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INVESTIGATOR'S REPORT
E16-0145
September 14, 2017

Lloyd Mudie (Madison)

v.

Dollar Tree[1] (Skowhegan)

I. Summary of Case:

Complainant worked for Respondent, a discount variety store, as an assistant store manager from October 2015 until January 28, 2016 when he was placed on unpaid leave.[2] Complainant alleged that Respondent discriminated against him on the basis of disability by failing to reasonably accommodate his disability and by refusing to let him return to work from unpaid medical leave. Respondent denied discrimination, and alleged that Complainant failed to provide the necessary medical documentation to clarify what accommodations he needed. The Maine Human Rights Commission Investigator conducted a preliminary investigation, which included a thorough review of the materials submitted by the parties and an Issues and Resolution Conference. Based on this information, the Investigator recommends that the Commission make a finding that there are reasonable grounds to believe that Respondent discriminated against Complainant by refusing him a reasonable accommodation and by refusing to let him return to work from unpaid leave.

II. Jurisdictional Data:

1) Dates of alleged discrimination: January 28, 2016.

2) Date complaint filed with the Maine Human Rights Commission ("Commission"): March 21, 2016.

3) Respondent employs 97,031 people and is subject to the Maine Human Rights Act ("MHRA"), the Americans with Disabilities Act, as well as state and federal employment regulations.

4) Respondent is represented by Sarah McConaughy, Esq. Complainant is not represented by counsel.

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[1] Complainant named Dollar Tree as the Respondent in his Complaint; Respondent provided that its legal name is Dollar Tree Stores, Inc. As Complainant did not amend his Complaint, the name he used has been retained.

[2] Complainant was still employed when he filed his Complaint, but was discharged on November 18, 2016. Complainant did not amend his complaint to allege discharge due to disability discrimination, so this allegation will not be addressed separately in this report.

IV. Development of Facts:

1) Complainant provided the following in support of his claims:

Complainant has [redacted], as well as [redacted]. Complainant submitted three doctor's notes to Respondent clearly articulating his need for accommodations: no lifting greater than 20 pounds, and no prolonged sitting or standing for more than an hour. Respondent refused to allow him to return to work after January 28, 2016, claiming that it did not understand his sitting/standing restrictions. He was forced to take unpaid leave because Respondent demanded additional medical information before it would allow him to return.

2) Respondent provided the following in support of its position:

Complainant never produced documentation to confirm that he had [redacted] or any disability; the doctor's notes he produced only referred to [redacted]. Respondent did its best to engage in the interactive process and accommodate Complainant. Complainant was told multiple times that he needed to produce a more detailed doctor's note clarifying the duration of his restrictions, and what exactly the restrictions regarding sitting and standing were. Respondent did not know whether Complainant had restrictions on walking versus standing still (such as at a cash register) or whether he needed breaks in between sitting and standing, and what those breaks would entail. For example, Respondent did not know whether Complainant was restricted from being on his feet for more than an hour, which would impact many of the essential functions of his position. Since Complainant failed to produce the necessary medical documentation, Respondent could not return him to work as it could not evaluate whether he would be able to perform the essential functions of his position with or without accommodation.

3) The Investigator made the following Findings of Fact:

a) Complainant worked as an Assistant Manager at the Dollar Tree store in Skowhegan. He performed his job satisfactorily.

b) The Assistant Manager job description provides that the position is "[r]esponsible for assisting with the complete operations of assigned store". The most important duty, according to the job description, is to assist "with all store functions including scheduling, ordering, freight processing and all day-to-day store activities as directed." The next-most important functions are opening and closing the store, and protecting and securing company assets. The Assistant Manager is also required to follow store procedures, provide leadership and direction to store associates, maintain a friendly and professional environment, maintain the sales floor to company standards, and process required reports. While there are additional duties for certain categories of assistant manager (freight manager, sales manager, etc.), Respondent did not provide that Complaint was in one of these specialized categories.

c) Respondent disputes that Complainant provided documentation to it showing that he has [redacted] or any disability under the MHRA. Complainant did state he believed he had [redacted]; he also provided that he had [redacted]. His doctor's notes specifically referred to [redacted], and Complainant explained to Respondent that the pain was ongoing since an injury he suffered six years earlier, and which had resulted in three surgeries.

d) Complainant submitted a doctor's note to his manager ("Manager") on January 2, 2016. The note stated, "Please consider the following restrictions to help reduce his [redacted]. 1. No lifting greater than 20 lbs. 2. No prolonged sitting or standing greater than 1 hour." Manager said that she would forward the note, but asked for a new, more detailed note when Complainant next saw his doctor. Complainant said that nothing would change, because his pain was due to a fall six years ago.

e) Complainant submitted a second doctor's note to Manager on January 8, 2016. The note stated, "Please consider the following restrictions to help reduce his [redacted]: 1. No lifting > 20 lbs, 2. No prolonged sitting or standing > 1°." Manager again said she would forward the note, and asked when Complainant's next appointment was.

f) On January 25, 2016, Complainant met with members of management and a human resources member ("HR") to discuss his restrictions. Complainant was told during the January 25th meeting that the restrictions of lifting no more than 20 pounds was not a problem, but that Respondent had questions regarding the sitting and standing restrictions, as they remained unclear. Respondent asked questions, such as what "prolonged" meant and how long he could sit or stand. Complainant stated that moving around helped him. Respondent asked Complainant to get a follow-up note from his doctor clarifying the nature and duration of the restrictions, so that it could evaluate whether he would be able to perform the essential functions of his position.

g) Some of the confusion was caused because the parties believed that second doctor's note restricted Complainant from standing or sitting "> 10". Complainant's doctor clarified for Respondent that he had inadvertently used common medical shorthand to note the same restriction as before: no prolonged sitting or standing for more than one hour.

h) Respondent told Complainant he could not work until he provided clarification from his doctor.

i) Complainant submitted a third doctor's note to Manager on February 9, 2016, along with some lab results indicating a possible diagnosis of [redacted]. The note was identical to the first doctor's note submitted. Complainant did not produce any further medical documentation to Respondent.

j) Complainant spoke with HR after submitting the third note. HR asked how long Complainant's disability was going to last, and Complainant said it was permanent. HR said she would look into it.

k) Complainant again contacted HR a couple of days later. HR said the note was insufficient because it said nothing about his condition or how long his disability/restrictions would last. HR asked for another note with more details.

l) Complainant called HR again a few days later, and left a message saying he could not get a new note until he saw a specialist; his appointment was about a month in the future. Complainant said that his restrictions were already clear, and the detail HR had asked for identifying his specific condition and how long it would last was not necessary to decide whether he could do his job with accommodations.

m) Complainant provided no further medical information to Respondent, and Respondent did not permit him to return to work.

V. Analysis:

1) The MHRA requires the Commission to "determine whether there are reasonable grounds to believe that unlawful discrimination has occurred." 5 Maine Revised Statutes ("M.R.S.") § 4612(1)(B). The Commission interprets this standard to mean that there is at least an even chance of Complainant prevailing in a civil action.

2) The MHRA provides that it is unlawful to discriminate against an employee in the terms and conditions of employment because of physical or mental disability. *See* 5 M.R.S. § 4572(1)(A).

Failure to Reasonably Accommodate Disability

3) Pursuant to the MHRA, unlawful employment discrimination includes "[n]ot making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless the covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business of the covered entity." 5 M.R.S. §§ 4553(2)(E), 4572(2).

4) To establish this claim, it is not necessary for Complainant to prove intent to discriminate on the basis of disability. *See Higgins v. New Balance Athletic Shoe, Inc.*, 194 F.3d 252, 264 (1st Cir. 1999). Rather, Complaint must show (1) that he is a "qualified individual with a disability" within the meaning of the MHRA; (2) that Respondent, despite knowing of Complainant's physical or mental limitations, did not reasonably accommodate those limitations; and (3) that Respondent's failure to do so affected the terms, conditions, or privileges of Complainant's employment. *See id.*

5) The term "qualified individual with a disability" means "an individual with a physical or mental disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that the individual holds or desires." 5 M.R.S. § 4553(8-D). Examples of "reasonable accommodations" include, but are not limited to, making facilities accessible, "[j]ob restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, [and] the provision of qualified readers or interpreters". 5 M.R.S. § 4553(9-A).

6) In proving that an accommodation is "reasonable," Complainant must show "not only that the proposed accommodation would enable him to perform the essential functions of his job, but also that, at least on the face of things, it is feasible for the employer under the circumstances." *Reed v. Lepage Bakeries, Inc.*, 244 F.3d 254, 259 (1st Cir. 2001). It is Respondent's burden to show that no reasonable accommodation exists or that the proposed accommodation would cause an "undue hardship." *See Plourde v. Scott Paper Co.*, 552 A.2d 1257, 1261 (Me. 1989); Me. Hum. Rights Comm'n Reg. 3.08(D)(1) (July 17, 1999). The term "undue hardship" means "an action requiring undue financial or administrative hardship." 5 M.R.S.A. § 4553(9-B).

7) Here, Complainant established that he was denied a reasonable accommodation, with reasoning as follows:

   a) Complainant provided a note from his doctor stating specific restrictions: he could not lift more than 20 pounds, and he could not stand or sit for a prolonged period, which was identified as more than an hour. When asked about this restriction, Complainant explained that he felt less pain when he was able to move around, which should have clarified the nature of Complainant's restrictions.

b) Respondent's questions do not appear to have been designed to discover whether or not it could accommodate Complainant. The specific diagnosis and the expected duration of Complainant's medical condition were irrelevant to whether or not the request to avoid sitting or standing for periods of more than an hour was reasonable. Similarly, asking what "prolonged" meant, when the note stated specifically more than one hour, does not seem to be a good faith inquiry, nor does the question of whether the note meant that Complainant needed to lie down, especially in light of Complainant's statement about how it helped him to move around.

c) There is nothing in the Assistant Manager job description suggesting that the accommodation requested would not have allowed Complainant to perform the essential functions of his position. If Respondent had any real doubt on this issue, it could easily have asked Complainant's doctor about the performance of any essential function, or sent Complainant for a fitness-for-duty evaluation with Respondent's provider. Instead, Respondent wanted diagnostic information and to know for how long the accommodation would be needed when neither was necessary to respond to the accommodation request.

8) It is found that Respondent failed to reasonably accommodate Complainant's disability.

Disability Discrimination Terms and Conditions of Employment

9) Because here there is no direct evidence of discrimination, the analysis of this case will proceed utilizing the burden-shifting framework following *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 93 S. Ct. 1817 (1973). *See Maine Human Rights Comm'n v. City of Auburn*, 408 A.2d 1253, 1263 (Me. 1979).

10) First, Complainant establishes a prima-facie case of unlawful discrimination by showing that he (1) was a member of a protected class, (2) was qualified for the position he held, (3) suffered an adverse employment action, (4) in circumstances giving rise to an inference of discrimination. *See Harvey v. Mark*, 352 F. Supp. 2d 285, 288 (D.Conn. 2005). *Cf. Gillen v. Fallon Ambulance Serv.*, 283 F.3d 11, 30 (1st Cir. 2002).

11) Once Complainant has established a prima-facie case, Respondent must (to avoid liability) articulate a legitimate, nondiscriminatory reason for the adverse job action. *See Doyle v. Department of Human Services*, 2003 ME 61, ¶ 15, 824 A.2d 48, 54; *City of Auburn*, 408 A.2d at 1262. After Respondent has articulated a nondiscriminatory reason, Complainant must (to prevail) demonstrate that the nondiscriminatory reason is pretextual or irrelevant and that unlawful discrimination brought about the adverse employment action. *See id.* Complainant's burden may be met either by the strength of Complainant's evidence of unlawful discriminatory motive or by proof that Respondent's proffered reason should be rejected. *See Cookson v. Brewer School Department*, 2009 ME 57, ¶ 16. Thus, Complainant can meet his overall burden at this stage by showing that (1) the circumstances underlying the employer's articulated reason are untrue, or (2) even if true, those circumstances were not the actual cause of the employment decision. *Id.* In order to prevail, Complainant must show that he would not have suffered the adverse job action but for membership in the protected class, although protected-class status need not be the only reason for the decision. *See City of Auburn*, 408 A.2d at 1268.

12) Here, Complainant establishes a prima-facie case of disability discrimination by showing that he had or was perceived as having a disability, he was qualified for the position he held, he was put on unpaid leave and not allowed to return to work, and this occurred after he produced doctor's notes containing medical restrictions related to his disability.

13) Respondent articulated a legitimate, nondiscriminatory reason for keeping Complainant out on leave, namely that he failed to submit necessary medical documentation showing that he could perform the essential functions of his position with or without accommodation.

14) In the end, Complainant established that Respondent's reason was false or irrelevant and that he was held out on leave and unable to return due to disability discrimination. Reasoning is as follows:

   a) As stated above, the record reflects that Complainant provided sufficient information to allow Respondent to assess his request for accommodation. There was no evidence in the record to support Respondent's belief that Complainant's restrictions would have kept him from performing the essential functions of his position.

   b) Respondent's insistence that it needed to know how long Complainant's restrictions were needed tends to suggest some discriminatory animus. It appears from the record that Respondent did not want to deal with the restrictions indefinitely, and continued to ask for more information in order to avoid having to return Complainant to work.

15) Disability discrimination was found.

VI. <u>Recommendations:</u>

For the reasons stated above, it is recommended that the Commission issue the following findings:

1) There are **Reasonable Grounds** to believe that Dollar Tree discriminated against Lloyd Mudie on the basis of disability by failing to provide him with reasonable accommodations for his disability;

2) There are **Reasonable Grounds** to believe that Dollar Tree discriminated against Lloyd Mudie on the basis of disability by subjecting him to less favorable terms and conditions of employment; and

3) The case should be conciliated in accordance with 5 M.R.S. § 4612(3).

Amy M. Sneirson, Executive Director

Angela Tizón, Investigator