

**NEW YORK STATE  
DIVISION OF HUMAN RIGHTS**

**NEW YORK STATE DIVISION  
OF HUMAN RIGHTS**  
on the Complaint of

**VONCILLE ANDERSON,**

Complainant,

v.

**NEW YORK STATE WORKERS'  
COMPENSATION BOARD,**

Respondent.

**NOTICE AND  
FINAL ORDER**

Case No. 10102668

**PLEASE TAKE NOTICE** that the attached is a true copy of the Alternative Proposed Order, issued on January 14, 2008, by Peter G. Buchenholz, Adjudication Counsel, after a hearing held before Robert J. Tuosto, an Administrative Law Judge of the New York State Division of Human Rights ("Division"). An opportunity was given to all parties to object to the Alternative Proposed Order, and all Objections received have been reviewed.

**PLEASE BE ADVISED THAT, UPON REVIEW, THE ALTERNATIVE PROPOSED ORDER IS HEREBY ADOPTED AND ISSUED BY THE HONORABLE KUMIKI GIBSON, COMMISSIONER, AS THE FINAL ORDER OF THE NEW YORK STATE DIVISION OF HUMAN RIGHTS ("ORDER").** In accordance with the Division's Rules of Practice, a copy of this Order has been filed in the offices maintained by the Division at One Fordham Plaza, 4th Floor, Bronx, New York 10458. The Order may be inspected by any member of the public during the regular office hours of the Division.

**PLEASE TAKE FURTHER NOTICE** that any party to this proceeding may appeal this Order to the Supreme Court in the County wherein the unlawful discriminatory practice that is

the subject of the Order occurred, or wherein any person required in the Order to cease and desist from an unlawful discriminatory practice, or to take other affirmative action, resides or transacts business, by filing with such Supreme Court of the State a Petition and Notice of Petition, within sixty (60) days after service of this Order. A copy of the Petition and Notice of Petition must also be served on all parties, including the General Counsel, New York State Division of Human Rights, One Fordham Plaza, 4th Floor, Bronx, New York 10458. Please do not file the original Notice or Petition with the Division.

**ADOPTED, ISSUED, AND ORDERED**, this 6th day of February, 2008.



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KUMIKI GIBSON  
COMMISSIONER

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NEW YORK STATE WORKERS'  
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ALTERNATIVE  
PROPOSED ORDER

Case No. 10102668

Complainant alleges that Respondent discriminated against her based on her disability and race. Because the evidence does not support Complainant's allegations, the complaint is dismissed.

**PROCEEDINGS IN THE CASE**

On November 17, 2004, Complainant filed a verified complaint with the New York State Division of Human Rights ("Division"), charging Respondent with unlawful discriminatory practices relating to employment in violation of N.Y. Exec. Law, art. 15 ("Human Rights Law").

After investigation, the Division found that it had jurisdiction over the complaint and that probable cause existed to believe that Respondent had engaged in unlawful discriminatory practices. The Division referred the case to public hearing.

After due notice, the case came on for hearing before Robert J. Tuosto, an Administrative Law Judge ("ALJ") of the Division. Public hearing sessions were held on August 28 and October 2, 2007.

Complainant and Respondent appeared at the hearing. The Division was represented by Robert Alan Meisels, Esq. Respondent was represented by John E. Loughlin, Esq.

Respondent's counsel and Division counsel submitted post-hearing briefs.

On December 5, 2007, ALJ Tuosto issued a recommended Findings of Fact, Opinion and Decision and Order ("Recommended Order"). Respondent's counsel filed Objections to the Recommended Order with the Commissioner's Order Preparation Unit.

Because Respondent was improperly named in the complaint and the caption, the complaint and caption are hereby amended to reflect Respondent's proper name: Workers' Compensation Board.

### **FINDINGS OF FACT**

1. Complainant, who is Black, was employed by Respondent from May 10, 1990, until April 19, 2007. During the period relevant to this complaint, she served as an assistant claims examiner and was assigned to and worked out of Respondent's Peekskill, New York office. (Respondent's Exhibit A; Tr. 10-11, 27, 135, 61, 74)

2. On July 15, 2004, Complainant purchased a house in and moved to Tobyhanna, Pennsylvania, 100 miles away from her office in Peekskill. She commuted to her job by driving. (Complainant's Exhibit 6; Tr. 10, 61, 74, 259-60, 295)

3. On August 24, 2004, Complainant fractured her ankle. The following day, a physician diagnosed her with a temporary disability. (Complainant's Exhibits 1, 2; Tr. 11) As a result, Complainant was out of work from August 24 until October 13, 2004. Complainant initially had no medical restrictions upon returning to work. (Tr. 25-26, 28)

4. On October 28, 2004, Complainant formally requested that Respondent transfer her to a New York City office as a reasonable accommodation for her injury. She asserted that the long drive from her home in Pennsylvania to her office in Peekskill was causing her pain and hindering her recovery time. (Complainant's Exhibit 6; Tr. 235)

5. Complainant provided Respondent a doctor's note dated November 4, 2004, indicating her complaints that her ankle swelled after long drives and recommending that she limit her driving time to forty-five minutes per trip for six weeks. (Complainant's Exhibits 4, 5; Tr. 28, 149, 166, 172, 237)

6. During the relevant period, Respondent did not have an office within forty-five minutes driving distance of Complainant's home in Pennsylvania. (Tr. 178)

7. In assessing whether to grant a reasonable accommodation, Jaime Benitez, the individual responsible for addressing such requests, assessed an employee's medical condition, the availability of the accommodation requested, the feasibility of allowing such an accommodation, the availability of other potential accommodations, and the ability of Respondent to monitor compliance with any accommodation granted. (Tr. 312). Assessments were made on a case-by-case basis. (Tr. 323)

8. After conducting this assessment on Complainant's request to be transferred temporarily to the New York City office, Respondent determined that it could not grant Complainant's request due to concerns about supervision at that office. As a compromise, on November 16, 2004, Respondent offered to temporarily place Complainant in its Yonkers office, which was located between New York City and Peekskill and was supervised by the Peekskill staff. (Complainant's Exhibit 14; Tr. 313-16) It is undisputed that Respondent had no viable alternative other than Yonkers. (Tr. 326, 332)

9. Although Complainant had made arrangements with various family members to drive her from her home in Pennsylvania to New York City, she could not make comparable arrangements for transportation to Yonkers. As a result, Complainant declined Respondent's offer. (Complainant's Exhibit 14; Tr. 59, 96-98, 144-46, 173-76, 190-96, 217)

10. Complainant continued to work in and drive to the Peekskill office. (Tr. 64) There is no evidence that her commute exacerbated her injury or reduced her healing time, and Complainant's job performance during this period remained satisfactory. (Complainant's Exhibit 26; Tr. 187, 238, 285-86, 291)

11. In support of her allegations of race discrimination, Complainant alleged that Respondent subjected her to disparate treatment by refusing her requested accommodation, but granting the accommodation request of a non-Black co-worker, Lori Sanchez, by transferring her from the Peekskill office to the New York City office in order to allow Sanchez to receive cancer treatment. Benitez credibly testified that the supervision problem in the New York City office "was a dilemma for the agency . . . But she [was] dying of cancer, and the alternative would be to not allow her to work from there." Benitez understood that Sanchez would have lost her medical benefits had she not been accommodated. (Complainant's Exhibit 27; Tr. 99, 184, 322-23, 331)

12. Complainant also alleged that her supervisor, Judy Pugliese, made race-related comments to Complainant and said that she did not believe that Complainant actually lived in Pennsylvania. (Tr. 83, 102). Pugliese denied making any such statements. (Tr. 288)

### **OPINION AND DECISION**

Complainant alleged that Respondent discriminated against her based on her disability and race. Because the evidence does not support the allegations, the complaint is dismissed.

The Human Rights Law prohibits an employer from discriminating against a disabled employee by failing to provide reasonable accommodations for her disability. Human Rights Law § 296.3(a).

In the instant case, Respondent did not discriminate against Complainant by failing to provide her with a reasonable accommodation for her disability. After Complainant fractured

her ankle, she provided medical documentation indicating that her driving was restricted to forty-five minutes. Unfortunately, Complainant lived further than forty-five minutes from her office, and Respondent had no offices within forty-five minutes driving distance of Complainant's home. Complainant requested that she be transferred to one of Respondent's New York City offices, however, Respondent produced credible proof that she would not have been adequately supervised in those locations, and, thus, transferring her would have posed an undue hardship to Respondent. *See* Human Rights Law §§ 296.3(b) and 292.21-e.

In an attempt to compromise, Respondent offered to transfer Complainant to its Yonkers office, which was located between New York City and Peekskill. Complainant, however, refused this accommodation because it did not resolve her transportation issues. There is no evidence that any other reasonable accommodation existed. Complainant admitted as much.

The law makes clear that an employer is under no obligation "to meet the personal preferences of disabled employees. . . . Accommodations need only be 'sufficient to meet the job-related needs of the individual being accommodated.' [And] [d]ifficulties commuting to a job need not be accommodated." *Raffaele v. City of New York*, 2004 U.S. Dist. LEXIS 17786 (E.D.N.Y. 2004); *see also* *Metz v. County of Suffolk*, 2004 NY Slip Op 24298 (N.Y. Sup. Ct. 2004).

Here, the undisputed evidence reveals that Respondent attempted to work out an accommodation with Respondent, and, in fact, offered to accommodate Respondent by transferring her to an office that was closer to her home in Pennsylvania than the New York City office, and where she would be supervised by Peekskill staff. The fact that Respondent did not grant Complainant's desired accommodation is insufficient to prove that she was discriminated against because of her disability. Accordingly, Complainant's disability claim must be

dismissed.

Complainant's claim that she was discriminated based on her race when she was subjected to disparate treatment, in violation of Human Rights Law § 296.1, is similarly without merit. The fact that Respondent granted a non-Black employee the accommodation that Complainant wanted does not evidence race discrimination: The assessment of reasonable accommodations, by law and by necessity, must be made on a case-by-case basis, as was done here. And, the fact that Pugliese may have made racist comments is of no consequence to the accommodations decision: Pugliese was not responsible for making the decision regarding accommodation requests, and there is no evidence that she influenced the decision made by Benitez. In short, there is no evidence that Benitez' denial of Complainant's desired accommodation had anything to do with Complainant's race.

Accordingly, the complaint is dismissed.

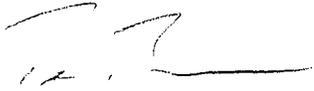
**ORDER**

On the bases of the foregoing Findings of Fact, Opinion and Decision, and pursuant to the Human Rights Law and the Division's Rules of Practice, it is hereby

**ORDERED**, that the complaint be, and the same hereby is, dismissed.

DATED: **JAN 14 2008**  
Bronx, New York

NYS DIVISION OF HUMAN RIGHTS

  
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PETER G. BUCHENHOLZ  
Adjudication Counsel