



STATE OF NEW JERSEY

In the Matter of J.J., Greystone Park
Psychiatric Hospital, Department of
Health

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

CSC Docket No. 2024-2409

Discrimination Appeal

ISSUED: November 7, 2024 (HS)

J.J., a Coordinator of Plant Services and Preventative Maintenance, Greystone Park Psychiatric Hospital (GPPH), Department of Health (DOH), appeals the determination of the Chief of Staff, which found 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).

As background, the appellant alleged that GPPH discriminated against him based on his religion by denying his request for a religious exemption from the COVID-19 vaccination mandate. The investigation by the Office of Diversity and Equity Services (ODES) included interviews and analysis of relevant documentation. The investigation revealed that a Centers for Medicare and Medicaid (CMS) rule and Executive Order No. 283 (Murphy, January 19, 2022) (EO 283) together required workers in health care settings, including those operated by the DOH, to be vaccinated against COVID-19. The determination letter indicated that the appellant's duties as a Coordinator of Plant Services and Preventative Maintenance required interactions with patients and coworkers. Teleworking or assignment changes would not be possible. Therefore, DOH determined that granting the appellant a religious exemption would pose an undue hardship and, therefore, he was not discriminated against due to his religious beliefs.

On appeal to the Civil Service Commission (Commission), the appellant disagrees that allowing the exemption would have posed an undue hardship because

other staff were given the ability to work from home. Specifically, he highlights, and provides copies of, a March 30, 2020 e-mail by the GPPH Chief Executive Officer that spoke to the scheduling of staff that would be “working remotely” and a schedule for the April 20, 2020 – May 8, 2020 period that shows that engineers, carpenters, electricians, and others were given the ability to work remotely. The appellant disputes that allowing him the exemption would have created a threat to the safety of patients, staff, and others at the facility because medical exemptions were granted. He contends that the DOH determination was disingenuous because it omitted the following text from EO 283:

The policies adopted by covered settings pursuant to this Order must provide appropriate accommodations, to the extent required by federal and/or state law, for employees who request and receive an exemption from vaccination because of a disability, medical condition, or sincerely held religious belief, practice, or observance.

For relief, the appellant requests that his religious exemption be granted with compensatory damages, as he was effectively left with no choice but to comply with the mandate, and that all future religious exemptions be granted. The appellant also complains that the determination was delayed in that he filed his complaint on March 16, 2022, but the determination was not issued until May 8, 2024.¹

In response, the ODES states that while EO 283 delineates the possibility for religious exemptions, GPPH determined it would be an undue hardship to grant requests. It reports that 54 GPPH employees in total sought religious exemptions. There was no disparate treatment related to religious beliefs as no religious accommodations were granted due to an undue hardship. Special concern for the patients was also taken into account as they were in a “special” category of being on medication and at a higher risk of serious complications from COVID-19. The denial of religious accommodation requests was made due to an undue hardship as a safety measure to protect the health of patients and employees of GPPH. Per the definition section of the job specification for Coordinator of Plant Services and Preventative Maintenance, the incumbent’s responsibilities are supervision and scheduling of the plant maintenance functions, including implementing, reviewing and monitoring regularly scheduled inspections and service of the institutional physical plant to ascertain the nature and extent of required repairs, and the determination of scheduled preventative maintenance. The appellant’s essential job functions required him to pass freely through GPPH, where he would come into contact with patients and employees.

¹ The appellant further complains that he lost vacation days in 2020 because they could not be carried over. The Commission can afford no relief on this issue as the ability to carry over vacation leave is governed by a statute, which the Commission has no authority to relax. See *N.J.S.A. 11A:6-2f*; *In the Matter of John Raube, Senior Correction Officer, Department of Corrections*, Docket No. A-2208-02T1 (App. Div. March 30, 2004).

To the appellant's contention that engineers, carpenters, electricians, and others were given the ability to "work remotely," the ODES responds that they were out intermittently at the onset of the pandemic to minimize patient exposure to the virus and notes that this was prior to the availability of COVID-19 vaccines. Staff were returned to the office in stages. Engineering staff were returned to full duty as of May 3, 2021, and all hospital staff were returned to full duty in the beginning of June 2021. Concerning the appellant's complaint that medical exemptions were approved, the ODES reports that GPPH employees made 24 requests in total for medical exemptions, and 22 were approved based on submitted medical documentation indicating that if the employee received the vaccine, it could pose physical harm to that employee. The ODES maintains that the medical exemption was of a higher standard for employers to meet than that of the religious exemption.

CONCLUSION

Initially, it is noted that the appellant complains that the determination was untimely. The appellant filed his complaint on March 16, 2022 but did not receive a determination until May 8, 2024. *N.J.A.C. 4A:7-3.2(l)2* provides that the investigation of a complaint shall be completed and a final letter of determination shall be issued no later than 120 days after the initial intake of the complaint. Additionally, *N.J.A.C. 4A:7-3.2(l)3* states that the time for completion of the investigation and issuance of the final letter of determination may be extended by the State agency head for up to 60 additional days in cases involving exceptional circumstances. The State agency head shall provide the Division of EEO/AA and all parties with written notice of any extension and shall include in the notice an explanation of the exceptional circumstances supporting the extension. The ODES is reminded that it must comply with the regulatory directives. If it fails to do so in the future and egregious violations occur, it may be subject to fines and penalties pursuant to *N.J.A.C. 4A:10-2.1(a)2*. Nonetheless, as further explained below, the Commission finds that a thorough investigation was conducted in the present matter, which did not substantiate the appellant's complaint.

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 ODES 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 health care settings, including those operated by the DOH, 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)[.]

The Superior Court of New Jersey, Appellate Division upheld EO 283. While the instant matter does not involve prisons, the following language from the court's opinion is instructive:

[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 patients and staff to the extent possible. Close contact is clearly contemplated within the job specification for Coordinator of Plant Services and Preventative Maintenance.

The appellant contends that the determination was flawed because engineers, carpenters, electricians, and others were given the ability to “work remotely” in the April 20, 2020 – May 8, 2020 period. However, as the ODES persuasively notes, this was at the onset of the pandemic and *prior to* the availability of vaccines, the CMS rule, and EO 283. Thus, the information does not in fact serve to undermine the investigation, which concerned the vaccine mandate and such issues as whether an exemption from that mandate would pose an undue hardship. In addition, the appellant suggests that the denial of his religious accommodation, coupled with the granting of medical exemptions, demonstrates that the denial of his religious accommodation was discriminatory. However, the ODES has responded that the standards for religious and medical accommodations were different² and that medical exemptions were granted based on medical documentation indicating that if the employee received the vaccine, it could pose physical harm to the employee. The appellant has not demonstrated that improper discrimination, as opposed to the application of differing standards and employees’ physical safety, led to the denial of one type of accommodation (religious) but the granting of another (medical). Further, the appellant contends that the determination was disingenuous because it omitted that part of EO 283 that stated that covered entities must provide appropriate accommodations to the extent required by federal and/or State law for employees who request and receive an exemption from vaccination because of a sincerely held religious belief, practice, or observance. This argument is not persuasive because the language cannot reasonably be read to *guarantee* a religious exemption to all who

² 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).

requested one and did not preclude an appointing authority from denying such exemption on the basis of undue hardship, a concept that is itself part of the “federal and/or State law” referenced in EO 283.

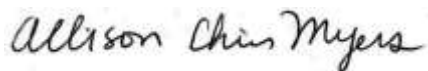
Accordingly, nothing in the record calls into question the Chief of Staff’s determination that the denial of the appellant’s religious accommodation was not based on his religion but based on such legitimate criteria as job duties and the safety of patients and staff. Accordingly, the investigation was thorough and impartial, and no substantive basis to disturb the determination has been presented. Further, the Commission acknowledges that the appellant has requested that “all future religious exemptions be granted.” The Commission can contemplate no sound or reasoned basis upon which it could grant such far-reaching, prospective relief.

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 6TH DAY OF NOVEMBER, 2024



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