

REVIEW OF THE RECORD
SUMMARY OF TRAVEL AND ADA REQUIREMENTS

1. Discrimination Claims Generally

- a. A review of the record as presented to me thus far has provided additional clarity in regard to Samantha Burnett's discrimination claim. Specifically, her repeated allegation is a varyingly direct/indirect claim that she is discriminated against because she is not Portuguese.

[REDACTED]

- c. Per a 5/19/21 e-mail from Napoleon Gonsalves, the City of East Providence completed an investigation regarding SB's claims of discrimination, encouraged SB to bring additional information forward, and committed to cooperating with any outside agency regarding any comparable claims.

2. Claims of lawsuits

- a. 9/20/2019 SB claims that she has filed a Commission for Human Rights Complaint against [REDACTED].
- b. 5/12/21 9:10am Claim that SB contacted the Commission for Human Rights as well as the ACLU and submitted paperwork for their investigation of discrimination.
- c. I have confirmed in with the ACLU, Commission for Human Rights, and the Governor's Commission on Disabilities that there are no claims against the City relative to SB

3. 7/19/2019 HR Incident Report

- a. SB came to HR [REDACTED]
- i. There is nothing in the records that identify the specific issue or substantiate the claims
- b. 7/22/19 follow up meeting regarding same
- i. Truly myriad and ranging allegations/complaints
1. Allegation of an investigation checked on by HR VS, says none exists
- ii. [REDACTED] Asked if she has any evidence, SB says no.
- c. 7/24/2019 SB/HR VS correspondence
- i. VS is following up on SB concerns
- ii. VS states that SB recorded their last meeting without his consent
- iii. VS is requesting an opportunity to meet with SB to go over her claims

REVIEW OF THE RECORD
SUMMARY OF TRAVEL AND ADA REQUIREMENTS

iv. SB in the end indefinitely postpones the meeting because SB states she is interviewing counsel to accompany her to any such meetings

4. 10/1/2019 – ██████████ Complaint against SB re: Hostile Work Environment

a. ██████████ claims were dismissed by ██████████

5. 12/2/20 - AA Complaints related to ██████████

a. SB alleges hostile work environment caused by ██████████

b. ██████████ alleges SB purposefully and publicly disclosed ██████████ medical condition in her pursuit of a raise

6. 2/12/20 - AA Complaint against ██████████

a. SB complaint against ██████████ related to race, color, and gender

i. SB stated that this was documented fact and that she would provide the e-mails to substantiate it; ██████████ repeatedly requested that she provide the e-mails to substantiate it; SB never provided any evidence to substantiate her claims;

ii. 2/25/20 - EP found no basis for a discrimination investigation

7. 2/27/20 - AA Complaint – Two (2) days after EP found no cause for discrimination investigation of SB's 2/10/20 complaint, SB claims that ██████████ is trying to sabotage her

8. 5/11/2021 Complaint

a. City found that a direct subordinate used language that "can be construed as racially insensitive to others" and same subordinate failed to comply with a directive

9. 8/13/2021 - Incident Report #081321

a. SB alleges the ADA request delay is because she is not Portuguese

b. SB agreed to the IME

c. SB requested that the conversation be documented by Elmer Pina

10. The "Form" referenced

a. Upon information and belief, the Council has not been requested to submit its requests in any particular format nor does the Council submit its requests in any particular format

REVIEW OF THE RECORD
SUMMARY OF TRAVEL AND ADA REQUIREMENTS

11. ADA Accommodation Request Travel, including IME

- a. 5/19/21 - HR provides original ADA accommodation request; Provides updated form on 5/26/21
- b. 6/29/21 - SB sends Reasonable Accommodation Request to HR
 - i. The Reasonable Accommodation Request was signed by a [REDACTED]. The request included the following accommodations:
 - 1. [REDACTED]
 - 2. [REDACTED]
 - 3. [REDACTED]
 - 4. [REDACTED]
 - 5. [REDACTED]
 - 6. [REDACTED]
 - 7. [REDACTED]
 - 8. [REDACTED]
 - 9. [REDACTED]
 - 10. [REDACTED]
 - 11. [REDACTED]
 - 12. [REDACTED]
 - a. Of critical note, the "form" that has been regularly referenced by SB as the sole item of her reasonable accommodation request was in fact not included within the reasonable accommodation request.
 - b. [REDACTED] did not complete the entire form – I am uncertain as to whether this is relevant, but it appeared worth noting
- c. 7/2/21 – HR leaves voicemail for SB
- d. 7/6/21 – SB responds by e-mail to 7/2/21 voicemail from HR
 - i. HR responds by outlining concerns regarding whether the accommodations requested conform to the ADA parameters and further stating that (HR VS) is going out on leave
 - ii. HR specifically requests a written list of what SB is relating to relative to her accommodation requests
- e. 7/7/21 – SB responds by agreeing to provide the written list as requested by HR
 - i. I do not have this written list within the records I have received.
- f. 7/19/21 – Napoleon Gonsalves provides SB with update
 - i. Acknowledges that the City is trying to contact the Physician who signed the request
 - ii. Acknowledges that the City is reserving its IME right
 - iii. Requests a meeting with SB to understand the accommodations request, requests dates for such a meeting
 - 1. (There is no written response to that request within the e-mail I have)
- g. 7/22/21 – [REDACTED] provided MM with a referral for an IME for dyslexia based on a preceding phone call request by MM.
- h. 7/26/21 – HR JK requests SB for a medical release waiver from the diagnosing physician
- i. 8/3/21- HR JK follow up on medical release

REVIEW OF THE RECORD
SUMMARY OF TRAVEL AND ADA REQUIREMENTS

- i. SB responds that she does not remember who the diagnosing physician was (she was 12 years old at time of diagnosis)
- j. 8/3/21 – MM contacts [REDACTED] to determine if the IME is the next step considering that SB cannot provide the City with medical records from the diagnosing physician
 - i. The ADA permits employers to seek IME as part of a reasonable accommodation request/review of claim and disability, *see* 12(a)(ii) below.
- k. 8/10/21 – Napoleon Gonsalves requests that HR book a doctor for an IME because SB has been unable to provide the City with medical records
- l. 8/12/21 – SB requests update on reasonable accommodation request
 - i. Michael Marcello responds requesting a meeting and acknowledges that the City is trying to arrange an IME
 - ii. SB responds with a list of requests including a different meeting time
 - iii. MM provides responses to SB requests and asks for dates and times
 - iv. SB responds with more requests and a suggested meeting time of 8/16/21
- m. 8/13/21 – SB sends an email, claiming for the first time, that a reasonable accommodation meeting already occurred with the Council President, Councilor Cahoon, and Mike Marcello. SB further claims that the accommodation request was for a single form
 - i. Of critical note, the Council President, Councilor Cahoon, and Mike Marcello all deny that there was ever any discussion of an accommodation.
 - ii. **Of critical note, the accommodation request was not for a “form”, *see* “6/29/21 Reasonable Accommodation Request” above**
 - iii. Mike Marcello responds correcting the record as to the meeting referenced by SB. (**I have been able to confirm MM’s record of the meeting with other parties**)
 - iv. SB responds effectively doubling down on a series of inaccuracies including her false claims of the meeting with CPRB, CNC, MM; false claims regarding her requested accommodations.
 - 1. **The response includes allegations regarding working with the Governor’s Commission on Disabilities**
 - 2. SB claims that MM has known SB is dyslexic
 - 3. She claims that she is not [REDACTED], but the actual requests may amount to as much.
 - v. MM responds again requesting a date to meet and informs SB that she is refusing to cooperate with the City’s evaluation and that may jeopardize SB’s request
 - 1. **To my knowledge based on the record at my disposal, SB has never responded to the City’s request for a date to meet to discuss the reasonable accommodations requested nor has any such meeting occurred**
- n. 8/13/21 (HR JK) writes [REDACTED] to note that the City has been unable to identify a doctor to perform the IME
- o. 8/19/21 [REDACTED] MM with the identity of a doctor capable and willing to perform the IME
 - i. [REDACTED] notes that he has attempted at least 20 other doctors without success
- p. 8/19/2021 HR JK to SB re: IME Doctor Identified etc.

REVIEW OF THE RECORD
SUMMARY OF TRAVEL AND ADA REQUIREMENTS

12. ADA Reasonable Accommodation Procedure

- a. The United States Equal Employment Opportunity Commission provides enforcement guidance regarding reasonable accommodation and undue hardship under the ADA. The most recent guide can be found here: <https://www.eeoc.gov/laws/guidance/enforcement-guidance-reasonable-accommodation-and-undue-hardship-under-ada>
 - i. §5 requires the employee and employer to engage in an informal process to clarify what is needed.
 1. A review of the record shows that the City consistently made efforts to engage in such an informal process and SB was the obstructionist.
 - ii. §6, §7, §8 set forth the employer's rights and responsibilities upon a reasonable accommodation request and are directly relevant to the proceedings thus far. Based on my review of the record and cross checking these sections of enforcement guidance, the City has fully complied with all of its obligations pursuant to ADA reasonable accommodation requests.
 - iii. §9 highlights the fact that a reasonable accommodation is not a mandatory obligation on the employer, but the employer has choice in how it provides reasonable accommodations.
 1. An employer does not have to provide a reasonable accommodation if it would cause an undue hardship. At this juncture, there are insufficient facts on the record regarding what the reasonable accommodation is or is not and therefore we cannot measure whether or not there is an undue hardship.
 - iv. §10 deals with the time required to respond. A violation of the ADA only occurs as set forth as follows:
 1. *In determining whether there has been an unnecessary delay in responding to a request for reasonable accommodation, relevant factors would include: (1) the reason(s) for the delay, (2) the length of the delay, (3) how much the individual with a disability and the employer each contributed to the delay, (4) what the employer was doing during the delay, and (5) whether the required accommodation was simple or complex to provide.*
 - a. The reason(s) for the delay appear to be SB's refusal to have informal meetings, SB's inability to provide medical releases, and the City's inability to provide a timely IME
 - b. The original request was filed on 6/29/21
 - c. The City does not appear to be causal in any of the delay. The inability to confirm the IME arose subsequent to SB's refusal to engage in informal meetings and failure to provide follow up information. There is also apparently a lack of professionals qualified and willing to perform the IME, which cannot be said to be the fault of either party.
 - d. The record indicates that the City was consistently reaching out to SB for more information but SB either refused meetings or failed to

REVIEW OF THE RECORD
SUMMARY OF TRAVEL AND ADA REQUIREMENTS

provide the information. It does not appear that the City engaged in anything that could be considered purposeful delay.

- e. The requested accommodation is complex and as of yet there is no determination what accommodation is medically needed to perform which tasks.
- 2. The record does not support a finding of unreasonable delay against the City.
- v. The guide includes instructions for investigators. However, the guide seems to assume that such an investigation will only occur upon a denial of a reasonable accommodation. Since no such denial has occurred under these facts, this form of investigation is not yet ripe or appropriate.