BEFORE THE PERSONNEL BOARD OF THE STATE OF ALABAMA
IN THE MATTER OF THE APPEAL OF

BEAU ROBERT M. DOOLITTLE

ORDER

July 19, 2022

This matter came before the Board upon the Employee filing a complaint of discrimination while employed with the Alabama Department of Human Resources ("DHR"). This matter was assigned to Administrative Law Judge Randy Sallé and a hearing was held on March 15, 2022. The Administrative Law Judge’s Recommended Order is now before the Board for consideration. The Board has also had the benefit of oral argument.

The Employee filed his complaint on or about January 27, 2022, pursuant to State Personnel Board (SPB) Rule 670-X-4. The Employee’s complaint alleges that DHR discriminated against him in violation of SPB Rule 670-X-4. SPB Rule 670-X-4-.01 prohibits discrimination against any person because of race, sex, national origin, age, disability, or any other statutorily protected nonmerit factor. The Employee asserts that DHR discriminated against him because he was not given a reasonable accommodation under the Americans with Disabilities Act (ADA). Additionally, the Employee alleges that DHR discriminated against him
based on his race and gender and that he was improperly placed on mandatory leave.

The Employee has served as an employee with DHR since 2009. Most recently, the Employee has worked as a Financial Support Worker II in the Mobile County office. In April 2020, DHR notified its employees that they fell under an exemption to the "Families First Coronavirus Response Act" (FFCRA). Later that month, the Financial Support Supervisor notified employees they would be teleworking for one week. The Employee responded by stating he was recovering from an illness, had difficulty with the computer system, the workload was unreasonable, and, given his health issues, he needed some reasonable accommodations.

In September 2020, the Financial Support Supervisor asked him to complete certain work-related tasks. The Employee responded by stating that he was battling anxiety and the instructions to complete the tasks exacerbated his anxiety issues. In December 2020, the Employee drafted fifteen accommodations for his doctor to review. The Employee submitted his list of accommodations to DHR along with a letter from his doctor stating that the Employee was a patient. The letter, however, did not provide any information regarding tasks the Employee could not complete due to a disability or reasonable accommodations that would permit the Employee to perform the essential functions of the job. Later
that month, the Employee was assigned a phone call based on the rotation schedule. The Employee attempted to decline the rotation, complained about his schedule, and referenced his ongoing mental health issues. Also in December, the Employee sent another email regarding a prior disciplinary matter, protesting the disciplinary action he received but agreed to follow the task plan given to him.

In early 2021, the Employee began protesting on multiple occasions that DHR was wrong for exempting employees from the FFCRA. The Employee filed a formal grievance complaint, but an investigation DHR determined the grievance was not founded. When the Employee was notified of this, the Employee began criticizing DHR General Counsel for her interpretation of the law, condemning the investigators for finding his grievance unfounded, and criticizing DHR leadership. The Employee was referred by DHR to the Alabama Department of Rehabilitation Services to see if they could assist him with his job performance. The Rehabilitation Engineer suggested a few accommodations for the Employee.

In March 2021, The Employee filed another grievance alleging the Mobile County DHR Director failed to conduct a good faith investigation into his previous grievance. The DHR Human Resources Regional Manager responded to his grievance and found the complaint unfounded. Additionally, the Director of DHR's Civil Rights/Equal Employment
division responded to the Employee’s fifteen requested accommodations. DHR agreed to implement thirteen of the fifteen accommodation requests. The Employee responded to the DHR Human Resources Regional Manager by criticizing her and others within DHR stating their lack of indifference to DHR employee’s welfare and lack of respect for DHR employees that the Employee says sends a message of “F.U.”

In April 2021, DHR placed the Employee on mandatory leave pending a psychological evaluation and fitness for duty based upon “profane, vulgar language that was highly inappropriate” as well as declining work performance, disruptive behavior, and “escalating unpredictable behavior” as safety concerns. The Employee became angry after learning that he was being placed on mandatory leave and one of the individuals in the room testified that she was frightened during the meeting by the Employee’s words and actions. In July 2021, DHR had still not received a medical release and psychiatric evaluation for the Employee. DHR sent a letter reminding him that it had not received the necessary documentation and that he was still on mandatory leave.

The Employee claims DHR violated the ADA by failing to provide him with reasonable accommodations due to his disability. Additionally, the Employee alleged that he was improperly placed on mandatory leave and that he believes his race and gender were factors in the decision. The
Employee claims he has issues with depression and anxiety and that his increased workload exacerbated these conditions. The Employee acknowledged that his productivity at work began to wane around 2018 prior to the COVID-19 pandemic. The Employee’s co-workers testified on his behalf and had nice things to say about his general demeanor towards them. Many of his co-workers were aware of his anxiety and depression, but still believed he could do the job. The Unit Supervisor testified that the Employee could not keep up with the volume of work and that he failed to follow the work plan given to him. At his request, the Employee was allowed to be off rotation for three days to catch up on his work, but he still failed to bring his work up to date.

The Mobile County DHR Director did engage in the ADA interactive process with the Employee. Many of the Employee’s accommodations were met, but one of the accommodations that was not provided was to decrease his caseload. The Mobile County DHR Director testified that if the Employee was assigned less cases, then his co-workers would have to absorb his caseload.

The Employee has the burden to prove that at the time of the discriminatory action, (1) he was disabled; (2) he was a “qualified individual” as defined by the ADA; and (3) he was unlawfully discriminated against based upon his disability. The Employee asserts
that he is disabled, suffering from anxiety and depression, which was not challenged at the hearing.

The ADA defines the term “qualified individual” as an individual who, with or without reasonable accommodation, can perform the essential job functions of the position. The Employee was placed on a work plan, but his performance did not improve. The Employee requested the number of assigned cases he received to be lowered to 6 from 8 per day, while the rest of the unit was running 14 or more cases per day. “An employee with a disability is not entitled to the accommodation of his choice, but only to a reasonable one.” If the Employee’s caseload was dispersed to other employees within the office this accommodation would place an undue hardship on the unit. “An employer unlawfully discriminates against an otherwise qualified person with a disability when it fails to provide a reasonable accommodation for the disability, unless doing so would impose an undue hardship on the employer.” DHR is not obligated to decrease the Employee’s caseload at the expense of his coworkers. There is no evidence that indicates that DHR failed to follow clearly established State and Federal laws that were designed to protect individuals with a disability.

Additionally, the Employee alleged DHR discriminated against him based on his race and gender. The Employee is a white male. There was
no evidence that a comparator of a different race, sex, or gender requested fewer cases because of a disability or that DHR granted such a request. "Personal opinions and conclusory allegations, in the absence of supporting evidence, are insufficient to withstand judgement as a matter of law." There is no credible evidence supporting the Employee's allegation that he suffered discrimination because he was a white male.

Lastly, the Employee alleged that DHR violated SPD Board Rule 670-X-15-.06. The Employee argued that DHR has no grounds to place him on mandatory leave because there was no tangible reason to believe he was a threat to himself or others. DHR had legitimate concerns regarding Employee's ability to perform his job, as well as concerns as to whether the Employee was a potential danger to himself, or others based on his emails expressing his anger at administration and supervisors and his use of vulgar language. An employer can lawfully require a medical examination for an employee who is hostile, make threats, and is insubordinate.

The Employee failed to demonstrate that DHR engaged in discrimination against the Employee because the Employee was not a "qualified individual" under the ADA; and therefore, not afforded the protections provided in the ADA. Furthermore, no credible evidence supports the Employee's claim of discrimination based on his race or
gender and the evidence presented was sufficient to prove that DHR properly placed the Employee on Mandatory Leave. Thus, the Employee failed to establish a claim of discrimination under SPB Rule 670-X-4.

The Employee also alleged that DHR retaliated against him under the Families First Coronavirus Response Act because of his complaints regarding DHR's exemption from the Emergency Paid Sick Leave ("EPSL") portion of the Act. However, the Employee was not an "employee" under the EPSL because the statute specifically excludes "certain health care providers and emergency responders from the definition of employee under section 5110(1) including by allowing the employer of such health care providers and emergency responders to opt out." Therefore, the Employee cannot avail himself to any protections afforded by the EPSL.

The Board has carefully considered the Administrative Law Judge's Recommended Order and the oral argument presented in this matter and it is therefore the Order of this Board that the decision to dismiss the complaint is hereby affirmed.
JACQUELLE GRAHAM
SECRETARY

FAYE NELSON
CHAIR

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