B-97

STATE OF NEW JERSEY

In the Matter of J.S.,
Motor Vehicle Commission

CSC Docket Nos. 2014-1860

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

Discrimination Appeal

ISSUED: FEB 11 2015 (JET)

J.S.,[1] a former Records Technician 1, Motor Vehicles, with the Motor Vehicle Commission, represented by Walter R. Bliss, Jr., Esq., appeals the attached determination of the Deputy Administrator, which found that the appellant failed to support a finding that she had been subjected to a violation of the New Jersey State Police Prohibiting Discrimination in the Workplace (State Policy).

The appellant filed a complaint on March 6, 2013 with the Office of Equal Employment Opportunity and Affirmative Action (EEO/AA) alleging that she was discriminated against on the basis of age and that the appointing authority failed to provide her with a reasonable accommodation. Specifically, the appellant alleged that she was discriminated against when she failed one of the categories on her employee evaluation regarding the number of telephone calls she was required to answer.[2] She also alleged that she was subjected to differential treatment when she was placed on a 90-day improvement plan and she did not meet with her supervisors during the 90-day timeframe between May 23, 2012 and August 2012. The appellant alleged that when she met with her supervisors, A.K., a Supervisor 2, Motor Vehicle Commission, and G.S., a Manager 2, Division of Motor Vehicles, on

[1] The appellant was removed from State service effective December 6, 2013.

[2] The appellant's employee evaluation from October 1, 2011 through November 30, 2012 stated: "Must assist 10 to 15 calls per hour (depending on the complexity of the call) by answering phone by the 3rd ring. Provide accurate information in a professional manner, using correct grammar when talking to the driver. Respond in accordance with MV laws and regulations in a timely and courteous manner with no legitimate complaints if necessary provides authorization for a letter to be typed and sent."

September 7, 2012, G.S. asked the appellant "how old are you" and the appellant stated "56." G.S. allegedly stated "You could retire" and A.K. allegedly stated, "Yeah, you could." Moreover, the appellant alleged that the appointing authority failed to accommodate her request for leave under the Family Medical Leave Act (FMLA) to be relieved from phone duties. The appointing authority also allegedly informed the appellant's union representative that she had a choice of retiring or taking a demotion.

It is noted that the appellant submitted an accommodation request dated May 20, 2011 indicating that she could not carry on conversations or accept frequent calls.[3] The appointing authority denied her request on May 23, 2011, indicating that the accommodation could not be granted since it would interfere with the essential functions of her position as a Records Technician 1 in a high volume call center environment.[4] Thus, the appellant was instructed to report to full duty effective May 24, 2011. The appellant submitted an accommodation request dated October 29, 2013 indicating, among other things, that she could not perform telephone work and requesting to be provided with frequent breaks for a minimum of three months.[5] The appointing authority denied the appellant's request on November 4, 2013, indicating that the accommodation could not be granted as it would interfere with the essential functions of her position as a Records Technician 1 in a high volume call center environment. The appointing authority also indicated in the November 4, 2013 letter that it could not reassign the appellant to a position without telephone duties in her position as a Records Technician 1. Thus, the appointing authority offered to reassign the appellant as a Records Technician 2 where minimal telephone work is performed. The appellant was instructed to advise the appointing authority on November 6, 2013 about her decision and she did not accept the reassignment as a Records Technician 2. By letter dated July 11, 2013, the appointing authority granted a temporary accommodation to the appellant for one week from July 12, 2013 through July 19, 2013.[6] It is also noted that the appellant was approved for FMLA leave from May 20, 2011 through November 4, 2011; November 18, 2011 through May 18, 2012;

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[3] In support of her request, the appellant's personal physician indicated in a note dated May 19, 2011 that "[J.S.] suffers from migraines that are exacerbated by stress/anxiety, which was [increased] recently. In my opinion, she will need intermittent hours off of work in order to decrease her anxiety."

[4] The appointing authority indicated that the essential function of the appellant's position as a Records Technician 1 was to receive, analyze, and respond to complex correspondence and telephone communications.

[5] In support of her request, the appellant submitted medical documentation from her personal physician dated October 29, 2013, indicating that "[J.S.] is a long term patient of mine with severe migraines that frequently flare at work. During these times she should be given frequent breaks, no answering phones, no heavy lifting, no exposure to loud noises. Her medication will be adjusted so that these accommodations can be discontinued on January 27, 2014."

[6] The appellant submitted medical documentation from her personal physician dated July 10, 2013 requesting that the appellant should take "10 minutes off the phone and computer every hour for one week" and the appointing authority temporarily granted this accommodation.

April 25, 2012 through November 2, 2012; October 19, 2012 through May 3, 2012; and April 24, 2013 through October 24, 2013. The appellant used 130.5 FMLA hours in 2013.

The EEO/AA conducted an investigation and determined that the allegations did not implicate the State Policy. Specifically, the investigation revealed that the appellant's employee evaluation was revised in October 2011 to include new call performance standards. These call standards were outlined in her May 23, 2012 interim employee evaluation. The appellant was placed on a 90-day improvement plan on May 23, 2012 since she was not meeting the call standards. The appellant's supervisors met with the appellant on May 23, 2012, August 2, 2012, and September 7, 2012 during the 90-day improvement plan. The appellant was advised during the meetings to let her supervisors know if she required any further assistance with her duties. The investigation found that the appellant showed little improvement and she continued to fail the "call performance" standard on her final employee evaluation. Further, the lack of meetings during the 90-day period was not based on the appellant's age. In this regard, the appellant and her supervisor were not available for meetings on various dates between May 2012 and August 2012. Thus, the investigation did not substantiate that the appellant's placement on the 90-day improvement plan was a violation of the State Policy. Moreover, none of the witnesses corroborated the appellant's allegations that the appellant's supervisors asked the appellant's age or stated that she could retire during the meetings. Thus, there was no violation of the State Policy.

DISCRIMINATION APPEAL

On appeal, the appellant asserts that the appointing authority inappropriately removed her duties in October 2011 and reassigned her to perform lower level work. The appellant claims that her lead worker duties were removed and other employees were not required to answer as many telephone calls as she was required to answer. In this regard, the appellant states that she was assigned to answer 10 to 15 telephone phone calls per hour and her original duties were reassigned to younger employees, which caused her to experience stress and migraine headaches which forced her call out from work using FMLA leave.[7] Additionally, the appellant asserts that her supervisors, G.S. and A.K., asked her age during a meeting and stated "you could retire." Further, the appellant contends that she passed her employee evaluations except for the call standards section. The appellant was unaware of her performance until she received an employee evaluation indicating that her work was in need of improvement. Further, the appellant avers that she was placed on a 90-day improvement plan which is an example of differential treatment. The appellant adds that her supervisors did not consistently meet with her during the 90-day period and her work improved during

[7] The appellant acknowledges that she experienced migraine headaches for years and her condition was exacerbated due to her treatment at work.

that timeframe. Moreover, the appellant disagrees with the disciplinary charges of chronic and excessive absenteeism and inability to perform duties that resulted in her removal and she requests to be returned to duty since she possesses the ability to properly perform her work.

In response, the EEO/AA states that the appellant's unit was merged with another unit in 2010 and nearly all of the duties for the employees in the affected units were amended. Thus, the appellant was not singled out when her duties were amended. Further, the appellant was notified in October 2011 that she was required to answer 10 to 15 telephone calls per hour and she did not meet the minimum call standards as set forth in her employee evaluation for the period of October 2011 through September 2012. The EEO/AA adds that the appellant was the only employee in her unit who failed the call standard. Thus, the investigation did not substantiate that the appellant failed the minimum call standards in violation of the State Policy. In addition, the investigation did not corroborate that the appellant was placed on the 90-day improvement plan on the basis of her age. The EEO/AA explains that the appellant's supervisors met with her during that timeframe and attempted to help her improve her work performance. Moreover, none of the witnesses confirmed that A.K. and G.S. made any statements regarding the appellant's age or that they asked her to retire during the 90-day improvement timeframe. Additionally, there was no evidence that the appellant was demoted, disciplined or forced to retire in violation of the State Policy. The EEO/AA maintains that the arguments presented by the appellant are nothing more than "red herrings" in an attempt to distract attention away from the real reasons for her removal.

ACCOMMODATION APPEAL

The appellant states that she requested an accommodation to take a break from telephone duty so she could take her medication. She adds that her doctor provided a note indicating that her migraines were exacerbated by stress and anxiety. The appellant avers that similar accommodations were granted to other employees and they were allowed to stop answering telephones. The appellant contends that the appointing authority increased "the pressure" rather than granting her request for an accommodation. Moreover, the appellant asserts that she was subjected to such treatment because the appointing authority wanted her to retire and she did not have any disciplinary history in her 40 years of employment until the events in this matter occurred.

In response, the EEO/AA states that the appellant's request for an accommodation was temporarily granted from July 12, 2013 through July 19, 2013. In this regard, the appellant's request for an accommodation consisted of "taking 10 minutes off the phone and computer every hour for one week." Thus, the appellant returned to full duty after the one week timeframe. Further, the EEO/AA contends

that the appellant's May 2011 and October 2013 accommodation requests could not be granted. The EEO/AA explains that removing the appellant from telephone duty would interfere with the essential functions of her position as a Records Technician 1. Thus, the October 2011 and May 2013 accommodation requests were properly denied. The EEO/AA adds that the appellant refused to be reassigned as a Records Technician 2. Moreover, the EEO/AA states that the appellant was properly approved for FMLA leave on several occasions.

CONCLUSION

N.J.A.C. 4A:7-3.1(a) provides that under the State Policy, discrimination or harassment based upon the following protected categories are prohibited and will not be tolerated: race, creed, color, national origin, nationality, ancestry, age, sex/gender (including pregnancy), marital status, civil union status, domestic partnership status, familial status, religion, affectional or sexual orientation, gender identity or expression, atypical hereditary cellular or blood trait, genetic information, liability for service in the Armed Forces of the United States, or disability. Additionally, retaliation against any employee who alleges that she or he was the victim of discrimination/harassment, provides information in the course of an investigation into claims of discrimination/harassment in the workplace, or opposes a discriminatory practice, is prohibited by the State Policy. Examples of such retaliatory actions include, but are not limited to, termination of an employee; failing to promote an employee; altering an employee's work assignment for reasons other than legitimate business reasons; imposing or threatening to impose disciplinary action on an employee for reasons other than legitimate business reasons; or ostracizing an employee (for example, excluding an employee from an activity or privilege offered or provided to all other employees). *See N.J.A.C.* 4A:7-3.1(h).

The Americans with Disabilities Act (ADA) is a federal statute designed to eliminate discrimination against individuals with disabilities. 42 *U.S.C.A.* § 12101; *See also, Jones v. Illinois Cent. R. Co.*, 859 *F. Supp.* 1144 (N.D. Ill. 1994). State courts have concurrent jurisdiction with federal courts over ADA claims; however, existence of such concurrent jurisdiction does not alter the fact that ADA actions are federal question cases. *Jones v. Illinois Cent. R. Co., supra.* The Commission may review ADA issues collaterally when they are implicated in an appeal properly before it, such as in a disciplinary action or in a discrimination appeal. *See Matter of Allen,* 262 *N.J. Super.* 438, 444 (App. Div. 1993); *In the Matter of John Soden* (MSB, decided September 10, 2002) (noting that jurisdiction was proper when the ADA was implicated as a defense to a disciplinary removal properly before the Merit System Board (Board)); *In the Matter of Michael Giannetta* (MSB, decided May 23, 2000) (Board may apply the ADA in deciding an issue concerning removal from an eligible list). *Compare, In the Matter of Michael Tidswell* (MSB, decided August 9, 2006) (Board remanded the appellant's request for a reasonable

accommodation to the appointing authority for further investigation regarding possible violations of the State Policy).

In regard to discrimination matters, *N.J.A.C.* 4A:7-3.2(m) allows a complainant in the State career, unclassified or senior executive service, or an applicant for employment, who disagrees with the determination of the (State agency head or designee), to submit a written appeal within 20 days of the receipt of the final letter of the determination from the (State agency head or designee), to the Commission. The appellant shall use the procedures set forth in *N.J.A.C.* 4A:7-3.2.

Under the ADA, the term "reasonable accommodation" means (1) modifications or adjustments to a job application process that enable a qualified applicant with a disability to be considered for the position such qualified applicant desires; (2) modifications or adjustments to the work environment, or to the manner or circumstances under which the position held or desired is customarily performed, that enable a qualified individual with a disability to perform the essential functions of that position; or (3) modifications or adjustments that enable a covered entity's employee with a disability to enjoy equal benefits and privileges of employment as are enjoyed by its other similarly situated employees without disabilities. A reasonable accommodation may include, but is not limited to: (1) making existing facilities used by employees readily accessible to an usable by individuals with disabilities; and (2) job restructuring: part-time or modified work schedules; reassignment to a vacant position; acquisition or modifications of equipment or devices; appropriate adjustment or modifications of examinations, training, materials, or policies; the provision of qualified readers or interpreters; and other similar accommodations for individuals with disabilities. *See* 29 *CFR* § 1630.2(o) (1999). Further, the ADA requires that, where an individual's functional limitation impedes job performance, an employer must take steps to reasonably accommodate, and thus help overcome the particular impediment, unless to do so would impose undue hardship on the employer. *See* 29 *CFR* § 1630.2(p). Such accommodations usually take the form of adjustments to the way a job customarily is performed, or to the work environment itself. This process of identifying whether, and to what extent, a reasonable accommodation is required should be flexible and involve both the employer and the individual with the disability. No specific form of accommodation is guaranteed for all individuals with a particular disability. Rather, an accommodation must be tailored to match the needs of the disabled individual with the needs of the job's essential function. The ADA does not provide the "correct" answer for each employment decision concerning an individual with a disability. Instead, the ADA simply establishes parameters to guide employers in how to consider, and to take into account, the disabling condition involved. *See* 29 *CFR* § 1630.2(o) and 29 *CFR* § 1630.9.

The Commission has conducted a review of the record in this matter and finds that that the EEO/AA conducted an adequate investigation. It interviewed the relevant parties and reviewed the appropriate documentation in regard to the

appellant's complaints. The record reflects that the appointing authority granted the appellant's requests for a reasonable accommodation for one week pursuant to the medical documentation that was submitted. It was unable to grant the appellant's May 2011 and October 2013 accommodation requests. Based on a review of the record, the appointing authority did not unreasonably deny the appellant's accommodation requests. The record establishes that the essential functions of the appellant's position consisted of receiving, analyzing, and responding to complex correspondence and telephone inquiries in a high volume call center environment. In this regard, it is noted that in providing an accommodation, an employer does not have to eliminate an essential function or fundamental duty of the position. This is because a person with a disability who is unable to perform the essential functions, with or without a reasonable accommodation, is not a "qualified" individual with a disability within the meaning of the ADA. *See* 29 *C.F.R.* 1630.2. *See also, Ensslin v. Township of North Bergen,* 275 *N.J. Super.* 352, 361 (App. Div. 1994), *cert. denied,* 142 *N.J.* 446 (1995) (No reasonable accommodation of Police Sergeant's disability would permit him to perform essential functions of job, and thus the township did not violate the New Jersey Law Against Discrimination by terminating the Sergeant after he was rendered paraplegic in skiing accident); *Albertson's Inc. v. Kirkingburg,* 527 U.S. 555 (1999) (Truck driver with monocular vision who failed to meet the Department of Transportation's visual acuity standards was not "qualified" individual with a disability under the ADA). In this case, due to reorganization in 2010, the record establishes that the duties of a Records Technician 1, Motor Vehicles were performed in a high volume call center. Moreover, the appellant requested, and was granted FLMA leave for the other periods of time where she requested an accommodation as she was unable to work.

As noted above, the recipient of a reasonable accommodation is still required to perform the essential functions of his/her job duties. Further, the fact that the appellant was not authorized to be permanently relieved from telephone duty does not show that there was a violation of the State Policy. As such, the record establishes that the appellant was accommodated in the best way that fit the needs of the agency and the accommodation that was provided to her was reasonable. The appointing authority properly reviewed the medical documentation that was provided by the appellant and her physician in her requests for a reasonable accommodation. The Commission is not persuaded that the appellant could not have adequately performed the essential functions of her job based on the medical documentation that was presented. It is emphasized that an employee does not necessarily have the right to demand and receive a specific accommodation if he or she can still perform the essential functions of her position. *See e.g., In the Matter of Mary V. Powell* (MSB, decided February 20, 2002). Additionally, the appellant did not provide any substantive documentation to show that answering telephones specifically caused her to experience migraine headaches. Even if such medical authorization was provided, the appointing authority detailed sufficient reasons why the appellant could not be removed from phone duty. The appellant also

acknowledged that she experienced migraine headaches for a number years prior to events that occurred in this matter. Thus, her medical condition is not a new condition. In this regard, she acknowledges that she was employed for 40 years and she provides no evidence to show that she previously filed for an accommodation due to migraine headaches and stress. Further, the appellant did not name any employees who were granted similar accommodations who were relieved from phone duties. In this regard, the record does not reflect that any of the employees in the appellant's unit filed an appeal for similar reasons. It is noted that the appointing authority properly offered to reassign the appellant as a Records Technician 2 as an accommodation since the essential function of that position does not require high volume telephone duty. However, the appellant was not interested in being reassigned as a Records Technician 2. Therefore, she effectively denied the appointing authority's offer to reasonably accommodate her. Thus, the accommodations that were authorized by the appointing authority were proper.

In regard to the appellant's arguments that she was discriminated against on the basis of age, the EEO/AA interviewed the relevant witnesses and documentation and it was not corroborated that there was a violation of the State Policy. Pertaining to the appellant's arguments that her duties were amended, the investigation confirmed that the appellant's unit was merged with another unit and the duties for most of the affected employees were amended. Thus, the appellant was not singled out when her duties were amended in violation of the State Policy. Although the appellant argues that her lead duties were removed and were assigned to younger employees, she did not name any of these employees on appeal. Thus, there was no evidence that the appointing authority purposely removed the appellant's duties and reassigned them to younger employees. Further, the appellant's employee evaluation required the appellant to answer 10 to 15 calls an hour and she was unable to meet that goal. The appellant was placed on the 90-day improvement plan to help her improve her work performance as she failed the call performance standard section of her employee evaluation. Thus, the fact that the appellant was placed on the 90-day improvement plan does not, in and of itself, establish that she was discriminated against on the basis of age. In addition, other than the appellant's allegations, there was no substantive evidence to confirm that her supervisors asked the appellant's age or suggested that she retire. Moreover, there was no evidence that the appointing authority forced the appellant to retire or that it increased her work assignments in order to place her under undue pressure. The appellant's perception that she was placed under additional pressure to perform her duties does not establish a nexus to show that she was discriminated against on the basis of age. As noted above, the record does not reflect that any of the employees in the appellant's unit filed an appeal for similar reasons. In regard to the appellant's concern about her performance evaluation, the Commission has no jurisdiction to review this matter in the context of a State Policy appeal as this matter should have been addressed through non-contractual grievance procedures.

The investigation was thorough and impartial, and therefore, no basis exists to find a violation of the New Jersey State Policy Prohibiting Discrimination in the Workplace.

ORDER

Therefore, it is ordered that this appeal be denied.

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

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 4th DAY OF FEBRUARY, 2015

Robert M. Czech
Chairperson
Civil Service Commission

Inquiries and Correspondence

Henry Maurer
Director
Division of Appeals
& Regulatory Affairs
Civil Service Commission
Written Record Appeals Unit
P.O. Box 312
Trenton, New Jersey 08625-0312

Attachment

c: J.S.
Walter R. Bliss, Jr., Esq.
Betty Ng
Mamta Patel
Joseph Gambino

New Jersey
Motor Vehicle Commission
STATE OF NEW JERSEY

P.O. Box 160
Trenton, New Jersey 08666-0160

Chris Christie
Governor

Kim Guadagno
Lt. Governor

Raymond P. Martinez
Chairman and Chief Administrator

January 7, 2014

SENT VIA REGULAR AND CERTIFIED MAIL

J[redacted] S[redacted]
[redacted]

Re: Discrimination Complaint
Division of EEO/AA File No: 2013-276

As you are aware, your complaint of discrimination was referred to the Division of Equal Employment Opportunity and Affirmative Action ("Division of EEO/AA") by the New Jersey Motor Vehicle Commission ("NJMVC") for administrative reasons. In March 2013, in a complaint filed with the NJMVC, you alleged that you were discriminated against based on your age and disability. Specifically, you alleged the following:

- You failed a category regarding the number of telephone calls you must answer, on your performance evaluation for the first time during your 40 years of service, without previously being advised.
- You were placed on a 90 Day Employee Improvement Plan.
- You were supposed to meet with A[redacted] K[redacted] and G[redacted] S[redacted] every 30 days regarding your Improvement Plan and that no one met with you between May 23 and August 2012.
- On September 7, 2012, you met with G[redacted] S[redacted] and A[redacted] K[redacted] to discuss an Action Plan for your performance. Sine asked, "How old are you?" You replied, "56". Sine stated, "You could retire" and K[redacted] stated, "Yeah, you could."
- Management (A[redacted] K[redacted]) failed to accommodate your Family Medical Leave Act ("FMLA") request to be relieved from phone duty when you had a migraine.
- Management said you were idle, loafing and incompetent.

- Human Resources ("HR") told your union representative that you had a choice to retire or take a demotion.

The Division of EEO/AA conducted a thorough investigation pursuant to the State Policy Prohibiting Discrimination in the Workplace ("State Policy") in which an investigator interviewed several witnesses and reviewed relevant documentation.

I have reviewed the Division of EEO/AA's investigation and adopt the findings and recommendations discussed below.

AGE-BASED ALLEGATIONS

You alleged that you failed a category regarding the number of telephone calls you must answer on your performance evaluation for the first time during your 40 years of service, without previously being advised. The investigation revealed that your Performance Evaluation System ("PES") was revised in October 2011 to include revised standards for phones. The record shows that you were made aware by your supervisor as stated on your interim PES dated May 1, 2012, that you were not meeting the call standards. A 90 Day Improvement Plan was implemented immediately following the interim PES on May 23 2012. Meetings were held with you, your supervisor and the unit manager on May 23, 2012, August 2, 2012 and September 7, 2012. You were advised that if at any time there was something your supervisor or manager could do for you, you should let them know. You were asked at every meeting if there was anything that you felt could help you and you would say no. You showed minimal improvement after completing the Improvement Plan and failed the Call Performance Standard on your final PES for the period October 1, 2011 through September 30, 2012. The allegation is not substantiated.

You alleged that you were placed on a 90 Day Improvement Plan. The investigation found that you were placed on a 90 Improvement Plan on May 23, 2012 because you were not meeting the call standards outlined in your October 2011 PES. The Division of EEO/AA's investigation did not substantiate that your placement on the Improvement Plan was in violation of the State Policy.

You alleged that you were supposed to meet every 30 days regarding your Improvement Plan and that no one met with you between May 23 and August 2012. The record indicates that you met on May 23, 2012, August 2, 2012 and September 7, 2012 with your supervisor and unit manager. A review of documentation submitted indicates that you, Ms. K[redacted] and Ms. S[redacted] were out of the office on various days between May 23, 2012 and August 2, 2012 and a meeting was not held in June or July 2012. However, the failure to meet was not based on your age or found to be in violation of the State Policy.

You alleged that on September 7, 2012, you met with G[redacted] S[redacted] and A[redacted] K[redacted] to discuss an Improvement Plan for your performance. During the meeting you alleged that Ms. S[redacted] asked you, "How old are you?" You replied, "56". You stated Ms. S[redacted] responded, "You could

retire" and Ms. K[redacted] stated, "Yeah, you could." None of the witnesses interviewed corroborated your allegation. The EEO/AA investigation failed to substantiate your allegation.

You alleged that Human Resources told your union representative that you had a choice to retire or take a demotion. The EEO/AA investigation revealed that the option of retirement to individuals facing disciplinary charges for their consideration is a form of resolution in some instances. The EEO/AA investigation also revealed that your union representative may have also suggested the option of retirement. The statement, even if made, does not in and of itself implicate the State Policy. Moreover, based on a review of your employment history, the EEO/AA's investigation revealed that the Preliminary Notice of Disciplinary Action, dated November 15, 2012, recommended a demotion, since you had previously been charged for "neglect of duty and idleness/loafing." The EEO/AA investigation revealed that as stated in the Final Notice of Discipline dated August 27, 2013, you were ultimately suspended for three days and not demoted. The allegation is not substantiated.

FAILURE TO ACCOMMODATE

You alleged that management (A[redacted] K[redacted]) failed to accommodate your FMLA request to be relieved from phone duty when you had a migraine. The investigation found that you were approved for FMLA from May 20, 2011 through November 4, 2011; November 18, 2011 through May 18, 2012; April 25, 2012 through November 2, 2012; October 19, 2012 through May 3, 2013; and April 24, 2013 through October 24, 2013. A review of your leave records indicate that you used 130.5 FMLA hours in 2012 and 145 FMLA hours in 2013. In addition, you requested an ADA accommodation, which was temporarily granted and subsequently denied after returning to work on full duty status. The investigation found that you were advised that answering phones is an essential function of your job and you were instructed to provide the NJMVC with medical clearance to return to full duty without any restrictions. You subsequently returned to full duty status. In addition, it is noted that the NJMVC did temporarily accommodate your request to take a break from the phones for one week before making a final determination. There is no evidence that the NJMVC failed to accommodate your request for FMLA or an ADA accommodation.

Based on the above, the investigation did not substantiate that the NJMVC discriminated against you in violation of the State Policy.

If you disagree with this determination, you have the right to file an appeal with the New Jersey Civil Service Commission within 20 days of your receipt of this letter. **The burden of proof is on the Appellant.** The appeal must be in writing, state the reason(s) for the appeal and specify the relief requested. All materials presented at the department level and a copy of this determination letter must be included. The appeal should be submitted to the NJ Civil Service Commission, Director of the Division of Appeals and Regulatory Affairs, P.O. Box 312, Trenton, NJ 08625-0312. Please be advised that

pursuant to P.L. 2010, c.26, effective July 1, 2010, there shall be a $20 fee for appeals. Please include the required $20 fee with your appeal. Payment must be made by check or money order, payable to the "NJ CSC." Persons receiving public assistance pursuant to P.L. 1997, c.38 (C.44:10-55 et seq.) and individuals with established veterans preference as defined by N.J.S.A. 11A:5-1 et seq. are exempt from these fees.

At this time, I would like to remind you that the *State Policy* prohibits retaliation against any employee who files a discrimination complaint or participates in a complaint investigation or opposes a discriminatory practice. Furthermore, this matter remains confidential and the results of the investigation must not be discussed with others.

If you have any questions, please contact Taiwanda Terry-Wilson at the NJMVC at 609-777-3831.

Sincerely,

Richard J. Miller
Deputy Administrator

c. Mamta Patel, Esq., Director, Division of EEO/AA
Civil Service Commission
Taiwanda Terry-Wilson, EEO Office
NJMVC