STATE PERSONNEL BOARD, STATE OF COLORADO
Case No. 2024G112

INITIAL DECISION OF THE ADMINISTRATIVE LAW JUDGE

YARA MELANO,
Complainant,

v.

DEPARTMENT OF LABOR & EMPLOYMENT, DIVISION OF FAMILY & MEDICAL LEAVE INSURANCE,
Respondent.

The State Personnel Board conducted an evidentiary hearing in this matter on October 20, 21, and 23, 2025. Complainant appeared by video conference without counsel. Respondent appeared by video conference, by and through counsel, Assistant Attorney General, Carlos Ramirez, Esq. Respondent's advisory witness, Gordon Bedell, was also present. A list of the exhibits admitted into evidence and the witnesses who testified at hearing is attached as an appendix. The parties were given 30 days to submit written arguments, and the record closed on November 24, 2025.

MATTER APPEALED

Complainant contends that Respondent's decision to terminate her probationary employment was discriminatory based on disability and retaliatory for engaging in protected activity in violation of the Colorado Anti-Discrimination Act (CADA). As relief, she requests reinstatement, back pay, and benefits.

Respondent, the Department of Labor and Employment (DLE) contends that its decision was not discriminatory or retaliatory. Respondent requests that its decision be affirmed, and this matter be dismissed with prejudice.

For the reasons discussed below, Respondent's action is **affirmed.**

ISSUES TO BE DETERMINED

- Was DLE's decision to terminate Complainant's probationary employment discriminatory based on disability?

- Was DLE's decision to terminate Complainant's probationary employment retaliation for Complainant's protected activity?

FINDINGS OF FACT

Background

1. In 2023, Colorado voters passed Proposition 118 establishing Family and Medical Leave Insurance (FAMLI) for all Colorado employees. FAMLI is funded by premiums paid by employees and employers. The premiums went into effect in 2023, and coverage went into effect on January 1, 2024. Claims are administered by a third-party company, which processes applications and determines an applicant's eligibility.

2. After the passage of Proposition 118, DLE created the FAMLI Division to regulate the program. The FAMLI Division is headed by Tracy Marshall, Director. She is the direct or indirect supervisor of the Division's 360 employees.

3. The FAMLI Division established a Contact Center to answer questions from employers and employees (referred to as "customers") regarding the program.

4. The Contact Center had twelve supervisors, each managing a team of Customer Care Representatives (CCR's). The Contact Center was managed in part by Gordon Bedell.

5. The FAMLI Division hired Complainant to be one of the Contact Center's bilingual supervisors. Marshall was Complainant's appointing authority, and Bedell was her supervisor.

6. Complainant's job duties included training, supervising, and monitoring CCR's to ensure that FAMLI's customers have access to timely and accurate information regarding the program. According to the Position Description, 60% of Complainant's job duties involved supervisory activities.

7. Complainant's job duties also included internal and external customer service. This primarily involved "escalations" of calls from upset, frustrated or dissatisfied customers, but could include phone coverage. According to the Position Description, 15% of Complainant's job duties involved internal and external customer service.

8. Because the FAMLI Division was a new state agency, Complainant's job duties also involved policy implementation and continuous process improvement efforts. 20% of Complainant's job duties involved process improvement efforts. The remaining 5% of Complainant's job duties were "other duties as assigned."

9. The position description states the purpose of the position is to create a work environment that encourages a "culture of care." The required competencies include: "helper, relationship builder with a positive outlook, . . . [and] team oriented collaborator."

10. As part of the DLE, the FAMLI Division has core values, including respect and collaboration.

11. The FAMLI Division is part of a pilot program that gives hiring preference to people with disabilities.

12. Complainant began work on July 24, 2023. Almost immediately, Bedell received a complaint that Complainant was rude to the person who was assisting her to obtain her equipment.

October 3, 2023 Incident

13. On October 3, 2023, Complainant and her fellow call center supervisors had a meeting to discuss proposed policies and procedures. In response to one suggestion, Complainant stated "I don't think it's the best idea." The other supervisors felt this statement was disrespectful and reported it to Bedell.

14. As a result of this complaint, Bedell met individually with all the contact center's supervisors, including Complainant, to discuss team dynamics and collaboration. During these meetings, there were complaints that Complainant was not collaborating with her peers.

Complainant's Accommodation Request

15. Complainant took annual leave from December 4-8, 2023, and was granted leave without pay from December 11, 2023 through December 18, 2023 for the baptism of her child.

16. In January of 2024, there was discussion of a new policy requiring supervisors to work partially on-site. Up until this point, Complainant had worked remotely.

17. Complainant told Bedell that she could not work on-site due to her newborn daughter's health condition.

18. Complainant alleges that Bedell "laughed" at her and told her he did not think her situation qualified as an ADA accommodation. Complainant felt this was disability discrimination but did not submit a complaint.

19. Bedell does not recall this conversation and denies laughing at Complainant.

20. Complainant met with Heather Adair, Director of Human Resources, and requested an ADA accommodation due to her daughter's medical condition. Adair explained that the ADA only covered an employee's own disabilities.

21. On January 5, 2024, Complainant completed a written request for an ADA accommodation of 100% work from home due to her "anxiety and other mental

illnesses." Complainant testified at the hearing that being separated from her daughter aggravated her anxiety.

22. Adair reviewed the request and determined that Complainant had a qualifying disability. She forwarded her determination to Marshall.

23. On January 18, 2024, Marshall issued a letter, granting Complainant's accommodation request.

24. Bedell knew that Complainant had been granted an ADA accommodation but did not know the specific nature of her disability. He did not have any issues with Complainant working remotely.

January 4, 2024 Incident

25. On January 4, 2024, Complainant attended a regular meeting with her fellow Contact Center supervisors. One of the issues addressed was whether customers could submit documentation directly to the CCR's by email rather than using the portal. Complainant was upset that the different supervisors had different policies regarding this issue.

26. During the discussion, Complainant became aggressive and unprofessional towards one of her co-workers, Michele Barton,[1] by interrupting, talking over her, telling Barton she did not know what she was talking about, and telling Barton that she was not a good supervisor.

27. The other bilingual supervisor, Mayte Gardea, suggested that Complainant discuss the issue with Bedell. Complainant responded by stating that Gardea was not her manager and she was not obligated to do what Gardea said.

28. Barton exited the meeting because she felt that she did not have to tolerate being "yelled at" by Complainant.

29. Barton felt that this was not the first time that Complainant had been disrespectful and unprofessional to herself and other coworkers. Barton also thought that Complainant was always asking for help but not giving back to the team.

30. Barton was unaware that Complainant had a disability.

31. Bedell investigated this incident. Two of Complainant's fellow supervisors, John Dupriest and Heidi Stuckert, confirmed that Complainant acted disrespectfully and unprofessionally during the meeting.

[1] At the time, Barton worked with Complainant in the CDLE FAMLI Division. Barton now works for the Colorado Department Public Health and Environment.

Complainant's Conflict with Gardea

32. Complainant had a difficult relationship with Gardea. Complainant felt that Gardea acted like her supervisor and tried to undermine Complainant's authority by reaching out to Complainant's direct reports.

33. Gardea, in turn, felt Complainant was argumentative and disrespectful. Gardea also felt Complainant did not understand FAMLI's procedures and asked questions regarding basic things she should be expected to know.

34. On January 22, 2024, Complainant sent multiple emails to Adair complaining about Gardea. When Adair spoke to Complainant to follow up regarding these complaints, Complainant alleged Gardea discriminated against her based on race/ national origin because of Complainant's accent. Complainant also alleged Gardea harassed her and asked her to do tasks outside of her position description.

35. Adair began a formal investigation regarding whether Complainant had been discriminated against based on race/national origin.

36. Complainant testified during the hearing that Gardea and other colleagues resented the fact that Complainant worked 100% remotely. Complainant alleges that when told that Complainant's daughter had a medical condition, Gardea responded that everyone had kids and Complainant needed to "make sacrifices."

37. Gardea was unaware that Complainant had a disability.

After-Hours Email

38. In January of 2024, Complainant completed performance reviews of her direct reports. Complainant messaged one of her employees at 1:18 a.m. regarding signing the performance review. Complainant testified during the hearing that she did not expect the employee to see or respond to the late message until the next business day.

39. The employee complained to Bedell who informed Complainant that she should not be messaging exempt employees after hours.

Interim Performance Evaluation

40. On January 19, 2024, Bedell met with Complainant to discuss her interim performance evaluation.

41. During this meeting, Complainant admitted to Bedell that saying things like "you are not my manager" did not demonstrate the DLE core value of respect.

42. Bedell attempted to coach Complainant regarding professionalism and respect for her co-workers.

Complainant's First FAMLI Leave and Skip Level Review

43. Complainant took FAMLI leave from January 22, 2024 to March 7, 2024 to bond with her child. Complainant shared the purpose of this leave with both Marshall and Bedell.

44. Complainant requested that her discrimination complaint against Gardea be put on hold while Complainant was on FAMLI Leave.

45. While Complainant was on FAMLI leave, Bedell conducted a "skip level" review with Complainant's team. This review was conducted because Complainant's team was the only one with multiple supervisors, and Bedell wanted input on its reorganization after Complainant returned from leave.

46. The skip review included questions regarding the CCR's thoughts about their supervisors and which supervisors they would prefer.

47. In general, the CCR's were complimentary about Complainant, although many said they did not have enough time with her to form an opinion. One employee, Beth Robinson, was critical and did not want to return to Complainant's team because she did not feel "safe." Robinson later stated she would rather quit than be supervised by Complainant again.

March 20, 2024 Incident

48. Up until the spring of 2024, the Contact Center had separate teams answering questions from employees and employers. The decision was made to merge the teams, which meant that the CCR's needed additional training.

49. Gardea scheduled a meeting for all the bilingual CCR's on March 20, 2024 to discuss the merger. At the time, Gardea was supervising the bilingual CCR's as Complainant was still transitioning back to work from her FAMLI leave.

50. Gardea sent Complainant the following message: "are you able to help with call volume from 1:30-2:30 if a spanish [sic] call comes through please." Complainant stated it would be better to split the team into two meetings.

51. Bedell intervened and asked Complainant to cover the phones during the meeting. Complainant replied that she did not feel comfortable doing so because she had not taken calls before, just escalations. Complainant asked Bedell why Gardea was telling her what to do.

52. Bedell was concerned that Complainant did not feel prepared to take calls because supervisors needed to be able to do so when necessary to support the team.

53. Complainant replied that she was also concerned because Gardea "was telling her what to do and [Bedell] was supporting her." Bedell clarified that he was the one asking Complainant for assistance with phone coverage.

54. Complainant then responded that she was "having an anxiety attack as I type!" and that she could not provide the best customer experience because she was "not feeling good." Bedell then told Complainant that he would find coverage as her "health was the top priority."

55. Following this incident, Complainant sent an email to Adair, stating that covering phones was outside her job responsibilities as a supervisor and accusing Bedell of favoritism towards Gardea.

56. Complainant also sent an email to Bedell on March 27, 2024 stating that her reason for "declining the request to be on phone duty" was her belief that it was not her "responsibility to provide coverage in this particular situation."

57. Call logs indicate that Complainant's fellow supervisors answered phone calls on a regular basis. Bedell testified at the hearing that all supervisors were expected to cover phones as needed.

58. Complainant made an informal request for an ADA accommodation of not covering phone calls. Adair denied this request because, based on Complainant's position description, covering calls was an essential function of her job.

March 22, 2024 Incident

59. On March 22, 2024, Complainant and Gardea were exchanging messages regarding the approval of time for the team. During the exchange, Complainant stated: "I am done with you. Have a good day!"

60. Bedell advised Complainant that her comment to Gardea was unprofessional. He provided Complainant with a link to the DLE Code of Conduct, Ethics, and Values, as well as assigning her a training entitled "Respect at Work."

Complainant's Second FAMLI Leave

61. Complainant took a second FAMLI leave from April 29, 2024 to June 4, 2024 for "medical complications." Bedell, Marshall, and Adair did not know the specific reason for this leave or have access to any of Complainant's medical records. They only knew that the leave had been approved by FAMLI's third-party administrator.

62. When Complainant returned on June 5, 2024, Complainant met with Bedell to discuss her transition back to work. Bedell told Complainant that she would not be supervising her employees until she had a chance to catch up on the policy changes that were made in her absence.

63. Complainant alleges that during this meeting, she told Bedell that she was excited to be back, and Bedell replied “are you really?”

64. On the same day, Complainant messaged Bedell regarding her concerns that another employee who had also just returned from leave was trying to avoid returning to phone coverage and was not answering Complainant’s emails.

65. Bedell responded by reminding Complainant that she had not yet returned to her supervisory duties and needed to focus on her own transition for the remainder of the week.

66. On June 6, 2024, Complainant sent an email to Bedell recommending changes in the CCR’s schedules.

67. Also on June 6, 2024, Complainant sent an email to Adair with numerous allegations of favoritism, inconsistencies, and lack of respect by Bedell. She expressed fear of consequences for “speaking out” but did not allege discrimination.

68. On June 7, 2024, Complainant sent another email to Adair with additional complaints about Bedell. Complainant alleged discrimination because she was the only supervisor who was subject to the skip level review. Complainant did not associate the alleged discrimination with a protected class. She also alleged she was treated differently after she “spoke out about the situation with [Gardea].”

69. On June 10, 2024, Complainant sent an email to Bedell asking for additional time to get caught up from her leave before transitioning back to her regular duties. Bedell granted Complainant a two-day extension, but Complainant was unable to obtain coverage from her fellow supervisors. Barton testified at the hearing that no one was willing to cover for Complainant as they were frustrated with Complainant always asking for help.

70. On June 11, 2024, Complainant met with Adair regarding her issues with Bedell. Complainant mentioned that she might need FMLA for a health condition when she became eligible. Complainant alleges that Adair replied “more time off?”

ADA Meeting

71. After Complainant returned from her second leave, Adair referred Complainant to Sean Montoya, ADA Coordinator, to determine if Complainant needed any ADA

accommodations, other than the 100% work from home, which remained in place. This was Adair's usual practice when an employee returns from extended leave.

72. Complainant met with Montoya on June 14, 2024. Complainant did not request any new ADA accommodation. Montoya scheduled a follow up meeting to discuss whether Complainant needed accommodation pursuant to the Pregnant Workers Fairness Act.

Completion of Discrimination Investigation Based on Race/National Origin and New Claim of Disability Discrimination

73. Adair performed an internal investigation regarding Complainant's allegations of discrimination against Gardea. This included interviewing witnesses and reviewing the documentation Complainant provided.

74. Adair concluded that it was "less likely than so" that Complainant "experienced harassing treatment due to her protected class [sic] of race and national origin." Adair testified at hearing that she thought the issues between Complainant and Gardea were due to a personality conflict, not discrimination.

75. Adair concluded that Complainant was the "common denominator" to her team's conflicts, but that Complainant did not appear to understand her contribution to the problem.

76. Adair prepared and forwarded her report to Marshall, and on June 12, 2024, Marshall issued a letter indicating that the allegation of discrimination based on race/national origin was not substantiated.

77. Also on June 12, 2024, Complainant sent Adair an email alleging discrimination based on disability. Complainant stated that since she took medical leave she was ignored or excluded. This is the first time Complainant alleged discrimination based on disability.

78. Adair did an informal investigation of Complainant's disability discrimination claim. This investigation included reviewing the documents forwarded by Complainant and speaking with Complainant's co-workers.

79. Adair did not find any evidence that Complainant's co-workers knew of her disability. It was Adair's opinion that the disability claim was a continuation of the interpersonal issues between Complainant and her co-workers. Adair felt that Complainant alleged discrimination when she felt slighted or when anyone disagreed with her.

80. Based on her initial review, Adair did not feel a formal investigation of Complainant's disability discrimination complaint was warranted.

81. During the hearing, Complainant alleged that she was also discriminated against because there were times when Bedell did not allow Complainant to use Otter, an AI transcription program, during meetings. The program had been approved by the Office of Information and Technology for general use, but Complainant did not request its use as an ADA accommodation.

82. Complainant was also upset that Bedell did not acknowledge that one of her direct reports had nominated Complainant for "manager of the year." She was also upset that she was not included in the hiring process for new employees.

Termination of Complainant's Probationary Employment

83. On June 18, 2024, Marshall terminated Complainant's probationary employment for unsatisfactory job performance. Marshall cited the incidents on October 3, 2023, January 4, 2024, March 20, 2024, and March 22, 2024. Marshall also cited the after-hours message Complainant sent in January of 2024 and Complainant's failure to follow the reintegration plan following her return from her second FAMLI leave in June of 2024.

84. Marshall made the decision to terminate Complainant based on the totality of the incidents. Marshall concluded these incidents showed Complainant lacked professional ethics, accountability, customer service, collaboration, and respect towards her co-workers.

85. Marshall made the decision to terminate Complainant's probationary employment. While Bedell provided information regarding Complainant's performance, he did not have any input regarding this decision.

86. At the time Marshall decided to terminate Complainant's probationary employment, Marshall knew Complainant had a qualified disability but did not know Complainant's specific disability or medical condition. Marshall did not know that Complainant had just made an allegation of discrimination based on disability.

87. On June 20, 2024, Complainant filed a timely Petition for Hearing with the Board, alleging discrimination based on disability and retaliation in violation of CADA. After a preliminary review, Senior Administrative Law Judge Tybruski granted the Petition for Hearing on these two issues.[2]

[2] Complainant also checked the box on the Consolidated Appeal and Dispute for appealing a Step Two Grievance Decision but did not submit any evidence that she completed the grievance process prior to her termination of employment. This claim is therefore abandoned. Complainant later made a claim of retaliation pursuant to the Whistleblower Act but this claim was not considered during the hearing as it was not endorsed on Consolidated Appeal and Dispute Form and was not made within ten days of the adverse action. Complainant made multiple other claims, such as interference with FML and violation of the Pregnant Workers Fairness Act, which were not considered as they are not within the Board's jurisdiction.

ANALYSIS

A. Complainant's Discrimination Claim

CADA prohibits an employer from taking any adverse action against an employee on the basis of disability. C.R.S. § 24-34-402. To establish a prima facie case of discrimination:

> First, an employee must show that he belongs to a protected class. Second, the employee must prove that he was qualified for the job at issue. Third, the employee must show that he suffered an adverse employment decision despite his qualifications. Finally, the employee must establish that all the evidence in the record supports or permits an inference of unlawful discrimination.

Bodaghi v. Dep't of Natural Resources, 995 P.2d 288, 297 (Colo. 2000).

Complainant Failed to Establish a Prima Facie Case of Disability Discrimination

In granting Complainant's accommodation request, Respondent determined that Complainant had a qualifying disability. During the hiring process, Respondent determined that Complainant met the minimum qualifications for her position. Respondent terminated Complainant's probationary employment, which is an adverse employment action. Complainant has therefore established the first three elements of a prima facie claim of disability discrimination.

I. The Circumstances of the Termination Do Not Create an Inference of Discrimination.

Complainant has failed to establish that a preponderance of the evidence supports an inference of discrimination. Complainant argues that her job was going well, and there were no incidents prior to her disclosure of a disability. However, there were two incidents prior to the disclosure. First, Bedell received a complaint almost immediately after Complainant started working in July of 2023 that she was rude to the person assisting her with her equipment. Second, Bedell received a complaint from Complainant's fellow supervisors in October of 2023 that she was disrespectful. This incident was serious enough to require Bedell to meet with all the supervisors individually regarding respect and collaboration. In addition, Barton testified that Complainant was a challenge to work with from "day one."

Based on this evidence, there were already significant questions regarding Complainant's professionalism prior to the disclosure of her disability.

The questions regarding Complainant's professionalism were brought to the fore on January 4, 2024, when Complainant became heated over a policy dispute during a meeting with her fellow supervisors. Complainant interrupted her colleagues and raised

her voice. Complainant also personally attacked Barton by saying Barton did not know what she was talking about and was not a good supervisor. This ALJ credits Barton's testimony regarding this incident, in part because Barton no longer works for the FAMLI Division and has no interest in this appeal. Barton's testimony is also substantiated by contemporaneous emails sent to Bedell from Dupriest and Stuckert who witnessed and reported Complainant's unprofessional conduct during the meeting. Barton's testimony is also credible because this ALJ witnessed similar conduct from Complainant during the hearing. While Complainant was always respectful of this ALJ, the same cannot always be said of her tone, attitude, and demeanor while addressing witnesses and Assistant Attorney General Ramirez.

Around the time of the January 4, 2024 incident, Complainant met with Bedell regarding the possibility of having to work on-site. Complainant stated that it would not be possible for her to do so because of her daughter's medical condition and requested accommodation under the ADA. During the hearing, Complainant testified that Bedell said he did not know if the ADA applied to a child's medical condition or disability. Complainant felt that this was "disability discrimination," but even if Bedell made such a statement, it does not constitute discrimination. This ALJ does not credit Complainant's testimony that Bedell "laughed" at her or was in any way dismissive or disrespectful, as Complainant did not make any written complaint regarding Bedell's conduct at the time. Rather, this ALJ credits Bedell's testimony that he would refer any questions related to the ADA to HR.

Also in January of 2024, Complainant sent an exempt employee a message at 1:18 a.m. While this ALJ is putting little weight on this incident, the employee was upset enough to contact Bedell.

On January 5, 2024, Complainant submitted a form to HR with her formal request for an ADA accommodation of 100% work from home. This was reviewed and granted, which shows the FAMLI Division's willingness to work with Complainant to accommodate her disability and to enable her to perform her essential job functions.

One of Complainant's essential job duties was answering phones. On March 20, 2024, Complainant was asked, first by her co-worker Gardea and then by her supervisor Bedell, to help cover phones for one hour while the bilingual CCR's were in a meeting. Complainant refused this reasonable request on two grounds—first that it was not her job, and second that Gardea could not tell her what to do. However, according to her position description, 15% of her job duties included external and internal customer service. This includes occasionally covering for the CCR's as this would help both customers and co-workers at the same time. The position description also includes 5% "other duties as assigned." Since Bedell assigned her to cover calls, it was Complainant's job to do so. All the supervisors in the FAMLI Division answer phones, so Complainant was not being singled out or treated differently by this assignment.

Complainant contends that her refusal to cover phones at Bedell's request was not insubordinate because she did not actually refuse but simply expressed her concerns

about doing so. This is contradicted by Complainant's own words in an email she sent to Adair the next day in which Complainant stated her reason for "**declining** the request to be on phone duty" was due to her belief that it was not her "responsibility to provide coverage in this particular situation" (emphasis added). Complainant's email is an admission that she refused a direct order from her supervisor.

Complainant also contends that she cannot be held responsible for her insubordination because she was subsequently excused from covering phones after she told Bedell she was having a panic attack. However, it is clear that Complainant's refusal to perform her job duties and insubordination came before she notified Bedell that she was having a panic attack. The subsequent disclosure of the panic attack and excusal from phone coverage does not mean that Complainant cannot be held accountable for her conduct up to that point.

Complainant further contends that she did not have to cover phone calls because Gardea was not her supervisor and could not tell her what to do. She points out that the message from Gardea asking for help lacks a question mark. However, the sentence structure of the request ("are you able to help") shows that it was a question, not an order, despite the lack of the correct punctuation. Complainant's own words in her messages to Bedell confirm that she was unwilling to help her team cover phones for an hour, even though her position description requires her to be a "helper, relationship builder with a positive outlook, . . . [and] team oriented collaborator."

Just two days later, on March 22, 2024, Gardea was attempting to discuss an issue regarding the approval of an employee's leave. While Gardea's messages were respectful and professional, Complainant responded "I am done with you. Have a good day!" While Complainant argues that this message exchange lacks context, there is no context where Complainant's statement of "I'm done with you" can be interpreted as anything but disrespectful. Nor does adding, "Have a good day!" mitigate the unprofessionalism and disrespect.

The final straw came in June after Complainant returned from her second FAMLI leave. Bedell instructed Complainant to focus on getting caught up and reintegrated. While she was allowed to contact her CCR's to touch base, she was explicitly instructed not to begin her supervisory duties until the following week. Instead, Complainant sent several emails to one of the CCR's who was also in a reintegration period regarding when the CCR should begin covering phones. This goes beyond touching base and was contrary to Bedell's direct instruction.

It is important to note that Complainant's employment was not terminated due to one particular incident. Rather it was an ongoing pattern of conduct that continued to occur, despite Bedell's multiple efforts to address the problem with Complainant through coaching and mentoring. Ultimately, it was Complainant's unwillingness to change her negative behavior that led to the termination of her probationary employment.

II. Complainant's Arguments Regarding Disability Discrimination

Complainant argues that she felt excluded and ignored after reporting her disability. To the extent this may have occurred, it is more likely related to her interpersonal disputes with her co-workers, which escalated during the same time frame, rather than discrimination based on her disability. This is particularly true since neither Barton nor Gardea knew Complainant was disabled.

Complainant next argues that the "skip level" review that occurred while she was on leave was discriminatory because she was the only supervisor subject to the review. However, this ALJ credits the testimony that the review was conducted because Complainant's team was the only one with multiple supervisors, and management was soliciting feedback from the CCR's regarding the reorganization of the team after Complainant returned from leave. During the review, the CCR's were asked the same questions regarding all the supervisors on the team, so Complainant was not targeted or singled out by the skip level review.

Complainant next argues that she was discriminated against because she and Adair discussed the possibility of Complainant requesting FML when she became eligible after completing one year of employment. Complainant testified that Adair responded, "more time off?" in a sarcastic fashion, but this ALJ does not believe Adair made such a statement. Rather, this ALJ credits Adair's testimony that she is dedicated to ensuring that all employees, including Complainant, receive the benefits to which they are entitled. This ALJ further credits Adair's testimony that she explained the process for requesting FML to Complainant just as she would to any other employee.

Complainant next argues that she was discriminated against because there were times when she was not allowed to use Otter, an AI transcription program to take notes. This program was available to all employees through the Office of Information and Technology. However, Complainant never requested it, nor was it approved as an accommodation for her disability. In the absence of approval as an accommodation, Bedell was free to set the policy regarding its use in meetings.

Complainant next argues that the termination of her probationary employment was not due to poor job performance because she had just been nominated as "manager of the year." There is evidence in the record that Complainant got along well with some of her co-workers, particularly her subordinates. This only shows that Complainant is capable of professional behavior when it involves someone she likes. Unfortunately, there were multiple occasions when she did not extend the same courtesy to people she did not like, especially her fellow supervisors.

Complainant finally argues that the timing between her return from her second FAMLI leave and the termination of her probationary employment establishes an inference of disability discrimination. However, Marshall did not know the specific reason for Complainant's second FAMLI leave. An employee may take FAMLI leave for many reasons, including a temporary medical condition that does not qualify as a disability or

caring for a relative. While there is some indication that Complainant's second FAMLI leave was for "medical complications" there is nothing to indicate it was related to a qualified disability or to Complainant's own condition. Because Marshall did not know Complainant's second FAMLI leave was related to Complainant's disability, the timing between the leave and the termination does not give rise to an inference of disability discrimination.

Complainant has not provided evidence that supports or permits an inference of unlawful discrimination. She has therefore failed to establish the fourth element of a prima facie case of discrimination.

Respondent Presented a Legitimate Reason for Its Termination of Complainant's Probationary Employment

If an employee establishes a prima facie case of discrimination, the burden of production shifts to the employer to articulate a legitimate, nondiscriminatory reason for the adverse employment action. *Colorado Civil Rights Comm'n v. Big O Tires, Inc*., 940 P.2d 397, 401 (Colo. 1997). Here, Marshall terminated Complainant's probationary employment due to an ongoing pattern of disrespect and unprofessionalism towards co-workers. This is a legitimate, nondiscriminatory reason for the termination.

Complainant Failed to Establish that the Reason for the Termination of Her Probationary Employment Was Pretextual

"Once the employer meets its burden, the complainant must then be given a full and fair opportunity to demonstrate by competent evidence that the presumptively valid reasons for the employment decision were in fact a pretext for discrimination." *Id*. Pretext is shown by "weaknesses, implausibilities, inconsistencies, incoherencies or contradictions in the employer's proffered legitimate reasons for its action that a reasonable factfinder could rationally find them unworthy of credence and hence infer that the employer did not act for the asserted nondiscriminatory reasons." *Morgan v. Hilti, Inc.,* 108 F.3d 1319, 1323 (10th Cir.1997). This requires a showing that "that the tendered reason for the employment decision was not the genuine motivating reason, but rather was a disingenuous or sham reason." *McKnight v. Kimberly Clark Corp*., 149 F.3d 1125 (10th Cir. 1998) (citations omitted).

Here, even if Complainant could establish a prima facie case of discrimination, Complainant has not proven that Marshall's reasons for the decision to terminate Complainant's employment were pretextual. As discussed above, there was a legitimate concern that Complainant was disrespectful and unprofessional towards Bedell and co-workers. This concern is supported by a preponderance of the evidence in the record, including the testimony of Bedell, Barton, and Gardea, as well as Complainant's own words in her messages and emails. It is important to note that Complainant's employment was not terminated due to one particular incident. Rather it was an ongoing pattern of conduct that continued to occur, despite Bedell's multiple efforts to address the problem with Complainant through coaching and mentoring. Ultimately, it was Complainant's

unwillingness to change her negative behavior that led to the termination of her probationary employment.

The preponderance of the evidence does not show that the reason DLE terminated Complainant's employment was a pretext for discrimination.

B. Complainant's Retaliation Claim

CADA prohibits an employer from taking any adverse action against an employee for engaging in protected activity opposing discrimination, including participating in a hearing. C.R.S. § 24-34-402(1)(e)(IV). To establish a prima facie claim of retaliation, an employee must demonstrate that: 1) he engaged in protected opposition to discrimination; 2) Respondent took an adverse employment action against him; and 3) there exists a causal connection between the protected activity and the adverse action. *Smith v. Board of Educ. Of Sch. Dist. Fremont RE*-1, 83 P.3d 1157, 1162 (Colo. App. 2003).

If an employee establishes a prima facie retaliation case, the burden shifts to Respondent to proffer a legitimate, non-retaliatory reason for the adverse employment action. Complainant must then establish that the purported legitimate, non-retaliatory reason for the adverse employment action is pretextual. *Molla v. Colo. Serum Co.,* 929 P.2d 1 (Colo. App. 1996).

Complainant Failed to Establish a Prima Facie Case of Retaliation

Here, Complainant made an internal complaint of discrimination based on race/ national origin and a separate complaint of discrimination based on disability. These complaints constitute protected activity in opposition to discrimination. In addition, DLE terminated Complainant's probationary employment, which is an adverse action. Complainant has therefore established the first and second elements of a prima facie case of retaliation.

Complainant, however, has not established that there is a causal connection between her protected activity and Marshall's decision to terminate her probationary employment. While Marshall knew about Complainant's discrimination complaint based on race/national origin, this ALJ credits Marshall's testimony that she did not consider this complaint when making her decision to terminate Complainant's probationary employment because there is nothing in the record to the contrary.

This ALJ also credits Marshall's testimony that she was not aware of Complainant's June 12, 2024 disability discrimination complaint at the time Marshall made the decision to terminate her probationary employment. While Complainant argues that she copied Marshall on the email to Adair regarding the complaint, Marshall directly or indirectly supervises 360 employees. There is no evidence that Marshall read and/or remembered the disability discrimination complaint before making her decision, particularly since she was only copied on the email.

Complainant argues that the temporal proximity between the issuance of the report regarding the discrimination complaint based on race/national origin and the termination creates an inference of retaliation. However, the actual complaint was made over six months prior to Complainant's termination, so temporal proximity does not create an inference of discrimination. *See Clark Cty. Sch. Dist. v. Breeden,* 532 U.S. 268 (2001) (temporal proximity between protected activity and adverse action must be "very close.").

Complainant also argues that the temporal proximity between the disability discrimination complaint and the termination creates an inference of retaliation. But as discussed above, Marshall did not know about the disability discrimination complaint when she made the decision to terminate Complainant's probationary employment. *See Singh v. Cordle*, 936 F.3d 1022, 1044 (10th Cir. 2019) ("a plaintiff who seeks to show causation [based on temporal proximity] still must present evidence that the decisionmakers *knew* of the protected conduct.") (emphasis in the original). In addition, there is some evidence in the record that Marshall was contemplating terminating Complainant's employment before Complainant made her disability discrimination complaint. *See Breeden,* supra (an employer "proceeding along lines previously contemplated, though not yet definitively determined, is no evidence whatever of causality.").

In arguing temporal proximity as a means of proving causation, Complainant is overlooking another important date--the end of her probationary period. Given Complainant's history of conflict with her co-workers, this ALJ infers that the decision to terminate her employment was made during the time-period in question to avoid Complainant becoming a certified employee with a constitutionally protected property interest in continued employment.

Complainant failed to establish the requisite causation between her protected activity and the termination of her probationary employment. She has therefore failed to establish a prima facie case of discrimination.

Complainant Failed to Establish that the Reason for the Termination of Her Probationary Employment Was Pretext

Even if Complainant established a prima facie case of discrimination, Marshall terminated Complainant for poor job performance; specifically, her disrespect and unprofessionalism towards her co-workers. As discussed above, Complainant failed to prove this legitimate reason was pretext.

CONCLUSIONS OF LAW

Based on the above analysis, this ALJ concludes that DLE's decision to terminate Complainant's probationary employment was not discrimination based on disability. This ALJ further concludes the DLE's decision was not retaliation for Complainant's engagement in protected activity.

ORDER

IT IS THEREFORE ORDERED: that Respondent's decision to terminate Complainant's probationary employment is affirmed, and this appeal is dismissed with prejudice.

Dated January 2, 2026 by:

/s/ [redacted]
Charlotte A. Veaux
Administrative Law Judge
State Personnel Board
1525 Sherman Street, 4th Floor
Denver, CO 80203

CERTIFICATE OF SERVICE

This is to certify that on the 2nd day of January, 2026, I electronically served a true and correct copy of the foregoing **INITIAL DECISION OF THE ADMINISTRATIVE LAW JUDGE** as follows:

Yara Melano
[redacted]

Carlos Ramirez, Esq.
Assistant Attorney General
Carlos.Ramirez@coag.gov

/s/ [redacted]

APPENDIX

Complainant's Witness:

Yara Melano, Complainant

Complainant's Admitted Exhibits: C-D, I-J, O, U, X-Z, AA-AE, AG, AJ, AL, AN-AQ, AW-AX, BA-BK, BM-BO, BQ-BR, BY-BZ, CE-CZ, DA-DC, DE, DK-DL, EH

Respondent's Witnesses (in order of appearance):

Michele Barton, former Customer Contact Center Supervisor, DLE
Sean Montoya, ADA Coordinator, DLE
Mayte Gardea, Customer Contact Center Supervisor, DLE
Tracy Marshall, Director of FAMLI, DLE
Heather Adair, Employee Relations and Benefits Manager, DLE

Respondent's Admitted Exhibits: 1, 4-6, 9-11, 19, 23-24, 27-31

NOTICE OF APPEAL RIGHTS

EACH PARTY HAS THE FOLLOWING RIGHTS:

To abide by the decision of the Administrative Law Judge ("ALJ").

To appeal the decision of the ALJ to the State Personnel Board ("Board"). To appeal the decision of the ALJ, a party must file a designation of record with the Board within twenty (20) calendar days of the date the decision of the ALJ is served to the parties. § 24-4-105(15), C.R.S. and Board Rule 8-53(A)(2).

Additionally, a written notice of appeal must be filed with the State Personnel Board within thirty (30) calendar days after the decision of the ALJ is served to the parties. §§ 24-4-105(14)(a)(II) and 24-50-125.4(4), C.R.S. The appeal must describe, in detail, the basis for the appeal, the specific findings of fact and/or conclusions of law that the party alleges to be improper and the remedy being sought. Both the designation of record and the notice of appeal must be received by the Board no later than the applicable twenty (20) or thirty (30) calendar day deadline referred to above. Vendetti v. Univ. of S. Colo., 793 P.2d 657 (Colo. App. 1990) and § 24-4-105(14) and (15), C.R.S.

RECORD ON APPEAL

The cost to prepare the electronic record on appeal in this case is $5.00. This amount does not include the cost of a transcript, which must be paid by the party that files the appeal. Board Rule 8-53(C). That party may pay the preparation fee either by check or, in the case of a governmental entity, documentary proof that actual payment already has been made to the Board through COFRS. A party that is financially unable to pay the preparation fee may file a motion for waiver of the fee. That motion must include information showing that the party is indigent or explaining why the party is financially unable to pay the fee.

Any party wishing to have a transcript made part of the record is responsible for having the transcript prepared. To be certified as part of the record, an original transcript must be prepared by a disinterested, recognized transcriber and filed with the Board within 59 days of the date of the designation of record. See Board Rule 8-53(A)(5) – (7). For additional information contact the State Personnel Board office at (303) 866-3300 or email at: dpa_state.personnelboard@state.co.us.

BRIEFS ON APPEAL

When the Certificate of Record of Hearing Proceedings is served to the parties, signifying the Board's certification of the record, the parties will be notified of the briefing schedule and the due dates of the opening, answer and reply briefs and other details regarding the filing of the briefs, as set forth in Board Rule 8-54.

ORAL ARGUMENT ON APPEAL TO THE BOARD

In general, no oral argument is permitted. Board Rule 8-55(C).

MOTION FOR RECONSIDERATION

Motions for reconsideration are discouraged. See Board Rule 8-47(K).