

Murray v New York City Dept. of Fin.
2022 NY Slip Op 31700(U)
May 26, 2022
Supreme Court, New York County
Docket Number: Index No. 151714/2022
Judge: Arlene Bluth
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ARLENE BLUTH PART 14

Justice

-----X

ESTHER MURRAY

Petitioner,

- v -

NEW YORK CITY DEPARTMENT OF FINANCE,

Respondent.

-----X

INDEX NO. 151714/2022

MOTION DATE 05/25/2022

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 1-11, 12, 13, 14, 15, 16, 17, 18, 19

were read on this motion to/for ARTICLE 78.

The petition for an order reversing respondent's denial of petitioner's request for a 5-day reasonable accommodation to work from home, directing respondent to restore 19 vacation days and to direct that respondent grant petitioner a 5-day reasonable accommodation is denied and the cross-motion by respondent to dismiss is granted.

Background

Petitioner brings this proceeding arising out of respondent's denial of her request for an accommodation to work from home five days a week. She explains that her initial request to work from home was granted on April 29, 2021 (NYSCEF Doc. No. 6 at 1). This letter explains that the accommodation would run from May 3, 2021 to July 2, 2021 and would be reassessed based on petitioner's medical situation and the status of the pandemic (*id.*). Petitioner points out that she suffers from chronic asthma and panic attacks.

On July 26, 2021, respondent issued another letter to petitioner that reduced her accommodation to three days of telework and two days in the office (NYSCEF Doc. No. 6 at 2).

In a subsequent email to respondent, petitioner detailed the issue she faced: she would report to work two days a week and be denied entrance as part of the health screening questions (NYSCEF Doc. No. 8). As part of the entrance process, petitioner was asked whether she felt shortness of breath as part of a COVID-19 screening (NYSCEF Doc. No. 7 [Health Screening Survey]) and petitioner would answer that she had felt shortness of breath in the last 10 days due to her asthma (NYSCEF Doc. No. 8).

Petitioner explains that prior to September 29, 2021 her supervisor told her to work from home the two days she was required to show up at the office because she could not pass the screening survey. However, she contends that on September 29, 2021 she received a phone call from her supervisor that she would have to take annual leave for the two days (per week) if she refused to come in.

On October 8, 2021, respondent sent a letter to petitioner reaffirming its position that she continue to work at the office two days a week (NYSCEF Doc. No. 4). It also permitted her to appeal the decision (*id.*). Petitioner appealed and respondent affirmed its position once again (NYSCEF Doc. No. 3). The decision noted that all city workers returned to the office full-time on September 13, 2021 and that petitioner was granted an accommodation to two days a week in the office until November 14, 2021 (*id.*). Respondent observed that petitioner's concern about mask wearing could be addressed by taking breaks in a nearby empty room and removing the mask.

Petitioner claims she should have been provided the five-day telework accommodation and demands that the Court restore the vacation days she used starting in September 2021. She claims that other employees with conditions that are less debilitating have been granted a complete work from home accommodation.

In opposition and in support of its cross-motion, respondent claims that the case is time barred because it made its final decision on October 8, 2021 and this case was not commenced until February 25, 2022. Respondent maintains that the petition fails to state a cause of action because the determination was not arbitrary or capricious. It argues that petitioner was slowly eased back into working in the office and that she did not suffer any COVID-19 related symptoms. Respondent argues that petitioner purposefully avoided coming into the office by intentionally failing the health screening survey. It insists it had no choice but to charge petitioner's annual leave when she refused to report to the office despite knowing her shortness of breath was from asthma and not from COVID-19.

In opposition to the cross-motion, petitioner contends that the petition was filed timely and questions how respondent could bar her from doing her job at home when she is a highly effective employee. Petitioner points to letters from her doctors detailing her medical conditions and insists that respondent never formally acknowledged the fact that petitioner was forced to use annual leave for the two days a week she was supposed to be in the office.

Petitioner claims she is losing a tangible benefit—the annual leave—without the appropriate due process. She claims that she was forced to use this annual leave for 19 days and that this makes no sense because she could have been simply working from home.

Discussion

In an article 78 proceeding, “the issue is whether the action taken had a rational basis and was not arbitrary and capricious” (*Ward v City of Long Beach*, 20 NY3d 1042, 1043, 962 NYS2d 587 [2013] [internal quotations and citation omitted]). “An action is arbitrary and capricious when it is taken without sound basis in reason or regard to the facts” (*id.*). “If the determination

has a rational basis, it will be sustained, even if a different result would not be unreasonable”
(*id.*).

As an initial matter, the Court observes that the instant proceeding is not time barred. The final decision issued by respondent was dated November 1, 2022 (NYSCEF Doc. No. 3). That determination resolved petitioner’s appeal of the October 8, 2021 decision stating she would remain on an accommodation that permitted her to telework three days a week.

With respect to the merits, the Court is unable to find that respondent’s determination was arbitrary or capricious. Respondent made a decision about how to accommodate one of its employees and it is not this Court’s place to interfere and direct respondent how to handle getting its employees back into the office or letting them stay home. The Court observes that respondent provided petitioner with an accommodation long after all city employees were required to return to full in-person office work. The Court cannot, for instance, review the evidence (including the letters from petitioner’s doctors) and make its own determination regarding what accommodation is most appropriate.

Petitioner’s reliance on the Health Screening Survey is not a basis to grant the petition or restore the 19 vacation days. Undoubtedly, the survey, which obviously sought to assess who may spread COVID-19, implicated a symptom petitioner knew she experienced from her asthma (shortness of breath). And the record, according to petitioner, makes clear that she used the response to this question to avoid having to come into the office for months despite receiving a directive that she show up to work two days a week. But, by September 2021, respondent no longer wished to participate in this gamesmanship.

Setting aside that the survey was overinclusive of many ailments and conditions, there is no question that petitioner used her asthma as a way to avoid coming into the office. She does

not claim that she had COVID-19 or was a close contact of someone who tested positive for COVID-19 when she responded to the survey questions. The survey, albeit imperfect, was an effort to discourage people who might be carrying the virus from spreading it at the office. Petitioner knew that and instead tried to use the question about shortness of breath to justify not abiding by the accommodation she was provided. After months of using this strategy to avoid in-person work, petitioner admits she was told she would have to use annual leave if she refused to show up in the office two days a week. And that is exactly what happened. It should not be a surprise that petitioner was charged vacation days for not reporting to work.

The letters from petitioner's doctors do not compel a different outcome. One letter, from Dr. Chang, insists that petitioner could return to work without restrictions on October 4, 2021 (NYSCEF Doc. No. 5). The Court notes that respondent allowed petitioner to continue working from home for three days a week through at least November 14, 2021. This is not a situation where the doctors' letters demonstrate, overwhelmingly, that there was no way petitioner could report to work.

Moreover, respondent need not be a rubber stamp based on every note it receives from a doctor. The letters here describe petitioner's medical condition but, notably, do not say working from the office would pose a heightened or serious risk of COVID-19 to petitioner due to her asthma or explain exactly why working from home was absolutely necessary. Respondent was permitted to make a judgment about the seriousness of petitioner's condition and the level of accommodation appropriate. And respondent did make an accommodation; it just wasn't the accommodation petitioner wanted.

That petitioner might potentially suffer from panic attacks or trouble breathing from wearing a mask is explicitly addressed by the final determination issued by respondent. It noted that breaks would be provided every hour (NYSCEF Doc. No. 3).

Summary

As employees return to the office in New York City, many continue to seek accommodations that permit them to continue to work from home. The situation present here involves a city agency that accommodated petitioner's request to work full-time from home initially and then sought to return petitioner to limited in-person office work. It is respondent's prerogative to manage its employees and the Court observes that all City employees were supposed to return to the office full time by September 13, 2021.

Petitioner clearly disagrees with respondent's decision not to let her work from home indefinitely. But that dissatisfaction is not a basis for this Court to step in and micromanage how respondent handled this situation. There is nothing in this record that shows that petitioner was completely incapable of working at the office and the Court cannot conclude that respondent's determination was irrational. That petitioner contends she was treated less well than other unspecified workers is not a basis to grant Article 78 relief. And the record establishes that petitioner knew that if she continued to refuse to show up for work starting in September 2021, she would be charged vacation days. There is no basis for the Court to restore those days.

Accordingly, it is hereby

ORDERED that the cross-motion by respondent to dismiss the petition is granted, this proceeding is dismissed and the Clerk is directed to enter judgment accordingly along with costs and disbursements upon presentation of proper papers therefor.

5/26/2022

DATE



ARLENE BLUTH, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE