

*In the Matter of Anita Bose, Forensic Scientist 1, Law and Public Safety (S6708E),
Department of Law and Public Safety
DOP Docket No. 2005-4333
(Merit System Board, decided September 21, 2005)*

Anita Bose appeals the attached decision of Human Resource Information Services (HRIS) which upheld the removal of her name from the Forensic Scientist 1, Law and Public Safety (S6708E), Department of Law and Public Safety, eligible list on the basis that she was not interested in the duties of the position.

The appellant appeared on the Forensic Scientist 1, Law and Public Safety (S6708E), Department of Law and Public Safety, eligible list, which was certified to the appointing authority on March 26, 2004 for positions in Mercer County (OS040391); Monmouth County (OS040392); Passaic County (OS040393); and Atlantic County (OS040394). In disposing of the certifications, the appointing authority requested the removal of the appellant's name on the basis that she was not interested in the duties of the position. It indicated that during the appellant's interview, she repeatedly stated that she could not perform or would refuse to perform some of the duties of the position, such as working with soiled clothing, since it may make her ill. Additionally, the appointing authority stated that the appellant did not possess a driver's license which was required for the position. The appellant appealed her removals, asserting that she did not at any time state in her interview that she was not interested in the duties of the position. Rather, she explained that she may have difficulty working in the biochemistry section of the laboratory because some of the evidence may cause her to become ill. She indicated that in her current position as a Senior Laboratory Technician with the Department of Law and Public Safety, she filed for an accommodation under the Americans with Disabilities Act (ADA), 42 *U.S.C.A.* sec. 12101, *et seq.* However, HRIS found that the appointing authority had sufficiently supported its request to remove the appellant's name from the subject eligible list.

On appeal to the Merit System Board (Board), the appellant reiterates that as a Senior Laboratory Technician, she filed for an ADA accommodation allowing her not to conduct biochemical analysis of certain items. Specifically she points to the job specification for Forensic Scientist 1, Law and Public Safety, and states that she advised the interviewers that she becomes ill performing this type of work: "Screens evidence for biological fluids and stains and collects samples for further analyses. Conducts analyses of blood or body fluids for DNA profiles/typing." Moreover, the appellant maintains that biochemical analysis is only conducted in the Criminalistics Unit and argues that she should not be disqualified for a position in the Toxicology Unit or Drug Unit. She contends that no rule entitles a forensic science laboratory to have "more of a right than any other organization" to deny employment to ADA applicants. Further, she asserts that the appointing authority

has no right under the ADA to disqualify her if she has difficulty performing only one or two of the essential functions of the job, which is required in only one particular section of an organization.

Additionally, the appellant argues that the appointing authority is in violation of *N.J.A.C. 4A:4-6.5(a)*, which provides in relevant part that an appointing authority may request that an eligible's name be removed from an eligible list due to disqualification for medical reasons which would preclude the eligible from effectively performing the duties of the title. The rule further provides that the appointing authority shall furnish to the Department of Personnel a copy of the certification and a report and recommendation supporting the removal request, prepared and signed by a physician, psychologist or psychiatrist who is licensed in New Jersey or qualified and employed by the appointing authority in the Clinical Psychologist title series. The appellant states that as far as she is aware, the appointing authority has not submitted any medical documentation to support her removal. Additionally, the appellant asserts that she never stated in her interview that she would refuse to work with certain items. Further, as a Senior Laboratory Technician, she never refused to do work in the central laboratory. Therefore, the appellant maintains that her name should not have been removed from the subject eligible list.

In response, the appointing authority submits a letter from Dr. Thomas Brettell, Director of the Office of Forensic Sciences. Dr. Brettell indicates that he and other laboratory directors interviewed the appellant and advised her of the duties and responsibilities of a Forensic Scientist 1, Law and Public Safety. During the interview, the appellant stated that she could not, and would not, perform all the duties listed in the job specification for the title. She specifically expressed that she would be unable to examine sexual assault evidence as this would make her physically ill. Moreover, Dr. Brettell states that the appellant made no mention of a medical condition nor did she request an ADA accommodation during her interview. Further, it was the general consensus among the laboratory directors that the appellant was not suited for the position as she would be unable to fulfill her job responsibilities. Moreover, Dr. Brettell contends that since this was not a promotional eligible list, it was the directors' position that employment should be offered to qualified candidates who could perform work in all of the units within the laboratory system, including the Criminalistics Unit. He maintains that "it is extremely vital to the mission of the Office of Forensic Sciences that we have staff who have the flexibility to meet the demands of the workload and that candidates be able to be reassigned to different units . . . depending on operational needs."

As for an accommodation in the appellant's current employment, Dr. Brettell states that the appellant's request was granted and she was reassigned to the DNA Laboratory in May 2005. He notes that the appellant would not be qualified to work in the DNA Laboratory as a Forensic Scientist 1 since she does not possess the

proper educational requirements of the DNA Advisory Board. Further, Dr. Brettell indicates that the appellant does not possess a valid New Jersey driver's license, which is a requirement of the position. In this regard, Dr. Brettell states that Forensic Scientists are required to drive to courts and crime scenes throughout the State, and therefore, a New Jersey driver's license is required.

It is noted that the appellant does not dispute her failure to possess a valid New Jersey driver's license, nor did she file a reply to the appointing authority's response. It is further noted that the Department of Personnel job specification for Forensic Scientist 1, Law and Public Safety, states that an employee conducts the chemical analysis of various materials and evidence submitted to the laboratory by law enforcement agencies and Medical Examiners Offices for identification in connection with criminal investigations and prosecutions; performs related field and laboratory work as required.

CONCLUSION

N.J.A.C. 4A:4-4.7(a)1, in conjunction with *N.J.A.C.* 4A:4-6.1(a)9, allows the Board to remove an eligible's name from an eligible list for other sufficient reasons. Further, *N.J.A.C.* 4A:4-6.3(b), in conjunction with *N.J.A.C.* 4A:4-4.7(d), provides that the appellant has the burden of proof to show by a preponderance of the evidence that an appointing authority's decision to remove his or her name from an eligible list was in error.

In the instant matter, the appointing authority removed the appellant's name for not being interested in the duties of the position. Although the appellant argues that she can perform other functions, it is clear that the appellant advised the appointing authority that she cannot perform biochemical analysis of certain items since it makes her ill. Dr. Brettell indicates that it is necessary for the Office of Forensic Sciences to appoint Forensic Scientists 1, Law and Public Safety, who have the flexibility to meet the demands of the workload, and to reassign such employees, once appointed, to different units depending on the operational needs, which would include working in units involved in the analysis of biological fluids and stains. Therefore, it was appropriate for the appointing authority to remove the appellant's name from the subject eligible list. It is noted that the appellant's reliance on *N.J.A.C.* 4A:4-6.5(a) is misplaced. In this case, the appointing authority based its determination on the appellant's admission that she cannot perform the duty in question.

Further, although there was not a clear request for an accommodation during the interview process, there is no dispute that the appellant indicated that she becomes ill performing such a duty and the appointing authority was well aware of her request for an accommodation in her current title. However, under the ADA, an employer does not have to eliminate an essential function or fundamental duty of

the position. This is because a person with a disability who is unable to perform the essential functions, with or without a reasonable accommodation, is not a “qualified” individual with a disability within the meaning of the ADA. See 29 C.F.R. 1630.2. See also *Ensslin v. Township of North Bergen*, 275 N.J. Super. 352, 361 (App. Div. 1994), cert. denied, 142 N.J. 446 (1995) (No reasonable accommodation of Police Sergeant’s disability would permit him to perform essential functions of job, and thus the township did not violate the New Jersey Law Against Discrimination by terminating Sergeant after he was rendered paraplegic in skiing accident); *Albertson’s Inc. v. Kirkingburg*, 527 U.S. 555 (1999) (Truck driver with monocular vision who failed to meet the Department of Transportation’s visual acuity standards was not a “qualified” individual with a disability under the ADA). In this case, it is an essential function of a Forensic Scientist 1, Law and Public Safety, to conduct chemical analysis of biological fluids and stains. Therefore, according to the ADA, the appellant is not a “qualified” individual with a disability and the appointing authority is not obligated to accommodate her.

Moreover, the appointing authority states that it is essential for Forensic Scientists to possess a license since they are required to drive to courts and crime scenes throughout the State. It indicates that the appellant does not possess a valid New Jersey driver’s license, and the appellant does not dispute this. Therefore, the appellant also does not meet the requirements for a position as a Forensic Scientist 1, Law and Public Safety. Accordingly, the appellant has not met her burden of proof in the matter and there is a sufficient basis to remove her name from the eligible list for Forensic Scientist 1, Law and Public Safety (S6708E), Department of Law and Public Safety.

ORDER

Therefore, it is ordered that this appeal be denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.