



**STATE OF NEW JERSEY**

In the Matter of J.Z., Juvenile Justice  
Commission

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

CSC Docket No. 2023-543

Discrimination Appeal

**ISSUED: May 3, 2023 (HS)**

J.Z., a Senior Parole Officer, Juvenile Justice Commission (JJC), appeals the determination of the Chief Ethics and Compliance Officer, which found that the appellant failed to present sufficient evidence to support a finding that she had been subjected to a violation of the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy).

As background, the appellant alleged that the JJC discriminated against her based on her religion by denying her request for a religious exemption from the COVID-19 vaccination mandate. The investigation by the Attorney General’s Office of Equal Employment Opportunity (EEO) included speaking with the appellant; reviewing her COVID-19 Vaccination Religious Accommodation Request Form and the accommodation decision; conducting witness interviews; and reviewing documentation. The investigation revealed that Executive Order No. 283 (Murphy, January 19, 2022) (EO 283) required workers in congregate care settings, including those operated by the JJC, to be vaccinated against COVID-19. The determination letter indicated that the appellant’s duties as a Senior Parole Officer, JJC required close contact, or potential close contact, with residents and staff. In this regard, the JJC indicated that successful future outcomes for JJC’s residents required the appellant’s close contact with residents. The JJC determined that she needed to establish a relationship with the resident to make sure that the resident stays on the “right path” going forward after release from a facility, which was easier to do in-person. That close contact could not occur through telework because of JJC’s data-driven decision that residents, especially those with considerable needs, do better in

an in-person educational setting. JJC also determined that none of the other suggested alternate accommodations could be utilized without increasing the spread of COVID-19, resulting in undue hardship to JJC of staffing shortages and operational issues. Additionally, JJC noted that given the frequent violent outbursts in its facilities, the appellant would in all likelihood have close contact with residents and Correctional Police Officers seeking to contain these outbursts, which would again exacerbate the spread of COVID-19. Therefore, JJC determined that granting the appellant a religious exemption would pose an undue hardship on it and its residents and, therefore, she was not discriminated against due to her religious beliefs.

On appeal to the Civil Service Commission (Commission), the appellant argues that the EEO failed to distinguish between “Institutional Parole Officers” and other types of Parole Officers; in her role as an “Institutional Parole Officer,” she only acts in a liaison role and does not carry a caseload that requires building relationships with residents; she has not been in close contact with residents and staff in a congregate care facility since the pandemic’s start; and she continues to perform her daily duties by videoconferencing. The appellant maintains that she does not actually work “in” a congregate care setting as defined in EO 283 but rather works in an off-site building without residents. The appellant insists that Parole Officers have never had to respond to violent outbursts in her 20 years of service, and there is a Parole Response Unit tasked with providing secondary assistance. In addition, the appellant proffers that there are many employees, such as those in maintenance, who have close contact with residents and staff but who also received exemptions. Further, the appellant notes that although her request for a religious exemption was denied, she was granted one on medical grounds. She maintains that she asked for the same accommodations in each request, *i.e.*, more frequent testing, social distancing, remote work, masking, and other safety protocols.

In response, the EEO notes that the JJC does not have an “Institutional Parole Officer” title. Rather, there are only the Senior Parole Officer, JJC and Parole Officer, JJC titles, which is consistent with the State’s classification plan. The EEO states that although the appellant’s current role may be more administrative in nature, she may be reassigned, in-title, to different duties based on operational need and have close contact with residents and staff. According to the EEO, Parole Officers now must be in the office all five days; all Senior Parole Officers must resume in-person meetings with residents when feasible; and parole classes, which are the review of the expectations and conditions of parole and the signing of related paperwork, are expected to be held in-person when feasible. The EEO states that the appellant’s duties require her to enter buildings with residents. Responding to the appellant’s arguments concerning violent outbursts, the EEO maintains that Parole Officers must respond if there is a violent outburst or dangerous situation and a colleague asks for help. In the EEO’s view, the appellant cannot argue that she has no duty to respond to a conflict if so ordered. The EEO notes that the appellant’s office is on the

same campus as the Independent Living Facility. Thus, it is well within the realm of possibility that if the Supervising Parole Officer there needed assistance with a parolee, she would be contacted. The Parole Response Unit's main role, according to the EEO, is to locate fugitives or pick them up from law enforcement agencies, and it does not solely respond to violent outbursts. Concerning maintenance employees who received exemptions, the EEO indicates that this issue was not raised in the investigation but nevertheless such exemptions were revoked once the JJC reinstated a program where residents are assigned to a job, including working with maintenance employees. The EEO maintains that maintenance employees were not afforded an exemption if JJC determined that they had close contact with residents. As to the appellant's receipt of a medical exemption, the EEO responds that such exemptions were governed by an entirely different process and are not at issue here.

In reply, the appellant asserts that she continues to conduct parole classes remotely; regional Parole Officers did not resume in-person parole classes, contrary to the EEO's response; and certain resident and staff meetings such as the Sex Offender Specific Committee and the Special Case Review Committee, continue to be conducted remotely. The appellant proffers that the JJC could have treated her as it treated the maintenance employees. In other words, per the appellant, the JJC could have granted her the religious exemption and then revoked it if she were to be reassigned. The appellant further contends that there can be no undue hardship in granting the religious accommodation if the same result, *i.e.*, exemption from the vaccination mandate, was reached for medical reasons.

In reply, the EEO states that current policy requires parole classes to be held in person unless there is an exceptional circumstance, such as a difficult travel situation. The EEO counters that it would not have been possible to provide the appellant with her requested religious exemption and then revoke it upon reassignment because Parole Officers can be asked to intercede in a conflict at a moment's notice, which cannot be preplanned. As to the appellant's medical exemption, the EEO insists that only the requested religious accommodation is at issue here. The EEO maintains that the legal standards for religious and medical accommodations are different and cannot be conflated.

## CONCLUSION

It is a violation of the State Policy to engage in any employment practice or procedure that treats an individual less favorably based upon any of the protected categories. *See N.J.A.C. 4A:7-3.1(a)3*. The protected categories include 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. *See N.J.A.C. 4A:7-3.1(a)*. The State

Policy is a zero tolerance policy. *See N.J.A.C. 4A:7-3.1(a)*. 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 Commission has conducted a review of the record in this matter and finds that an adequate investigation was conducted and that the investigation failed to establish that the appellant was discriminated against in violation of the State Policy. The EEO appropriately analyzed the available documents and witness interviews in investigating the appellant's complaint and concluded that there was no violation of the State Policy. The investigation revealed that EO 283 required workers in congregate care settings, including those operated by the JJC, to be vaccinated against COVID-19. EO 283 noted, among other things:

[T]he [Centers for Disease Control and Prevention (CDC)] has reported that vaccinated people who receive a COVID-19 booster are likely to have a *stronger protection* against contracting *and transmitting* COVID-19, particularly the Omicron variant, and stronger protection against serious illness, including hospitalizations and death[.]

...

[T]he CDC has repeatedly emphasized the importance of *heightened mitigation protocols* in certain congregate and health care settings because of the *significant risk of spread and vulnerability of the populations served*[.]

...

[R]equiring workers in those congregate and health care settings to be up to date with their COVID-19 vaccinations can help prevent outbreaks and *reduce transmission to vulnerable individuals* who may be at a higher risk of severe disease (emphases added)[.]

In upholding EO 283, the Superior Court of New Jersey, Appellate Division, stated:

[W]e must be mindful that prisons and places of incarceration are, by their very nature, closed facilities that inevitably call for close contact. That makes them vectors for the spread of the virus. For that reason, the CDC has determined that 'high COVID-19 vaccination coverage is critical to protect staff and people who are incarcerated/detained,' and '[s]taff vaccination coverage is particularly important given their frequent contact with the outside community, which creates the opportunity for potential introduction [of the virus] to the facility.'

...

There is no doubt, as the Supreme Court of the United States recently said, that ‘COVID-19 is a highly contagious, dangerous, and . . . deadly disease’ and that ‘a COVID-19 vaccine mandate will substantially reduce the likelihood’ of contracting and transmitting the disease. *Biden v. Missouri*, 142 S. Ct. 647, 653 (2022) (upholding a similar vaccination mandate for health care workers and observing that this directive constituted a “straightforward and predictable example of the ‘health and safety’ regulations” a federal agency may impose).

*N.J. State Policemen’s Benevolent Ass’n v. Murphy*, 470 N.J. Super. 568, 585, 590 (App. Div. 2022). Thus, alternate safety protocols such as masking and testing would not protect residents and staff to the extent possible.

While the appellant argues that her current job function as an “Institutional Parole Officer” is more administrative in nature, the investigation revealed that the appellant was required to enter buildings with residents as part of her duties. JJC does not have an “Institutional Parole Officer” title. Rather, the relevant title in this case is Senior Parole Officer, JJC, which is consistent with the State classification plan, and the appellant could be reassigned, in-title, to different duties based on operational need and have close contact with residents and staff. Indeed, an appointing authority may, at its discretion, reassign an employee to a new job function, *see N.J.A.C. 4A:4-7.2*, and close contact is clearly contemplated within the job specification for Senior Parole Officer, JJC. In that regard, the definition section of the job specification states:

Under direction of a supervisory official in the Juvenile Justice Commission, conducts investigations related to parole planning and aftercare services for juvenile offenders; assumes responsibilities for paroled juvenile offenders by coordinating, developing, and monitoring specific programs of various types directed to the parolee and encouraging family involvement in community programs, counseling, and treatment; utilizes a balanced approach in supervision of juvenile parolees in concert with treatment, surveillance, and enforcement practices with extensive interaction of public and private treatment service providers and social service and law enforcement agencies in accord with state statutes, administrative codes, and policies of the State Parole Board; interacts with law enforcement agencies in the apprehension and custody of parole violators and in the enforcement of arrest warrants; does other administrative and related duties as required.

The investigation also revealed that Parole Officers must respond if there is a violent outburst or dangerous situation and a colleague asks for help, which would entail close contact. The EEO maintains, reasonably, that the appellant cannot argue that she has no duty to respond to a conflict if so ordered. Indeed, there is no question that Senior Parole Officer, JJC is a law enforcement title. The appellant further argues here that the JJC could have treated her in the same manner it treated certain maintenance employees. Specifically, she suggests that the JJC could have granted her the religious exemption and then revoked it if she were to be reassigned to a function requiring close contact. Apparently, this issue was not raised in the investigation. Nevertheless, the EEO provides a reasonable response that the appellant's proposal would not have been possible because Parole Officers can be asked to intercede in a conflict at a moment's notice, which cannot be preplanned. Thus, the JJC's handling of the maintenance employees' exemptions does not undermine the investigation.

Additionally, the appellant suggests that the denial of her religious accommodation, coupled with the granting of her medical exemption, demonstrates that the denial of the religious accommodation was discriminatory. However, the EEO has responded that the legal standards for religious and medical accommodations are different<sup>1</sup> and cannot be conflated. The appellant has not demonstrated that improper discrimination, as opposed to the application of differing legal standards, led to the denial of one type of accommodation (religious) but the granting of another (medical).<sup>2</sup>

Thus, nothing in the record calls into question the EEO's determination that the denial of the appellant's religious accommodation was not based on her religion but based on such legitimate criteria as job duties and the safety of residents and staff. Accordingly, the investigation was thorough and impartial, and no substantive basis to disturb the appointing authority's determination has been presented.

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<sup>1</sup> For example, under the Law Against Discrimination, a religious accommodation poses an undue hardship if it requires unreasonable expense or difficulty, unreasonable interference with the safe or efficient operation of the workplace, a violation of a *bona fide* seniority system, or a violation of any provision of a *bona fide* collective bargaining agreement, or will result in the inability of an employee to perform the essential functions of the position in which he or she is employed. *N.J.S.A.* 10:5-12(q)(3). Under the Americans with Disabilities Act, undue hardship means an action requiring significant difficulty or expense, when considered in light of certain enumerated factors. 42 U.S.C. § 12111(10).

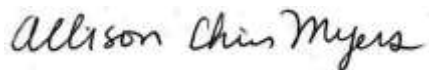
<sup>2</sup> Moreover, as the appellant received the same remedy she would have received if her religious accommodation request were granted, the practical challenge to that action is essentially moot. *See N.J.A.C.* 4A:7-3.2(m). Regardless, the Commission is mandated to review her claims to determine whether there was a violation of the State Policy in denying her religious accommodation request. For all the reasons presented, it finds that no violation occurred.

**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 3<sup>RD</sup> DAY OF MAY, 2023



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