

COOK COUNTY COMMISSION ON HUMAN RIGHTS

69 West Washington Street, Suite 3040

Chicago, Illinois 60602

Claudette GREENE, Complainant)

v.)

LAW OFFICE OF THE COOK COUNTY)
PUBLIC DEFENDER, Respondent)

Case No. 2011E036

Entered: May 27, 2014

ORDER FINDING SUBSTANTIAL EVIDENCE

On November 16, 2011, Complainant Claudette Greene ("Greene") filed a complaint against her employer, Respondent Law Office of the Cook County Public Defender ("Cook County"). Greene alleged employment discrimination for failure to reasonably accommodate a disability in violation of the Cook County Human Rights Ordinance ("Human Rights Ordinance"). *See* Cook County Code of Ordinances ("County Code"), § 42-35(b)(1). The Cook County Commission on Human Rights ("Commission") ordered an evidentiary conference to facilitate its determination of whether there was sufficient evidence that a violation of the Human Rights Ordinance could have occurred to justify a hearing on the merits.

On August 1, 2012, the Commission held an evidentiary conference pursuant to Section 440.110 of its rules. An investigation report produced from this evidentiary conference, and adopted now by the Commission, shows that Greene has presented substantial evidence that a violation of the Human Rights Ordinance may have occurred. As such, the Commission cannot enter a dispositive resolution of this matter without an Administrative Hearing to decide material disputes of fact and law.

For the foregoing reasons and those reasons set out in the adopted Investigation Report (Attachment A), the Commission finds **SUBSTANTIAL EVIDENCE** of a violation of the Human Rights Ordinance with respect to complaint 2011E036. The Commission will issue a notice of the date and time of an Initial Status for an Administrative Hearing. In accordance with CCHR Pro. R. 480.100(A), any party may file a request for reconsideration with the Commission within 30 days of the date of this order.

May 27, 2014

By delegation:



Ranjit Hakim
Executive Director of the Cook County
Commission on Human Rights

ATTACHMENT A

and were provided an opportunity to present testimony and additional documentation.¹ At the conclusion of the Conference, the Facilitator suggested that the parties spend some time trying to work out their differences to see if a settlement could be reached. The parties agreed and after approximately two months, the parties reported that no settlement had been reached. The parties were allowed until October 15, 2012 to provide additional documentation and/or argument. Each party submitted information, including legal argument and the Facilitator is now prepared to issue her report.

Overview of the Facts

Ms. Greene suffers from chronic and severe asthma that has resulted in multiple emergency hospitalizations, and her treatment, including the use of steroids, has resulted in a depressed immune system and lowered resistance to disease and infection. Ms. Greene is assigned to the Juvenile Courts where she has daily contact with children and their families, often in small interview rooms with limited ventilation. She contends that this ongoing exposure to germs and disease particularly during the traditional flu season exacerbates her disability, increasing her absences and ultimately preventing her from being able to perform her duties as a public defender.

On August 22, 2011 Ms. Greene sent a detailed memo to Christopher Garcia, Deputy, Law Office of the Public Defender, explaining her limitations and requesting a transfer to a location where client contact would be minimized. On September 12, 2011, Mr. Garcia responded with a memorandum asking for additional information and medical documentation.

¹ Respondent was represented by Christopher Garcia, Deputy, accompanied by Lester Finkle, (Legal Resource Division), Jeff Howard (Deputy of County Operations, Juvenile Justice) and Jessica Bryan (Complainant's immediate supervisor). Ms. Claudette Greene, Complainant, appeared with her attorney Lonny Ben Ogun.

After that there is a long history of emails² and letters between the parties demonstrating, in part, an increasing tension between the parties. Respondent contends that Complainant's restrictions make any continued employment unsafe, that an assignment to the Legal Research Division would still require significant client contact and furthermore that no openings have been available. At the time of the evidentiary conference the complainant was still working as a public defender assigned to the Juvenile Court building.

Discussion

An individual makes out a *prima facie* case of accommodation of disability discrimination in employment when he or she comes forward with evidence:

- (1) That he or she meets the Ordinance's definition of an individual with a disability;
- (2) That he or she can perform the essential functions of the job with or without a provision of a reasonable accommodation;
- (3) If an accommodation is necessary, that he or she has requested said accommodation or that the accommodation is or should be obvious to a reasonable individual; and
- (4) That the employer failed to provide the individual with a reasonable accommodation.
Section 630.150, Interpretive Rules on Disability Discrimination

1. Does Ms. Greene Meet the Definition of an Individual With a Disability?

Respondent agrees with Complainant that she meets the definition of disability as defined in this Ordinance. (Section 620.110 Interpretive Rules on Disability Discrimination)³

² Some of the correspondence involves requests for FMLA leave which is relevant to Greene's medical conditions and ability to work but is not directly relevant to the request for accommodation.

³ Counsel for Respondent, Christopher Garcia, made this statement at the evidentiary hearing. Complainant's counsel is now suggesting that Respondent made inconsistent statements in responding to a parallel proceeding before the Illinois Department of Human Rights (October 15, 2012 submission of additional documentation by Lonny Ben Ogus at p.1) Alleged inconsistencies between responses filed in different forums are not relevant during this initial review.

2. Could Ms. Green Perform the Essential Functions of the Job With or Without Accommodation?

The interpretive Rules on Disability Discrimination state in part, "(In order to gain the Ordinance's protections against disability discrimination in employment under Article III(B), an individual must show that, the disability at issue notwithstanding, he or she is able to perform the essential functions of the job at issue, either with or without a reasonable accommodation. Essential functions" means the basic fundamental duties of the employment position in question." Subpart 630.100

Ms. Greene now contends that the appropriate accommodation is that which requires the least client contact. The Complainant's communications to her employer regarding the required level of accommodation, however, appear to be a bit of a slippery slope. In her original letter of August, 2011 she catalogues an extensive list of triggers for her asthma including diseases carried by clients, allergens (including grasses and pollen), chemical sensitivity (including cleaning products, fumes and paint), molds, heat and humidity, and stress. (August 22, 2011 letter to Judge Cunningham) More recently her submissions appear to reduce her restrictions to only "more limited client contact" and do not include an extensive catalogue of environmental triggers that must be avoided. (August 13, 2012 and August 17, 2012 letters from Dr. Alderman) A determination of the true nature of Complainant's physical restrictions constitutes a factual issue that is material to the resolution of this Complaint. If, Complainant's restrictions are as pervasive as those presented in her August 22, 2011 letter, it is entirely possible that no reasonable accommodation exists to allow Ms. Greene to continue working as a public defender. However, as later correspondence suggests, that Ms. Greene only requires "more limited client

contact” to allow her to remain in her employment, perhaps an accommodation is feasible.⁴ At the Evidentiary Conference Complainant argued that a transfer to the Legal Research Division would provide an acceptable and reasonable accommodation and that the Respondent has accommodated other disabled individuals in the past by transfer into that department. Respondent disagrees that such a transfer would alleviate the need for client contact as well as other potentially harmful asthmatic triggers and furthermore states that no positions are available in that unit. Respondent apparently at some earlier point suggested other accommodations that involved unpaid leaves and/or transfers to different positions and locations, some requiring a reduced salary.⁵ Ms. Greene rejected those potential accommodations. There are unresolved factual issues regarding the true nature of the complainant’s restrictions as well as the availability of appropriate accommodations. Therefore, the question of whether Ms. Greene can perform the essential duties of her position as a public defender, with or without accommodation is a factual dispute that will have to be determined by a trier of fact.

3. Did Ms. Greene Request an Accommodation From the Respondent?

There is no factual dispute that Ms. Greene requested an accommodation from the Respondent. According to the Commission’s interpretive rules, “(o)nce an individual notifies his or her employer of a request for an accommodation or once it should become obvious to a reasonable person that an accommodation would possible enable the individual to perform the position in question both the individual and the employer have a duty to engage in an interactive process with the goal of arriving at a reasonable accommodation to which both parties could

⁴ Respondent states that it attempted to depose the attending physician but the Complainant refused to cooperate. While there is no automatic right to depositions under this Commission’s procedures, even at the Hearing level, the Facilitator agrees that more specific information from the physician will be crucial to a fair resolution of this complaint. There is nothing in the current record which clarifies how much “client contact” is tolerable given complainant’s restrictions.

⁵ The Facilitator mentioned at the evidentiary conference that proposed accommodations that require loss of income and/or demotions are inherently troublesome in that they may appear to be a form of retaliation. These are issues that will have to be explored and briefed as part of an Administrative Hearing.

agree.” (Section 630.140 Interpretive Rules on Disability Discrimination) It is very difficult at this point to evaluate the sufficiency of the “interactive process” between Ms. Greene and her employer. It appears that this process became, at some point, adversarial and unproductive. The Office of the Public Defender argues that Greene cannot perform her duties, with or without accommodation and that the only accommodation that Ms. Greene will accept is transfer to the Legal Research Division. Respondent further argues that Ms. Greene has blocked necessary access to her physician and that an individual who is “allergic” to her clients and unable to enter court houses is not employable as a Public Defender. Ms. Green contends that she is a dedicated public defender and that she can continue in her chosen career with the reasonable accommodation of being transferred to a position in Legal Research that has “less” client contact. She also contends that the notes written by her pulmonary specialist are sufficient to support this request in that her physician will certify her to work in an environment with “less client contact”. As part of a legitimate interactive inquiry the parties need to ascertain what “more limited contact” means in order to evaluate the true nature of Complainant’s restrictions. Only then can each party determine if accommodation is possible and appropriate. Once again this conflict is replete with factual matters that are material to resolution of this claim that will have to be resolved by a trier of fact.⁶

4. Did Respondent Fail to Provide a Reasonable Accommodation to Greene?

As explained above, there are issues of fact material to the resolution of this Complaint that cannot be decided without an evidentiary hearing.

⁶ The Facilitator’s suggestion that the parties explore a resolution before she issued an Investigation Report, by trying to start again and engage in a comprehensive interactive process, appears to have back fired as no resolution was reached and the parties at this time appear to be further apart and more entrenched in their respective positions.

Conclusion

It is recommended that a finding of substantial evidence be entered and this Complaint be assigned to a Hearing Officer for an Administrative Hearing. Without any suggested inference of whether or not Ms. Greene can ultimately sustain her Complaint, she has at this stage produced "more than a mere scintilla of evidence" which is sufficient to warrant a finding of substantial evidence and ultimately allow an administrative hearing on her complaint. Commission Rule 440.120 (C) It will be the task of each party to present evidence in support of each of the contested issues and that of a Hearing Officer to review the evidence, make credibility determinations and apply the law.

/s/Joanne Kinoy
Joanne Kinoy
Facilitator

Date: November 16, 2012

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