

IN THE MATTER OF THE
REQUEST FOR REVIEW BY:

Petitioner.

Charge No.: 2023CF0506
EEOC No.: 21BA30246
ALS No.: 24-0062

² This order is entered pursuant to a 3-0-0 vote by the Commissioners.

The Petitioner stated that she was told by former Bureau Chief, Bureau of Accessibility and Job Accommodation (“BAJA”) Martha Younger-White that the process of hiring and firing a Reader was the Petitioner’s decision.

The Petitioner stated that Deshaun Walker (“D. Walker”), her son, was her Reader until he was discharged by the Employer on July 8, 2022, for being a “no call no show.” The Petitioner stated that she did not have a Reader from July 11, 2022, through August 23, 2022. The Petitioner stated that without a Reader she was unable to perform some of the duties of her job. She stated that she was eventually discharged for not having a Reader, as she could not be productive without one and would often sit idle.

The Petitioner stated that BAJA approved Samantha Quijote to be her Reader, but Quijote did not start until August 23, 2022. The Petitioner stated that she felt that the Employer failed to accommodate her by approving Quijote too slowly, even though the Petitioner had placed an application for Quijote to be her backup Reader in May 2022.

The Petitioner stated that on August 24, 2022, Assistant Local Office Administrator Miguel Conde told her to do a self-assessment for her nine-month evaluation. The Petitioner stated that she did not understand the need for a self-assessment because her supervisor, Human Services Casework Manager Patricia Warrick, had just completed a nine-month evaluation of her, and she had met all of the Employer’s goals. The Petitioner stated that on August 25, 2022, Conde informed her that she had not met the goals of her position in her evaluation, which meant that she would not be certified, and consequently was being discharged. The Petitioner stated that Social Service Career Trainees had 12 months to be trained, with some even having their certification extended, while she was discharged after only nine months of training.

The Petitioner stated that her discharge was based on her blindness because she did not have a Reader, and therefore was not productive and often sitting idle. The Petitioner stated that her discharge notice stated that she was discharged for not having a Reader and for attendance issues. The Notice also indicated that she was not meeting her goals. She stated that she had gone over her allotted number of days off because of her connective tissue disorder (unrelated to her blindness), but that her scheduling accommodation request was in the appeals process at the time of her discharge. The Petitioner stated that the Employer did not discuss attendance during her discharge meeting, but wanted to go over her progress and told her that she was not meeting some of her job requirements.

The Petitioner stated that the Employer had discharged nine people with blindness in the past.

According to Public Service Administrator Janise King, requests for accommodation by the Employer were required to be made through BAJA. King stated that the Petitioner’s entire August 2021 request for accommodation (screen reader scanner, camera, and Reader) was approved on September 15, 2021. King stated that the approval letter explained that it was the Petitioner’s responsibility to

provide an Auxiliary Service Provider/Reader and that the Reader must work with the Contract Administration Division to apply and go through the contractual process.

Assistant Local Office Administrator Ronia Houston stated that although it was the Petitioner's responsibility to hire a Reader, the Employer did initially assist her in seeking out a Reader by emailing staff on October 6, 2021, to see if anyone was interested. Houston stated that Chaquita Cherry was selected for the position and started on December 1, 2021, as the Petitioner's Reader. Toward the end of December 2021, Cherry became ill and unable to work, so the Petitioner requested that her son, D. Walker, be added as her primary Reader. In March 2022, the Employer approved the Petitioner's request, after D. Walker completed the new selection, hiring, and onboarding process. On July 8, 2022, the Employer discharged D. Walker due to poor attendance. Houston stated that she met with D. Walker multiple times about his attendance, but it never improved. Division Liaison for Personal Service Contracts Fern Grohler stated that, although Readers have a contract with the Employer for services, the Employer can discharge Readers for cause.

Houston stated that the Petitioner had the opportunity to hire a new Reader after her son was discharged, that it was not the Employer's policy to provide Readers, and that any activity beyond approving the request for reasonable accommodation and reviewing/approving the Reader Service Contract would present an undue hardship. Houston stated that the Petitioner requested a third Reader, whose paperwork was submitted at the end of July 2022.

Houston stated that employees should have backup Readers in place, which the Petitioner chose not to have. Houston stated that because the Petitioner did not have a Reader between July 8, 2022, and August 15, 2022, she was fundamentally unable to execute her job functions. The Employer provided its letter to all employees receiving Auxiliary Service Providers (which included Readers), which indicated that it was a provision of the accommodation that the employee had the responsibility of identifying someone who would be their primary and secondary backup means of assistance. The letter indicated that Auxiliary Service Provider contracts were necessary in order to work, and that the contracts could take up to eight weeks to fully execute, and thus the employee was expected to have a backup Provider who "must be available for work on short notice in the absence of the primary Auxiliary Provider." The letter indicated that, "If you have no designated backup, this may cause an interruption in operations and job performance."

Conde stated that Quijote entered into a Personal Services Contract with the Employer on August 13, 2022, to be the Petitioner's Reader from August 15, 2022, through June 30, 2023.

Houston stated that she had a meeting on May 17, 2022, with the Petitioner, Conde, Warrick, and a union representative to discuss the Petitioner's attendance issues. Houston stated that the Petitioner had an accommodation for an unrelated medical condition, but that her absences extended beyond the accommodation. Houston stated that on July 8, 2022, there was a pre-disciplinary hearing with the Petitioner because she had failed to provide the requested documentation to support her prior absences after the May 17 meeting, and because she continued to accumulate unexcused absences.

Houston stated that on August 26, 2022, the Petitioner was discharged for violating the Employer's attendance policy, based on her 18 unexcused absences from April 2022 to June 2022. Houston stated that the Petitioner was also not performing her job satisfactorily, as shown on her most recent evaluation.

The Commission concludes that there is substantial evidence that the Employer failed to accommodate the Petitioner and discharged her based on her disability. Under the Act, substantial evidence is "evidence which a reasonable mind accepts as sufficient to support a particular conclusion and which consists of more than a mere scintilla but may be somewhat less than a preponderance." 775 ILCS 5/7A-102(D)(2).

Count A

The Petitioner argues that the Employer failed to accommodate her disability when it discharged D. Walker as her Reader on July 8, 2022, and left her without a Reader. A *prima facie* case of failure to accommodate includes showing that 1) an individual is disabled, 2) the employer had knowledge of her disability, 3) she requested a reasonable accommodation, 4) the employer failed to accommodate her, and 5) with or without a reasonable accommodation, she could perform the essential functions of the job. *Ill. Dep't of Corr. v. Ill. Human Rights Comm'n*, 298 Ill. App. 3d 536, 540 (3d Dist. 1998). An employer must provide reasonable accommodation unless such accommodations would be prohibitively expensive or would unduly disrupt the ordinary conduct of business. *Id.* at 541. The employee bears the burden of asserting the duty to accommodate; showing that accommodation was, in fact, requested; and demonstrating that accommodation was necessary for adequate job performance. *Id.*

Here, the Employer had already determined that the Petitioner's request for accommodation in the form of a Reader was reasonable in September 2021. The Employer then discharged D. Walker on July 8, 2022, based on attendance violations, which left the Petitioner without a Reader. It is the Employer's contention that it was the Petitioner's responsibility to ensure that she had a backup Reader in the event that the primary was unavailable, and that, therefore, the Petitioner's lack of a Reader was not the fault of the Employer. In her Request, though, the Petitioner states that she submitted a request in May 2022 for Quijote to be her backup Reader to Office Manager Bernice Hall and to Houston, but that her request was ignored. The Petitioner also states that the Employer wrongfully discharged D. Walker as a "no call no show," because he had in fact contacted Houston and because he was sick with COVID-19. The Petitioner further states that she sent in an application for her other son, Devontae Walker, to be her Reader, but was questioned about him, and was never told why the Employer would not consider him. The Petitioner states that she believes that if the application for the backup Reader had been acted upon sooner, she would not have had an issue with her Reader taking off due to illness because the backup could have filled in for him. Based on her claim that the Employer's discharge of D. Walker was suspect and the Employer delayed or did not approve Quijote's or Devontae Walker's application as backup Reader, there is more than a mere scintilla of evidence that the Employer failed

to accommodate her. The Commission vacates the dismissal of Count A and remands the count for a finding of substantial evidence.

Count B

The Petitioner argues that the Employer discharged her because of her disability. A *prima facie* case of disability discrimination requires that 1) the petitioner is disabled within the definition of the Act, 2) her disability was unrelated to her ability to perform the functions of the job she was hired to perform, with or without a reasonable accommodation, and 3) an adverse job action was taken against her related to her disability. *Ill. Dep't of Corrections*, 298 Ill. App. 3d at 540. Here, it was undisputed that the Petitioner was disabled, and that she performed the functions of her job with reasonable accommodations. In support of the third prong – that she was discharged because of her disability – the Petitioner stated that, because the Employer did not accommodate her disability with a Reader starting on July 8, 2022, her performance suffered, and that she was then discharged for performance issues. Although the Employer stated that it discharged the Petitioner for attendance violations, the Petitioner maintained that the Employer did not mention her attendance when it met with her, but rather only her performance. At this stage of the proceedings, we view factual discrepancies in favor of the Petitioner, and leave credibility determinations to a trier of fact. See *Cooper v. Salazar*, No. 98 C 2930 (N.D. Ill.), 2001 U.S. Dist. LEXIS 17952, *21 (Nov. 1, 2001). The Commission vacates the dismissal of Count B and remands the count for a finding of substantial evidence.

THEREFORE, IT IS HEREBY ORDERED THAT:

1. The dismissal of Counts A and B of the Petitioner's charge is **VACATED** and the counts are **REMANDED** for a **FINDING OF SUBSTANTIAL EVIDENCE** and for further proceedings that are consistent with this Order and the Act.

This Order is not yet final and appealable.

STATE OF ILLINOIS

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HUMAN RIGHTS COMMISSION

Entered this 30th day of JULY 2024.

Commissioner Jacqueline Y. Collins

Commissioner Demoya R. Gordon

Commissioner Stephen A. Kouri II