



**James Waddleton**  
Petitioner,

**STATE OF NEW JERSEY  
DEPARTMENT OF LABOR  
AND WORKFORCE DEVELOPMENT**

v.

**City of Jersey City,**  
Respondent.

**FINAL ADMINISTRATIVE ACTION  
OF THE  
COMMISSIONER**

**OAL DKT. NO LID 16351-16  
AGENCY DKT. NO. D63-06-228**

Issued: October 18, 2018

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The Division of Public Safety and Occupational Safety and Health (the Division), within the Department of Labor and Workforce Development, issued a determination dismissing the discrimination complaint of James Waddleton (petitioner) on the basis that he had failed to establish a *prima facie* case of discrimination as required under N.J.A.C. 12:110-7.5. In his complaint, petitioner alleged that he had been terminated in retaliation for reporting to the Division the existence of a cracked sewer pipe at his place of employment. Following the dismissal of his complaint by the Division, petitioner requested a hearing, at which time the matter was transmitted to the Office of Administrative Law as a contested case. The matter was assigned to Administrative Law Judge (ALJ) Leslie Z. Celentano.

The matter was scheduled for a hearing on July 10, 2017. On July 7, 2017, petitioner requested an adjournment of the hearing date. The hearing was then rescheduled for April 25, 2018. According to the ALJ, efforts were made thereafter to set up a telephone conference; however, petitioner could not be reached at any of the numbers provided. Thereafter, respondent filed a motion for summary decision. Petitioner filed no response to the motion. On April 24, 2018, petitioner again requested an adjournment of the hearing. That request was granted by the ALJ. According to the ALJ, efforts to set up a telephone conference continued, as no response had been received

to the motion for summary decision, and those efforts were again unsuccessful, as petitioner could not be reached. Petitioner was notified by letter from the ALJ on May 4, 2018 that a response to the motion for summary decision would be required by May 18, 2018. Petitioner submitted no response.

On respondent's motion for summary decision, the ALJ found that although the employee had shown that he engaged in a protected activity (submitting to the Division two anonymous reports of a noxious odor believed to have come from a broken sewer line in the area where petitioner worked), he had failed to show that the employer knew about his protected action; he had failed to show that the employer was hostile to that action; and he had failed to show that the employer terminated him in retaliation for that action. The ALJ added,

Here, as discussed above, Waddleton has not shown that Jersey City was aware of the identity of the originator of the complaint to [the Division]. Without knowledge of the identity of the employee who originated the complaint, Jersey City could not terminate in retaliation. Waddleton has not brought any evidence that could rationally connect his protected activity to his termination on June 24, 2016.<sup>1</sup> Additionally, Waddleton's significant history of absenteeism provides a compelling rationale that legitimizes his termination. Accordingly, Waddleton has not raised a genuine issue of fact as to whether Jersey City terminated him in retaliation for protected activity.

The ALJ, therefore, issued an Initial Decision ordering that petitioner's appeal be dismissed. No exceptions to the ALJ's Initial Decision were filed.

Having considered the record and the ALJ's Initial Decision, and having made an independent evaluation of the record, I have accepted and adopted the findings of fact, conclusions and recommendation contained in the ALJ's Initial Decision.

### ORDER


Therefore, the Initial Decision of the ALJ is affirmed and petitioner's discrimination complaint is hereby dismissed.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

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<sup>1</sup> The Final Notice of Disciplinary Action, dated June 24, 2016, removing petitioner from his employment with Jersey City states that petitioner was determined to have resigned not in good standing due to his absence from work without authorization from April 4, 2016 to June 7, 2016.

DECISION RENDERED BY  
THE COMMISSIONER, DEPARTMENT  
OF LABOR AND WORKFORCE DEVELOPMENT

A handwritten signature in black ink, appearing to read "R. Asaro-Angelo", written over a horizontal line.

Robert Asaro-Angelo, Commissioner  
Department of Labor and Workforce Development

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