STATE OF NEW JERSEY

In the Matter of V.L., Department of Human Services	:	**FINAL ADMINISTRATIVE ACTION OF THE CIVIL SERVICE COMMISSION**
CSC Docket No. 2025-1679	:	Discrimination Appeal

ISSUED: May 21, 2025 **(SLK)**

V.L., a former Head Cottage Training Supervisor (HCTS) with the New Lisbon Developmental Center (NLDC), Department of Human Services, appeals the determination of an Assistant Commissioner, which was unable to substantiate that she was subject to a violation under the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy).

By way of background, V.L. alleged (Allegation One) that K.P., a Chief Executive Officer Care Facility, discriminated against her based on disability because Americans with Disabilities Act (ADA) accommodation requests go through her, and she denied V.L.'s request. The investigation revealed that K.P. denied the allegation stating that she does not review ADA paperwork. Therefore, the investigation was unable to substantiate the allegation.

V.L. also alleged (Allegation Two) that the NLDC discriminated against her based on disability by not following its Leave of Absence Policy that stated, "Absence[s] with or without pay[,] HR shall notify the employee in writing of approval or disapproval with[in] 5 business days." The investigation revealed that K.W., a Personnel Assistant 1., denied the allegation. Specifically, K.W. stated that V.L. was on Workers' Compensation from August 7, 2020, through August 3, 2023. On August 25, 2023, a letter was received from V.L.'s doctor stating that V.L. was unable to work from August 11, 2023, through December 11, 2023. Further, K.W. stated that D.B., a now retired Manager 2 Human Resources, spoke with V.L. advising that per policy,

since V.L. had been out for more than a year, a leave of absence without pay could not be approved. K.W. also explained this in a letter to V.L. Therefore, the investigation was unable to substantiate the allegation.

Additionally, V.L. alleged (Allegation Three) that D.B., K.W., and K.P. discriminated against her based on disability when they denied her request for an ADA accommodation. The investigation reviewed that K.W. and K.P. denied the allegation. K.W. and K.P. explained that V.L.'s accommodation request had been denied because she was unable to return to work, she could not perform the essential functions of her job, and V.L.'s documentation from her doctors indicated that she could not perform the essential functions of her job. Further, although the investigation tried to contact D.B., she had retired and did not respond to the interview request. Therefore, the investigation was unable to substantiate the allegation.

Moreover, V.L. alleged (Allegation Four) that D.B discriminated against her by creating job demands that did not match the essential functions of her HCTS position and by changing the Functional Capacity Evaluation (FCE) to remove a restriction without having another evaluation for her. The investigation revealed that K.W. stated in preparation for V.L.'s FCE, Risk Management requested a Job Demand and Medical Capabilities Form for HCTS. Risk Management submits this information to the examiner who is performing the FCE so a determination can be made regarding the employee's return to work status. An error in lifting the requirements was discovered and corrected. When the FCE was corrected, it was not D.B.'s responsibility to request another evaluation. The investigation noted that D.B. was not interviewed because of her retirement. Therefore, the investigation was unable to substantiate the allegation.

On appeal, concerning Allegation One, V.L. presents that the job demand form was created by a residential services manager who K.P. supervised. All data concerning her department must be reviewed by the manager. She states that she asked K.W. who gave her this job demand, and she said she did not know. V.L. asserts that since K.W. was the head of the leave unit at the time of her illness, she should have known who she received the job demand from. V.L. indicates that on January 4, 2019, the date that was mentioned, she was not on Workers' Compensation and did not ask for an accommodation as mentioned because she was actively working for the NLDC at that time. V.L. claims that K.W. was actively involved in the denial of her accommodation request, and she harassed through their phone conversations and written communications, which forced her to retire under duress. She provides that the same document was provided to Risk Management for her FCE. V.L. states that the HCTS job specification does not indicate that incumbents in this position need to engage in physical activity six to eight hours a day. Therefore, she questions why her accommodation request was not granted. Further, V.L. notes that K.W. signed the letter denying her ADA accommodation request. Additionally, she questions if K.P.

does not review ADA accommodation requests, than who does? V.L. attaches a copy of the job demand and medical capacity review, her performance assessment review (PAR), and the HCTS job specification. She highlights the job description on the FCE and her job description on her PAR and the HCTS job specification.

Regarding Allegation Two, V.L. presents that her doctor provided a letter that indicated that her treatment was a continuation of her Workers' Compensation treatment, but this letter was not acknowledged by the facility administrators, K.W. and D.W. She asserts that she qualified for at least 12 weeks of Family Medical Leave Act (FMLA) leave, and she emailed the leave unit asking for FMLA papers. However, no one responded. V.L. contends that the facility continued to decline her treatment and claim that her illness was a personal one to deny her ADA accommodation request. She notes that her unpaid leave was not covered by FMLA. Therefore, V.L. indicates that her condition worsened and NLDC ended her health insurance. Moreover, she presents that despite sending multiple inquiries about payment while waiting for the FCE amendment, she received no income. Therefore, V.L. argues that the leave policy was violated as her leave was denied and only approved upon her return to work full-time on March 29, 2024. She highlights that Risk Management can only act on information received by her employer. Consequently, V.L. believes that the NLDC violated its own leave policy as well as federal leave policy concerning FMLA by rejecting her doctor's note which concluded that her condition was a personal one and approved for time as a personal illness. She states that if she had violated the NLDC's policy on job abandonment, she would have been served with a removal notice within five days. Instead, V.L. claims that K.W. continued to harass and intimidate her and forced her to resign or retire which made her condition worse. She reiterates that she went without pay for six months. V.L. notes that from August 23, 2023, to March 1, 2024, she was never separated from State service.

Referring to Allegation Three, V.L. claims that a false job demand was sent to her doctor by facility administrators. She asserts that the job demand was not reasonable, but it forced her to resign after almost 30 years of service and left her without medical insurance, as the day she was released from Workers' Compensation, she was placed on COBRA insurance. V.L. presents that during the time D.B. and K.W. were reviewing her FCE from August to September, they changed the FCE to include her being able to lift 50 pounds. She also provides documentation for her shoulder injury. In 2021, V.L. indicates that Risk Management stopped her treatment with a neurologist and sent to her to an orthopedist after years of complaining that she had shoulder pain, which the neurologist advised was due to a neck injury. However, the Workers' Compensation doctor could not conclusively determine that her tear was work related. She provides that they received all her information and was made aware of her shoulder tear. Therefore, V.L. questions why D.B. asked her to complete an ADA form if the purpose was to force her to leave or accommodate her. Further, she indicates that K.W.'s email messages stated that her only options were to resign or retie. V.L. states that she will send medical information

that proves her lumber surgery was not successful, and she was scheduled for an MRI. She claims that the information was not given to her when a decision was made by NLDC to deny her ACA accommodation request, and she was given one week to resign, retire, or look for other work within State service, which was not enough time. V.L. presents that she responded that she wanted to look for work, but then K.W. replied that her only options were to resign or retire from NLDC. She asserts that she was under a lot of pressure as the loss of her job where she had spent almost 30 years left her with no income while she had to care for four kids. This situation caused her stress and anxiety; yet the NLDC refused to her accept her doctor's note.

Concerning Allegation Four, V.L. submits the job specification for her title and her PAR. She requests that the job demand and the FCE evaluation on page 11 be reviewed. V.L. emphasizes that Risk Management is not her employer as it can only provide documents that it receives from her employer so that a functional analysis can be completed. She asserts that the error on her FCE was not based on Risk Management's error but K.W.'s. error. V.L. states that at the time when the FCE was done, the facility who conducted the studies used information received from Risk Management. Then, Risk Management gave the facility the information from the employer. Therefore, V.L. asserts that it was NLDC's error to correct, and it would have been its responsibility to request from Risk Management another evaluation.

In response, the appointing authority presents that K.W. denied V.L.'s ADA accommodation request because the three physicians who treated her indicated that she was not able to perform certain essential functions of her job. It notes that V.L.'s Workers' Compensation doctors cleared her for "full unrestricted duty" on September 22, 2023, and then on October 12, 2023, V.L. made the accommodation request. The appointing authority states that the reports submitted by her treating physicians conflicted with the Risk Management physician's reports.

The appointing authority notes that sending job demands to treating physicians is part of the ADA interactive process as the NLDC would be unable to understand V.L.'s disability and determine the accommodations without input from her treating doctors. It presents that during the investigation, when K.W. was asked why she denied V.L.'s request for an accommodation, she replied:

> We received completed job demands from [V.L.'s] physicians which indicated she could not perform many of the essential functions of her job. Specifically, Dr. Gorgy, indicates of the 18 physical activity demands that V.L. can perform 4 of these and cannot lift more than 25 pounds, and also indicates that patient is able to return to work 11/6/23 with modified duty of no heavy lifting, bending/twisting. Dr. Powell indicates that of the 18 physical activity demands, that [V.L.] can perform 4 of these and cannot lift more than 25 pounds. For the social/psychological demands, of the 8 that are listed, [V.L.] was not able

> to perform 2 of them, in addition Dr. Powell stated that she should have no direct contact with patients. Dr. Francis indicated of the 18 physical activity demands that [V.L.] could not perform 8 of these and is not able to lift more than 25 pounds; of the social/psychological demands, of the 8 listed, 1 could not be performed; in addition, he states "lifting 11-25 pounds due to low back pain/tear of left shoulder. Working beyond 8 hours shift will trigger symptoms. Increase stress will lead to depression and PTSD symptoms. Need use of back and knee brace and neck pillow when seating for posture. She is unable to push a wheelchair. Avoid assisting with restraints may cause further injury or flareups of back and neck pain or left arm injury. Working at a location not directly with patients if possible to prevent PTSD. Walking no more than 2-3 hours as tolerated". This was the information that was used to determine that we could not approve [V.L.] request for an accommodation.

Therefore, the appointing authority highlights that her doctors opined that she should not interact with clients, she would be unable to push a wheelchair, and she should avoid assisting with residents who need restraints. Accordingly, it determined that since these limitations were indefinite, V.L.'s continued employment as a HCTS would cause an undue hardship to the NLDC. Additionally, it notes that Risk Management physicians cleared V.L. for "unrestricted duty."

Concerning V.L.'s comments that she should be reevaluated because the original essential functions sent to Risk Management were incorrect, the appointing authority notes that FCE was corrected to remove a restriction regarding the amount needed to lift during the workday and her work status was changed from "altered duty" to "unrestricted duty." Therefore, it asserts that it was unnecessary for a new evaluation to be completed. Further, it highlights that a physician for the FCE found that V.L. was not displaying maximum effort during her evaluation. Therefore, it believes that a second evaluation could only further demonstrate that she was fit for unrestricted duty. Additionally, it notes that the need for a second evaluation for V.L. would be determined by the evaluating physicians and not the NLDC.

Regarding V.L.'s claim that the denial of her accommodation request was retaliation for a prior State Policy complaint, the appointing authority asserts that there is nothing in the record to support this claim. It presents that V.L. filed a State Policy complaint against the NLDC in 2020. The appointing authority presents that although V.L. believed that she was reassigned to a different cottage due to a confrontation with a male employee, K.P. stated that the reassignment was based on its coverage needs. Further, it indicates that V.L. filed a State Policy complaint in 2013. However, it highlights that none of the respondents in the current matter were working with V.L. at the Green Brook Regional Center at the time of the 2013 complaint. It reiterates that V.L.'s request for an accommodation was denied because it would have placed an undue burden on the NLDC.

Referencing V.L.'s allegation that several Caucasian employees were granted accommodations while she was not, the appointing authority provides that K.W. indicated that there were no current ADA accommodations on file for the three specific employees that V.L. mentioned. It emphasizes that accommodations are fact-specific and reviewed on a case-by-case basis and the granting of one employee's accommodation request, which is based on different circumstances, has no bearing on another person's request. The appointing authority asserts that V.L.'s belief that her accommodation request was denied based on race is mere speculation without evidence.

Finally, the appointing authority presents that V.L. alleged that the NLDC violated its Absence Policy when it did not inform her within five days as to whether her leave was approved. It indicates that K.W. explained that V.L. had been on leave for more than one year and under *N.J.A.C.* 4A:6-1.10, in State service, a leave of absence cannot exceed one year unless provided by statute. In exceptional circumstances, a leave of absence beyond one year may approved by the appointing authority and written approval from the Civil Service Commission's Chairperson or designee. Therefore, it provides that whether the five-day rule was followed was not relevant because her leave could not be approved under the regulation. However, the appointing authority did provide her leave of absence request to allow her to buy back pension time. Therefore, the appointing authority contends that V.L. was not harmed by the NLDC not following the five-day rule, and there is no evidence that the NLDC's not following the five-day rule was based on discrimination.

In reply, V.L. notes that the NLDC ended her medical coverage leaving her without any coverage or income. V.L. states that the job specification for her title does not demand lifting and she believes that she could have been reassigned to a cottage that does not require her to restrain anyone. She questions that if the inability to lift zero to 25 pounds is an automatic denial of her accommodation request, why go through the evaluation?

Regarding retaliation, she states that the allegation is based on her 2020 State Policy complaint. She asserts that she expects to be compensated and she notes that each correspondence from the NLDC indicated that retiring or resigning were the only options. V.L. reiterates her belief that the evidence indicates that the NLDC, including K.W., created a hostile work environment.

V.L. presents that on August 4, 2023, her doctor indicated that she could return to work with restrictions. On that date, she contacted the NLDC to see if she should report to work and who was going to pay her. In response, she was advised not to return to work as D.B. was reviewing the FCE with restrictions. She notes that she did not receive any salary and it was suggested that she apply for COBRA. V.L. contends this circumstance triggered her depression which she was in treatment for

after multiple surgeries from a work-related accident. Therefore, she highlights that she had no income, a mortgage, and four children to care for, which is why her doctor asked for a leave of absence for her from August 11, 2023, to November 8, 2023. V.L. states that this leave request was denied even when the facility kept her out of work while it was reviewing and correcting the FCE. Further, V.L. asks if her health benefits should have been stopped while the NLDC was conducting its review and correcting its mistakes.

V.L. asserts that the job demand does not match the job specification for her title, and she attaches her PAR. She questions if the NLDC should be able to create a job demand that does not correspond with her title's job specification, such as requiring continuous lifting six to eight hours a day to make it difficult to accommodate a person with a work-related disability. V.L. states that it is the facilities responsibility to ensure adequate staffing and there is no policy that demands a person continuously work out-of-title. She asserts that it is the NLDC's burden to prove an undue hardship. V.L. presents a Caucasian male who was hired in her title who worked in a position away from the cottages, with every other weekend off and no adjusted shift schedule as was required at the time, in contrast to herself and the other 99 percent of staff working in her title who are African American as evidence of race discrimination.

V.L. presents a September 26, 2023, correspondence that gave her three options, apply for a vacant State position, retire, or resign. Further, she presents that on October 20, 2023, D.B. encouraged her to put in an accommodation request, which she did. Thereafter, on December 1, 2023, V.L. indicates that a decision regarding her request was made without the final report from her treating physician. She presents that K.W. informed her that she would need to provide medical reports from all the doctors who treated her, and staff was aware that she was having back issues and a MRI was scheduled. She highlights that in 2022, she had surgery for lower back pain sustained from a work-related issue. Further, V.L. provides that her primary doctor in this matter stated on the job demand that he would reassess on December 8, 2023. However, V.L. contends that the decision to deny her an accommodation was made with incomplete medical information and the only options she was afforded was to find another job within the State within in six days, which was unreasonable, or resign or retire. She states that she responded that she would look for another job, and then the NLDC replied that her only option was to retire or resign. Therefore, she argues that she was discriminated against based on her disability and bullied into retiring. Additionally, she indicates that her request to purchase leave from August 4, 2024, through February 29, 2024, was denied for six months.

In further response, the appointing authority presents that V.L. raises a new allegation that was not part of her complaint and not investigated. It provides that V.L. is now alleging that a specific Caucasian male was provided preferential

treatment by being hired provisionally in her title in a position that allows him to work out of the cottages and other preferential treatment as compared to herself and others who serve in her title who are African American. While the appointing authority indicates that V.L. mentioned this employee as one of the three Caucasian employees who allegedly received an accommodation, the investigation revealed that none of these employees received an accommodation. However, it provides that her new allegation, that this employee has received favorable treatment based on race, has not been investigated. Therefore, she may file a new discrimination complaint regarding this allegation, but it cannot be addressed this in this matter since it was not investigated.

CONCLUSION

N.J.A.C. 4A:6-1.10(a) provides that, in State service, an appointing may with the approval from the Chairperson or designee, grant leaves of absence without pay to permanent employees for a period not to exceed one year unless provided by statute. A leave may be extended beyond one year for exceptional situations upon request by the appointing authority and written approval by the Chairperson or designee.

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 disability and race will not be tolerated.

N.J.A.C. 4A:7-3.2(n)1 provides that the burden of proof shall be on the appellant.

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) (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 a "qualified" individual with a disability under the ADA).

In this matter, the record indicates that V.L. was a HCTS for the NLDC. The Department of Human Services' website indicates that the developmental centers serve individuals with intellectual and developmental disabilities. Center residents have intensive needs related to their intellectual and developmental disabilities, and many also have co-occurring mental health, behavioral health and/or medical needs. Additionally, in reviewing V.L.'s July 26, 2023, FCE, the record indicates that V.L. was "[i]njured during a crisis intervention takedown procedure" on April 27, 2018. Further, personnel records indicate that V.L. was serving as a HCTS as the time of this incident. Moreover, V.L.'s doctors opined that she should not interact with clients, she would be unable to push a wheelchair, and she should avoid assisting residents with restraints. V.L. has not disputed these limitations. Instead, she

asserts that she should be given a reasonable accommodation where she would not have to perform these duties. She presents the job specification for HCTS and her PAR to support her belief that these duties are not essential to the position, the job demand that was used for the FCE contained non-essential duties, and it would not be an undue burden to the NLDC if it reasonably accommodated her by modifying her responsibilities as a HCTS where she would not need to perform these duties.

Initially, it is noted that the purpose of a job specification for a Civil Service title is to determine a title's classification. Further, the examples of work in a job specification are for illustrative purposes only and is not an exhaustive list of all essential duties. Similarly, a PAR is used to evaluate an employee's performance and is not an exhaustive list of all essential duties. In other words, these documents are not used to determine whether an incumbent in a position can perform the essential functions of a position and whether an incumbent with a disability can be reasonably accommodated by removing a duty without it being an undue burden to an appointing authority. Therefore, the Commission finds that D.B. and K.W. did not discriminate against V.L. by providing a job demand containing essential duties of a HCTS that may not be specifically articulated in these documents as V.L. alleged. Moreover, even though there was a change in the FCE after its initial submission, as V.L. has not argued that she can push a resident's wheelchair, restrain a resident, or otherwise interact with residents, there is no basis for a second evaluation despite the updated FCE, which reduced the lifting requirements for the position.

Further, in this case, V.L., as a HCTS, was injured during a crisis intervention takedown procedure. Therefore, the record indicates that even though V.L. was a second-level supervisor, it is necessary for a HCTS to be both physically and mentally capable of directly interacting with center residents with intensive needs related to their intellectual and developmental disabilities, who many also have co-occurring mental health, behavioral health and/or medical needs. Consequently, it was appropriate for the NLDC to provide a job demand that included these responsibilities to the FCE physician evaluators. Moreover, due to nature of the population that the NLDC serves, it would place both the center residents and staff at risk if V.L. served as a HCTS without the ability to directly interact with residents, especially during a crisis. Therefore, the record indicates that it would be an undue burden to the NLDC to employ V.L. as a HCTS, and there is no basis to find that K.P., D.B., K.W. or anyone else at the NLDC failed to comply with the ADA when it was determined that V.L.'s disability could not be reasonably accommodated.

Regarding the leave of absence policy, the record indicates that under *N.J.A.C.* 4A:6-1.10(a), the NLDC appropriately did not approve V.L. for an additional leave of absence as she has been on leave for more than one year, and there is nothing in the record that indicates that any failure on the NLDC's part to inform of her of this decision within five days was based on her membership in a protected class. Additionally, concerning the allegation that Caucasian employees received

accommodations when she did not, the record indicates that the specific Caucasian employees that V.L. believed were approved for accommodations were not actually granted accommodations. Also, there is nothing in the record that indicates that the reason behind the NLDC's denial of her accommodation was in retaliation for a prior State Policy complaint. Finally, concerning V.L.'s claim that the NLDC provisionally hired a Caucasian male as a HCTS, who had favorable work conditions as compared to herself and other African American HCTSs, as V.L. did not present this allegation at the time of her State Policy complaint, this allegation was not investigated and cannot be addressed in this matter. However, V.L. can file a new State Policy complaint with the Department of Human Services that contains this new allegation, which then can be investigated.

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 21ST DAY OF MAY, 2025

Allison Chris Myers

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Allison Chris Myers
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

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

c: V.L.
Pamela Conner
Division of EEO/AA
Records Center