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STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

In the Matter of P.Z.,  
Department of Human Services

CSC Docket No. 2015-2421

Discrimination Appeal

ISSUED: SEP 16 2015 (DASV)

P.Z., an Occupational Safety Consultant 2 with Trenton Psychiatric Hospital (TPH), Department of Human Services, appeals the attached determination of the Equal Employment Opportunity (EEO) Director, stating that the appellant failed to present sufficient evidence to support a finding that he had been subjected to a violation of the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy).

The appellant filed a complaint against TPH, alleging that he was discriminated against based on his disability. The appellant was diagnosed with, among other things, lumbar disc herniation and spinal stenosis and sought to return to work. In that regard, agency records indicate that the appellant was on family leave from March 14, 2014 through April 20, 2014, and federal family and medical leave from April 21, 2014 through June 5, 2014. The appellant has been on personal leave due to illness since June 6, 2014. TPH denied the appellant's request for an accommodation since it involved removal of "one or more essential job functions." In response, the Office of EEO conducted an investigation, which did not substantiate the appellant's allegation. It stated that TPH engaged in an adequate interactive process regarding the appellant's request, but that restructuring his position to meet his physical limitations "would result in removing all of the essential functions" of his position. The appellant's personal doctor, Dr. Lucien Eid, completed a Return to Work Recommendations form, which restricted the appellant to "sedentary work." Specifically, in an eight-hour work day, the appellant was to stand or walk for only one to four hours, sit up to two hours, and drive up to three hours. The appellant was also restricted from bending or

squatting, but he could occasionally climb stairs. Dr. Eid stated that the appellant should avoid repetitive motions involving the lumbar spine, prolonged standing and sitting, and twisting. Similarly, in a Job Demands and Medical Capabilities Form, dated June 20, 2014, Dr. Eid stated that the appellant's restrictions were permanent and listed somewhat modified restrictions as follows: the appellant could only stand for one to two hours a day, sit for two to three hours a day, walk one hour, and lift up to 10 pounds. Moreover, the appellant should seldom<sup>1</sup> engage in climbing, bending, crouching/stooping, kneeling, twisting, and pushing/pulling. The appellant should also only intermittently<sup>2</sup> reach and drive a car from one to three hours.

It is noted that, after the attached determination was issued, per the appellant's request, TPH provided the appellant with a specific list of the essential functions of his position<sup>3</sup> which included the following tasks:

Emergency Response: reports to all emergency calls from the operator or other hospital personnel. May need to escort ambulance staff and/or lift equipment or assist with stretcher;

Fire Alarm: meets fire department, escorts to the location of the fire alarm, must be able to take the stairwell;

Environmental Round: with other designated personnel must be able to do environmental rounds to check for safety violations; checks units and all buildings for mold and/or other related conditions; makes note of conditions, prepares necessary paperwork to fix all violations. Requires walking around the buildings and may require to walk up and down steps for approximately 1-3 hours;

Building Safety Checks: visually inspecting buildings for safety conditions such as electrical, water or other damage. May require climbing a ladder, advising management of unsafe conditions;

Perimeter checks: checking around the fenced area for breaches in the fence;

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<sup>1</sup> "Seldom" is defined as performing the task from zero to 33% of the time.

<sup>2</sup> "Intermittent" is defined as performing the task from 34% to 66% of the time.

<sup>3</sup> The definition portion of the job specification for Occupational Safety Consultant 2 states that an incumbent "[u]nder the direction of a supervisory official or other designated higher level official in a State department or agency, conducts on-site occupational safety consultation visits to assist employers in developing and implementing an effective safety program and in expediting compliance with the standards, rules and regulations of the Occupational Safety and Health Administration; does related work."

Bed bug checks: checking mattresses for bed bugs; requires lifting a corner of the mattress to check for bugs;

Escort outside contractors: may be required to escort outside contractors to areas in and on hospital property which includes but is not limited to basements, kitchens, patient areas and on-grounds;

Walking checks: ability to walk and make inspections of walkways for snow, ice and deterioration, ability to climb stairwells to inspect and ensure stairwells are free from storage and debris;

Right-to-know Poster: Hangs the right to know posters.

On appeal, the appellant states that the essential functions of his position “indisputably” require standing, walking, climbing, bending, crouching/stooping, kneeling, twisting, reaching, pushing/pulling and driving, which were *not* restricted by his personal physician, Dr. Eid. Thus, the appellant asserts that it is not clear to him which essential function would be removed if his accommodation request was granted since he may perform these tasks. Moreover, he maintains that the denial of his accommodation request was “unilateral” and made prior to notifying him of the essential functions of his position.

In response, the Office of EEO indicates that it investigated the appellant’s allegation that TPH failed to engage in an interactive process to identify a reasonable accommodation for his disability. The investigation included interviewing three employees and reviewing documents. The investigation revealed that an adequate interactive process occurred prior to denying the appellant’s request for an accommodation. In that regard, the Office of EEO disputes that the decision was “unilateral,” as the appellant’s request was evaluated through a collaborative effort based on the appellant’s medical documentation from Dr. Eid and information from the appellant and his supervisor. Additionally, it notes that the appointing authority’s legal and regulatory department provided guidance regarding the matter. The Office of EEO further states that the permanent time and physical restrictions specified by Dr. Eid would not allow the appellant to complete the safety, perimeter, environmental, and other checks required of his position. Therefore, in order to accommodate the appellant, the Office of EEO indicates that all of the essential functions of the appellant’s duties would have to be removed. As such, it submits that the appointing authority is not under any legal obligation to provide such an accommodation, as it would not be considered reasonable.

In addition, the Office of EEO states that once TPH determined that it could not approve the appellant’s request, it contacted other facilities within the Department of Human Services for a possible reassignment of the appellant.

However, no facilities could accommodate him. Moreover, the Office of EEO reports that in March 2014, during a meeting with the appellant and appointing authority representatives to discuss an assignment given to the appellant and his request for an accommodation, the appellant was provided a copy of his title's job specification. It notes that the appellant had conveyed in the meeting that he was unable to fulfill an assignment given to him by his supervisor and to perform the physical duties of his job due to his disability. Moreover, when TPH provided the appellant with a specific list of the essential functions of his position, it noted in that correspondence that the job specification information had already been given to the appellant, as well as to his physician. Furthermore, the Office of EEO emphasizes that the appellant is required to identify unsafe and inefficient operations of the facilities at TPH. Therefore, it would create an undue hardship for TPH to keep the appellant in his position given his impairments and his inability to perform the essential functions of his position.

### 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. Moreover, the appellant shall have the burden of proof in all discrimination appeals. *See N.J.A.C.* 4A:7-3.2(m)4.

The Civil Service Commission (Commission) has conducted a review of the record and finds that, in denying the appellant's request for an accommodation, TPH did not discriminate against him based on his disability. TPH presents legitimate reasons for the denial. In that regard, the Commission notes that under the Americans with Disabilities Act (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 and 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 *C.F.R.* § 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 *C.F.R.* § 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 *C.F.R.* § 1630.2(o) and 29 *C.F.R.* § 1630.9.

Furthermore, 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 the 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 a "qualified" individual with a disability under the ADA); *In the Matter of Bonaventure Duru* (MSB, decided June 12, 2001) (Family Services Specialist who was unable to drive was not a "qualified" individual since driving was an essential function of the position); *In the Matter of E.H., Department of Law and Public Safety*, Docket No. A-4859-11T1 (App. Div. April 10, 2014) (No basis to grant a hearing or further accommodations to a Deputy Attorney General with a disability, as his request for a personal assistant would not be an appropriate accommodation in such areas of legal analysis, writing, and working with other staff members).

In the instant matter, the appellant asserts that it is not clear to him which essential function would be removed since Dr. Eid did not actually restrict him from physical activity associated with his job duties. However, Dr. Eid did in fact place

permanent time restrictions on several physical activities, which TPH cannot accommodate given the many physical tasks needed for the appellant's job. Considering that reason, there is not a sufficient basis to find that TPH violated the State Policy. Moreover, the appellant claims that the denial of his accommodation request was "unilateral" and made prior to notifying him of the essential functions of his position. As evident from the above summary, the ADA contemplates an interactive process between the employee and employer whenever an employee's disability may impact his or her ability to perform the essential functions of the position. In the appellant's case, the record reflects that at the time of the appellant's leave of absence, there was a meeting to discuss his assignment and request for an accommodation. Moreover, the investigation revealed that the appellant's medical documentation from Dr. Eid and information from the appellant and his supervisor were reviewed prior to any decision being made. In addition, TPH contacted other facilities within the Department of Human Services for the appellant's possible reassignment. However, no facilities could accommodate the appellant. Consequently, there is insufficient evidence to find that TPH failed to engage in an interactive process to accommodate the appellant.

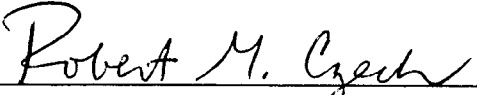
Therefore, a review of the record indicates that the investigation was thorough and complete and no basis exists to find a violation of the State Policy. Accordingly, the Commission finds no basis to disturb the determination of the Office of EEO.

### 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 16<sup>TH</sup> DAY OF SEPTEMBER, 2015

  
\_\_\_\_\_  
Robert M. Czech  
Chairperson  
Civil Service Commission

Inquiries  
and  
Correspondence

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

Attachment

c: P.Z.  
Edward McCabe  
Mamta Patel  
Joseph Gambino



**State of New Jersey**  
 DEPARTMENT OF HUMAN SERVICES  
 PO Box 00  
 TRENTON NJ 08625-0000

CHRIS CRISTO  
 Governor  
 KIM GUADAGNO  
 Lieutenant Governor

JENNIFER VELEZ  
 Commissioner

February 5, 2015

Mr. P. Z. [REDACTED]  
 [REDACTED]  
 [REDACTED]

DHS File No. 5487-2014  
 CSC File No. 2014774

Dear Mr. Z. [REDACTED]:

On November 14, 2014, you filed an EEO complaint against Trenton Psychiatric Hospital (TPH) alleging disability discrimination. Specifically, you alleged that TPH failed to engage in an interactive process to identify a reasonable disability accommodation that would allow the performance of the essential functions of your position.

The Department of Human Services (DHS) neither condones nor tolerates any form of discriminatory behavior in the workplace. Accordingly, the Office of EEO assigned this matter to Marcia Pollard-Hampton for investigation.

The Office of EEO did not substantiate the allegation. The investigation revealed TPH engaged in an adequate interactive process. On January 30, 2015, TPH denied your accommodation request. Your physical impairments prevent you from performing the essential functions of your job with or without an accommodation. As noted in a December 12, 2014, email, Safety, Perimeter and Environmental checks are requirements of your title. Restructuring the position to meet your physical limitations would result in removing all essential functions.

If you disagree with this determination, you have the right to file an appeal with the Civil Service Commission within twenty (20) days of your receipt of this letter. The appeal must be in writing, state the reason(s) for the appeal, and specify the relief requested. Please include all materials presented at the department level and a copy of this determination letter with your appeal. The appeal should be submitted to the Division of Appeals and Regulatory Affairs, P.O. Box 312, Trenton, N.J. 08625-0312.

Please be advised that pursuant to P.L. 2010, c.25, 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 only, payable to the NJ CSC. Persons receiving public assistance pursuant to P.L. 1947, c. 156 (C.44:8-107 et seq.), P.L. 1973, c.256 (C.44:7-85 et seq.), or 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.

You are reminded that the State Policy prohibits retaliation against any employee who files a discrimination complaint or participates in a complaint investigation. Furthermore, this matter remains confidential and the results of the investigation should not be discussed with others.

Should you have any questions, please contact the DHS Office of EEO at (609) 292-2816 or 292-5807.

Sincerely,



Edward M. McCabe  
EEO Director

EMM: tw

C: Chris Mongon, Assistant Commissioner, HR  
Teresa McQuaide, CEO  
Mamta Patel, CSC  
Lois Robinson, EEO Liaison

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