



**STATE OF NEW JERSEY**

In the Matter of T.B., Department of  
Human Services

**FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION**

CSC Docket No. 2022-2666

Discrimination Appeal

**ISSUED: JUNE 20, 2022 (SLK)**

T.B., a Cottage Training Supervisor with the New Lisbon Developmental Center (NLDC), Department of Human Services (DHS), appeals the decision of an Assistant Commissioner, which was unable to substantiate her allegations that she was subject to discrimination in violation of the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy).

By way of background, T.B. alleged that the NLDC discriminated against her based on her religion by denying her request for a religious exemption from the COVID-19 vaccination mandate. The investigation revealed that there is a federal mandate and State Executive Order that require workers in health care and congregate settings, including the NLDC, to be vaccinated against COVID-19. The investigation found that T.B. was one of several hundred employees who requested a religious exemption from this requirement. The determination letter indicated that DHS is not required to grant religious accommodations that would impose an undue hardship on its operations, including exemptions that could impact the health of its residents at its developmental centers. DHS determined that allowing religious exemption requests for employees who have contact with residents would pose an undue hardship because it would expose these residents to a heightened risk of infection from COVID-19 and this determination is permissible under the New Jersey Law Against Discrimination and the federal Civil Rights Act of 1964. DHS indicated that as a Cottage Training Supervisor at NLDC, T.B.'s primary function is to mentor individual residents and implement assigned physical care, recreation, resident self-

help, social training, and other programs which requires contact with residents. Therefore, DHS determined granting T.B. a religious exemption would pose an undue hardship on NLDC and its residents and, therefore, she was not discriminated against due to her religious beliefs.

On appeal, T.B. argues that not only was the denial of her request for a religious accommodation a denial of her rights under Title VII of the Civil Rights Act, but it was a violation of Executive Order 283, paragraph 10, and Article 2A Policy Agreement Non-Discrimination. She asserts that the State failed to reasonably accommodate her religious beliefs or practices by declining to explore other viable options that pose no greater risk or harm to clientele or create a potentially hazardous or burdensome work environment. T.B. presents that throughout the pandemic, she has been working and adhering to safety protocols including routine testing and wearing personal protective equipment (PPE). She believes that the employer should not be able to infringe upon her religious beliefs and practices and she should be able to continue working by maintaining weekly testing and adherence to established safety protocols to mitigate the virus.

In response, the Equal Employment Office (EEO) presents that during her interview, T.B. indicated that she believed that the State Policy provided for religious exemptions where employees could wear additional PPE as opposed to getting vaccinated. She presented that her religion is associated with the Church of God and Christ. The investigation determined that T.B.'s allegation that she was discriminated against based on her religion by denying her request for an exemption from the COVID-19 vaccination mandate was unsubstantiated for the reasons as stated in the determination letter. It submits the job specification for Cottage Training Supervisor to demonstrate that T.B.'s duties require her to be in contact with residents.

In reply, T.B. presents that on December 2, 2021, she put in a request for a religious exemption for the COVID-19 vaccination mandate and was continuously working with routine testing, wearing a mask and other safety protocols as outlined by NLDC and DHS. She indicates that on February 23, 2022, she received the denial response to her religious exemption request and continued to work. T.B. provides that she did not receive any supporting documentation that showed evidence of being an undue hardship or why the provisions that she was working under could no longer be granted. She attaches the COVID-19 vaccination policy for DHS as she contends that it does not indicate that the decision would be made based on the job specification definition for a title, but it provides for religious and medical exemptions, and she filed for a religious exemption. T.B. notes that the Examples of Work that the EEO highlighted on the job specification for Cottage Training Supervisor are for illustrative purposes only and she was not asked about her job duties during her interview with the investigator. T.B. submits the denial letter which states that DHS

does not judge the sincerity of her request for a religious accommodation. She asserts that she should not be forced to do something against her religious belief.

## CONCLUSION

*N.J.A.C.* 4A:7-3.1(a) provides, in pertinent part, the State is committed to providing every State employee and prospective State employee with a work environment free from prohibited discrimination or harassment. Under this policy, forms of employment discrimination or harassment based upon religion will not be tolerated.

*N.J.A.C.* 4A:7-3.2(m)4 provides that the appellant shall have the burden of proof in all discrimination appeals brought before the Commission.

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 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.

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).

In this matter, the investigation revealed that there is a federal mandate and State Executive Order that require workers in health care and congregate settings, including the NLDC, to be vaccinated against COVID-19. The investigation found that T.B. was one of several hundred employees who requested a religious exemption from this requirement. T.B. alleged that the NLDC discriminated against her based on her religion by denying her request for a religious exemption from the COVID-19 vaccination mandate. She presents that DHS’ policy regarding the COVID-19 vaccine mandate for staff at developmental centers indicates that staff members with sincerely held religious beliefs that object to receiving the COVID-19 vaccine may apply for an exemption pursuant to Title VII of the Civil Rights of Act of 1964, and she questions why she cannot continue to work without being vaccinated using the same safety protocols that she has used throughout the pandemic.

Initially, it is noted that DHS’ policy only indicates that staff with sincerely held religious belief may **apply** for an exemption from the vaccine mandate. The policy does not indicate that if a staff member has a sincerely held religious belief against receiving the COVID-19 vaccine, it will be automatically granted. Instead, the policy indicates that exemptions will be reviewed in the same process as ADA accommodations. Further, a review of the denial letter explains:

After careful review, your request for a religious exemption is denied because the request cannot be safely accommodated. The mission of the center is to provide comprehensive care to residents, which includes protecting them from infectious diseases to the extent possible. Given the nature of your job duties, to accommodate your request for a religious exemption would pose an undue hardship on the center and its residents because it would expose them to harm.

In other words, while T.B.’s adhering to safety protocols including routine testing and wearing PPE provides the residents of NLDC some protection, as illustrated in the job specification for Cottage Training Supervisor, her position requires her to be in contact with residents. Therefore, T.B.’s refusal to get vaccinated does not protect

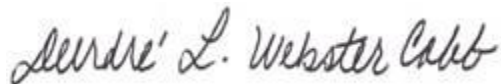
the residents from getting infectious diseases **to the extent possible**, as vaccinated staff are less likely to get infected and spread COVID-19 to residents. While T.B. may believe that there are other viable options to receiving the vaccine that pose no greater risk or harm to clientele based on her sincerely held religious beliefs, the Center for Disease Control indicates that getting vaccinated is not only the best way to protect oneself from contracting COVID-19, but it is also the **best way** to prevent its spread to others. See <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html>. Consequently, DHS's determination that T.B., despite her sincerely held religious belief, could not be reasonably accommodated did not violate the ADA. Further, DHS's denial of her request for a religious accommodation was not a violation of the State Policy because her denial was not based on her religion, but based on its core mission to keep residents safe to the extent possible. Regarding T.B.'s comments that she was never interviewed about her job duties, the determination was made based on the common job duties for a Cottage Training Supervisor as illustrated in the job specification for that title, and she has not argued or presented any evidence that contacting residents is not an essential duty of her position.

### 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 15<sup>TH</sup> DAY OF JUNE 2022




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Deirdre L. Webster Cobb  
Chairperson  
Civil Service Commission

Inquiries  
and  
Correspondence

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

c: T.B.  
Pamela Connor  
Division of EEO/AA  
Records Center