

**BEFORE THE PERSONNEL BOARD OF THE STATE OF ALABAMA  
IN THE MATTER OF THE APPEAL OF**

**SUSAN HAWK**

**ORDER**

**August 16, 2017**

This matter came before the Board upon the Employee filing a complaint of discrimination while she was employed with the Department of Rehabilitation Services (“DRS”). This matter was assigned to Administrative Law Judge Randy C. Sallé. A hearing was held on May 24, 2017. The Administrative Law Judge’s Recommended Order is now before the Board for consideration.

The Employee charges that DRS violated State Personnel Board Rule 670-X-4-.01-.03, which prohibits discrimination against any person with regard to promotion, retention, or any other personnel action because of race, sex, national origin, age, handicap, or other non-merit factor.

The Employee’s complaint was filed on or about March 10, 2017 and it alleges that DRS discriminated against her due to her race, sex, or national origin. The Employee asserts that she was discriminated against when in October 2015 she was assigned to see clients in Randolph County. The Employee claims she was assigned these duties because she is Caucasian.

Having reviewed the documentary evidence and having heard the testimony presented at the hearing and having observed the witnesses’

demeanor and assessed their credibility, the undersigned finds the greater weight of the evidence supports the following findings of facts.

The Employee worked for DRS as a Rehabilitation Counselor beginning in June 1996. The Employee resigned her position with DRS in January 2001 to pursue an opportunity to work as a school counselor. The Employee returned to DRS as a Rehabilitation Counselor in June 2013 and remains in that job classification. The Employee's personnel file shows she exceeded standards in her job and does not have prior disciplinary issues.

The Employee worked as a Rehabilitation Counselor in the State of Alabama Independent Living ("SAIL") Medicaid Waiver Program for DRS, where her job required her to travel to clients' homes on a regular basis. From June 2013 until October 2015, the Employee's primary areas of travel included Lee County and Tallapoosa County. Sometime around March 2015, one of her clients moved from Tallapoosa County to Randolph County. The Employee started traveling to Randolph County in March 2015 to check on this one client.

In October 2015, another SAIL nurse volunteered to help DRS's Anniston Office get caught up with vendor audits. The SAIL Director and this SAIL nurse had a meeting. During the meeting, the two discussed what to do with the clients in Randolph County since this nurse would not have time to visit them and help the Anniston Office with vendor audits. The Director was informed that the Employee was already going to Randolph County. The Director

testified she assigned the Randolph County clients to the Employee because the Employee was already traveling to that county to see one of her own clients.

When the Employee was assigned the Randolph County clients, her clients in Lee County were reassigned. The Employee did not enjoy traveling to Randolph County. The Employee complained that Randolph County was too far for her to drive. The Employee also complained to one of her coworkers that Randolph County was nothing but woods and dirt roads and there were no places to eat.

In late March 2016, the Employee complained about travel to Randolph County and some back pain she was experiencing. The Employee was advised to complete an accommodation worksheet. On April 13, 2016, the Employee submitted an Employee Job Accommodation Worksheet. The Employee's doctor concluded that she should limit her driving to 1-1.5 hours maximum, per trip, on paved roads.

On or about June 20, 2016, the Employee wrote a letter to the DRS Commissioner complaining of discrimination. The Employee maintained that her Lee County cases were removed from her and the reason was race discrimination.

In the present action, the Employee was assigned to visit four clients in Randolph County after her supervisor found out she was already traveling to Randolph County to visit a current client who relocated to the area. Furthermore, the Employee's Lee County cases were reassigned. The

evidence in this case fell far short of establishing that the Employee's assignment to Randolph County amounted to an adverse employment action. There was no testimony introduced into evidence to indicate this reassignment affected her prestige, amount of pay, or job classification. Moreover, there was no evidence introduced that suggested this responsibility extended beyond the scope of the Employee's normal duties as a Rehabilitation Counselor with DRS. It is very clear that the Employee was unhappy with the reassignment; however, that is not actionable under the law. Thus, the Employee has failed to establish a prima facie case of discrimination.

The Administrative Law Judge found that the substantial weight of the evidence failed to demonstrate DRS engaged in race-based discriminatory conduct against the Employee. Moreover, the evidence established that the Employee did not suffer an adverse employment action and the remedy she seeks is unavailable through the State Personnel Board. Thus, the Employee failed to establish a claim of discrimination under ALA. ADMIN. CODE r. 670-X-4-.01-.03.

The Board has carefully considered the Administrative Law Judge's Recommended Order and it is therefore the Order of this Board that the decision to dismiss the complaint is hereby affirmed.

*Jackie Graham*  
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JACKIE GRAHAM  
SECRETARY

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EVAN M. THORNTON  
MEMBER

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