

**BARBARA CEAZAN, Plaintiff and Appellant, v. SAINT JOHN'S  
HOSPITAL & HEALTH CENTER, Defendant and Respondent.**

**B162407**

**COURT OF APPEAL OF CALIFORNIA, SECOND APPELLATE  
DISTRICT, DIVISION TWO**

*2004 Cal. App. Unpub. LEXIS 3601*

**April 13, 2004, Filed**

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**PRIOR HISTORY:** Superior Court of Los Angeles County, No. BC248065, Alexander H. Williams III, Judge.

**DISPOSITION:** Affirmed.

**COUNSEL:** Gelfand Rappaport & Glaser, Marvin Gelfand, Steven Glaser, Gregory M. Marsh for Plaintiff and Appellant.

Herzog, Fisher, Grayson & Wolfe, David R. Fisher; Greines, Martin, Stein & Richland, Robert A. Olson, Lillie Hsu for Defendant and Respondent.

**JUDGES:** BOREN, P.J.; NOTT, J., ASHMANN-GERST, J., concurred.

**OPINION BY:** BOREN

**OPINION:**

Barbara Ceazan, a hospital administrative employee, became depressed and unable to work because she felt abused by her supervisor, a hospital vice-president. Ceazan demanded that the hospital accommodate her disability by restoring her to the same administrative position, albeit without the same supervisor. Instead, the hospital offered Ceazan a lesser job, because all administrative employees at her level had to report to the same [\*2] vice-president--the one whom Ceazan disliked. We conclude that Ceazan failed to show a triable issue of material fact on her claims of employment discrimination and breach of contract.

**FACTS**

Appellant Ceazan, a registered nurse, was hired by respondent Saint John's Hospital & Health Center (the Hospital) in January 1990. During her employment, Ceazan acknowledged receipt of the Hospital's Employee Handbook, which specifies that the employer/employee relationship is at-will, subject to termination at any time, without advance notice. Ceazan understood that the Hospital had an at-will employment policy and that the provisions of the Handbook applied to her.

Ceazan was promoted to the position of team leader of the Ambulatory Medicine Unit. Later, she began to oversee the Emergency Department as well. As team leader, Ceazan was in charge of the nursing staff and of the nonclinical employees in her unit. Ceazan supervised some 78 employees. Ceazan and 10 other Hospital team leaders reported to Paula Smith, the Hospital's vice-president of patient care services, who was hired in February 1998. By state law and internal Hospital policy, Smith is responsible for all of the [\*3] Hospital's clinical nursing staff.

Ceazan found Smith to be "harsh, belligerent and autocratic." In 1999, Ceazan experienced various incidents of condescension, general hostility, and mistreatment by Smith. Smith did not scream, yell or point fingers at Ceazan, and Ceazan could not recall any untrue or disparaging remarks made by Smith. Ceazan heard from other people that Smith made negative comments about her.

In May 1999, Ceazan resigned as team leader of the Emergency Department, due to Smith's un-supportive attitude. Smith agreed that Ceazan's salary would not be lowered despite her diminished responsibilities; however, while Ceazan's salary remained unchanged, her pay grade status was reduced. In October 1999, Ceazan filed a grievance claiming that she was wrongfully demoted and was maltreated by Smith.

The grievance committee concluded that a "suboptimal working relationship" existed between Ceazan and Smith, though there was no evidence of harassment or a hostile work environment. The committee identified behavioral problems in both Ceazan and Smith, and recommended that their working relationship be improved with the help of a facilitator. The two women met with an organizational [\*4] psychologist after this recommendation was made. The grievance committee also recommended that Ceazan be restored to a higher pay grade. Smith appealed the decision of the grievance committee. The appeal was heard by a Hospital vice-president, who overturned the grievance committee decision.

After learning that the grievance committee decision in her favor was overturned, Ceazan became increasingly depressed and unable to work. She took a medical leave from the Hospital on January 10, 2000, on the grounds of temporary total mental disability, and applied for workers' compensation benefits. Ceazan underwent counseling and was prescribed antidepressants. A psychiatrist believed that the mental disability was caused by Ceazan's employment.

In September 2000, Ceazan's psychiatrist authorized her to return to work at the Hospital, but recommended that Ceazan not be directly supervised by Paula Smith. The psychiatrist felt that Ceazan was medically well enough to report to Smith, but Ceazan did not wish to do so.

Ceazan testified that the Hospital should have made a reasonable accommodation by "allowing me to return to a place of employment that I wanted to" that did not require her to [\*5] report to Paula Smith. It is unclear to whom Ceazan would report, if she returned as team leader, inasmuch as Smith supervised all of the team leaders. Ceazan concedes that she was given an opportunity to request a clinical nursing position at the Hospital in September 2000. The offer was for a nonmanagerial job that would not require Ceazan to report to Smith. Ceazan did not respond to the offer. Ceazan claims that she was constructively discharged as of September 15, 2000, due to the Hospital's failure to accommodate her disability.

In November 2000, the Hospital restructured the patient services department and eliminated all 11 team leader positions, including the position held by Ceazan. The manager of employee health spoke to Ceazan's psychiatrist about the restructuring, which gave Ceazan the opportunity to seek a managerial position that did not report directly to Paula Smith. On November 16, 2000, the Hospital faxed the psychiatrist materials relating to the qualifications for the new employment positions, and asked that the physician review these with Ceazan. Ceazan did not respond to the information about job positions in the newly restructured department.

Ceazan filed [\*6] a disability discrimination claim with the Department of Fair Employment and Housing on November 7, 2000. She listed her disability as clinical depression, and asserted that the Hospital's manager of employee health told her not to return to work because the Hospital was unable to accommodate her medical restriction, i.e., no supervision by Paula Smith.

Since leaving the Hospital, Ceazan has enrolled in a university and is pursuing a degree in forensic nursing. The Hospital has paid \$ 16,000 toward Ceazan's vocational rehabilitation, including her university tuition. Ceazan no longer suffers from the symptoms of depression.

Ceazan filed suit against the Hospital for wrongful termination and breach of contract. The Hospital pursued a motion for summary judgment. The trial court determined that there is no triable issue of material fact as to either of Ceazan's claims. The court entered judgment in favor of the Hospital. This timely appeal ensued.

## DISCUSSION

### 1. Appeal and Review

The judgment is appealable. (*Code Civ. Proc.*, § 437c, subd. (l).) Review is de novo, interpreting the evidence, inferences and any ambiguities in the [\*7] light most favorable to appellant. (*Saelzler v. Advanced Group 400* (2001) 25 Cal.4th 763, 768; *Walker v. Countrywide Home Loans, Inc.* (2002) 98 Cal.App.4th 1158, 1168.) "The purpose of the law of summary judgment is to provide courts with a mechanism to cut through the parties' pleadings in order to determine whether, despite their allegations, trial is in fact necessary to resolve their dispute." (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 843.)

### 2. Employment Discrimination

Ceazan alleges that the Hospital violated state law and public policy forbidding discrimination against an employee due to a disability, and requiring employers to reasonably accommodate such disabilities. Ceazan suffered from clinical depression and went on medical leave. When authorized to return to work by her doctor, it was on condition that Ceazan not report to Paula Smith. The Hospital allegedly refused to accede to this condition. Ceazan asserts that it was "reasonable and medically necessary" for her to report to a supervisor other than Paula Smith.

The Fair Employment and Housing Act (FEHA) prohibits employers from discriminating [\*8] against employees with physical or mental disabilities. (*Gov. Code*, § 12940, subd. (a).) n1 Physical and mental disabilities include clinical depression. ( § 12926.1, subd. (c).) An employer who is aware of an employee's disability "has an affirmative duty to make known to the employee other suitable job opportunities with the employer and to determine whether the employee is interested in, and qualified for, those positions, if the employer can do so without undue hardship . . . ." (*Hanson v. Lucky Stores, Inc.* (1999) 74 Cal.App.4th 215, 225.) A "reasonable accommodation" may include job reassignment to a vacant position. ( § 12926, subd. (n)(2).)

n1 All further statutory references are to the Government Code.

"The employer is not obligated to choose the best accommodation or the accommodation the employee seeks." (*Hanson v. Lucky Stores, Inc.*, *supra*, 74 Cal.App.4th at p. 228.) Rather, ""the employer providing the accommodation has the ultimate [\*9] discretion to choose between effective accommodations, and may choose the less expensive accommodation or the accommodation that is easier for it to provide." [Citation.] As the Supreme Court has held in analogous circum-

stances, an employee cannot make his employer provide a specific accommodation if another reasonable accommodation is instead provided." (*Ibid.*)

In this instance, Ceazan was cleared for work by her psychiatrist in September 2000. The psychiatrist testified that Ceazan was medically well enough to report to Paula Smith, but Ceazan did not care to do so. Ceazan demanded to return to her position as team leader, but without supervision by Smith. Ceazan was offered the opportunity to request a nonmanagerial position that would not require her to report to Smith. As noted in a memorandum sent to Ceazan on September 15, 2000, all the positions available at Ceazan's managerial level required her to report to Paula Smith, though there were "lesser positions available" that would not require supervision by Smith. Ceazan did not respond to the offer.

The accommodation that Ceazan demanded was unequivocally unreasonable. Ceazan was a high-level employee. For her position [\*10] as team leader, there was only one supervisor: the Hospital's vice-president of patient care, Paula Smith. Ceazan's job could not be performed without supervision, nor could she be supervised directly by the Hospital president. The Hospital could not--nor should it have to--accommodate Ceazan's desire to be supervised by a different vice-president of patient care services. Requiring the Hospital to fire its vice-president to accommodate a managerial employee's desire for a new supervisor would "impose "undue hardship"" on the Hospital, as a matter of law, and is therefore not mandated by the FEHA. (See *Spitzer v. Good Guys, Inc.* (2000) 80 Cal.App.4th 1376, 1383.)

In her brief, Ceazan argues that the Hospital should have "implemented a dual reporting structure, whereby Ceazan reported to another superior, who then reported to Smith." In other words, she believes the entire corporate chain of command should have been altered, requiring the Hospital to create and fund a new position between her position and the vice-president. n2 The FEHA does not require the costly and burdensome restructuring proposed by Ceazan. (See *Spitzer v. Good Guys, Inc.*, *supra*, 80 Cal.App.4th at p. 1389 [\*11] [FEHA does not require an employer to create a new job to accommodate a disabled employee].) For example, a hospital is not required to hire a new nurse or orderly to help a disabled nurse lift patients or objects weighing more than 10 pounds. (*Mays v. Principi* (7th Cir. 2002) 301 F.3d 866, 871.)

n2 The Hospital would have to create a new position: it would be inappropriate to accommodate Ceazan by reallocating her job duties in a way that required a coworker to work harder or for longer hours. (See *Milton v. Scrivner, Inc.* (10th Cir. 1995) 53 F.3d 1118, 1124-1125.)

The accommodation proposed by Ceazan was addressed, and rejected, by a federal appellate court. In *Kennedy v. Dresser Rand Co.* (2d Cir. 1999) 193 F.3d 120, the plaintiff was a nurse whose supervisor oversaw all of the employer's health care personnel. The nurse's job required her to work closely with her supervisor. She eventually sued her employer claiming that the supervisor harassed her by [\*12] being critical, taunting, sneering and acting in an insulting manner, causing the nurse to suffer a depression. As an accommodation, the nurse demanded that she "be relieved from reporting to, associating with, or otherwise being subjected to the antics" of her supervisor. (*Id.* at pp. 121-122.)

The appellate court in *Kennedy* affirmed the district court's grant of summary judgment. The court acknowledged that a request to change supervisors is presumptively unreasonable, and it is the plaintiff's burden to overcome that presumption by demonstrating that the request was reasonable in her particular workplace. *Kennedy* failed to meet her burden of identifying a reasonable accommodation, the costs of which did not exceed its benefits, because (a) in her particular workplace, a

change of supervisors could not be accomplished without high organizational costs; (b) it would be impossible for Kennedy to perform her job without having contact with her supervisor because he supervised all the health care personnel. (*Id. at pp. 122-123.*) The reasoning in the *Kennedy* case applies with equal force here.

Here, the Hospital offered the reasonable accommodation [\*13] of a nonmanagerial position that did not require Ceazan to report to Smith. Indeed, it was the only accommodation option available, given that all of the team leaders reported to Smith. Ceazan could not be assigned as leader of a different nursing team (assuming there was a vacant position) because she would still have to report to Smith. Ceazan ignored the offer of a lesser position.

An employer must "engage in a timely, good faith, interactive process with the employee . . . to determine effective reasonable accommodations, if any, in response to a request for reasonable accommodation by an employee . . . with a known physical or mental disability or known medical condition." ( § 12940, subd. (n).) Ceazan never responded to the Hospital's opening gambit, for reasons that she refused to reveal during discovery. She did not notify the Hospital that she was interested in exploring different positions at the Hospital as an accommodation for her condition. Instead, Ceazan immediately considered herself to be constructively terminated because the Hospital did not agree to restore her to her former position as team leader, without supervision by Paula Smith. As we have just discussed, [\*14] the job of team leader came with supervision by Smith, and the Hospital did not have to fire its vice-president to accommodate Ceazan.

The Hospital cannot be faulted for failing to participate interactively with Ceazan inasmuch as her unbending demands were patently unreasonable and offered no room for negotiation or engagement. No accusation of failure to engage in the interactive process can be leveled at an employer who shows that no reasonable accommodation was possible. (*Mays v. Principi, supra, 301 F.3d at p. 870.*) In other words, "when no reasonable accommodation is possible the failure to jaw about accommodation is harmless." (*Id. at p. 871.*)

In her brief on appeal, Ceazan continues to insist that "it was not reasonable to expect Ceazan to apply for [] lesser positions . . ." She ignores that all managerial positions at her pay grade required direct contact with and supervision by Paula Smith; only lesser positions permitted her to avoid contact with Smith. When an employee cannot identify a "reasonable" accommodation, the employer's lack of investigation into accommodating the employee is unimportant. (*Lucas v. W.W. Grainger, Inc. (11th Cir. 2001) 257 F.3d 1249, 1256.*) [\*15]

After rejecting the Hospital's offer of a lesser position in September 2000, Ceazan was notified of--but did not apply for--a managerial post when the Hospital restructured its patient services department in November 2000, creating new jobs that would not have required Ceazan to report directly to Smith. By the time the restructuring occurred, Ceazan considered herself to have been constructively terminated effective September 15, 2000, the date that the Hospital sent Ceazan a memo indicating, essentially, that it would not fire Smith to accommodate Ceazan's need for a pleasant working environment and instead proposed nonmanagerial positions that did not report to Smith.

In sum, even if we assume that Ceazan suffered from a mental disability that limited a major life activity, there is no triable issue of fact regarding the Hospital's alleged failure to accommodate Ceazan's disability. No organization can be reasonably expected to fire its executives to please managerial employees. Nor can an organization be reasonably expected to use intermediaries or psychologists to facilitate or "buffer" communications between an immediate supervisor and a manager: the FEHA does not require [\*16] a restructuring of the corporate lines of communication and authority to meet the duty to provide "reasonable" accommodation.

### **3. Breach of Contract**

Cezan asserts that the Hospital promised to abide by the rules contained in its Employee Handbook regarding grievance proceedings. She alleges that the Hospital constructively discharged her without cause by creating or acquiescing in egregious working conditions. Cezan's complaints about her working conditions were vindicated by the grievance committee, whose decision in Cezan's favor was overturned by a single chairperson selected by the Hospital.

The Employee Handbook does not purport to create any legal rights. It states, "This booklet only highlights [the Hospital's] policies, practices, and benefits for your personal education and cannot therefore be construed as a legal document." In other words, it is not a binding contract. The Handbook announces that the Hospital "*must reserve the right to amend, supplement or rescind any provisions of this handbook, other than its employment-at-will provisions, from time to time as it deems appropriate in its sole and absolute discretion, without advance notice.*" (Italics [\*17] in original.)

Nothing in the Employee Handbook suggests that the grievance procedure is anything other than a means of addressing employee dissatisfaction. The Handbook does not state that the grievance procedure is binding on the Hospital. Rather, it states that the grievance procedure is intended "to provide all employees an opportunity to resolve grievances that may arise from time to time" while the Hospital expressly retained its right to terminate employees at will.

Cezan's complaints are not directed at the initial grievance procedure, in any event, because the grievance committee resolved matters to her satisfaction. Her challenge is to the appeal taken by Smith, which was filed more than 10 days after the deadline for taking an appeal, and which resulted in a reconsideration of the entire dispute.

We fail to perceive any triable issue regarding the grievance appeal process. First, the Employee Handbook does not limit the issues that can be considered in an administrative appeal. Second, the Handbook indicates that an appeal "may" be taken within 10 days: the language is not mandatory or jurisdictional.

We note, in passing, that Cezan is not in a good position to complain [\*18] about the timing of Smith's appeal. The Handbook required Cezan to file a grievance within 10 days of the complained-of event. Cezan complains of incidents of abuse lasting most of 1999, and even resigned from one of her positions in May 1999, due to Smith's attitude. Moreover, Cezan's pay grade was reduced in July 1999, and Cezan declares that she learned of the reduction one month later. Yet Cezan waited until October 1999 to file a grievance, far more than the 10 days allowed by the Handbook. Cezan cannot legitimately argue that the time periods for grievances strictly apply to the Hospital, but apply the rules liberally to herself.

## **DISPOSITION**

The judgment is affirmed.

BOREN, P.J.

We concur:

NOTT, J.

ASHMANN-GERST, J.