

Matter of Diaz v New York City Dept. of Corr.

2025 NY Slip Op 30991(U)

March 14, 2025

Supreme Court, New York County

Docket Number: Index No. 155190/2024

Judge: Lynn R. Kotler

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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. LYNN R. KOTLER PART 08

Justice

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INDEX NO. 155190/2024

IN THE MATTER OF THE APPLICATION OF TANISHA DIAZ, FOR A JUDGMENT PURSUANT TO ARTICLE 78 OF THE CIVIL PRACTICE LAW AND RULES,

MOTION DATE 06/05/2024

MOTION SEQ. NO. 001

Petitioner,

- v -

THE NEW YORK CITY DEPARTMENT OF CORRECTION,
THE CITY OF NEW YORK

**DECISION + ORDER ON
MOTION**

Respondent.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 23, 24, 25, 26, 27, 28, 29, 32, 34

were read on this motion to/for ARTICLE 78 (BODY OR OFFICER)

Upon the foregoing documents, this motion is decided as follows. This is a special proceeding brought pursuant to CPLR Article 78 seeking to annul the decision by respondent New York City Department of Corrections (“DOC”) to terminate petitioner Tanisha Diaz’ (“Diaz”) employment as a corrections officer in violation of the New York City Human Rights Law (“NYCHRL”). Diaz seeks reinstatement with back pay and seniority. The DOC and City of New York’s (collectively, “respondents”) previous cross-motion to dismiss was denied and respondents were ordered to file an answer to the petition. Respondents now oppose the petition, arguing that Diaz failed to meet her burden of establishing that her termination was predicated on a constitutionally impermissible purpose, was made in a violation of a statute, or was done in bad faith.

Facts

The relevant facts, which are based upon the Verified Petition and Verified Answer, are largely the same to those discussed in the court order dated October 11, 2024. Diaz was employed as

a corrections officer by the DOC and suffered from uterine fibroids that prevented her from working due to the pain and excessive bleeding they caused. On November 14, 2022, Diaz and the DOC entered into a Negotiated Plea Agreement and a Probation Agreement to settle pending disciplinary charges brought against her pursuant to Civil Service Law § 75. In the plea agreement, Diaz waived her rights granted under Civil Service Law § 75 and § 76 during the probationary period and agreed to forfeit 20 days of compensatory time. The probation agreement was for two years beginning on the date of the agreement and limited to time and leave violations.

Diaz disability necessitated several hospitalizations and procedures beginning on March 7, 2023, when she underwent a Uterine Fibroid Embolization which confirmed her condition. From June 6 to June 13, 2023, Diaz was hospitalized due to severe hemorrhaging which required three blood transfusions. On June 19, 2023, Diaz had an MRI which revealed the presence of fibroids. Unbeknownst to petitioner, on July 12, 2023, DOC's Trial and Litigation Division sent DOC Human Resources a Personnel Determination Review ("PDR") Memorandum recommending Diaz' termination due to her "copious use of sick leave." The memo also notes that the sick leave was due to "uterine bleeding, uterine fibroids, and hospitalization." No action was taken by respondents in response to the PDR memo at that time.

On August 30, 2023, petitioner's doctor performed a hysteroscopic D & C. On November 9, 2023, Diaz underwent a hysteroscopic myomectomy to remove the fibroids.

On January 23, 2023, Diaz met with HMD doctor Harry Strulovici ("Dr. Strulovici"). Dr. Strulovici indicated that Diaz was ready to return to duty but requested a copy of her operative report, which was provided later that day, prior to approving petitioner for active duty. Diaz was approved for light duty and returned to work the following day and scheduled for a follow up appointment on February 14, 2024, to be cleared for full duty.

A DOC PDR memo authorizing Diaz termination was signed on February 9, 2024. The documented reason for termination was violation of the plea deal due to the amount of leave she had taken. The PDR lists Diaz absences and each absence is categorized as either “Gynecology”, “Hospitalization”, or “Trauma/Ambulatory Surgery”. The PDR also acknowledged that Diaz had returned to work on January 24, 2024. On February 12, 2024, Diaz was notified of her termination. The February 14, 2024 follow up appointment with HMD never occurred.

Discussion

In an Article 78 proceeding, the applicable standard of review is whether the administrative decision: was made in violation of lawful procedure; affected by an error of law; or arbitrary or capricious or an abuse of discretion, including whether the penalty imposed was an abuse of discretion (CPLR § 7803 [3]; *see also Matter of Pell v Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d 222, 231 [1974]). “An action or determination is arbitrary and capricious when ‘it is taken without sound basis in reason or regard to the facts’” (*Matter of Ferrelli v State of New York*, 226 AD3d 504, 504 [1st Dept 2024] quoting *Matter of Peckham v Calogero*, 12 NY3d 424, 431 [2009]; *see also Matter of Pell*, 34 NY2d at 231).

Generally, a probationary employee “may be discharged for any or no reason at all in the absence of a showing that . . . her dismissal was in bad faith, for a constitutionally impermissible purpose or in violation of law” (*Matter of Bonacarti v Mayor's Off. of Criminal Justice*, 214 AD3d 445, 445–46 [1st Dept 2023], *lv denied* 38 NY3d 902 [2023] quoting *Matter of Smith v New York City Dept. of Correction*, 292 AD2d 198 [1st Dept 2002]). “The burden falls on the petitioner to demonstrate by competent proof that bad faith exists, or that the termination was for an improper or impermissible reason” (*Matter of Castro v Schriro*, 140 AD3d 644, 647 [1st Dept 2016], *affd* 29 NY3d 1005 [2017]).

“Section 8–107(1)(a) of the NYCHRL makes it an unlawful discriminatory practice for an employer to discriminate in terms and conditions of employment or discharge an employee because of disability. A disability is defined by § 8–102(16) of the NYCHRL as any physical, medical, mental or psychological impairment.” *Watson v Emblem Health Servs.*, 158 AD3d 179, 182 [1st Dept 2018]). NYCHRL provisions should be construed broadly in favor of discrimination plaintiffs (*see Albunio v City of New York*, 16 NY3d 472, 477 [2011]).

Respondents first argue that the reason Diaz was terminated was not because of her disability but due to her chronic absences and that it is petitioner’s burden to demonstrate that the termination was in bad faith or for an improper or impermissible reason. Respondents point to a history of 434 total sick days taken between 2021 and 2023, stating she is not qualified to hold the position of corrections officer.

Here, the parties agreed that Diaz’ absences prior to the plea deal and probation agreement would not impact the probation and should not factor into the decision to terminate her. Additionally, respondents provided a copy of Diaz’ Leave Request Report which shows each of those absences as approved. Respondent’s answer also undermines their argument that petitioner has not demonstrated bad faith or impermissible reason for Diaz’ termination. By their own admission, the termination was not due to performance issues or violation of the probationary agreement, but for Diaz’ history of approved sick leave.

Next, respondents point to the fact that Diaz was only hospitalized for 59 of the 67 sick days that were categorized as “hospitalization” and that her uterine fibroid condition does not excuse the additional absences. Respondents quote *Black v The New York City Dept. of Corr.* which states “petitioner’s alcohol problem does not immunize him against the legitimate, nondiscriminatory legal action taken by respondents in terminating his probationary employment due to his continued violations of DOC’s Sick Leave Policy which in turn violated the NPA” (2019 NY Slip Op

32794[U], *3 [Sup Ct, NY County 2019]). The court in *Black* also stated that the record “convincingly demonstrate that petitioner, a probationary employee, was terminated because of his repeated violations of DOC’s Sick Leave Policy, which in turn violated the terms of the Agreement” (*id.*). Importantly, the petitioner in *Black* failed on multiple occasions to submit necessary documentation to the HMD, missed a scheduled appointment with HMD, and failed to report for scheduled duty (*id.* at *2). *Black* is distinguishable from the instant case. Here, Diaz has provided documentation on her hospitalizations and medical reports, went to her scheduled HMD appointment, reported for duty the day following her appointment, and did not violate the terms of her parole agreement.

Respondents further contend that Diaz violated her agreement as a November 27, 2023 medical report by her doctor did not list any physical limitations, yet Diaz remained out of work. Respondent’s own doctor, not Diaz personal doctor, oversaw when she would be cleared to return for active duty. Diaz returned to light duty on January 24, 2024, as soon as she was approved to do so by the HMD doctor. HMD’s doctor required a surgery report, that was promptly provided by Diaz, to clear her for full duty. Respondents terminated Diaz before her next scheduled appointment with HMD.

Respondents claim that Diaz cannot rely on the PDR and PDR Memo as evidence of disability discrimination because “[t]he mere fact that the PDR includes the petitioner’s attendance record is insufficient, without more, to give rise to an inference of discrimination” (*Coa v Molina*, 2023 NY Slip Op 33246[U], *6 [Sup Ct, NY County 2023]). *Coa*, however, is distinguishable. The PDR in that case:

“[L]isted absences include[d] several that were wholly unrelated to his injury, including ‘vaccine side effects’ and ‘gastrointestinal.’ The petitioner’s attendance is not part of the ‘Reason for Referral’, which includes only the March 8, 2022, incident where he abandoned his post and left unsecured inmates to brutally assault a fellow inmate.” (*id.*, *6)

The PDR memo for Diaz recommended her termination based on her “copious use of sick leave.” The PDR memo also noted that the sick leave was due to “uterine bleeding, uterine fibroids, and hospitalization”, all of which were directly related to her medical condition. There was no disciplinary reason for the termination like the dereliction of duty by the petitioner in *Coa*.

While respondents allege that Diaz was terminated “because of her chronic absences, not because of her purported disability” it is unclear what distinguishes the two. While the court recognizes the importance of avoiding chronic absenteeism, the DOC’s policies and CBA allow for unlimited sick days and Diaz’ sick days were all due to her disability and marked as approved. While Diaz’ disability did cause her to miss a significant amount of work, inclusion of documented disability leave in a termination determination “shows respondents’ lack of good faith and is violative of [NYCHRL § 8–107(1)(a)]” (*Matter of Castillo v Schriro*, 49 Misc 3d 774, 793 [Sup Ct, NY County 2015]). For the reasons above, respondents violated NYCHRL § 8–107(1)(a) when they terminated Diaz because of the sick days related to her disability.

Respondents make the same argument from their cross-motion to dismiss that the unlimited sick leave granted to correctional officers under their Collective Bargaining Agreement (“CBA”) did not apply to Diaz as she was a probationary corrections officer. The court is still unpersuaded by this argument and it is rejected again.

While the violation of NYCHRL § 8–107(1)(a) is sufficient to grant the petition, the court will address the remaining arguments.

Diaz argues that respondents violated NYCHRL § 8-107(28)(a), which “makes it an unlawful discriminatory practice for an employer to refuse or otherwise fail to engage in a cooperative dialogue within a reasonable time with a person who has requested an accommodation” (*Matter of Marsteller v City of New York*, 217 AD3d 543, 545 [1st Dept 2023] [internal quotation marks, ellipses, and citation omitted], *lv dismissed & denied* 41 NY3d 960 [2024]). Respondents argue that

Diaz never approached them seeking a cooperative dialogue. However, this section of the NYCHRL requires the employer engage in a cooperative dialogue with employees they knew or should have known may require accommodation (*Hosking v Memorial Sloan-Kettering Cancer Ctr.*, 186 AD3d 58, 64 [1st Dept 2020]). Based on the record before the court, respondents had knowledge of Diaz' disability and that she would require an accommodation.

Finally, Diaz argues that respondents violated NYCHRL § 8-107(15)(a) which requires employers to provide reasonable accommodations for a known disability unless doing so would impose an undue hardship. Respondents argue that they did not fail to accommodate Diaz as she did not affirmatively allege that she ever notified the DOC supervisors that she was disabled and never requested reasonable accommodations (*see Coa*, 2023 NY Slip Op 33246[U], *4).

Respondents' claim that they were unaware of Diaz' disability is disingenuous. DOC's HMD was aware of Diaz' disability, had been provided with medical records documenting her illness and treatment and placed petitioner on light duty. Additionally, the PDR recommending her termination makes references to her disability by stating "the sick leave was due to uterine bleeding, uterine fibroids, and hospitalization." In fact, respondent DOC Health Management Division ("HMD") monitors correction officers, including petitioner, on sick leave and reviews their medical records to determine when they are fit to return to duty.

Because respondents knew or should have known about Diaz' disability, they were obligated to make a reasonable accommodation even without a formal request (*Estate of Benitez v City of New York*, 193 AD3d 42, 48 [1st Dept 2021]; *Watson*, 158 AD3d at 182). "Pursuant to the NYCHRL, there is no accommodation, including indefinite leave or any other need created by a disability, which is excluded from the category of reasonable accommodation" (*Watson*, 158 AD3d at 182).

While Diaz no longer required indefinite leave, it would not have been improper to grant such a request if it was necessary. Respondents could have made other reasonable accommodations

such as "job restructuring [or] modified work schedules" (*Benitez*, 193 AD3d at 48). It appears this is precisely what Dr. Strulovici was attempting to do prior to respondents' determination to terminate Diaz. Dr. Strulovici had placed Diaz on light duty after the January 23, 2024 appointment, and Diaz reported to work and was performing her duties when she was terminated by respondents. Moreover, respondents did not engage in any meaningful conversation with Diaz prior to her termination, and allowing Diaz to work light duty while she was waiting to be cleared for full duty would not have imposed an undue hardship on respondents.

Based on the foregoing, the petition is granted.


Conclusion

Accordingly, it is hereby

ORDERED that the petition is granted; and it is further

ORDERED that the Department of Corrections is to reinstate Tanisha Diaz as a corrections officer with seniority and back pay.

Any requested relief not expressly addressed herein has nonetheless been considered and is hereby denied and this constitutes the decision and order of the court.



3/14/2025

DATE

LYNN R. KOTLER, 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