

In or around July 2010, Respondent hired Complainant as a Cargo Agent at its John F. Kennedy International Airport location. As such, Complainant was responsible for building up and breaking down cargo loads, handling cargo related documentation, and timely delivery of cargo loads to customers.

On September 19, 2011, as an accommodation to allow him to care for his recently disabled wife, Complainant requested that Respondent reduce his work hours to "33 to 35 hours from Monday through Friday" and move him from the morning to evening shift. After an on-going process to find a mutually acceptable schedule, Complainant accepted a schedule adjustment giving him Saturdays and Sundays off, and requiring him to work only one morning shift on Mondays, effective February 6, 2012.

On May 10, 2012, Respondent terminated Complainant's employment stating that his "attendance falls below the standards set forth by the Company."

The Commission's Investigation

In this matter, in order for Complainant to establish a *prima facie* case of discrimination under NYCHRL, he must demonstrate by a preponderance of the evidence that Respondent discriminated against him because of his relationship or association with a disabled person. After its investigation, the Commission finds that he cannot.

In investigating the Complaint allegations, the Commission reviewed and considered all of the file documents and other submissions made by, and requested from, Complainant and Respondent, including the Complaint, Respondent's Verified Answer and Position Statement with Exhibits, and Complainant's Rebuttal.

Among other things, NYCHRL §8-107(20) makes it unlawful for an employer to discriminate against an employee because of their association or relationship with a disabled person. Additionally, §8-107(15) mandates an employer to provide a reasonable accommodation to enable a disabled employee to satisfy the essential requisites of a job. However, this mandate does not entitle a non-disabled employee to a reasonable accommodation based on their association or relationship with a disabled person under §8-107(20).

Here, Complainant does not allege that he is disabled. Rather, he alleges that Respondent discriminated against him

based on his wife's disability.¹ Specifically, Complainant stated that an accident in May 2011 left his wife disabled and required that he assist with her daily care. Subsequently, Complainant alleges that he asked Respondent to reduce his work hours "to accommodate his wife's disability." Complainant further alleges that after failing to provide the requested accommodation, Respondent unlawfully terminated his employment on May 10, 2012.

In response, Respondent provided documentary evidence establishing that it worked with Complainant through multiple schedule changes to come as close as possible to a mutually agreeable schedule which satisfied the needs of both parties. Complainant's final schedule, effective February 6, 2012, gave him everything he requested in his September 11, 2011 letter, except he had to work: i) approximately three hours more per week than he wanted to, ii) to 12:30 A.M. instead of 12 A.M., and iii) the day instead of the evening shift on Mondays. Respondent further stated that "despite having no obligation to offer [Complainant] any type of alternative working schedule, [Respondent] proactively attempted to be flexible with him."

Between February 7 and May 4, 2012, Complainant was late and/or left work early approximately 92 times. As a result, Respondent states that he was terminated only "because of his truly abysmal attendance record." Complainant does not dispute his attendance record.

As a non-disabled employee, NYCHRL does not entitle Complainant to a reasonable accommodation based on his relationship with his disabled wife. Although Complainant was not entitled to the requested accommodation, Respondent established, through documentary evidence, that it engaged with Complainant to accommodate his schedule given the requirements of his job. Despite his adjusted schedule, Complainant arrived and/or left work early approximately 92 times within a three month period. Even an employee that is entitled to a reasonable accommodation is still required to perform the essential functions of the job; and attendance, whether absences or tardiness, is a prerequisite to performing the essential functions of a job. See McMillan v. City of New York, 2011 U.S. Dist. LEXIS 95062 (S.D.N.Y. Aug. 23, 2011).

Accordingly, the Commission finds that Complainant cannot establish by a preponderance of the evidence that Respondent

¹ Complainant's wife was not employed by Respondent.

discriminated against him based on his association or relationship with a disabled person.

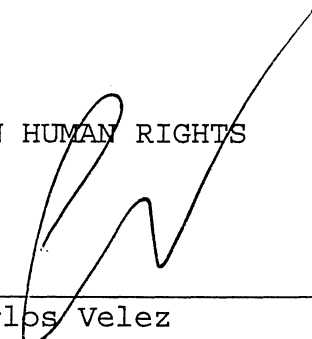
Determination on the Merits

Based on the foregoing the Complaint is hereby dismissed.

Complainant may apply for review by filing a request in writing within thirty (30) days after the date of the mailing of this order. The application should be addressed to the Office of the Chairperson, New York City Commission on Human Rights, 40 Rector Street, 10th Floor, New York, NY 10006, Attn: NPC Appeals. Please state reasons for applying for review.

DATED: New York, New York
December 24, 2013

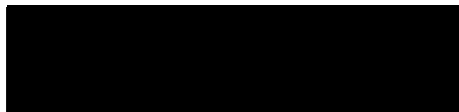
CITY COMMISSION ON HUMAN RIGHTS



Carlos Velez
Executive Director
Law Enforcement Bureau

By: V. Browne
Staff Attorney

NOTICE TO:



Attorney for Respondent

