

**NEW YORK STATE
DIVISION OF HUMAN RIGHTS**

TO: Files

REGION: White Plains

FROM: Linda Fenstermaker
Regional Director

DATE: January 30, 2018

SDHR CASE NO: 10189879-17-E-CDO-E

Federal Charge No. 16GB704185

SUBJECT: Maureen M. Billings v. New York State, Department of Corrections and
Community Supervision

FINAL INVESTIGATION REPORT AND BASIS OF DETERMINATION

I. CASE SUMMARY

This is a verified complaint, filed by Complainant, Maureen M. Billings, on Thu 8/31/2017. Complainant who is Muslim and has Diabetes charges Respondent with unlawful discriminatory practices in relation to employment because of creed, disability, opposed discrimination/retaliation.

II. SUMMARY OF INVESTIGATION

Complainant's Position:

Complainant is employed by Respondent as a Corrections Officer. Complainant states that on April 28, 2017, she received written notification that she was approved to wear a hijab (Islamic head covering) during work hours. On May 1, 2017, Complainant was ordered to report to Deputy Superintendent for Security Roger A. Murphy's office. Complainant was accompanied by a union representative because her religion prohibits her from being alone in a room with a man. Deputy Murphy reprimanded Complainant for wearing a hijab to work without first consulting with him and told her to tuck the hijab into her shirt. Complainant allegedly explained that she did not consult him or another supervisor because there was no high ranking supervisor on the weekend. Complainant also stated that she wore it immediately since she felt it was an urgent matter.

On May 2, 2017, Captain Paul J. Artuz ordered Complainant to report to his office. Complainant was accompanied by union representative, Officer Deborah Floyd. Captain Artuz stated that he needed to call Albany for consultation in regards to the hijab. Upon consultation, Captain Artuz stated that the hijab must be three feet by three feet in size. When Complainant asked Captain

Artuz to identify the directive that stated that rule, Captain Artuz said, "You can like it or take it off." Complainant and Officer Floyd cut down the hijab to the measurement discussed outside of the presence of Captain Artuz. Upon presenting the cut hijab to Captain Artuz, he indicated that he had to call Albany again. After calling Albany, he allegedly said to Complainant, "In order for you to wear your hijab in to prison, you have three options. Option number one, you can take your hijab off and go to your post and continue to work. Option number two, you can keep your hijab on and go home. That is your choice and your right. You have to deal with the consequences. Option number three, you have to demonstrate that your hijab could be pulled off quickly without you being choked. After all we would not want an inmate to choke you." Complainant stated that she did not have a problem complying with the order so long as it was in front of a female supervisor. Complainant informed Captain Artuz that her religion prohibited her from disrobing in front of men who were not part of her immediate family. Captain Artuz allegedly insisted and said there were no female supervisors that was a the rank of captain available. Complainant removed her hijab in front of Captain Artuz.

Thereafter, en route to her post, Complainant almost fell twice. Sergeant Soto stated that she was not fit for duty, and sent Complainant to the medical clinic. Complainant filled out Worker's Compensation papers and was sent home. On her way out of the facility, she was informed by Officer Valerie Calhoun that all employees were required to write a memorandum if they interacted with Complainant. Officer Calhoun also stated that she received a call from two supervisors yelling at her for Complainant leaving the prison.

Complainant asserts that she was told to use her personal time and not Worker's Compensation because her personal doctor diagnosed her with stress and Respondent's personnel stated that mental issues are not covered. Complainant was told that she could not return to work because a mental health form had to be filled out. Regardless of the stress diagnosis, Complainant's doctor deemed her fit for duty. After completing the form, Complainant found out her request was rejected because her doctor's note had wrong dates.

On August 1, 2017, Complainant alleges that she received a letter stating that she needs to send a corrected doctor's note. The next day, Complainant asserts that she received a letter stating that she was being taken off the pay roll as of May 27, 2017.

Complainant further states that she is being retaliated against for filing a case with EEOC.

Respondent's Position:

Respondent asserts that Complainant was ordered to Deputy Murphy's office so that he could confirm it was in compliance and she failed to do so on three separate occasions. Complainant failed to do so because she was seeking a union representative to accompany her, even though she was told that it was unnecessary. Deputy Murphy instructed the representative to leave but Complainant insisted that the representative stay.

Respondent alleges that the purpose of the meeting with Complainant was to review the memorandum and assure compliance with the directive regarding the hijab. After Complainant described for Deputy Murphy how her hijab was worn and fastened, he determined that it could

be used as a choking device. After consulting with Albany, it was determined that if Complainant could demonstrate that her hijab could be pulled off quickly without her being choked, the hijab would satisfy the Department's safety and security concerns. Respondent asserts that Complainant did not object to demonstrating the detachability of the hijab and Respondent approved the request. Respondent asserts that Complainant experienced no adverse employment action.

With regard to Complainant's claim of disability discrimination based on her diabetes, the complaint is devoid of any assertions that support this claim.

Complainant's Rebuttal:

Complainant alleges that there were two female supervisors working, Lieutenant Curra and Sergeant D. Skinner, the morning she was told to remove her hijab. Complainant asserts that the following occurred after she filed her complaint: (1) After taking sick leave, Respondent refused to allow Complainant to return to work despite the clearance she received from her doctor; (2) On June 27, 2017, Complainant received a letter stating that Respondent was removing her from payroll as of May 27, 2017, despite not having been issued any disciplinary sanctions; and (3) Respondent issued her a letter, dated August 4, 2017, stating that Complainant was overpaid \$13,598 from May 16, 2017 through July 19, 2017. Complainant states that this was the time period she was taken off payroll despite receiving clearance from her doctor.

Investigator's Observations:

The Division examined a letter from Complainant, dated 10/14/2016, to Diversity Management regarding "Religious Accommodation." In the letter, Complainant requested permission to wear her "Islamic hair covering" because it is a religious requirement to cover her hair.

In an email dated 11/20/2016, Marion Lamarre of the Office of Diversity Management acknowledged that Respondent received Complainant's request for permission to wear her Islamic hair covering.

The Division examined a letter, dated 11/10/2016 from Michael Washington, Director of Diversity Management addressed to Complainant. In the letter, Director Washington acknowledged Complainant's request for a religious accommodation under Directive 3083 and notified Complainant that her request would be individually assessed.

The Division examined a letter, dated 4/16/2017, sent to Complainant granting her an accommodation of her request to wear a hijab at work subject to certain conditions. The letter disclosed various conditions for wearing the hijab, including requiring Complainant to wear the hijab tucked under her uniform shirt; it must be no larger than 3 feet by 3 feet for safety reasons; the hijab must be worn fashioned so that it would immediately tear away should anyone try and grab it. The letter also states that prior to the implementation of this accommodation, the hijab must be inspected by the Deputy Superintendent of Security to confirm that it met the guidelines specified in this approval.

The Division examined an email conversation between Deputy Murphy, Captain Artuz, Superintendent Joseph, and members of the Diversity Management office in Albany. The emails show the process Complainant's superiors went through to ensure that the hijab complied. The Diversity Management office in Albany stated that "a supervisor (we discussed the acting DSS) should meet with her and advise her that she needs to demonstrate that the hijab meets the requirements laid out in the approval letter. If Ms. Billings indicates that she can't remove the hijab in front of other people, she can be provided with a private area to remove it, or if she refuses, told to leave the facility and come back with it available for inspection."

The Division examined an e-mail from Deputy Murphy to Nicole Keith. In the e-mail, Deputy Murphy denies directing or asking Complainant to remove her hijab. Deputy Murphy also asserted that Complainant stated she did not know the memo directed her to meet with Deputy Murphy to ensure that the hijab she wore complied with Respondent's directive.

The Division interviewed Complainant. Complainant stated that there were at least two female supervisors on duty, including Lieutenant Curra, when Captain Artuz directed her to remove her hijab. Complainant also clarified that she fell twice because her knee had buckled. After being sent home on Worker's Compensation, Complainant asserts that she was diagnosed by her doctor with stress related to her knee. After presenting her doctor's note, which stated the diagnosis and cleared Complainant to return to work, Respondent stated that stress was a mental illness and that mental illness is not covered under Worker's Compensation. Complainant was then directed to fill out mental illness forms before returning to work, despite never receiving a mental illness diagnosis. The forms were then denied for inserting the wrong date.

The Division examined a document signed by Dr. Bradley Cohen, dated May 8, 2017, stating that he examined Complainant and that she is fit to return to work as of 05/16/2017. Dr. Cohen also submitted another document, dated July 21, 2017, that states Complainant is fit to work on August 1, 2017.

The Division examined a Worker's Compensation document signed by Bradley Cohen, D.O. of Neurology Medical Services of Long Island, dated 7/21/2017. In the letter, Dr. Cohen reported that Complainant was "neurologically cleared and stable to return to work on August 1, 2017." He further noted that Complainant was not depressed and has no emotional issues preventing her from returning to work. The document states that Complainant was cleared to work without limitations on 5/16/2017.

The Division examined three documentation receipts made by Respondent of Complainant's medical notes. Two of the documentation receipts, dated 5/15/17 and 8/17/17 respectively, state that Complainant's medical notes conformed to department standards. Those notes covered periods of 5/2/17 through 5/15/17 and 7/21/17 through 7/31/17. The third documentation receipt, dated 7/25/17, states that the notes do not conform for the period of 5/2/17 through 8/1/17.

The Division examined a document, dated 8/4/17, from Respondent stating that Complainant has been overpaid \$13,598.04 for the time-period of 5/16/17 through 7/19/17.

The Division examined a grievance form, dated 8/14/17, M. Daye issued to Complainant. Daye

states that he has received the Grievance and that Complainant should schedule an appointment with his secretary no later than 8/28/2017.

The Division examined a letter, dated 8/14/17, from Complainant to the NYS Department of Labor. The letter gives notice and describes the same events Complainant alleged in the instant complaint, including Lieutenant Curra's rejection of the doctor's notes authorizing Complainant to return to duty.

The Division examined a letter from Complainant to Clarence Fisher, dated 8/23/17. The letter states that Complainant was told by Respondent that she was overpaid \$13,598.04 during a period that she was on Worker's Compensation.

The Division examined a grievance form, dated 8/23/17, submitted by Complainant to the New York State Correctional Officers & Police Benevolent Association, Inc. The form alleges the issues set forth in the instant complaint.

The Division examined a letter, dated 8/24/17, from Complainant to DSS M. Daye. The letter states that Daye previously sent Complainant a letter telling her to schedule a meeting with his secretary to discuss the grievance. The letter states that Daye's letter was placed in Complainant's mailbox at Respondent's facility. Complainant questioned Daye's decision to deliver the letter to her mailbox at work when he was aware that Complainant was not allowed in the facility.

The Division examined a letter, dated 9/13/2017, from Complainant to the Director of Diversity Management Michael Washington. The letter gives notice of the incident of the hijab and not being allowed to return to work.

The Division examined a grievance submitted by Complainant against Respondent on 9/13/2017. The grievance complained of the conduct alleged in the instant complaint.

The Division examined a grievance notice, dated 9/22/2017, filed by Complainant against Respondent in the Office of Diversity Management. The grievance states that Complainant has previously submitted grievances to this office on 8/14/2017 and 8/23/2017 but was ignored.

The Division examined a document, dated 9/27/2017, written by Complainant to William M. Fitzpatrick from Human Resources. The document states that Complainant was informed that Respondent scheduled her for a medical examination. When she arrived, she was told that it was a psychological evaluation. Complainant stated that she wanted the evaluation taped, and the Doctor refused.

By e-mail dated 12/15/2017, Respondent notified the Division that Complainant returned to work on 12/7/2017.

On 12/27/2017, Complainant confirmed via phone interview that she has been returned to work as of 12/7/2017.

return to work. According to Complainant, Respondent's conduct precluded her return to work for several months thereafter. The record includes medical notes that corroborate Complainant's assertion that she was authorized to return to work without restriction as of 5/16/2017 and which also corroborated that her mental stability to return to work. The record shows that Respondent authorized her return to work in December 2017.

Given the temporal proximity to the 5/2/2017 event related to her request for a religious accommodation, the issue of whether the Respondent discriminated against Complainant on the basis of a perceived disability and retaliation is best left to hearing where all parties will be under oath and subject to cross examination.

Legal standards regarding probable cause determinations require that, once the investigation is complete, all remaining genuine issues of fact must be hypothetically resolved in favor of the Complainant. A determination of probable cause is not a final adjudication, but merely a determination that there should be a formal hearing on the matter.

It is recommended that the matter proceed to public hearing where the issues can best be resolved by an Administrative Law Judge and where all the parties will obtain a full and fair opportunity to present their contentions and testimony under oath.

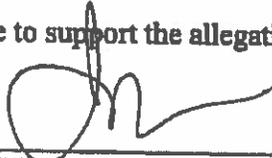
Reviewed & Approved:



Linda Fenstermaker
Regional Director

IV. DETERMINATION

Based on the foregoing, I find probable cause to support the allegations of the complaint.



Linda Fenstermaker
Regional Director