COMMONWEALTH OF PENNSYLVANIA

GOVERNOR'S OFFICE

PENNSYLVANIA HUMAN RELATIONS COMMISSION

NIKKI ANN SEIBERT, Complainant	:	
v,	:	PHRC CASE NO. 201100031 EEOC CHARGE NO. 17F201162085
CITY OF ALLENTOWN, DEPARTMENT OF EMS, Respondent	:	PHRC CASE NO. 201102434 EEOC CHARGE NO. 17F201260339

FINDINGS OF FACT

CONCLUSIONS OF LAW

OPINION

RECOMMENDATION OF PERMANENT HEARING EXAMINER

FINAL ORDER

FINDINGS OF FACT*

1. On or about February 2007, the Complainant, Nikki Ann Seibert, (hereinafter "Seibert") was hired as a Billing Clerk by the City of Allentown, Department of EMS, (hereinafter "Respondent"). (N.T. 17, 87, 219; C.E. 1; R.E. 7 p. 5)
2. Seibert's initial supervisor was Suzanne Raftery, (hereinafter "Raftery"). (N.T. 17)
3. Seibert was a member of a union when she worked as the Billing Clerk. (N.T. 17, 88, 220)
4. After working as a Billing Clerk for approximately 90 days, Seibert was promoted to the management position of Billing Specialist. (N.T. 17, 88, 220; R.E. 7 pp. 7-9, 13)
5. The duties of Billing Clerk and Billing Specialist were generally the same, but as the Billing Specialist, Seibert posted more payments for ambulance services as Seibert was now in the Emergency Management Services billing department. (N.T. 18. 20)
6. When Seibert was promoted to Billing Specialist, in theory David Howells Jr. became her supervisor, however, Seibert continued to have supervisory contact with Raftery. (N.T. 18, 20-21, 38-39, 152; R.E. 7 p. 8)
7. In 2006, Raftery was not in the EMS billing department but, in theory, was assigned to supervise other Billing Specialists and a Billing Clerk. (N.T. 153, 218)

* To the extent that the Opinion which follows recites facts in addition to those here listed, such facts shall be considered to be additional Findings of Facts. The following abbreviations will be utilized throughout these Findings of Fact for reference purposes:

N.T.	Notes of Testimony
C.E.	Complainant's Exhibit
R.E.	Respondent's Exhibit

8. In the EMS billing department, Seibert worked with and supervised Jason Keppel, a Clerk 2. (N.T. 88, 153)
9. Between the time of Seibert's hire in 2007 through October 2010, Seibert had no problems with Raftery. (N.T. 18, 77; R.E. 7 pp. 13-14, 19)
10. Until sometime after October 2010, Seibert and Raftery were friends as they shared their personal lives with each other inside and outside of work. (N.T. 18, 77, 33, 34, 221)
11. In or about 2008, David Van Allen, (hereinafter "Van Allen"), became the EMS Manager and made all departmental decisions. (N.T. 222-223)
12. Seibert's performance evaluations covering the years 2007 and 2008 were both good evaluations. (N.T. 220, 222)
13. In February 2010, Seibert received an annual performance review covering the period January 1, 2009 through December 31, 2009. (N.T. 34-35; C.E. 2)
14. The performance evaluation covering year 2009 was listed as overall commendable with Seibert listed as proficient in work results; outstanding in 2 categories; and commendable in 5 categories. (N.T. 35; C.E. 2)
15. In October 2010, Seibert was notified that she was to attend a weeknight mandatory training session to be held December 9, 2010. (N.T. 97, 99, 228)
16. Those scheduled to attend the mandatory training were Seibert, Raftery, Van Allen and Joe Calarco, the Operations Supervisor under Van Allen. (N.T. 153, 230)
17. When told she would have to attend the evening training on December 9, 2010, Seibert said she was not going because it was her bowling night. (N.T. 97, 229)
18. Seibert was informed that if she did not attend, she would need a doctor's note. (N.T. 98)

19. Seibert testified that she was seen by a doctor on December 9, 2010 who provided her with a doctor's note that indicated Seibert could return to work on December 9, 2010, unrestricted. (N.T. 98; R.E. 3)

20. After Seibert missed the mandatory training on December 9, 2010, her performance began to decline. (N.T. 231)

21. Sometime in or about January 2011, Van Allen changed Seibert's job description. (N.T. 231)

22. Van Allen made two significant changes to Seibert's job description; (a) Seibert would now be mandated to attend trainings; and (b) Raftery became Seibert's supervisor. (N.T. 27, 130; R.E. 1, 2)

23. Seibert testified that on January 21, 2011, she learned of the job description change and that she would now be mandated to attend trainings and that, to do so, she would have to travel the following October for a week's training in Colorado. (N.T. 27, 89; R.E. 7 pp. 25-26, 62)

24. Raftery testified that in either December 2010 or January 2011, she informed Seibert that Van Allen had decided the week long training for 2011 would not be in Colorado but in Hershey, Pennsylvania. (N.T. 232-233, 253)

25. On January 21, 2011, when Seibert saw her new job description, she became upset, agitated and angry. (N.T. 22-26, 236, 256; R.E. 7 p. 37)

26. The first thing Seibert did was to go to the Human Resources Department to ask if there is anything that can be done. (N.T. 22, 26)

27. The Respondent's HR department informed Seibert that nothing could be done. (N.T. 55; R.E. 7 pp 25, 35)

28. From the HR department, Seibert returned to her work area at which point, several times, Raftery asked Seibert "what's wrong?" (N.T. 24, 92. 121)

29. Seibert eventually told Raftery that her job description had changed, to which Raftery responded that the city reserves the right to change job descriptions. (N.T. 24, 235)

30. Raftery's testimony described Seibert as being angry and disrespectful to Raftery so Raftery called Seibert into an unoccupied office space to talk. (N.T. 24, 256; R.E., 7 p. 35)

31. Rafery's private conversation with Seibert prompted Seibert to eventually say to Raftery "go to HR and just write me up." (N.T. 236-237, 256)

32. Raftery did leave the room and go to HR where Raftery spoke to Tars Williams, a HR representative. (N.T. 25, 238)

33. Seibert left the building and while in a breezeway between two building, Seibert kicked the wall. (N.T. 29, 102; R.E. 7 p. 37)

34. Seibert returned inside and splashed water on her face in the ladies room then returned to work. (N.T. 26, 102; R.E. 7 p. 37)

35. At this point, Seibert received a call from Tara Williams asking Seibert to come to HR. (N.T. 26, 29, 238; R.E. 7 p. 37)

36. When Seibert arrived at Tara William's office, Raftery and Williams were present. (N.T. 30)

37. Seibert was upset and abrupt with Tara Williams during the meeting which lasted approximately 5 minutes. (N.T. 156, 238-239)

38. Eventually, Williams informed Seibert that she was being sent home for having been insubordinate to her supervisor. (N.T. 30, 245; R.E. 7 p. 37)

39. During the meeting, Seibert did not reveal to Williams why she was so upset. (N.T. 103)

40. All Seibert did was to ask if she could use sick time for the afternoon and whether she would be paid. (N.T. 31, 41, 103, 239; R.E. 7 p. 38)

41. Seibert testified that in approximately 2008, Seibert had been diagnosed with depression and anxiety and that her condition was being managed with low doses of prozac and therapy. (N.T. 21)

42. Before January 2011, Seibert had never made the Respondent aware of her diagnosis . (N.T. 21)

43. Seibert left the meeting at HR and called her husband to come pick her up. (N.T. 31, 41; R.E. 7 pp. 38-39)

44. Seibert called her husband back and asked him to call her doctor as she felt like she was having a panic attack or a heart attack. (N.T. 32)

45. Seibert's Husband picked her up and took Seibert directly to the doctor. (N.T. 32)

46. Seibert testified that at the time, her heart raced, she couldn't breathe, she cried and was inconsolable. (N.T. 45)

47. At the doctor's office, Seibert presented with a panic attack and her medications were increased. (N.T. 43)

48. January 21, 2011 was a Friday, and it appears that Siebert returned to work on Monday January 24, 2011 and worked that week. (N.T. 31)

49. At 5:40 p.m. on Monday, January 31, 2011, Siebert had a follow-up visit with her doctor, Dr. Mark Wendling. (C.E. 3)

50. Dr. Wendling provided Seibert with a document dated January 31, 2011, which indicated "Pt is to be excused from work from 1/31/11 through 2/6/11. She may return on 2/7/11." (C.E. 3)

51. Dr. Wendling's note concluded by stating, "If there are any questions, please call the office at the above number." (C.E. 3)

52. On January 31, 2011, Dr. Wendling also prepared a "To Whom It May Concern" letter which stated: "I am the primary care physician of Ms. Seibert, and she is currently under my care. I saw here (sic) initially on 1/21/11, who presented with a panic attack. Her anxiety has continued, albeit improved with medication, and I have advised her that she would benefit from a job transfer to a different area. (C.E. 4)

53. Seibert first testified that she provided Dr. Wendling's "To Whom it May Concern" letter to the Respondent and then testified that she gave the letter to her husband to give to Tara Williams. (N.T 43, 46, 104; R.E. 7 p. 39)

54. Seibert testified that on February 3, 2011, she had a meeting with Van Allen and Denise Holland at City Hall. (N.T. 115)

55. Seibert testified that it was at this meeting that she provided Van Allen with a letter dated February 3, 2011, that she had written to Tara Williams and that at the meeting she had requested an accommodation. (N.T. 120)

56. The February 3, 2011 letter Seibert directed to Tara Williams states in pertinent part: "I have been under my doctors' care for anxiety for almost 2 years due to my situation with my supervisor, Suzanne Raftery. As time has passed my anxiety has been controlled up until the incident on January 21, 2011. Due to an unnecessary conflict initiated by Ms. Raftery, I was forced to leave work and seek immediate

medical attention after being told I was being insubordinate and unable to work well with my supervisors. It was at that point I was diagnosed with anxiety attacks and panic attacks. My husband had taken me to my doctor and he had increased my medication and added an anti-anxiety medication. At this time, due to my doctor's diagnoses of my conditions, and in light of his recommendation that continuing contact with Mrs. Raftery would adversely impact my health, I am requesting a reasonable accommodation of transfer to a different unit where I can concentrate on doing my job without undue stress." (N.T. 52' C.E. 5; R.E. 7 p. 29)

57. Initially, Seibert testified that she assumed that she sent the letter to Tara Williams by email or that she could have hand delivered it. (N.T. 53)

58. In later testimony, Seibert offered that she probably did not email the letter to Tara Williams and could have faxed it. (N.T. 111)

59. In even later testimony, Seibert testified that she provided the Respondent with the letter at a meeting held on February 3, 2011. (N.T. 138)

60. The evidence fails to support that there was a meeting held on February 3, 2011. (N.T. 115)

61. Seibert returned to work on February 7, 2011. (N.T. 47; R.E. 7 p. 41)

62. Evaluation year 2010 was the first year the Respondent had employees do self-evaluations. (N.T. 157)

63. Seibert's prepared her self-evaluation for year 2010 prior to the incident that happened on January 21, 2011 and reflected Seibert's view that she needed improvement in all categories. (N.T. 123)

64. The Respondent's February 8, 2011 evaluation of Seibert's 2010 performance simply copied Seibert's evaluation of herself. (N.T. 122; C.E. 6)

65. By letter dated February 21, 2011, Tara Williams informed Seibert that according to policy, Seibert's 5 occasions of sick leave usage in the prior 12 month period was considered to be "unsatisfactory sick leave usage" and excessive and that "continued excessive sick leave usage may result in progressive disciplinary action." (N.T. 57-59; C.E. 7)

66. Tara Williams' February 21, 2011 letter to Seibert also provided that, for a period of a year, Seibert would be required to submit a doctor's excuse on a specific form furnished by the Respondent. (C.E. 7)

67. There is no dispute that Seibert's sick leave usage fits within the parameters of the Respondent's policy as outlined in Tara Williams' February 21, 2011 letter. (N.T. 59; C.E. 7)

68. By email dated March 8, 2011, Seibert informed Tara Williams that she had reviewed her personal file and had noted that the file did not contain documentation about Seibert being sent home on January 21, 2011 for 5 hours and that the personal file also did not contain Seibert's request for a transfer. (N.T. 59; C.E. 8)

69. Seibert testified that her private attorney had advised Seibert to review her file to ensure all the documents Seibert sent to the Respondent were in her file. (N.T. 104)

70. Although Seibert had discovered that her February 3, 2011 letter was not in her personnel file, Seibert did not furnish Tara Williams with a copy of the letter. (N.T. 59)

71. Similarly, Seibert did not attempt to give HR another copy of either Dr. Wendling's note or To Whom It May Concern letter. (N.T. 105)

72. By email to Tara Williams with a copy to Van Allen dated March 14, 2011, Raftery documented her version of the events of January 21, 2011. (C.E. 9)

73. Raftery's email described Seibert's action and tone as insubordinate and further described Seibert as unwilling to have a professional conversation and being only concerned about the changes to her job description. (C.E. 9)

74. Raftery's email also related that Seibert was taken to a private office because of her aggressive and non-cooperative behavior with Seibert simply saying "just write me up." (C.E. 9)

75. Seibert testified that she disagreed with Raftery's version by did not submit a written rebuttal. (N.T. 64)

76. Seibert initially testified that the tasks she was given in 2011 were not out of the ordinary but were things she normally did within the scope of her job description (N.T. 60, 113)

77. In a memorandum dated June 25, 2011, from Raftery to Seibert with copies to both Van Allen and Tara Williams, Raftery referenced having spoken to Seibert on February 11, 2011 about Seibert's "job performance and numerous errors" and asking Seibert whether Seibert needed help or if she did not understand something. (R.E. 4)

78. Raftery testified that when she would ask Seibert if she could help her, Seibert neither expressed remorse for the mistakes being made nor answered Raftery. (N.T. 242-243)

79. In the June 25, 2011 memo, Raftery summarized a particular error made by Seibert on March 15, 2011 where Seibert failed to verify an account and sent incorrect information to an insurance company. (R.E. 4)

80. In the memo, Seibert was informed that the memo was a written warning and that further disregard for work rules would result in further discipline including, termination. (R.E. 4)

81. There were also issues with Jason Keppel's performance and Raftery had to speak with Keppel as well. (N.T. 244)

82. In a June 28, 2011 email from Van Allen to both Seibert and Keppel, with copies to Raftery and Joel Calarco, Van Allen referenced speaking with both Seibert and Keppel and telling both of them of the need to work harder and to reduce mistakes. (N.T. 62; R.E. 5)

83. Van Allen's email also speaks about Raftery spending time investigating errors made by both Seibert and Keppel and that Raftery has given both of them advise in an effort to help them. (R.E. 5)

84. Van Allen's email further referenced that Raftery is keeping a list of mistakes both Seibert and Keppel were making so there can be a measurement of the problem. (N.T. 240; R.E. 5)

85. Seibert testified that she viewed Van Allen's email as "team building" and not that she was being targeted. (N.T. 108-109)

86. In a memorandum dated July 12, 2011, Raftery issued Seibert a second written warning for continuing deficiencies in Siebert's job performance. (N.T. 64; C.E. 10)

87. The July 12, 2011 memo was copied to both Van Allen and Tara Williams. (C.E. 10)

88. The memo listed specific dates of Seibert's failure to follow office protocol, failure to follow audit procedures, failure to verify accounts, mixing up patient information,

using incorrect social security numbers, and errors that caused an ambulance trip to not be billed. (C.E. 10)

89. The memo also referenced Van Allen's June 28, 2011 email to Seibert and Keppel, meetings in May where there had been discussions with Seibert about areas where she needed to be more careful, discussions about continued errors since June 28, 2011, and a meeting on July 6, 2011 where Seibert was told that sloppy work would not be tolerated. (N.T. 62; C.E. 10)

90. Raftery memorialized the counseling sessions she had with Seibert between February 9, 2011 and August 1, 2011 as follows: February 9 and 11; March 15, 29 and 31; April 1, 6, 21 and 26; May 3, 9, 11, 12, 17,m 19, 20 and 25; June 1, 2, 7 27 and 28; July 1, 6, 7, 8, 12, 1314, 25, 27 and 29; and August 1. (C.E. 19)

91. Seibert confirmed that she was being counseled regarding her job performance and that she was taking steps to improve. (R.E. 7 pp 49-50)

92. Seibert's private attorney advised her that it was important that the Respondent know as soon as possible that she had filed a PHRC Complaint, so, on July 12, 2011, Seibert gave Tara Williams a copy of the PHRC Complaint Seibert had verified on July 1, 2011 at PHRC Case No. 201100031. (N.T. 72, 73, 74-75; R.E. 6)

93. The PHRC served the Complaint at Case No. 201100031 on the Respondent on August 15, 2011. (N.T. 66)

94. On August 2, 2011, James M. Maley, Respondent's Deputy Director of Human Resources directed correspondence to Seibert advising her that she was being terminated because of behavior and continued job performance issues. (C.E. 11)

CONCLUSIONS OF LAW

1. The Pennsylvania Human Relations Commission (hereinafter "PHRC") has jurisdiction over the parties and the subject matter of these consolidated cases.

2. The parties have fully complied with the procedural prerequisites to a Public Hearing in this case.

3. Nikki Ann Siebert is an individual within the meaning of the PHRA.

4. City of Allentown – Department of EMS is an employer within the meaning of the PHRA.

5. To establish a *prima facie* case of disability discrimination, Siebert must prove by a preponderance of the evidence that:

   a. She is a disabled person within the meaning of the PHRA;

   b. She is otherwise qualified to perform the essential functions of the job with or without reasonable accommodation; and

   c. He suffered an adverse employment action as a result of discrimination.

6. Seibert failed to prove that she has a disability within the meaning of the PHRA because she failed to establish that her anxiety and panic attacks substantially limit her in one or more major life activities.

7. The determination of whether a Complainant has a disability is not based on the name of an impairment, but is based on the effect the impairment has on the life of the Complainant.

8. When a Complainant requests as an accommodation a transfer away from a supervisor to avoid stress, there is a presumption that such a request is unreasonable.

9. Seibert failed to overcome this presumption.

10. Seibert failed to establish that the City was obligated to engage her in an interactive process.

11. To establish a *prima facie* case of a retaliatory discharge, Siebert must show:

a. That she requested an accommodation for a disability;

b. That the City of Allentown – Department of EMS was aware of Siebert's request for an accommodation;

c. That subsequent to requesting an accommodation, Siebert suffered an adverse employment action; and

d. That a causal connection exists between the request for an accommodation and the adverse action.

12. Making a request for an accommodation of a disability is a protected activity under the PHRA.

13. Filing a Complaint with the PHRC is a protected activity under the PHRA.

14. Siebert has established a prima facie case of retaliation.

15. The City of Allentown – Department of EMS established that Seibert was terminated not in retaliation but because of performance issues.

OPINION

These consolidated cases arise on complaints filed by Nikki Ann Siebert (hereinafter "Siebert") against City of Allentown/Department of EMS (hereinafter "the City"). Seibert's first PHRC Complaint was filed on or about July 1, 2011, at PHRC Case Number 201100031. Generally, Seibert's first Complaint alleges that the City failed to accommodate Seibert's alleged disability, depression and anxiety with panic attacks and also harassed Seibert because of her alleged disability. Additionally, Seibert's PHRC Complaint at Case No. 201100031 alleges that the City harassed Seibert in retaliation for Seibert requesting an accommodation of her alleged disability. Subsequently, on or about October 24, 2011, Seibert filed another PHRC Complaint at PHRC Case No. 201102434. This second Complaint alleges that Seibert was terminated because of Seibert's alleged disability and in retaliation for having filed PHRC Case No. 201100031. Seibert's 201100031 claims of failure to accommodate and harassment allege violations of Section 5(a) of the Pennsylvania Human Relations Act of October 27, 1955, P.L. 744, as amended, 43 P.S. §§951 et seq. (hereinafter "PHRA"). Seibert's 201100031 retaliation claim alleges a violation of Section 5(d) of the PHRA. Additionally, the retaliation claim found in PHRC Case No. 201102434 also alleges a violation of Section 5(d) of the PHRA.

Pennsylvania Human Relations Commission (hereinafter "PHRC") staff conducted an investigation of both Complaints and found probable cause to credit all of Seibert's allegations of discrimination. In both cases, the PHRC and the parties attempted to eliminate the alleged unlawful practices through conference, conciliation and persuasion. The efforts were unsuccessful, and these cases were approved for a consolidated public hearing. The consolidated hearing was held on November 17, 2016, in Allentown,

Pennsylvania, before Carl H. Summerson, Permanent Hearing Examiner. The state's interest in Seibert's allegations was presented at the Public Hearing by Kelly M. Matos, Esquire. William S. Braveman, Esquire was Seibert's private attorney. Shawn M. Dethlefsen, Esquire represented the City. Post-Hearing briefs were submitted by the parties in June 2017.

Section 5(a) of the PHRA provides in relevant part:

> It shall be an unlawful discriminatory practice...for any employer because of the...non-job-related handicap or disability...of any individual to discharge from employment...such individual...or to otherwise discriminate against such individual ...with respect to compensation, hire, tenure, terms, conditions or privileges of employment,...if the individual...is the best able and most competent to perform the services required...(43 P.S. 955(a))

Sections 4(p) and 4(p.1) provide the Act's only clarification of the reach of the cited portion of Section 5(a). Section 4(p) states:

> The term "non-job-related handicap or disability" means any handicap or disability which does not substantially interfere with the ability to perform the essential functions of the employment which a handicapped person applies for, is engaged in or has been engaged in...

Section 4(p.1) states:

> The term "handicap or disability," with respect to a person, means:
>
> (1) a physical or mental impairment which substantially limits one or more of such persons major life activities;
>
> (2) a record of having such an impairment; or
>
> (3) being regarded as having such an impairment...
>
> (43 P.S. 954(p) and (p.1))

The PHRA provisions are supplemented by applicable regulations promulgated by the PHRC at 16 Pa. Code §44.4 which provide:

> *Handicapped or disabled person* - Includes the following:
>
> (i) A person who has or is one of the following:

(A) A physical or mental impairment, which substantially limits one or more major life activities.

(B) A record of such impairment.

(C) Regarded as having such an impairment.

(ii) As used in subparagraph (i) of this paragraph, the phrase:

(A) "physical or mental impairment" means a physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine or mental or psychological disorder, such as mental illness, and specific learning disabilities.

(B) "major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(C) "has a record of such impairment" means has a history of or has been misclassified as having a mental or physical impairment that substantially limits one or more major life activities.

(D) "is regarded as having such an impairment" means has a physical or mental impairment that does not substantially limit major life activities but that is treated by an employer or owner, operator, or provider of a public accommodation as constituting such a limitation; has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or has none of the impairments defined in subparagraph (i)(A) of this paragraph but is treated by an employer or owner, operator, or provider of a public accommodation as having such an impairment.

(16 Pa. Code §44.4)

Non-job-related handicap or disability – The term includes the following:

(i) Any handicap or disability which does not substantially interfere with the ability to perform the essential functions of the employment which a handicapped person applies for, is engaged in, or has been engaged in. Uninsurability or increased cost of insurance under a group or employe insurance plan does not render a handicap or disability job-related.

(ii) A handicap or disability is not job-related merely because the job may pose a threat of harm to the employe or applicant with the handicap or disability unless the threat is one of demonstrable and serious harm.

(iii) A handicap or disability may be job-related if placing the handicapped or disabled employe or applicant in the job would pose a demonstrable threat of harm to the health and safety of others.

(16 Pa. Code §44.4)

These definitions have been upheld as a valid exercise of the PHRC's legislative rule-making authority. See Pennsylvania State Police v. PHRC, 72 Pa. Commonwealth Ct. 520, 457 A.2d 584 (1983) and Pennsylvania State Police v. PHRC, 85 Pa. Commonwealth Ct. 624, 483 A.2d 1039 (1984), reversed on other grounds, 517 A.2d 1253 (1986) (appeal limited to propriety of remedy).

Absent direct evidence, to establish a *prima facie* case of disability discrimination under the PHRA, it is appropriate to use the three-step, burden shifting analysis set forth in *McDonnell Douglas Corporation v. Green,* 411 U.S. 792 (1973), a Complainant must prove that: (1) she is a disabled person within the meaning of the PHRA; (2) she is otherwise qualified to perform the essential functions of the job, with or without reasonable accommodation; and (3) she has suffered an adverse employment decision as a result of discrimination. Williams v. Philadelphia Housing Authority Police Department, 380 F.3d 751, 10 AD Cases 1607 (3rd Cir. 2004); and Taylor v. Phoenixville School District, 184 F.3d 296, 9 AD Cases 1187 (3rd Cir. 1999), citing Gaul v. Lucent Technologies, 134 F.3d 576, 580, 7 AD Cases 1223 (3rd Cir. 1998).

Before analyzing whether Seibert established a *prima facie* case of disability discrimination, we note that during the opening statement on behalf of the State's interest in Seibert's Complaint at 201100031, the harassment claims found there were abandoned. The harassment claim in Count 1 alleged a failure to consider Seibert for a transfer,

subjecting Siebert to verbal abuse for trivial and unreasonable matters and rummaging through Seibert's desk and going through the trash can near Seibert's work cubicle. The harassment claim in Count 2 generally alleged harassment in retaliation for requesting a reasonable accommodation. The alleged harassment involved marking Seibert sick and trying to use Seibert's sickness as the basis for future progressive discipline, being verbally abused by Seibert's supervisor, making unreasonable demands on Seibert, and requiring Seibert to attend a Conference in October 2011 and share a room with Seibert's supervisor.

After the case was heard at Public Hearing, it is understandable why the harassment allegations were abandoned. Indeed, many of the allegations found in Complaint 201100031 are simply not credible. In every case, issues of credibility present themselves. Here, a review of the entire record of these cases reveals that Seibert was less than credible.

Seibert's erosion of credibility begins with an analysis of the evidence presented regarding Seibert's relationship with Suzanne Raftery, (hereinafter "Raftery"). The record is clear that between when Seibert began employment with the City in February 2007 and October 2010, Seibert had no problems with Raftery. Seibert's testimony about the relationship she had with Raftery can best be described as confusing and inconsistent. At one point Seibert would say she had no problems with Raftery until January 2011, the point at which Seibert's job description was changed. (N.T. 29) Then Seibert would deny that things had been ok with Raftery prior to October 2011. (N.T. 32) In fact, in Seibert's February 3, 2011 letter to the City's HR department, (C.E. 5), Seibert attributed the need for 2 years doctor's care for anxiety to the "situation" with Raftery. As a whole, the evidence

presented in these cases reveals that until either October 2010 or January 21, 2011, Seibert and Raftery were more like friends than supervisor and employee.

Seibert's testimony offered that she would get in trouble if she spoke to anyone except Raftery, (N.T. 93), however, Seibert then contradicted that testimony by offering that there had not been problems and she did not get in trouble with Raftery because she kept her nose clean, kept quiet and did her job. (N.T. 32, 95) Seibert testified that Raftery did not like the work Seibert had done, however, for the first 4 years of Seibert's employment, the EPRs Seibert was given were outstanding. (N.T. 96; C.E. 2)

Smaller inconsistencies in Seibert's versions of acts and events further wear away her credibility. For instance, with respect to the meeting Seibert was called to on January 21, 2011, Seibert testified in a deposition that she was "immediately" sent home. (R.E. 7 p. 38) During the Hearing, Seibert offered that the meeting was approximately 5 minutes. (N.T. 156)

Paragraph 10 of Seibert's Complaint at Case No. 201100031 declares that Raftery "places me under unnecessary stress by making unreasonable requirements of me, many of which are not contained within either my old or new job descriptions." When Seibert testified, she offered that her task assignment were normal. (N.T. 60)

During Seibert's testimony she initially offered that prior to 2011, she had not been called into the office regarding her job performance. (N.T. 34) Seibert then changed this to say she had been called in monthly. (N.T. 61-62)

There is uncertainty in this case with regard to exactly when and what information Seibert conveyed to the City about her alleged condition and what her doctor recommended. What is clear is that, prior to January 2011, the City had been wholly unaware that allegedly, for the prior 2 years, Seibert had been under a doctor's care for

anxiety and panic attacks. What is clear is that Seibert's doctor prepared two writings that were offered as evidence in these cases: (1) a January 31, 2011 note offering that Seibert should be excused from work from January 31, 2011 through February 6, 2011 and that Seibert may return to work on February 7, 2011. (C.E. 3); and (2) a short, "To Whom it May Concern," letter also dated January 31, 2011 which states "I am the primary care physician of Ms. Seibert, and she is currently under my care. I saw her (sic) initially on 1/21/11, who presented with a panic attack. Her anxiety has continued, albeit improved with medication and I have advised her that she would benefit from a job transfer to a different area." (C.E. 4) Seibert's testimony regarding providing the City with these documents is once again inconsistent.

Added to the doctor's writings, Seibert offered into evidence a document dated February 3, 2011, written by Seibert that relates that Seibert had been under a doctor's care for the past 2 years for anxiety caused by the situation with Raftery. The writing then submits that after an incident on January 21, 2011, Seibert sought medical care and was diagnosed with anxiety attacks and panic attacks. The February 3, 2011 document then requests the "reasonable accommodation" of a transfer to a different unit to avoid contact with Raftery and where Seibert can do her job without undue stress. (C.E. 5)

In paragraphs 14 and 15 of her Complaint at 201100031, Seibert refers to her letter February 13, 2011 as a doctor's note. Of course, it is not. Further, paragraph 14 states that Seibert sent the February 3, 2011 "note" to the City's HR. During her testimony, Seibert offered that the February 3, 2011 "note" was delivered by her husband, then Seibert changed her testimony and offered that she thinks she sent it by email or hand-delivered it. (N.T. 53) Finally, Seibert testified that she gave C.E. 5 to the City's HR at a meeting on February 3, 2011. (N.T. 138) On this point, it is unlikely that there had been a meeting on

February 3rd as Seibert was off work from January 31, 2011 through February 6, 2011. In any event, Seibert offered a shifting version of how such an important document as the February 3, 2011 request for an accommodation got to the City.

Yet another inconsistency regarding how an important document was delivered to the City is found in the testimony of how the Complaint at 201100031 was delivered to the City before the PHRC actually served the document. Paragraph 11 of the Complaint at 201102434 states "I provided the Employer with a copy of the Complaint by handing it to Tara Williams on Wednesday July 13, 2011." Seibert then testified that she gave the Complaint to her husband to give to Tara Williams. (N.T. 75)

On the issue of seeking a transfer, paragraph 18 of Seibert's Complaint at 201100031 states, "Since February 3, 2011, several other positions have become vacant which have duties that I could perform; however, I have not been considered for transfer into those positons." During the Hearing, the only evidence offered about possible other positions was that, at some point, Seibert had applied for an IT position. (N.T. 150) No further clarification was offered regarding the purported "several other positions."

In summary, considering the conflicting evidence presented in this case as a whole, Seibert's credibility is found to be questionable. Conversely, the City's evidence was not found to be replete with inconsistencies and inaccuracies but was found to be generally coherent and factually plausible. Indeed, much of the analysis that follows turns on credibility. With this in mind, we turn back to Seibert's allegations.

First of all, there is a fundamental shortcoming in the evidence presented in the case regarding the alleged denial of an accommodation because of a disability. The very first thing Seibert must do is to establish that she has a disability. The ADAAA may have expanded the definition of disability and major life activities, however, the ADAAA left

untouched a Complainant's burden to prove she has a disability that results in a substantial limitation on a major life activity. *Estate of Murray v. UHS of Fairmount, Inc., 2011 U.S. Dist. LEXIS 130199 (E.D. Pa. Nov. 10, 2011); Becknauld v. COP, Dept. of Agriculture*, 2017 Pa. Commw. Unpub. LEXIS 19, (Commw. Ct. No 678 C.D. 2016, January 4, 2017); and *O'Donnell v. Colonial Intermediate Unit 20*, 2013 U.S. Dist. LEXIS 43103 (E.D. Pa. Mar. 27, 2013); *see also, Blackard v. Livingston Parish Sewer District,* 29 Am. Disabilities Cases 35 (M.D. La. 2014) *citing* Mann v. Louisiana High School Athletics Association, *535 F.App'x 405 (5th Cir. 2013).*

On this point, both of Seibert's Complaints declare that Seibert's protected disability is depression, anxiety and panic attacks. Literally, Seibert's two Complaints are the only places where "depression" is mentioned. The Doctor's January 31, 2011, "To Whom it May Concern" letter only references anxiety. (C.E. 4) The Doctor's January 31, 2011 note seeking to excuse Seibert from work from January 31, 2011 through February 6, 2011 does not mention a condition at all. (C.E. 3) Seibert's February 3. 2011 letter to the City's HR department does mention anxiety but specifically does not mention depression. In her February 3, 2011 letter, Seibert writes that on January 21, 2011, Seibert was diagnosed with anxiety attacks and panic attacks. (C.E. 5) In this regard, we note that the ADA was amended, effective January 1, 2009 and that the amendment to the ADA expanded coverage provided under the ADA. *See Garner v. Chevron Phillips Chemical Co., L.P.*, 834 F.Supp 2d 528 (S.D. Tx 2011) Under ADAAA regulations, which we find instructive, major depressive disorder, along with several other conditions, is listed as a type of impairment that will, at a minimum, substantially limit the major life activity of brain function. See 29 C.F.R. §1630.2(j)(3)(iii). The same regulations caution that "not every impairment will constitute a disability..." so a line must be drawn somewhere. 29 C.F.R. 1630.2(j)(1)(ii). In

Seibert's two cases, Seibert's evidence fails to present evidence that she suffered from depression let alone a "major depressive disorder." Accordingly, Seibert is unable to tap into the reforms crated by the ADAAA and the applicable regulations which list certain conditions that almost automatically establish a disability.

Fundamentally, what is missing here is evidence that Seibert's anxiety and panic disorders," whether treated or untreated, substantially limit a major life activity. We note here that anxiety and panic attacks are often episodic, however, the evidence presented fails to sufficiently demonstrate that either Seibert's anxiety or panic attacks meet the definition of disability by showing that either the anxiety or panic attacks substantially limited a major life activity when active. Clearly, the cognitive function of concentrating can be a major life activity. *See e.g. Gagliardo v. Connaught Labs, Inc.*, 311 F.3d 565 (3rd Cir. 2002). Similarly, thinking can be a major life activity. *See Phoenixville School District*, 184 F.3d 296 However, here, the evidence presented makes little effort to identify a substantial limitation on any major life activity. Literally, all Seibert did was to place into evidence a letter she wrote that described that she had anxiety and, that generally, she was taking medications for it. Further Seibert's testimony vaguely described several symptoms she experienced on January 21, 2011. Seibert offered no information about the severity, duration or frequency of the symptoms about which she testified. Further, Seibert offered no other evidence to indicate that there was a substantial impact on a major life activity. Seibert's evidence shows that she had been taking medications, however, the evidence presented failed to demonstrate that her conditions in their unmitigated states substantially limited a major life activity. As a whole, Seibert's evidence is not enough to meet the burden to establish that a Complainant has a disability that substantially limits a major life activity.

The circumstances of the present cases are similar to the situation presented in the case of *Estate of Murray v. UHS of Fairmount, Inc., 2011 U.S. Dist. LEXIS 130199 (E.D. Pa. Nov. 10, 2011).* In the *Estate of Murray,* a nurse claimed disability discrimination and a retaliatory termination. The Complainant in Murray had worked for approximately 2 years for a hospital prior to her termination and had been suffering from depression for the entire period as well as episodes of depression during the 4 years before her employment with the hospital. Because of Murray's depression, she was forced to take one and two week periods of leave from work several times. A doctor's note was supplied for each leave but the notes failed to specify that the mental illness was the reason for the absences. While Murray testified that she suffered from depression for the past 6 years, the court noted that "being diagnosed with depression, by itself, does not make an employee "disabled..." A Complainant must show that the depression substantially limits a major life activity. The *Estate of Murry* court found that the evidence presented was "incredibly sparse" and the brief mention of symptoms without details of duration, frequency or severity is insufficient to prove a substantial impact on a major life activity.

In *Taylor v. Principal Finance Group, Inc.*, 93 F.3d 155, 164 (3rd. Cir. 1999), the court noted that it is important to distinguish between an employer's knowledge of an employee's disability versus an employer's knowledge of any limitations experienced by the employee as a result of that disability. *Howard v. Steris Corp.,* 886 F. Supp. 2d 1279 (M.D. Ala. 2012) *citing Sever v. Henderson*, 381 F.Supp. 2d 405 (E.D. Pa. 2005). The law requires employers to reasonably accommodate limitations not disabilities. The determination of whether an individual has a disability is not necessarily based on the name or diagnosis of the impairment, but rather on the effect of that impairment on the life of the individual. A good example of this is found in the case of *Alston v. Park Pleasant, Inc.*, 679 Fed. Appx.

169 (3rd. Cir. 2017). In *Alston*, the Complainant had cancer, a condition that generally qualifies as a disability. However, to make the determination of whether an impairment substantially limits a major life activity requires an individualized assessment. To make such an assessment, courts require some evidence of the Complainant's substantial limitation they experience even where the limitation seems self-evident in context. *Citing Albertson's Inc. v. Kirkingburg*, 527 U.S. 555 (1999). Here, Seibert has not provided sufficient competent evidence that her anxiety and panic attacks substantially limit her in one or more major life activities.

Generally, PHRA claims are interpreted and analyzed identical to claims under the ADA. *Becknauld v. COP, Dept. of Agriculture*, 2017 Pa. Commw. Unpub. LEXIS 19, (Commw. Ct. No 678 C.D. 2016, January 4, 2017); *See also, O'Donnell v. Colonial Intermediate Unit 20*, 2013 U.S. LEXIS 43103 (E.D. Pa. Mar. 27, 2013), *citing Slagle v. County of Clarion*, 435 F.3d 262 (3rd Cir. 2006); *Fasold v. Justice*, 409 F3d 178 (3rd Cir. 2005); *Kelly v. Drexel University*, 94 F.3d 102 (3rd Cir. 1996); *Alston v. Park Pleasant, Inc.* 679 Fed. Appx. 169 (3rd Cir. 2017); *Imler v. Holidaysburg Am. Legion Ambulance Service*, 1999 Pa. Super. 127, 731 A.2d 169, 173-174 (Pa. Super. 1999); and *Taylor v. Phoenixville School District*, 184 F.3d 296 (3rd. Cir. 1999). Because of the similarities between the ADA and the PHRA, we do look to the federal cases interpreting the ADA for guidance in both interpreting and enforcing the PHRA.

In the PHRC post-hearing brief on behalf of the Complaints, an assertion is made that the City failed to engage Seibert in an interactive process and that this failure resulted in the City failing to provide Seibert with the transfer she requested. Importantly, the only accommodation Seibert requested was a transfer away from her Supervisor, Raftery. (C.E.

5) Of course, it is appropriate to consider the reasonableness of accommodation requests on a "case-by-case" basis.

Numerous courts have declared that there is a "presumption... that a request to change supervisors is unreasonable, and the burden of overcoming that presumption (i.e., of demonstrating that, within the particular context of plaintiff's workplace, the request was reasonable) therefore lies with the [Complainant]. *Kennedy v. Dresser Rand Co.* 193 F.3d 120, 122-23 (2nd Cir. 1999). Under the circumstances of Siebert's cases, Seibert failed to overcome this presumption. *See Bento v. City of Milford*, 213 F.Supp. 3d 346 (D.C. Conn. 2016). In this case, the evidence shows that Seibert is the one whose attitude shifted towards the negative and her performance steadily deteriorated simply because her job description had been changed in such a way as to mandate that she attend after work training sessions.

Some courts have held that proposed accommodations seeking transfer to a position where an employee would not be subjected to stress by either co-workers or supervisors is "unreasonable" as a matter of law. *See Gaul v. Lucent Technologies, Inc.*, 134 F.3d 576 (3rd Cir. 1998). The court in *Gaul* also observed that Gaul's employer's failure to investigate into reasonable accommodations was "unimportant" given that Gaul's request to be transferred to a different supervisor was an unreasonable accommodation request. *Gaul* at 581.

The major life activity of working is not 'substantially limited' if a Complainant merely cannot work under a certain supervisor because of anxiety and stress... *Gaul* at 580. In PHRC Complaint at Case No. 201100031, Seibert cannot establish that she has a disability and is unable to show that the City had an obligation to engage her in an interactive process. *See Theilig v. United Tech. Corp.*, 415 Fed. Appx. 331 (2nd Cir. 2011), citing

Brady v. Wal-Mart Stores, Inc., 531 F.3d 127 (2nd Cir. 2008). Accordingly, the Complaint at 201100031 should be dismissed.

In Seibert's PHRC Complaint at Case No. 201102434, Seibert alleges that she was discharged on August 2, 2011, in retaliation for having filed PHRC Complaint at Case No. 201100031. Seibert could have attempted to prove her retaliation claim either by direct evidence or circumstantial evidence. Here, Seibert could not produce direct evidence of discriminatory retaliation so she is left with attempting to prove her claim utilizing the three part evidence procedures outlined in the case of *McDonnell Douglas v. Green*, 41 U.S. 792 (1973).

Under *McDonnell Douglas*, a Complainant must establish a *prima facie* case of retaliation. By doing so, a Complainant eliminates the most common nondiscriminatory reasons for the alleged adverse action and creates a presumption of discrimination. *Texas Dept. of Community Affairs v. Burdine,* 450 U.S. 248 (1981). Once a *prima facie* case is established, a Respondent must produce evidence that support a legitimate nondiscriminatory reason for the alleged action. *Fuentes v. Perskie*, 32 F.3d 759 (3rd Cir. 1994), *quoting McDonnell Douglas*, 411 U.S. at 802. If a Respondent produces such evidence, a Complainant must then produce some evidence from which the fact finder could reasonably either (1) disbelieve the Respondent's articulated legitimate reasons; or (2) believe that a discriminatory reason was more likely than not a motivating cause of the Respondent's action. *Fuentes*, 32 F.3d at 764.

To establish a prima facie case of discriminatory retaliation, Seibert must demonstrate that; (1) she engaged in a protected activity; (2) the City was aware that Seibert filed a PHRC discrimination claim; (3) after Seibert engaged in protected activity, Seibert was terminated; and (4) there is a causal connection between the protected activity

and the Respondent's termination of Seibert. *Uber v. Slippery Rock University*, 887 A.2d 362 (Pa. Cmwlth. Ct. 2005); and *Robert Wholey Company, Inc. v. PHRC*, 606 A.2d 982 (Pa. Cmwlth Ct. 1992).

Here, on July 1, 2011, Seibert filed a PHRC Claim at Case No. 201100031. Clearly, the filing of a PHRC Complaint is participation under Section 5(d) of the PHRA which states in pertinent part, "It shall be an unlawful discriminatory practice....[f]or any ... employer...to discriminate in any manner against any individual because such individual has...made a charge...under [the PHRA.]"

The Post-Hearing Brief on behalf of the state's interest in Seibert's Complaints submits that the protected activity Seibert engaged in was Seibert's request for an accommodation. While Seibert did request what Seibert believed to have been a reasonable accommodation, and a request for an accommodation of a disability is participation in the arena of retaliation, Seibert's Complaint at Case No. 201102434 only alleges that Seibert was terminated because she filed the PHRC Complaint at 201100031. Accordingly, Seibert meets the first element of the requisite *prima facie* showing because she filed a PHRC Complaint, not because she requested an accommodation.

We note that unlike a general disability claim, a retaliation claim does not require a Complainant to demonstrate a disability, but only that the Complainant filed a claim. Whenever a Complaint is filed, there is protection afforded against retaliation even in those instances where the underlying allegation is meritless.

The second element of the requisite *prima facie* showing is met with evidence that Seibert hand delivered a copy of her PHRC Complaint at Case No. 201100031 to the City's HR department on July 13, 2011. Seibert's termination did not occur until August 2, 2011,

accordingly, Seibert has shown that the City knew of the Complaint Seibert filed on July 1, 2011.

Clearly, Seibert was terminated on August 2, 2011, thus, Seibert established the 3rd element of the requisite *prima facie* showing. This brings us to the final element of a *prima facie* showing – whether Seibert can establish a causal connection between her participation in a protected activity and the adverse action taken against her.

Evidence of a causal link may be satisfied by evidence of circumstances which justify an inference of retaliatory motive. *Jennings v. Tinley Park Community Consolidated School District No. 146*, 796 F.2d 962 (7th Cir. 1986), *cert denied* 481 U.S. 1017 (1987). Further, proximity in time between the filing of a PHRC claim and a Complainant's termination raises an inference of a causal connection between the protected activity and the termination. *Farrell v. Planters Lifesavers Co.*, 106 F.3d 271 (3rd Cir. 2000), *See also Oliver v. Digital Equipment Corp.*, 846 F.2d 103 (1st Cir. 1988).

While the post-hearing brief on behalf of the state's interest in the Complaint argues that retaliatory animus is shown by the City beginning to document Seibert's errors shortly after she requested to be transferred away from Raftery, this is not the evidence used to show temporal proximity in this case. The temporal proximity here is in the time frame between the City receiving a copy of the Complainant's Complaint at Case No. 201100031 and Seibert's termination, a period of only several weeks. Under the circumstances here, we find that Seibert is able to sufficiently establish a *prima facie* case of retaliatory termination.

The PHRC post-hearing brief on behalf of the Complaint concedes that the City had provided a legitimate, non-retaliatory reason for terminating Seibert. Indeed, the City easily meets their production burden of articulating a non-discriminatory reason for Seibert's

termination. The City submits that sometime after January 2011, general unsatisfactory job performance and numerous serious errors being made by Seibert began to be continually documented by Raftery at the instruction of Van Allen. (R.E. 4, 5). Further, the City notes that Raftery met often with Seibert in an effort to help and counsel her. Seibert's own testimony confirmed that she was being counseled and was taking steps to improve her work performance. (R.E. 7 at pp 49-50). Frankly, you do not have to improve something this is not defective. Clearly, Seibert was told that her errors would not be tolerated and warned that if her job performance deficiencies continued she could be terminated.

The City having successfully articulated non-discriminatory reasons for Seibert's termination, the burden of proof shifts to Seibert to establish by a preponderance of the evidence that the City's articulated reasons for her termination were a pretext for retaliation. *St. Mary's Honor Center v. Hicks,* 125 L.Ed. 2d 407 (1993). Employers are rarely so cooperative as to "include a notation in the personnel file that the firing is for a reason expressly forbidden by the law." Therefore, in the absence of direct evidence, it is sufficient to show that the proffered justification is pretextual. *Texas Dept. of Community Affairs v. Burdine,* 450 U.S. 248 (1981). Further, this showing can be by circumstantial evidence. *See, U.S. Postal Service Board of Governors v. Aikens*, 460 U.S. 711 (1983).

In the post-hearing brief on behalf of the state's interest in the Complaint, little effort is made to attempt to show that the City's reasons are a pretext for discrimination. In fact, the argument is made that the City "failed to produce and competent evidence in support of its defense." On the contrary, the City points to a host of items showing Seibert's marginal deteriorating performance. As early as February 11, 2011, the evidence shows that Raftery spoke with Seibert about her job performance and to ask if Seibert needed help of did not understand something. This was documented in a memorandum to Seibert dated April 25,

2011 with copies being sent to Van Allen and Tara Williams. The April 25, 2011 memorandum also reviewed another situation regarding improper billing. (R.E. 4) This was Seibert's first written warning that careless mistakes would not be tolerated. Four days later, Van Allen directed a memorandum to both Seibert and Jason Keppel regarding his expectation that both of them needed to work harder and make fewer mistakes. Also, in that memorandum, both Seibert and Keppel were told that Raftery was keeping a list of problems so the extent of the problem could be measured. (R.E. 5).

The well documented evidence shows that the next written warning Seibert received was through a memorandum from Raftery dated July 12, 2011. In this unrefuted memorandum, Raftery memorialized earlier meetings where Seibert's job performance had been discussed. (C.E. 10). Finally, placed in evidence was a "counseling record February 9, 2011 to August 1, 2011." (C.E. 19). This document shows that Seibert and Raftery met on a regular basis to discuss Seibert's performance and was not rebutted except for Seibert generally offering that she disagreed with Raftery's warnings. (N.T. 65). An employee's self-serving remarks standing alone are insufficient to raise doubt as to the credence of an employer's explanation for a termination. Schultz v. General Electric Capital Corp., 76 F.3d 329 (7th Cir. 1994). Complainant's must do more than challenge the judgment of a Respondent through their own self-interested assertions. Here, Seibert does not point to any facts to support that any of the outlined observations of Seibert's deteriorating performance were incorrect in any way. In fact, Seibert did not even directly challenge any of the performance concerns outlined.

Here, there is clear evidence that Jason Keppel was under the same scrutiny as Seibert, however, there was no effort made to make a comparison with respect to how he was treated versus Seibert. For instance, there was no evidence presented that Keppel's

performance was as bad as Seibert's but that he did not receive warnings for poor job performance.

In summary, Seibert has failed to present sufficient evidence to prove that the City's non-discriminatory reasons for her termination were a pretext for retaliation. For this reason, Seibert's Complaint at PHRC Case No. 201102434 should also be dismissed.

COMMONWEALTH OF PENNSYLVANIA

GOVERNOR'S OFFICE

PENNSYLVANIA HUMAN RELATIONS COMMISSION

NIKKI ANN SEIBERT,	:	
Complainant	:	
	:	
v,	:	**PHRC CASE NO. 201100031**
	:	**EEOC CHARGE NO. 17F201162085**
	:	
CITY OF ALLENTOWN,	:	**PHRC CASE NO. 201102434**
DEPARTMENT OF EMS,	:	**EEOC CHARGE NO. 17F201260339**
Respondent	:	

RECOMMENDATION OF PERMANENT HEARING EXAMINER

Upon consideration of the entire record in the above-captioned matter, the Permanent Hearing Examiner finds that Seibert has failed to proven she was discriminatorily denied an accommodation, in violation of Section 5(a) of the PHRA, and terminated in retaliation for having filed a PHRC Complaint Section 5(e) of the PHRA. It is, therefore, the Permanent Hearing Examiner's recommendation that the attached Findings of Fact, Conclusions of Law, and Opinion be approved and adopted. If so, approved and adopted, the Permanent Hearing Examiner further recommends issuance of the attached Final Order

PENNSYLVANIA HUMAN RELATIONS COMMISSION

October 18, 2017
Date

By: _____
Carl H. Summerson
Permanent Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA

GOVERNOR'S OFFICE

PENNSYLVANIA HUMAN RELATIONS COMMISSION

NIKKI ANN SEIBERT,	:	
Complainant	:	
	:	
v,	:	**PHRC CASE NO. 201100031**
	:	**EEOC CHARGE NO. 17F201162085**
	:	
CITY OF ALLENTOWN,	:	**PHRC CASE NO. 201102434**
DEPARTMENT OF EMS,	:	**EEOC CHARGE NO. 17F201260339**
Respondent	:	

FINAL ORDER

AND NOW, this 27th day of November, 2017 after a review of the entire record in this matter, the Pennsylvania Human Relations Commission, pursuant to Section 9 of the Pennsylvania Human Relations Act, hereby approves the foregoing Findings of Fact, Conclusions of law, and Opinion of the Permanent Hearing Examiner. Further, the Commission adopts said Findings of Fact, Conclusions of Law, and Opinion into the permanent record of this proceeding, to be served on the parties to the complaint and hereby.

ORDERS

1. That the Complaints in these cases be, and the same hereby are dismissed.

PENNSYLVANIA HUMAN RELATIONS COMMISION

By: _____

M. Joel Bolstein, Esquire
Interim Chairperson

Attest:

_____

Dr. Raquel O. Yiengst
Vice Chairperson