant. Respondent stated that Complainant’s leave was unapproved because she refused to complete Federal and Medical Leave Act (FMLA) paperwork to document her medical need for the leave. Respondent further stated that when Complainant approached Keyes in March 2019 about

¹ Because this disposition discloses Complainant’s personal medical information, a pseudonym is used in place of Complainant’s full name consistent with N.J.A.C. 13:4-2.10.

returning to work on April 9, 2019, its kitchen was overstaffed and there were no open positions for Complainant.

In an interview with DCR, Complainant stated that Respondent's Assistant Administrator Ashley Wilson verbally approved her initial request for medical leave due to major depression in October 2018. Complainant explained that she later needed an extension of her leave because, in January 2019, a lump was found on her lung that required surgery. Complainant said she gave documents supporting her need for an extension to Human Resources Manager Renee Hester.

Complainant told DCR that she did not fill out FMLA forms for her leave because Respondent never provided them. Complainant stated that Respondent's Human Resources staff only gave her paperwork to apply for short-term disability benefits, and Complainant said that she filled out and submitted that paperwork through The Standard Benefits Administrators. Complainant stated that her doctors also sent medical notes regarding her condition directly to The Standard Benefits Administrators, and that those notes had an initial return-to-work date of January 13, 2019 and, later, expected return-to-work dates of April 7 and April 8, 2019. Complainant told DCR that she believed The Standard Benefits Administrators was sending her disability documentation to Respondent.

Complainant also stated that during her medical leave, she told Respondent's Nurse Director and Kitchen Supervisor that she was going to return, but she could not recall their names. Furthermore, Complainant said that Respondent had an open kitchen position when she was ready to return because her co-worker, [REDACTED], had just passed away.

DCR reviewed the following relevant documents submitted by Complainant:

- Completed The Standard Benefits Administrators/"New Jersey State Disability Claim" forms, including an "Employee's Statement" signed and dated October 16, 2018 by Complainant; an "Attending Physician's Statement" signed and dated by Complainant's doctor on October 2, 2018; and an "Employer's Statement" signed and dated October 16, 2018 by [REDACTED] on behalf of Respondent, indicating that Complainant was out of work on a temporary basis;
- October 19, 2018 letter from the Standard Benefits Administrators to Complainant, with Respondent cc'ed, stating that Complainant's claim for New Jersey Temporary Disability Benefits was approved;
- A series of letters from The Standard Benefits Administrators to Complainant, with Respondent cc'ed, stating on December 6, 2018 that Complainant's temporary disability benefits were set to close as of January 1, 2019; on December 26, 2018, that the benefits were set to close on January 12, 2019; on December 28, 2018, that the benefits were set to close on January 13, 2019; on January 4, 2019, that the benefits were set to close on February 13, 2019; and on February 28, 2019, that the benefits were set to close on April 8, 2019;
- Multiple completed "Attending Physician's Statements" and "Mental Health Provider Reports," signed and dated by Complainant's doctor on November 27, 2018, December 18, 2018, February 18, 2019, and February 19, 2019 and by her thoracic surgeon on January 14, 2019 and January 30, 2019, together indicating that Complainant was initially unable to work in October 2018 due to major depression and then underwent surgery for

a lung hamartoma in January 2019 before being cleared to return to work as of April 8, 2019;

- Handwritten note from Complainant's doctor, dated December 31, 2018, releasing Complainant to return to "full duty" on January 13, 2019;
- Note from [REDACTED] dated January 2, 2019, stating "[b]ring all disability forms" and "[r]eturn with forms January 13";
- Handwritten note from Complainant's doctor, dated March 13, 2019, releasing Complainant to return to "full duty" on April 8, 2019;
- Letter from Complainant requesting that she be scheduled for work starting April 9, 2019;
- Documents indicating that Complainant filed a claim against Respondent over unpaid wages with the New Jersey Department of Labor and Workforce Development in July 2019, which was resolved in August 2019 with Respondent issuing a check to Complainant for 365.10 hours of paid time off.

DCR also reviewed documents submitted by Respondent with its Answer and Position Statement. In an email, dated March 14, 2019, Assistant Administrator Wilson wrote the following about Complainant to Keyes and others: "Last day worked Oct 13, 2019, [sic] wants to come back April 9. The problem is, I met with the employee regarding this leave on Oct 12 and asked her to fill out FMLA paperwork, which she refused to do. I told her at that time that if she did not, she would not have a position guaranteed at the facility."

DCR interviewed Respondent's former Assistant Administrator Ashley Wilson, who worked for Respondent overseeing day-to-day operations from September 2018 through May 2019. Wilson denied approving Complainant's initial request for leave and said that she was not responsible for handling employee leaves. Wilson said that one day in the fall of 2018 she found Complainant crying in the lobby and spoke to her through the translation of [REDACTED], [REDACTED]. Wilson said that Complainant told her she could not come to work due to her mental illness. Wilson said Complainant also seemed upset because Human Resources had told her to fill out FMLA documents, and Complainant insisted that she had already filled out disability documentation. Wilson told DCR that she tried to explain to Complainant that Respondent needed her to fill out the FMLA paperwork to protect her job, and that the disability paperwork was between her and the state. Wilson said she did her best to help Complainant understand, but Complainant did not seem interested in moving forward with FMLA paperwork. Wilson said she saw the FMLA documents in Complainant's hand the day she spoke with her. Wilson also said that she did not recall contacting Complainant on any other occasion in regards to the FMLA paperwork, nor did she recall receiving any documentation regarding Complainant's initial medical leave or her extension. Wilson said that she was not familiar with The Standard Benefits Administrators.

Wilson also told DCR that she did not know whether Respondent hired a new cook either after Complainant went out in October 2018 or after [REDACTED] passed away in the spring of 2019. Wilson stated that Respondent employed kitchen staff and dietary aides for its facility; in the Korean Food Program where Complainant worked, Respondent had two cooks – one in the morning and one in the evening – and may have had a third cook overlap with the other two. Wilson told DCR that she did not hear from Complainant for months, until one day Complainant showed up for work. Wilson told DCR that she talked with Complainant that day, and said that

there were no positions available for her and that Respondent was experiencing budget cuts and reducing kitchen staff at that time.

DCR also interviewed The Standard Benefit Administrators' customer service representatives [REDACTED]. [REDACTED] explained that The Standard Benefits Administrators is a private, contracted insurer carrier that processes disability claims for client companies. They stated that Respondent was one of their clients and had a group disability insurance policy for its employees. [REDACTED] told DCR that, due to Health Insurance Portability and Accountability Act (HIPAA) laws, The Standard Benefits Administrators does not send specific medical documentation to employers, but it does send documentation to the employer when an employee has been approved for benefits, approved for an extension due to medical reasons, and/or released to return to work. [REDACTED] further explained that in order to process a disability claim, The Standard Benefits Administrators needs information from the employer, the employee, and a physician.

DCR also issued a supplemental document and information request to Respondent. In its answer, Respondent re-stated its position that Complainant went out on an unapproved leave of absence beginning October 13, 2018 and that she was considered to have resigned from her position because she did not provide completed FMLA paperwork to Assistant Administrator Wilson. Respondent failed to explain how it covered Complainant's duties after October 13, 2018. Respondent also denied Complainant's assertion that it had an open kitchen position in spring 2019 following the death of [REDACTED]. Respondent stated that there were no vacant cook positions from March 2019 through July 2019, "despite [REDACTED] termination status on March 10, 2019," and asserted that it did not hire any cooks from March 5, 2019 through July 14, 2019. Respondent also denied having any employee, current or former, named [REDACTED].

When asked whether returning Complainant to work after her leave in April 2019 would have been an undue hardship, Respondent failed to answer the question and instead re-stated its position that Complainant was considered to have resigned because she had failed to fill out FMLA paperwork. Respondent further stated that it handles "all employee leaves of absence and disability requests" internally, not through The Standard Benefit Administrators.

ANALYSIS

At the conclusion of an investigation, the DCR Director is required to determine whether "probable cause exists to credit the allegations of the verified complaint." N.J.A.C. 13:4-10.2(a). "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." N.J.A.C. 13:4-10.2(b). If DCR determines that probable cause exists, then the complaint will proceed to a hearing on the merits. N.J.A.C. 13:4-11.1(b). However, if DCR finds there is no probable cause, then that determination is deemed to be a final agency order subject to review by the Appellate Division of the Superior Court of New Jersey. N.J.A.C. 13:4-10.2(e); R. 2:2-3(a)(2).

A finding of probable cause is not an adjudication on the merits. Instead, it is merely an initial "culling-out process" in which 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), cert. den., 498 U.S. 1073. 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 prohibits employers from discriminating based on disability and requires an employer to provide a reasonable accommodation so long as doing so does not impose an undue

burden on the employers' business operations. N.J.S.A. 10:5-4.1; N.J.S.A. 10:5-12(a); N.J.A.C. 13:13-2.5. Once an employee with a disability requests assistance, the employer must "initiate an informal interactive process" and "make the reasonable effort to determine the appropriate accommodation." Tynan v. Vicinage 13 of Superior Court, 351 N.J. Super. 385, 400 (App. Div. 2002).

An accommodation is not required if an employer can demonstrate that it would impose an "undue hardship on its business." N.J.A.C. 13:13-2.5(b)(3). In determining whether an accommodation would constitute an undue hardship, factors to be considered 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. N.J.A.C. 13:13-2.5(b)(3). The burden of proving undue hardship is on the employer. N.J.A.C. 13:13-2.8; cf. Lasky v. Moorestown Twp., 425 N.J. Super. 530, 545 (App. Div. 2012), cert. denied, 212 N.J. 198 (2012) ("If a defendant's response to a reasonable accommodation claim is that that accommodation would be unduly burdensome or an undue hardship, this defense is considered an affirmative defense and the defendant assumes the burden of proof on this issue.").

Here, the investigation found sufficient evidence to support a reasonable suspicion that Respondent violated the LAD with respect to Complainant's disability and need for leave as a reasonable accommodation. It is undisputed that Complainant did not fill out FMLA paperwork, but it is equally clear that Complainant sought a leave of absence due to disability and did not resign her position with Respondent.

Complainant's misunderstanding of the difference between requesting FMLA leave from Respondent and claiming temporary disability benefits on Respondent's group policy through The Standard Benefits Administrators is apparent, but is ultimately immaterial. The LAD's disability provisions are not co-extensive with the FMLA. Even where an employer is justified in denying an employee job-protected leave under the FMLA, the employer may still be obligated to provide job-protected leave as a reasonable accommodation under the LAD. See N.J.A.C. 13:13-2.5(b)(1)(ii) (listing leaves of absence among potential reasonable accommodations).

The evidence suggests that such is the case here. It is clear that Complainant made Respondent aware in October 2018 that she was experiencing a mental disability for which she needed an accommodation in the form of a leave of absence. That an employee may be ineligible to take leave under the FMLA in such a circumstance – whatever the reason – does not excuse the employer from its obligation under the LAD to enter into an interactive process to determine whether and how the employee may be reasonably accommodated.

As part of that interactive process, Respondent would certainly have been justified in requesting that Complainant provide documentation of her condition and need for accommodation. And it is true that Complainant did not submit FMLA paperwork to Respondent, which presumably would have included such information. However, the interactive process that the LAD prescribes is flexible and informal, and the investigation showed that Respondent received a stream of information about Complainant's condition and need for leave through other avenues. For example, in October 2018, Complainant told Respondent's Human Resources staff and its Assistant Administrator Wilson that she needed leave because of mental illness; within days, Respondent was copied on the notice of October 19, 2018 indicating that Complainant had been approved for temporary disability benefits; over the ensuing months, Respondent was also copied on a series of notices indicating that Complainant's temporary disability benefits were extended

through April 8, 2019 for medical reasons; and Complainant provided Respondent with two handwritten notes from her doctor releasing her to return to “full duty.”

Respondent did not explain how this information could have been insufficient to show that Complainant was indeed experiencing a disability within the meaning of the LAD and that her need for a temporary leave was legitimate. *Compare* N.J.S.A. 43:21-29(a) (defining “compensable disability” for temporary disability insurance purposes as “an accident or sickness” that is not job-connected and “results in the individual's total inability to perform the duties of employment”) *and* N.J.S.A. 10:5-5(q) (defining “disability” for LAD purposes to include “disability . . . which is caused by bodily injury . . . or illness . . . or is demonstrable, medically or psychologically . . .”). What’s more, even if Respondent did believe that Complainant did not need a leave of absence, it has offered no evidence that it ever discussed or proposed any alternative accommodations with her.

In addition, as noted above, the LAD and its regulations specify that an employer may deny an employee a reasonable accommodation for a disability if the employer can establish that the particular accommodation would impose an undue hardship for its operations. Here, though, Respondent did not assert, much less substantiate with evidence, a defense that providing Complainant with the job-protected leave she sought would have caused it an undue hardship. Respondent did not address any of the N.J.A.C. 13:13-2.5(b)(3) factors, and even when asked specifically in DCR’s request for supplemental documents and information, Respondent did not claim undue hardship and failed to explain what became of Complainant’s position after she went on leave in October 2018. Respondent did claim that its kitchen operations were overstaffed during Complainant’s leave, but that fact, even if proven, could tend to show that Complainant’s leave did not cause a hardship for Respondent’s operations. Also, Respondent’s witness explained generally that Respondent was undergoing budget cuts and reducing its kitchen staff when Complainant attempted to return to work in the spring of 2019, but Respondent did not show that Complainant’s position was one of those that was cut or that it would have been even had Complainant not been on a disability leave. There is thus no basis on which to find that Respondent could not have accommodated Complainant’s need for a leave of absence due to disability.

At this threshold stage in the process, there is sufficient basis to warrant “proceed[ing] to the next step on the road to an adjudication on the merits.” *Frank, supra*, 228 N.J. Super. at 56. Therefore, the Director finds PROBABLE CAUSE to support Complainant’s allegations of disability discrimination.

November 3, 2021



Rosemary DiSavino, Deputy Director
New Jersey Division on Civil Rights