

**NEW YORK STATE  
DIVISION OF HUMAN RIGHTS**

**NEW YORK STATE DIVISION  
OF HUMAN RIGHTS**

on the Complaint of

**JUDITH R. ZIEGLER,**

Complainant,

v.

**QUEST DIAGNOSTICS INCORPORATED,**

Respondent.

**NOTICE AND  
FINAL ORDER**

Case No. 10101632

**PLEASE TAKE NOTICE** that the attached is a true copy of the Recommended Findings of Fact, Opinion and Decision, and Order (“Recommended Order”), issued on December 24, 2007, by 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 Recommended Order, and all objections received have been reviewed.

**PLEASE BE ADVISED THAT, UPON REVIEW, THE RECOMMENDED 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.

A handwritten signature in black ink, appearing to read 'Kumiki Gibson', written over a horizontal line.

KUMIKI GIBSON  
COMMISSIONER

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**QUEST DIAGNOSTICS INCORPORATED,**

Respondent.

**ALTERNATIVE  
PROPOSED ORDER**

Case No. **10101632**

**SUMMARY**

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

**PROCEEDINGS IN THE CASE**

On September 21, 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 9 and 10, 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 October 3, 1946. (ALJ’s Exhibit 2; Tr. 14)
2. Complainant injured her left shoulder in 1999. (Tr. 137) Complainant injured the rotator cuff of her right shoulder in September 2003. (ALJ’s Exhibit 2; Complainant’s Exhibit 1, 2; Tr. 21-22, 30-31, 141)
3. Complainant worked for Respondent, as a phlebotomist, from March 4, 1987, until May 27, 2004. (ALJ’s Exhibit 3)
4. Martha Stutzman was Complainant’s immediate supervisor. (Tr. 19, 211)
5. Stutzman informed her own supervisor, Cheri Schumacher, that protected health information (“PHI”) was being removed from the workplace. (Tr. 227-28)
6. In response to Stutzman’s report, an investigation was commenced, and Respondent found PHI material in the vehicles owned by Complainant and Donna Shandrew, Complainant’s co-worker. No other co-workers were implicated in the investigation. (Tr. 304)
7. Respondent dismissed Complainant and Shandrew. (Tr. 228-29, 300-06, 315-16)
8. Respondent maintains Complainant was terminated for removing patients’ PHI from Respondent’s office. (ALJ’s Exhibit 3) Respondent’s policy prohibited phlebotomists from removing PHI from the workplace. (Tr. 246, 299)
9. Schumacher, Kelli Hunt and Craig Stauffer made the decision to terminate Complainant’s employment. Stutzman was not involved in the decision. (Tr. 315-16, 355)

10. While employed, Complainant asked Stutzman to fix the computer keyboard hinge that allowed for height adjustment. (Tr. 141-47) Complainant did not go through the appropriate channels or follow Respondent's policies for requesting reasonable accommodations. (Tr. 36-37, 150) However, Complainant concedes the keyboard was, nevertheless, fixed. (Tr. 37)

11. Complainant also asked Stutzman to lower the height of the printer even though the printer was within arm's reach. (Tr. 148, 150, 237-38, 240) Complainant did not want to continue reaching up and hurt her shoulder. (Tr. 36, 38-39, 148-50). However, Complainant concedes that simply standing up and sitting down rather than staying seated would have solved the problem. (Tr. 149-50.) Regardless, as per Complainant's request, the printer was moved. (Tr. 150, 238)

### **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.

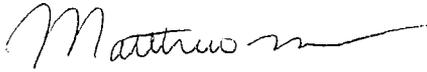
Similarly, Complainant has failed to show that her disability was not reasonably accommodated. Complainant made two requests: that her keyboard hinge be repaired to allow

for height adjustment and for the height of the printer to be lowered. Not only were both accomplished, but Complainant failed to prove, at least with regard to the lowering of the printer, that such an accommodation was necessary as she could easily have stood up to retrieve documents.

**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

  
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MATTHEW MENES  
Adjudication Counsel