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File: EMP-2016-10169

Citation: 2017 FPSLREB 49

Federal Public Sector Labour Relations and Employment Board Act and *Public Service Employment Act*

Before a panel of the Federal Public Sector Labour Relations and Employment Board

BETWEEN

JAMES ELLIOTT JONES

Complainant

and

THE DEPUTY MINISTER OF NATIONAL DEFENCE

Respondent

and

OTHER PARTIES

Indexed as
Jones v. Deputy Minister of National Defence

In the matter of a complaint of abuse of authority - paragraph 77(1)(a) of the *Public Service Employment Act*

Before: Bryan R. Gray, a panel of the Federal Public Sector Labour Relations and Employment Board

For the Complainant: Louis Bisson, representative

For the Respondent: Amita Chandra, counsel

For the Public Service Commission: Lesa Brown, Counsel

Heard at Ottawa, Ontario,
November 8 and 9, 2017.

Introduction

[1] James Elliott Jones ("the complainant") participated in an internal advertised appointment process at the Department of National Defence ("the respondent") for the position of senior intelligence analyst, classified at the AS-6 group and level. He has a disability and requested to be accommodated to write a test assessing his qualifications. The respondent granted the request and implemented the accommodation measures recommended by the complainant's health professional.

[2] Upon receiving a failing grade on the test and being eliminated from the appointment process, the complainant alleged that the respondent discriminated against him by failing to make additional efforts to determine his needs and further accommodate him. He claims in this complaint that in so doing, the respondent abused its authority.

[3] For the reasons set out below, I find that in granting the accommodation that was requested of it prior to the test, the respondent reasonably accommodated the complainant. Given this finding, I conclude that there was no discrimination and no abuse of authority, and dismiss the complaint.

[4] The complaint was filed with the Public Service Labour Relations and Employment Board on February 3, 2016. On June 19, 2017, *An Act to amend the Public Service Labour Relations Act, the Public Service Labour Relations and Employment Board Act and other Acts and to provide for certain other measures* (S.C. 2017, c.9) received Royal Assent, changing the name of the Public Service Labour Relations and Employment Board and the title of the *Public Service Labour Relations and Employment Board Act* to, respectively, the Federal Public Sector Labour Relations and Employment Board ("the Board"), and the *Federal Public Sector Labour Relations and Employment Board Act* (S.C. 2013, c. 40, s. 365, *FPSLREBA*).

Facts

[5] The complainant has well over a decade of experience in both a uniformed military capacity and as a non-uniformed staff member working in military intelligence. By all indications, he has had a successful career in a very fast-paced and demanding work environment where the well-being of others depends upon his efforts.

[6] The complainant applied in an advertised appointment process for an AS-6 position (process number 14-DND-IA-OTTWA-389838), entitled Senior Intelligence Analyst, Canadian Force Intelligence Command. It closed on March 13, 2015, and he was invited to participate in the written test to assess several of the essential qualifications for the position.

[7] The complainant had been diagnosed with a specific learning disorder, which requires workplace accommodation. Upon being invited to write the test, he replied in writing and requested a specific accommodation to allow his participation. The respondent provided the accommodation as requested.

[8] The complainant wrote the test and has since filed this complaint under s. 77(1) of the *Public Service Employment Act* (S.C. 2003, c. 22, ss. 12, 13; "the *Act*") alleging that the respondent abused its authority in the assessement of merit by failing to accommodate him and thereby discriminating against him.

Issues

[9] Did the respondent discriminate against the complainant by providing only those accommodations for the test requested in his letter, by failing to make further inquiries, and by failing to take into account a workplace accommodation request that was already under consideration?

Analysis

[10] Section 77 of the *Act* provides that an unsuccessful candidate in the area of selection for an internal advertised appointment process may file a complaint with the Board that he or she was not appointed because of an abuse of authority. As held by the Board, the seriousness and nature of any errors or omissions, and the degree to which any conduct is improper, may determine whether an abuse of authority occurred.

[11] The complainant bore the burden of proof, which required him to present sufficient evidence for the Board to determine that on a balance of probabilities, a finding of abuse of authority was warranted (see *Tibbs v. Deputy Minister of National Defence*, 2006 PSST 8 at paras. 49, 50, 55, 65, and 66).

[12] Section 80 of the Act provides that in considering whether a complaint is substantiated under s. 77, the Board may interpret and apply the *Canadian Human*

Rights Act (R.S.C., 1985, c. H-6, *CHRA*). Section 7 of the *CHRA* provides that it is a discriminatory practice, in the course of employment, to differentiate adversely in relation to an employee, on a prohibited ground of discrimination. Section 3 of the *CHRA* lists the prohibited grounds of discrimination, which include disability.

[13] In order to prove that the respondent engaged in a discriminatory practice, the complainant must first establish a *prima facie* case of discrimination. As the Supreme Court of Canada stated in *Ontario Human Rights Commission v. Simpsons-Sears*, [1985] 2 S.C.R. 536, "A *prima facie* case in this context is one which covers the allegations made and which, if they are believed, is complete and sufficient to justify a verdict in the complainant's favour in the absence of an answer from the respondent-employer."

[14] In cases such as the complainant's, an employer can answer a case of *prima facie* discrimination by showing that it reasonably accommodated the employee or that accommodating the employee's needs would impose undue hardship on it (s. 15(2) of the *CHRA*; see *Boivin v. President of the Canada Border Services Agency*, 2017 PSLREB 8 at para. 59 ("*Boivin PSLREB*")).

[15] The complainant testified that he was invited by email on June 1, 2015, to participate in the written test. He replied on June 2 by email to the respondent, stating the following:

…

> *Thank you for the news of my making it to the next level of the AS-06 process. As per your directions I am writing to inform you that I have a scheduling conflict for the test related to the 14-DND-IA-OTTWA-389838 process. I will be attending a tradecraft course, taught by foreign instructors, from June 15-18. The AS-06 test is set for June 18 from 0900-1200. I propose the alternate dates of June 19, 24, or 25 in order to not delay the process for too long.*
>
> *Also, I am writing to request additional time to complete the test. My goal is to be finished the evaluation in the standard time allotted. However, as outlined in my medical report from 2013, I require a quiet location and additional time to read, organize and write comprehensive responses during evaluations. This is the first time I have asked for an accommodation related to a job application process. If there is not a standardized time extension for Public Servants with disabilities I suggest 0900-1400 as a time widow to complete the test. This equates to one and a half times the hours given*

> *to complete the test and provides time for heath breaks. I'm not sure what documents or correspondence you need to verify my disability status. If it helps I am currently receiving workplace accommodations under a Service Level Agreement between DND and Shared Service Canada (SLA-ACT0000006121).*
>
> *My apologies for complicating the testing phase of this process. I look forward to hear from you about the alternate arraignments we can make so that I can complete the AS-06 test and hopefully file that role with CFINTCOM.*
>
> *Jim*
>
> [*Sic* throughout]

[16] Within minutes, the respondent replied, stating as follows: "I will forward your request to the hiring manager for their action. Thank you …". On the next day, June 3, 2015, the respondent replied again, asking for a copy of the doctor's note or SLA (Service Level Agreement) for the complainant's accommodation request.

[17] The complainant replied on the same day and attached a copy of his psychologist's report. He added as follows: "Here is the copy of the evaluation that outlines my disability. As it relates to my request the specific information you need is found on the last sentence on page 7, the first paragraph on page 8 and the second last paragraph of page 8 under 'Recommendations'."

[18] Those parts of the report noted in the last quotation state as follows:

> [Page 7:]
>
> …
>
> *While James is able to understand what he reads at a high level, it takes him longer than average to read through novel materials for meaning due to relative weaknesses in decoding skills.*
>
> …
>
> [Page 8:]
>
> …
>
> *The content of James's written work is highly sophisticated and relevant but the organization and mechanical aspects of*

> *writing impede efficiency and accuracy. Mathematics is an area of strength for James when he is afforded the necessary time to complete the work to the best of his ability.*
>
> …
>
> ***James requires access to the accommodations legally provided to government workers with learning disabilities/disorders.***
>
> …
>
> [Emphasis in the original]

[19] I also note the following recommendations in the report that the complainant chose not to highlight in his email to the respondent:

> [Page 8:]
>
> …
>
> *Assistive technology would be particularly useful to help James with increased efficiency in the work place.* ***James requires regular access to an assistive technology consultant*** *who can help him to choose the specific software programs that will compensate for his learning disorder as well as to* ***train him to use technological solutions effectively in the work place.***
>
> [Page 9:]
>
> …
>
> *For reading, James requires the use of a* ***text to voice program*** *… so that he can scan and listen to work related reading materials.*
>
> *For writing, James requires a* ***voice to text program*** *… so that he can verbalize ideas as they are transformed into written form. He also requires a* ***word prediction software*** *… that will help to minimize spelling errors and a* ***graphic organization program*** *… that will help him to organize ideas in writing in a concise manner.*
>
> …

[20] The complainant emailed the respondent on June 9, 2015, asking if it could do the following:

> *… please confirm that you received my confidentiality agreement by fax? I sent it last week and the fax print out*

> *says "OK". In light of my requests and all the effort that is going into addressing them, I don't want a missing agreement to derail my taking the test.*
>
> *Many thanks,*
>
> *Jim.*

[21] The respondent replied minutes later that it had received the agreement.

[22] Then on June 12, the complainant emailed the respondent again, stating the following:

> *I know the request for accommodation process takes time but I was wondering if you have any insight on when I will be writing the test? I've been told by persons in authority here that it will be the 18th as planned. However, I'm also hearing that the pre-reading package has gone out and I did not receive that email. Should I be preparing to take the test on the 18th? If so could someone please send me any reading material today? I am out of the office on a course next week and will only be able to check my email or voice mail once a day.*
>
> …

[23] The respondent replied the same afternoon and told the complainant the following: "We're still researching the requirements we will need for your accommodation. We will provide you with updates as soon as we have them …".

[24] Through a member of its human resources staff, Thavone Bounsouk, the respondent replied on June 17 and stated to the complainant as follows:

> *Note that I will need to validate with the psychologist (who provided the assessment) on the amount of time required so that you are given the accommodation required for the exam.*
>
> *Please let me know.*
>
> *Should you have any questions, do not hesitate to contact me.*

[25] The complainant replied promptly and provided the necessary authorization for the respondent to ask questions of his psychologist.

[26] On June 22, 2015, the respondent emailed the complainant with an exam invitation. Among other things, it stated the following: "Further to your

accommodation request you have been given an extra 2 hours for the exam… You will have a maximum of (5) hours to complete the exam." The invitation also stated the following: "If you have any health or physical limitations, which may adversely affect your performance during any phase of the selection process, or have other special accommodation needs, please advise us in advance so that we may make appropriate arrangements."

[27] Later on the same day, the complainant replied to the respondent, confirming that he had space reserved at work so that he would be able to take the test on July 2 from 0900 to 1400. Later that afternoon, having inquired as to materials for test preparation and having been told that he would receive them one week before the test, he replied again to the respondent, stating as follows: "Great! Thank you. I'm excited for the 25th. Until then…".

[28] In addition to the email correspondence noted earlier, the complainant testified that while he was waiting for a reply to his request for accommodation, he asked his commanding officer, Commander Michael Barefoot, if he knew of whether the accommodation request and a later date to write the test would be granted. The complainant testified that Cdr. Barefoot assured him not to worry and that his accommodation would be granted.

[29] The complainant also testified that he received a phone call from Ms. Bounsouk, who informed him that a Personnel Psychology Centre report was not being commissioned to assess his particular accommodation needs.

[30] Robert McScheffrey, the director general of the Personnel Psychology Centre (PPC) at the Public Service Commission (PSC), testified at the hearing. He testified that the PPC is a centre of excellence in assessment tools and that it is available for departmental clients, such as the respondent, which may wish to have it assess accommodation needs to ensure that a test that is being administered by the department is barrier-free.

[31] Mr. McSheffrey testified that if a test is departmental and not from the PSC, an accommodation assessment is conducted only when the department responsible for the conduct of the test requests one. He also testified that a department is not required to contact the PPC for advice or a report when it is considering accommodations in the administration of its own test. He also explained that if a

departmental test is being administered, then the department is in the best position to determine accommodations as it is the most knowledgeable about its own test.

[32] Mr. McSheffrey also testified that each accommodation request and related PPC assessment is treated as unique, as every test may be administered differently and could potentially be applied to different sets of essential qualifications, even if it is related to an appointment for the same position as another test. Perhaps more importantly, he also stated that a person's accommodation needs can change over time and that the employer should not make assumptions as to a person's health or accommodation needs.

[33] Cmdr. Barefoot was the head of Intelligence Command and the chairperson of the selection board for the appointment in question. He testified that when he became aware of the complainant's request for accommodation, he asked Ms. Bounsouk to contact the psychologist who authored the report provided by the complainant for advice. He stated that he wanted the test to be fair for the complainant.

[34] Cmdr. Barefoot testified that Ms. Bounsouk told him that the complainant's psychologist recommended that 50% extra time (1.5 hours) be allowed to accommodate the complainant's special needs. However, the Commander decided to grant the full 2 hours extra of time the complainant requested as the Commander said that he wanted to err on the side of caution to meet the complainant's needs without giving him an unfair advantage over other persons also seeking the appointment.

[35] When asked if the complainant communicated any concerns or displeasure to him about the decision to grant the accommodation request, the Commander testified that he did not receive anything about the complainant having issues or concerns. He also stated that in granting the accommodations, he hoped that the complainant would be satisfied and that he would be able to write the test without any problems.

[36] Ms. Bounsouk was called to testify. She related her conversation with Jamie Brooks, the psychologist, whom she called to inquire about the report Ms. Brooks had authored to support the complainant's accommodation requests (both at his workplace and for the test). Ms. Bounsouk testified that she asked how much time the complainant should be allowed to complete the test. Ms. Brooks replied that an additional 50% of time should be given. According to Ms. Bounsouk, Ms. Brooks did not seek out more information or ask anything else during the call.

[37] Ms. Bounsouk recalled receiving the complainant's email dated June 25, 2015, in which he stated as follows: "Great! Thank you. I'm excited for the 25th [the day he would receive his test preparation materials] Until then…". She added that after receiving the detailed invitation of June 22, 2015, to write the test, the complainant did not communicate any concerns or need for additional accommodation prior to writing it.

[38] Witnesses were examined and cross-examined on the test answers provided by the complainant. He ran out of time and did not complete one question. He wrote on his test booklet that the previous answer was in sufficient detail to also be accepted as a full response for the question he did not answer. When the test was marked, he received a failing grade for the unanswered question and for one other question and was eliminated from the appointment process.

[39] Cmdr. Barefoot provided a cogent and logical justification for how the complainant's test was marked, and I will not consider the matter of test marking in any more detail. It is well established in Board jurisprudence that it is not its role to reassess test marks in determining if there was an abuse of authority (see *Marcil v. Deputy Minister of Transport, Infrastructure and Communities*, 2011 PSST 31 at para. 17). Furthermore, the marking is not relevant to the matter before me, namely, whether the complainant was properly accommodated in his efforts to write the test.

[40] Cmdr. Barefoot was also questioned about an SLA and workplace accommodation request that the complainant had made previously. He confirmed that he was aware that at the time of the appointment process, an accommodation request was being considered to provide assistive technology software to the complainant for use at the workplace for speech and reading assistance. He knew that this accommodation request was in the system but it had not yet been approved.

[41] Cmdr. Barefoot testified that the military intelligence command is a highly secure office where all IT systems must operate under extremely high security to protect information of the utmost sensitivity. He explained that the software being requested to accommodate the complainant at work was undergoing very intense scrutiny to determine if it was safe to install it in the workplace without jeopardizing the integrity of the extremely secure work environment. Cmdr. Barefoot testified that none of this software requested by the complainant had yet been installed in the

workplace at the time of the test.

[42] In cross-examination on the assistive technology, the Commander was asked if there was a safe computer, one that was not connected to the high-security network of the military intelligence command, which the complainant could have used for his assistive technology to accommodate his needs for the test. The Commander replied that it was possible there might have been one at the workplace, but he added that if so, it would not necessarily have been in a quiet and private location such as was required for the complainant's accommodation. Cmdr. Barefoot also testified in cross-examination that he understood the cost to the department of a PPC referral for a report on the recommended accommodations for a test was $600.

[43] In closing his testimony, Cmdr. Barefoot reiterated that he wanted to ensure that the appointment process was conducted in a completely fair and transparent manner for all candidates and that the complainant's requested accommodations were provided to ensure his fair participation in the process.

[44] Having completed the test, the complainant wrote to the respondent on July 3, 2015, stating as follows:

> *The test is done! Thanks for your help on this project. As discussed previously can I please have a copy of the psychologists [sic] assessment related to 14-DND-IA-OTTWA-389838, which recommended or authorized the extra time I had for the test? As I apply to other competitions … I'll need to support any future requests for accommodation. This psych report will be a good reference for others and good awareness for me about what to expect next time.*
>
> *Thanks very much ….*

[45] On August 20, 2015, several weeks after writing the test and after learning that he had failed it, the complainant corresponded by email with Ms. Brooks. In her email to him on that date, she stated as follows:

> *… Sorry to hear that the testing process has been so stressful. The woman I spoke to had very little information and clearly no understanding of or experience with learning differences. The conversation was brief as she only asked me how much extra time to give you and I suggested the absolute maximum. There were no other questions addressed or things discussed. It was brief. Hope this helps.*

[46] Her email was tendered as an exhibit by the complainant. Counsel for both the PSC and the respondent objected to me accepting it. Counsel argued in support of their objection that the email was irrelevant as it arose from conversations that took place weeks after the test was administered and that it was also unreliable as its author was not present at the hearing to be cross-examined.

[47] I agreed to allow the email to be accepted as an exhibit but reserved my decision as to what if any weight I would place upon it. In the final analysis, I place no probative value upon it whatsoever.

[48] The email is prejudicial to the respondent's case as it suggests that the conversation was brief and it paints the respondent's representative in a dim light by suggesting that she had no understanding of learning differences. However, the email's statements about recommending the absolute maximum extra time clearly contradict the witnesses' testimony at the hearing. The complainant submitted Ms. Brooks' email as hearsay evidence without calling her to testify and be cross-examined on the matter. There was no indication that she was unavailable to testify. Although the Board can accept any evidence, whether admissible in a court of law or not (s. 20(e) of the *FPSLREBA*), in the absence of her testimony, which would have enabled me to more accurately assess her credibility and make findings of fact with respect to the details of the matters in the email, I find that no weight should be given to the email.

[49] The complainant also tendered as an exhibit a study of his accommodation needs that the respondent commissioned several months after he wrote the test. After taking up the matter of his test and what he later viewed as a lack of proper accommodation, the complainant persuaded his senior managers to requisition a PPC retrospective report into "Candidate's Assessment Accommodations".

[50] The PPC report was made available almost 10 months after the test was written. Among other things, it recommends the following:

- that the test be split into two parts and administered over two sessions, one each per day covering two days;
- that an additional 50% of time should be given plus an additional 30 minutes for breaks, totalling five hours of writing time split over two days;

- that the candidate be allowed to use assistive technologies on his personal or workplace computer for both his reading and writing tasks; and

- that during the test, the candidate be allowed access to a person who can provide instruction or clarification verbally.

[51] Again, both the PSC and respondent counsel objected to me accepting this report as an exhibit, arguing that it was irrelevant as it was written approximately 10 months after the test was administered. I accepted the document as an exhibit but reserved my decision on what if any weight I would place upon it. Given that the document was written months after the test was written, I do not place any probative value upon it. That information was not available when the complainant and his expert were consulted by the respondent to determine the accommodation needed for him to take the test.

[52] In cross-examination, the complainant stated that he had assumed that the adaptive technologies that had been listed in his workplace accommodation request would be in place sometime before the appointment process started. He further stated that he expected a dialogue on his workplace accommodation would take place, related to his appointment process candidacy.

[53] In his closing argument, counsel for the complainant stated that the employer did not do enough to ascertain the complainant's needs so that he could be fully and effectively accommodated. He pointed out that the complainant's email requesting accommodation for the test stated that it was the first time he had asked for an accommodation related to a job application process. It was also noted that the respondent did not disclose details about the test with the psychologist; nor did it ask about other matters that might have also required accommodation.

[54] The complainant relies upon the *CHRA* along with PSC policies for assessing persons with disabilities to ensure that they receive barrier-free and equal access to assessments for employment opportunities. Noted was the duty upon deputy heads to eliminate systemic barriers and provide accommodations and that as a part of it, employees should be consulted to identify the nature of the accommodations that they require.

[55] The complainant cited a decision from this Board (*Song v. Deputy Minister of National Defence*, 2016 PSLREB 73 at paras. 23 and 25) that found that an abuse of authority occurred when an applicant became visibly ill during an assessment and after a brief break, continued the test despite the employer having even considered calling an ambulance due to the candidate's illness. The parties in that case disputed how much the candidate told the employer about her illness. The Board found that the employer should have sought out more information and engaged in more thought and discussion of the appropriate measures to take. I find the facts in the matter before me drastically different such that it is not a helpful authority. There was no incident similar to what occurred in *Song*, during or prior to the test, alerting the respondent to the need for additional information or measures to be taken.

[56] The complainant also relies upon a decision from the Board's predecessor, the Public Service Staffing Tribunal, in *Rajotte v. President of the Canadian Border Service Agency*, 2009 PSST 25, at paras. 128, 131, and 166. In that case, the candidate was able through the cross-examination of her managers to adduce evidence that they assumed that she would not be available to regularly work overtime due to her well-known parental responsibilities and that this might have impacted the decision to proceed with a non-advertised appointment process that excluded her. The Board found that in so doing, she made out a *prima facie* case of discrimination, which the respondent did not rebut. The Tribunal concluded that the complainant should have had the benefit of an individualized assessment of her needs so as not to be deprived of her opportunities for advancement, based on the respondent's assumption about her availability to work flexible hours due to her family commitments.

[57] Again, I find the facts of *Rajotte* so significantly different from those in the matter before me as to render it unhelpful. Unlike in *Rajotte*, no assumptions were made. The complainant before me did in fact request a specific accommodation supported by a professional report documenting his needs. His employer accepted his request, and he expressed no concerns whatsoever.

[58] While making no submissions on the merits of the case, the PSC provided written submissions, based upon PSC policy suggesting that persons requesting accommodation are expected to make their needs known to their employers.

[59] The respondent referred to the Supreme Court of Canada decision in *Central*

Okanagan School District v. Renaud, [1992] 2 SCR 970, at 994, which found that a human-rights claimant had a duty to be an active participant and to assist in the process to find proper accommodation. The Court stated as follows:

> *To facilitate the search for an accommodation, the complainant must do his or her part as well. Concomitant with a search for reasonable accommodation is a duty to facilitate the search for such an accommodation. Thus in determining whether the duty of accommodation has been fulfilled the conduct of the complainant must be considered.*

[60] This Board has considered *Renaud* in the context of a s. 77(1) complaint under the *Act* that alleged discrimination and a failure to accommodate in *Boivin v. President of the Canadian Border Services Agency*, 2010 PSST 6 at paras. 133 and 134 ("*Boivin PSST*"). In that decision, Member Beattie found as follows:

> ***133*** *The process of accommodation therefore, requires the communication and engagement of both parties. The steps that establish that the parties have met their obligations in the accommodation process are not immutable, nor can they be rigidly compartmentalized. This is precisely because of the need, at times, to fine-tune how the requirement for accommodation is met, and the need for dialogue and cooperation from both the respondent and the employee. The process of accommodation cannot always result in perfection, particularly when it is clear that the party who must address the request does not know that there is a problem.*
>
> ***134*** *The parties are expected to act in a reasonable and cooperative manner in finding solutions to requests for accommodation. If there is a breakdown in the accommodation process, the issue becomes who is responsible for the breakdown and the outcome of the complaint will be determined by the answer to that question. The matter that the Tribunal must determine therefore, is where and how the process of accommodation broke down in this case.*

[61] Applying the facts to the relevant jurisprudence, I find that the complainant has established a *prima facie* case of discrimination. He has a learning disability that had been diagnosed and reported to his employer. His evidence, if believed, is that the test as administered to him placed him at a disadvantage given his disability and denied him a fair opportunity to demonstrate that he was qualified for the position. This obstacle resulted in his being adversely differentiated in the course of his employment and amounted to *prima facie* evidence of discrimination.

[62] In order to rebut the *prima facie* case, the respondent must demonstrate that it reasonably accommodated him, and if not, that the necessary accommodation would have caused it undue hardship.

[63] As stated by the Supreme Court of Canada in *Renaud* and applied by this Board in *Boivin PSST*, the complainant had a duty to participate and to help his employer in its efforts to ascertain his accommodation needs. The facts clearly establish that he requested a quiet place to write the test and that he receive extra time. The respondent confirmed this with the complainant's psychologist and agreed to both of his requested accommodations.

[64] There was no evidence at the hearing that prior to the test the psychologist voiced any concerns to either the respondent or the complainant about the need for additional accommodations beyond what the respondent understood he needed.

[65] When a seemingly well-informed employee makes a specific request for accommodation, his or her employer should be able to rely upon that request when it is supported by a professional opinion that is confirmed before the accommodation is implemented.

[66] Expecting more of an employer would place an unreasonable burden upon employers who do not have specific information about an employee's needs. Such specific information must be provided by the employee or his or her professional caregiver.

[67] While the complainant had previously sought a workplace accommodation for the assistive technologies that he much later said should have also been made available to him to write the test, he made no such request and raised no such concern in the context of his test. He testified that he assumed these technologies would be available at the time of his test. Yet he made no such assumption known to his employer. Even upon his commencement of the test, he did not voice any concerns that additional accommodation was required by means of these technologies. The test invitation specifically asked that he advise the respondent if he had any "other special accommodation needs." No such request was made.

[68] I further find that the respondent did not fail to properly accommodate the complainant by not electing to refer the accommodation request to the PPC for a

report. This is not a mandatory duty of the employer, and in the circumstances of this case, in which the complainant presented it with a request for a specific accommodation supported by a professional report, I find that it acted reasonably by electing not to commission a PPC report.

[69] Given these findings of fact and my analysis, I find that there was no discrimination, the complainant's human rights were not violated, and there was no abuse of authority.

[70] For all of the above reasons, the Board makes the following order:

(The Order appears on the next page)

Order

[71] The complaint is dismissed.

December 28, 2017.

Bryan R. Gray,
a panel of the Federal Public Sector
Labour Relations and Employment Board