

**NEW YORK STATE
DIVISION OF HUMAN RIGHTS**

**NEW YORK STATE DIVISION
OF HUMAN RIGHTS**

on the Complaint of

DONNA L. SHANDREW,

Complainant,

v.

QUEST DIAGNOSTICS INCORPORATED,

Respondent.

**NOTICE AND
FINAL ORDER**

Case No. 7905938

PLEASE TAKE NOTICE that the attached is a true copy of the Alternative Proposed Order, issued on December 24, 2007, by Matthew A. Menes, Adjudication Counsel, after a hearing held before Martin Erazo, Jr., 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 30th day of January, 2008.



KUMIKI GIBSON
COMMISSIONER

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**ALTERNATIVE
PROPOSED ORDER**

Case No. **7905938**

SUMMARY

Complainant alleged that Respondent terminated her employment because of her age and disability. Because the evidence does not support the allegations, the complaint is dismissed.

PROCEEDINGS IN THE CASE

On July 9, 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 an unlawful discriminatory practice. The Division thereupon referred the case to public hearing.

After due notice, the case came on for hearing before Martin Erazo, Jr., an Administrative Law Judge (“ALJ”) of the Division. Public hearing sessions were held on July 11 and 12, 2007.

Complainant and Respondent appeared at the hearing. The Division was represented by Karen J. Draves, of Counsel. Respondent was represented by Karyn D. Jefferson, Esq.

On November 6, 2007, ALJ Erazo issued a recommended Findings of Fact, Decision and Opinion, and Order (“Recommended Order”). Objections to the Recommended Order by Respondent were received by the Commissioner’s Order Preparation Unit.

FINDINGS OF FACT

1. Complainant’s date of birth is September 10, 1945. (Tr. 101)
2. Complainant had cancer during the relevant time period. (ALJ’s Exhibit 1)
3. Complainant worked for Respondent, as a phlebotomist, from November 18, 1991, until May 27, 2004. (ALJ’s Exhibit 1; Tr. 102)
4. Martha Stutzman was Complainant’s immediate supervisor. (Tr. 103)
5. Stutzman informed her own supervisor, Cheri Schumacher, that protected health information (“PHI”) was being removed from the workplace. (Tr. 243)
6. In response to Stutzman’s report, an investigation was commenced, and Respondent found PHI material in the vehicles owned by Complainant and Judith Ziegler, Complainant’s co-worker. No other co-workers were implicated in the investigation. (Tr. 244-45)
7. Respondent dismissed Complainant and Ziegler. (Tr. 247-48)
8. Respondent maintains Complainant was terminated for removing patients’ PHI from Respondent’s office. (ALJ’s Exhibit 4) Respondent’s policy prohibited phlebotomists from removing PHI from the workplace. (Tr. 242)
9. Schumacher, Kelli Hunt and Craig Stauffer made the decision to terminate Complainant’s employment. Stutzman was not involved in the decision. (Tr. 323-24, 359-600)
10. Although Stutzman was aware that Complainant had cancer, there is no evidence that Schumacher, Hunt or Stauffer knew of Complainant’s condition. (Tr. 103-08, 236, 325, 361)

OPINION AND DECISION

Human Rights Law § 296.1(a), makes it an unlawful discriminatory practice for an employer “because of the . . . age [or] . . . disability . . . of any individual to discriminate against such individual in compensation or in terms, conditions or privileges of employment.”

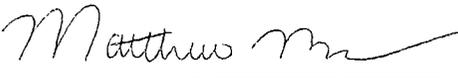
Where a complainant fails to show that an adverse employment action occurred under circumstances giving rise to an inference of discrimination, that complaint must be dismissed. *See Mittl v. New York State Div. of Human Rights*, 100 N.Y.2d 326, 763 N.Y.S.2d 518 (2003).

Here, Complainant has failed to show that the termination of her employment was related to her age or disability. Instead, the credible evidence shows that Respondent’s sole reason for terminating Complainant’s employment was Complainant’s violation of Respondent’s policy regarding PHI.

ORDER

On the basis of the foregoing Findings of Fact, Opinion and Decision, and pursuant to the provisions of the Human Rights Law and the Division’s Rules of Practice, it is hereby ORDERED, that the instant complaint be, and the same hereby is, dismissed.

DATED: December 24, 2007
Bronx, New York



MATTHEW MENES
Adjudication Counsel