SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0730-21

IN THE MATTER OF
CAROLYN WHITEHEAD,
CITY OF EAST ORANGE,
DEPARTMENT OF
POLICY, PLANNING AND
DEVELOPMENT.

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Submitted December 7, 2022 – Decided December 22, 2022

Before Judges Accurso and Vernoia.

On appeal from the New Jersey Civil Service Commission, Docket No. 2021-534.

Carolyn Whitehead, appellant pro se.

Weiner Law Group LLP, attorney for respondent City of East Orange (Sean M. Pena, of counsel; Stephen J. Edelstein; of counsel and on the brief; Rachel E. Smith, on the brief).

Matthew J. Platkin, Attorney General, attorney for respondent New Jersey Civil Service Commission (Pamela N. Ullman, Deputy Attorney General, on the statement in lieu of brief).

PER CURIAM

Based on claimed religious grounds, Carolyn Whitehead objected to the City of East Orange's requirement she obtain a negative COVID-19 test before returning to on-site work following the City's prior suspension of on-site work in response to the COVID-19. When Whitehead refused to obtain the required COVID-19 test and did not return to work, the City suspended and then terminated her employment for insubordination and resignation not in good standing. Whitehead appealed from her suspension and termination and, in its final agency decision, the Civil Service Commission adopted the findings and recommendations of an administrative law judge (ALJ) granting the City's motion for a summary decision, upholding the City's actions, and rejecting Whitehead's claims the suspension and termination violated Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e to 2000e-17, the Americans With Disabilities Act (ADA) of 1990, 42 U.S.C. §§ 12101 to 12213, her right to privacy under the Fourth Amendment to the United States Constitution, and her right to the free exercise of her religion.

We consider Whitehead's appeal from the Commission's decision. Based on our review of the summary decision record, we reverse in part the Commission's summary decision and remand for further proceedings on Whitehead's claim the City violated Title VII by suspending and terminating her

employment and by failing to allow her to work from home as a reasonable accommodation for her religious-based refusal to undergo the COVID-19 testing. In our view, the motion record did not permit a summary decision on that claim as a matter of law. We affirm the Commission's summary decision rejecting and dismissing Whitehead's remaining claims because she either does not challenge on appeal the Commission's dismissal of those claims or her arguments are otherwise devoid of merit.[1]

[1] The Commission adopted the ALJ's recommendation the City is entitled to a summary decision on Whitehead's claims the suspension and termination of her employment violated the ADA, her right to privacy under the Fourth Amendment to the United States Constitution, and her right to the free exercise of her religion under the First Amendment to the United States Constitution. We do not address those claims, and we therefore affirm the Commission's summary decision dismissing them, because Whitehead does not offer any argument challenging the Commission's dismissal of them. See Drinker Biddle & Reath LLP v. N.J. Dept. of Law & Pub. Safety, 421 N.J. Super. 489, 496 n.5 (App. Div. 2011) (finding an issue not addressed in a party's merits brief is deemed abandoned). We also reject Whitehead's assertion the Commission erred by finding the City was not obligated to reasonably accommodate her religious objection to the testing requirement by permitting her to work on site without obtaining a negative COVID-19 test because it would work an undue hardship on the City. Whitehead's claim such an accommodation would not impose an undue hardship on the City is without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E). The only argument Whitehead otherwise makes on appeal challenges the Commission's rejection of her claim the suspension and termination of her employment constituted prohibited religious discrimination in violation of Title VII because permitting her to work from home as a reasonable accommodation creates an undue hardship on the City.

I.

"A party may move for summary decision upon all or any of the substantive issues in a contested case." N.J.A.C. 1:1-12.5(a). A motion for summary decision may be granted if the motion record "show[s] that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law." N.J.A.C. 1:1-12.5(b). To avoid summary decision, the adverse party "must by responding affidavit set forth specific facts showing that there is a genuine issue which can only be determined in an evidentiary proceeding." Ibid. If the opposing party does not demonstrate a genuine issue of material fact exists, an evidentiary hearing is unnecessary, even when constitutionally protected interests are at stake. Contini v. Bd. of Educ. of Newark, 286 N.J. Super. 106, 120-21 (App. Div. 1995) (citing Codd v. Velger, 429 U.S. 624 (1977); Weinberger v. Hynson, Westcott & Dunning, 412 U.S. 609 (1973)).

The standard for summary decision "is substantially the same as that governing a motion under Rule 4:46-2 for summary judgment in civil litigation." Id. at 121 (citing Frank v. Ivy Club, 228 N.J. Super. 40, 62 (App. Div. 1988)). "Under this standard, the court or agency must determine 'whether the competent evidential materials presented, when viewed in the light most favorable to the

non-moving party in consideration of the applicable evidentiary standard, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party.'" Id. at 122 (quoting Brill v. Guardian Life Ins. Co., 142 N.J. 520, 523 (1995)).

In our analysis of the ALJ's recommended decision, which was adopted by the Commission, we apply the summary decision standard and therefore may only properly consider whether the undisputed facts established in the motion record support the ALJ's findings and conclusions of law. See ibid. The record on appeal includes the City's Statement of Undisputed Material Facts submitted in support of its summary decision motion, as well as a "Statement of Undisputed Material Facts" Whitehead submitted in opposition to the City's motion.[2] The appellate record does not include a direct response from either

[2] The City's "Statement of Undisputed Material Facts" included in Whitehead's appendix on appeal consists of nine separately numbered paragraphs, each of which is comprised of a single sentence. Whitehead's "Statement of Undisputed Material Facts," which is included in her appendix on appeal, consists of nine numbered paragraphs, many of which are comprised of multiple sentences. Whitehead's appendix on appeal does not include any other statements of material fact or responses to same. The City does not contend it submitted any additional or different statements of material facts in support of its motion for summary decision, and it does not include any other statements of material fact it contends were presented to the motion court in support of its motion. See generally R. 2:6-1(a)(1)(A) and (I) (requiring the appellant's appendix or the parties' joint appendix include pleadings and "such other parts of the record

party to the other's statement of material facts. Thus, for purposes of determining the undisputed facts extant on the record before the motion court, we accept the facts asserted in each party's respective statements if the opposing party did not properly deny them with an accompanying citation to competent evidence. Based on our review of the parties' statements, we discern the motion record established the following undisputed facts.

In March 2020, the City suspended on-site work activity for some of its employees in response to the COVID-19 pandemic. At that time, Whitehead had been a City employee for eight years, and she held the title of Assistant Zoning Officer.[3] The City permitted Whitehead to work remotely four days per week and it required she work one day per week on-site at the City's offices.

Three-and-a-half months later, the City advised its employees they were required to return to on-site work effective July 15, 2020. The City's directive, issued by its Department of Human Resources, stated "[a]ll employees will be

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. . . as are essential to the proper consideration of the issues" presented on appeal).

[3] In her "Statement of Undisputed Material Facts," Whitehead asserts she also held the title of "acting Zoning Officer." The City's "Statement of Undisputed Material Facts" states Whitehead also held the title of "Keyboarding Clerk I." Resolution of the factual dispute is unnecessary to a disposition of this appeal.

pretested for COVID-19 and test results must be negative before returning to" the mandated on-site work.

Whitehead did not return to on-site work on July 15, 2020. Instead, the following day she emailed the Director of Human Resources and asserted the required testing violated her rights under the New Jersey and United States Constitutions. Whitehead requested permission to return to on-site work without COVID-19 testing.

The Director of Human Resources denied Whitehead's request and provided information from the United States Equal Employment Opportunity Commission (EEOC) explaining an employer may require a "viral test" for COVID-19 as a condition of returning to work. The Director also provided Whitehead with a statement from the City's legal department declaring "[e]mployees that refuse to get tested should be referred to [Human Resources] . . . for disciplinary action."

Whitehead did not undergo the mandated COVID-19 testing and she did not return to on-site work as directed. The City suspended Whitehead without pay effective July 23, 2020, and it issued an August 10, 2020 Preliminary Notice of Disciplinary Actions charging Whitehead with insubordination, N.J.A.C. 4A:2-2.3(a)(2), and resignation not in good standing, N.J.A.C. 4A:2-6.2(b). The

notice stated Whitehead failed to provide a negative COVID-19 test prior to the July 15, 2020 deadline and "has informed her immediate supervisors that she will not be tested for COVID-19 as required to return to work." The notice further stated "[r]emoval" from employment "may be taken against" her.

At an initial hearing on August 19, 2020, "Whitehead informed" the City "of her religious objection" to the requirement she undergo COVID-19 testing as a condition of returning to on-site work. Following a later proceeding, a hearing officer issued a decision rejecting Whitehead's challenge to the City's actions and requirements. In an October 28, 2020 Final Notice of Disciplinary Action, the City terminated Whitehead's employment effective July 23, 2020, for insubordination and resignation not in good standing.

Whitehead appealed to the Civil Service Commission, which referred the matter to the Office of Administrative Law as a contested case. Following the exchange of discovery, the City moved for a summary decision dismissing Whitehead's appeal. The ALJ assigned to the matter held oral argument on the City's motion. During the argument, the City's counsel argued the EEOC and the Center for Disease Control supported return-to-work COVID-19 testing and the prescribed testing the City required did not constitute a "medical examination." Moreover, according to its counsel, the City did not actually

administer the tests which, instead, were to be performed by health care providers.

During her argument, Whitehead summarized her claim the City's testing requirement violated her right to a reasonable accommodation based on her religious beliefs. She explained her refusal to undergo the test is founded on her belief the testing is required because of a fear she may be infected with COVID-19, and that fear is inconsistent with her religious belief that "God has not given us the spirit of fear." Thus, according to Whitehead, she could not, based on her religious beliefs, succumb to the fear she had COVID-19 upon which the City based its testing requirement.[4] She acknowledged she did not expressly request the City provide a reasonable accommodation based on her religious beliefs, explaining she did not know she should ask for an accommodation. She noted, however, she advised the City she had "religious objections to" the testing.[5]

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[4] In her brief to the ALJ on the City's motion, Whitehead described differently the purported religious basis for her refusal to take a COVID-19 test. She explained the Bible states those who have faith in God will not have "diseases" put "upon thee," and she reasons that, because her faith in God prevents her from contracting COVID-19, taking a test to determine if she has COVID-19 is a betrayal of her faith.

[5] The City did not, and does not, dispute Whitehead's assertion, set forth in her "Statement of Undisputed Material Facts," that she advised the City she had a religious objection to the testing at the August 19, 2022 initial hearing.

The City's counsel argued Whitehead's request for religious accommodation — which counsel clearly understood as a request to be returned to on-site work without any testing — would create an undue hardship for the City because it would place its other employees who returned to work at risk for contracting the COVID-19 virus.[6] During argument, counsel also referenced many purported facts not included in the City's statements of material facts submitted in support of, and in opposition to, its motion for a summary decision. For example, counsel described the City's process in ordering the COVID-19 testing, referred to "talks" City representatives had with Whitehead and her collective negotiations representative concerning the testing, summarized discovery responses, and averred the City offered Whitehead many opportunities for testing before it imposed discipline.

Counsel also described conversations with Whitehead during the August 19, 2020 initial hearing on Whitehead's refusal to undergo testing, acknowledging Whitehead asserted a "faith based" objection to the testing. The

[6] The City's counsel made other arguments addressed to Whitehead's claims the testing requirement violated the ADA and her constitutional rights to privacy, to the free exercise of religion, and to be free from unreasonable searches and seizures. We do not summarize those arguments because, as noted, Whitehead does not challenge on appeal the Commission's summary decision dismissing those claims.

court inquired as to whether the City considered a "work-from-home" accommodation in response to Whitehead's religious objection to the testing requirement. Counsel responded by asserting a myriad of purported facts — none of which are tethered to competent evidence in the motion record — supporting the City's claim a work-from-home accommodation is not possible because it would not allow Whitehead to perform her job functions.

In response, Whitehead argued counsel was incorrect because she had worked from home four days a week following the City's March 2020 directive shutting down on-site work, and she could continue to perform her job functions with a work-from-home accommodation. In addition, during her argument Whitehead asserted purported facts — including numerous details concerning her version of the events surrounding her refusal to take the COVID-19 testing and leading to her suspension and termination — not included in her "Statement of Undisputed Material Facts" submitted as part of the motion record in accordance with N.J.A.C. 1:1-12.5(b).

In his written decision, the ALJ found the City did not violate any ADA or EEOC guidelines by requesting Whitehead take a COVID-19 test in the first

instance.[7] The ALJ also rejected Whitehead's claim the City violated Title VII by failing to provide a reasonable accommodation for her religious objection to the COVID-19 testing the City required as a condition of her return to on-site work.

The ALJ noted Whitehead's claim the City should have reasonably accommodated her religious objection by allowing her to work from home until she could return to on-site work without testing, but the ALJ did not directly address whether allowing Whitehead to work from home constituted a reasonable accommodation or would impose an undue hardship on the City. Instead, after acknowledging Whitehead's claim she was entitled to work from home as a reasonable accommodation, the ALJ incongruously concluded it was "unreasonable to expect [the City] to mandate . . . high-risk employees to stay at home so Whitehead can come into work, which is no guarantee that Whitehead could transmit COVID-19 to low-risk employees simply by being in the office." The ALJ concluded: "Whitehead's requested accommodations for her religious beliefs pose an undue hardship" and are therefore not required under Title VII;

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[7] Whitehead does not challenge the ALJ's determination, which the Commission adopted, that the City's COVID-19 testing requirement as a condition of returning to on-site work does not violate any ADA or EEOC guidelines. We therefore do not address the determination. See Drinker Biddle & Reath LLP, 421 N.J. Super. at 496 n.5.

Whitehead's return to work without testing "may pose a direct threat to the health of other employees and their families"; and Whitehead's refusal to take a COVID-19 test "is inconsistent with other employees['] right to work in a safe environment."

The ALJ recommended granting the City's motion for a summary decision affirming the City's suspension and termination of Whitehead's employment and dismissing Whitehead's appeal. Whitehead filed exceptions to the ALJ's decision, and the Commission later issued its final decision adopting the ALJ's findings, affirming the City's suspension and termination of Whitehead's employment, and dismissing her appeal. Whitehead appealed from the Commission's final decision and order.

II.

"Our review of administrative agency action is limited[,]" Russo v. Bd. of Trs., Police & Firemen's Ret. Sys., 206 N.J. 14, 27 (2011), but we are not "relegated to a mere rubber-stamp of agency action," Williams v. Dep't of Corrs., 330 N.J. Super. 197, 204 (App. Div. 2000). Rather, we engage in a "careful and principled" examination of the agency's findings. Ibid. (quoting Mayflower Sec. v. Bureau of Sec., 64 N.J. 85, 93 (1973)).

A reviewing "court ordinarily should not disturb an administrative agency's determinations or findings unless there is a clear showing that (1) the agency did not follow the law; (2) the decision was arbitrary, capricious, or unreasonable; or (3) the decision was not supported by substantial evidence." In re Virtua-West Jersey Hosp. Voorhees for a Certificate of Need, 194 N.J. 413, 422 (2008). "The burden of demonstrating that the agency's action was arbitrary, capricious or unreasonable rests upon the [party] challenging the administrative action." In re Arenas, 385 N.J. Super. 440, 443-44 (App. Div. 2006). Where an agency decides an issue of law, its "decision do[es] not carry a presumption of validity and it is for this court to decide whether those decisions are in accord with the law." Parsippany-Troy Hills Educ. Ass'n v. Bd. of Educ., 188 N.J. Super. 161, 165 (App. Div. 1983).

The standard governing agency determinations for summary disposition under N.J.A.C. 1:1-12.5 is "substantially the same as that governing a motion under Rule 4:46-2 for summary judgment in civil litigation," and our review is de novo. L.A. v. Bd. of Educ. of City of Trenton, Mercer Cnty., 221 N.J. 192, 203 (2015) (quoting Contini, 286 N.J. Super. at 121-22). We "must ascertain 'whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party in consideration of the

applicable evidentiary standard, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party.'" Id. at 204 (quoting Brill, 142 N.J. at 523).

Whitehead presents a limited and focused argument challenging the Commission's decision. She argues the Commission abused its discretion by granting a summary decision dismissing her claim the City failed to provide a reasonable accommodation for her religious objection to the COVID-19 testing as required under Title VII. More particularly, Whitehead asserts the City was required to provide a work-from-home accommodation based on her religious objection to the testing. Whitehead further claims the ALJ's determination the City was not required to provide a reasonable accommodation because it would result in an undue hardship lacks support in the record presented in support of the City's motion for a summary decision.

Under Title VII, it is unlawful "to discriminate against . . . individual[s] with respect to [their] compensation, terms, conditions, or privileges of employment, because of [an] individual's . . . religion." 42 U.S.C. § 2000e-2(a)(1). Title VII defines the term "religion" to "include[] all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that [they are] unable to reasonably accommodate . . . an employee's . . . religious

observance or practice without undue hardship on the conduct of the employer's business." 42 U.S.C. § 2000e(j).

"To establish a prima facie case of religious discrimination" under Title VII employees must show: they hold a sincere religious belief that conflicts with a job requirement; they informed their employer of the conflict; and they were disciplined for failing to comply with the conflicting job requirement. EEOC v. GEO Grp., Inc., 616 F.3d 265, 271 (3d Cir. 2010) (quoting Webb v. City of Phila., 562 F.3d 256, 259 (3d Cir. 2009)). Here, the record presented to the ALJ, as well as the parties' admissions during argument before the motion court and on appeal, support a finding Whitehead established a prima facie case of religious discrimination for purposes of deciding the City's summary decision motion. The motion record shows, and the City does not dispute, Whitehead objected to the COVID-19 testing requirement based on her sincere religious beliefs. Thus, the City was on actual notice of a conflict between Whitehead's religious beliefs and the COVID-19 testing requirement. See, e.g., Dixon v. The Hallmark Cos., Inc., 627 F.3d 849, 856 (11th Cir. 2010) (first citing Brown v. Polk Cnty., 61 F.3d 650, 654 (8th Cir. 1995); and then citing Hellinger v. Eckerd Corp., 67 F. Supp. 2d 1359, 1363 (S.D. Fla. 1999)) ("An employer need have 'only enough information about an employee's religious needs to permit the

employer to understand the existence of a conflict between the employee's religious practices and the employer's job requirements.'"); Heller v. EBB Auto Co., 8 F.3d 1433, 1439 (9th Cir. 1993) (finding an employer need have "only enough information about an employee's religious needs to permit the employer to understand the existence of a conflict between the employee's religious practices and the employer's job requirements").

Moreover, the City, at least for purposes of the summary decision motion, does not challenge the sincerity of the Whitehead's asserted beliefs. Further, Whitehead informed the City of the conflict between the testing requirement and her religious belief at their initial hearing, and Whitehead was later disciplined — she was suspended and then terminated — based on the claimed conflict between her religious beliefs and the testing requirement. Those undisputed facts established a prima facie case of religious discrimination under Title VII. See, e.g., Groff v. DeJoy, 35 F.4th 162, 167 (3d Cir. 2022) (finding the plaintiff established a prima facie case of religious discrimination under Title VII by presenting evidence he held a sincere religious belief that conflicted with an employment requirement, he advised his employer of the religious belief, and the employer disciplined him after he failed to fulfill the conflicting employment requirement).

Where, as here, an employee "establishes a prima facie case" of religious discrimination under Title VII, "the burden shifts to the employer to show either it made a good-faith effort to reasonably accommodate the religious belief, or such an accommodation would work an undue hardship upon the employer and its business." Id. at 169 (quoting Webb, 562 F.3d at 259). "[A]n accommodation is reasonable if it 'eliminates the conflict between employment requirements and religious practices.'" Ibid. (quoting Ansonia Bd. of Educ. v. Philbrook, 479 U.S. 60, 69 (1986)). If the evidence establishes the employer offered a reasonable accommodation, "the statutory inquiry is at an end." Ibid. (quoting Philbrook, 479 U.S. at 68).

"[W]here a good-faith effort to accommodate a religious practice has been 'unsuccessful,' the inquiry must then turn to the undue hardship analysis, which suggests that an accommodation must be effective." Ibid. (quoting Getz v. Pa. Dep't of Pub. Welfare, 802 F.2d 72, 73 (3d Cir. 1986)). The determination of whether the provision of an accommodation results in an undue hardship "is case-specific" and "requir[es] a court to look to 'both the fact as well as the magnitude of the alleged undue hardship.'" Id. at 174 (quoting GEO Grp., 616 F.3d at 273). Establishing an undue hardship "is 'not a difficult threshold to pass.'" Ibid. (quoting GEO Grp., 616 F.3d at 273). An undue hardship "is one

that results in more than a de minimis cost to the employer," including "[b]oth economic and non-economic costs suffered by the employer." Ibid. (quoting GEO Grp., 616 F.3d at 273). "Examples of undue hardships include negative impacts on the employer's operations, such as on productivity or quality, personnel and overtime costs, increased workload on other employees, and reduced employee morale." Ibid.

Measured against these principles, we are persuaded the ALJ did not employ the correct analysis of Whitehead's Title VII claim based on the record presented. The ALJ determined the termination of Whitehead's employment did not violate the City's obligation under Title VII to reasonably accommodate Whitehead's religious belief because returning Whitehead to work without COVID-19 testing created an undue hardship — the risk of infecting the City's other on-site employees with COVID-19. That determination, which Whitehead does not challenge on appeal, applies solely to an accommodation — returning Whitehead to on-site work without testing — she no longer claims is reasonable, required, or appropriate. It is therefore unnecessary to address the issue, see Drinker Biddle & Reath LLP, 421 N.J. Super. at 496 n.5., other than to note we are convinced any argument the court erred by finding the City would suffer an undue hardship if an untested Whitehead was permitted to return to on-site work

with the City's other tested employees is without sufficient merit to warrant discussion in a written opinion, R. 2:11-3(e)(1)(E).

Whitehead, however, correctly argues the ALJ did not decide her claim the City should have allowed her to work from home as a reasonable accommodation based on her asserted religious belief. Whitehead asserts she worked from home, and performed the duties of her job, four days per week for the four months prior to the City's directive she return to on-site work on July 15, 2020. She reasons a work-from-home accommodation was therefore reasonable, and she claims the City did not present any evidence such an accommodation would result in an undue burden.

As the ALJ noted in his decision, Whitehead claimed the City was obligated to reasonably accommodate her by allowing her to work from home. However, other than noting the claim, the ALJ did not make any findings or conclusions concerning whether provision of the work-from-home accommodation would impose an undue hardship on the City. See GEO Grp., 616 F.3d at 271. Instead, the ALJ found only that returning Whitehead to on-site work without COVID-19 testing was not a required accommodation because it would impose an undue burden on the City by presenting an impermissible risk of infection to Whitehead's co-employees.

In our view, the summary decision motion record did not permit the ALJ or the Commission, and does not permit this court on its de novo review, to determine as a matter of law that allowing Whitehead to work from home constitutes a reasonable accommodation that would result in an undue hardship for the City. See generally Groff, 35 F.4th at 174 (providing examples of "undue hardships" resulting from reasonable accommodations for an employee's religious beliefs). The City's moving papers do not include any competent evidence establishing undisputed facts permitting the requisite determination of "the magnitude of [any] alleged undue hardship" to the City as a matter of law. Ibid. (quoting GEO Grp., 616 F.3d at 273). The only information presented in support of the City's claim a work-from-home accommodation might cause the City an undue hardship was the ad hoc arguments of counsel during the motion hearing. The arguments of counsel do not, however, constitute competent evidence supporting a summary decision. See Contini, 286 N.J. Super. at 121-22 (explaining the facts supporting a motion for summary decision must be supported by "competent evidential materials"); see also Baldyga v. Oldman, 261 N.J. Super. 259, 265 (App. Div. 1993) (explaining "the presentation of facts which are not of record by unsworn statement[s] of counsel made in briefs and

oral arguments" do not constitute competent evidential materials supporting or opposing a summary judgment motion).

The "intent and effect" of the definition of "religion" in 42 U.S.C. § 2000e(j) is "to make it an unlawful employment practice . . . for an employer not to make reasonable accommodations, short of undue hardship, for the religious practices of [its] employees." Trans World Airlines, Inc. v. Hardison, 432 U.S. 63, 74 (1977). Here, the City did not sustain its burden of establishing it was entitled to judgment as a matter of law on Whitehead's claim the City violated Title VII by failing to provide a reasonable accommodation for her religious objection to the COVID-19 testing requirement and then suspending and terminating her employment based on her refusal to undergo the testing. See N.J.A.C. 1:1-12.5(b) (permitting entry of summary decision where record shows "the moving party is entitled to prevail as a matter of law"); see also R. 4:46-2(c) (providing summary judgment "shall be rendered" where the undisputed facts establish "the moving party is entitled a judgment or order as a matter of law"). The City failed to present competent evidence establishing a work-at-home accommodation was not required because it would result in an undue hardship.

We therefore reverse the Commission's summary decision order rejecting and dismissing Whitehead's appeal from the suspension and termination of her employment on her claim the City violated Title VII by failing to provide a work-from-home accommodation in response to her religious objection to the COVID-19 testing requirement. As we have explained, we reverse because the motion record does establish sufficient material undisputed facts supported by competent evidence permitting a determination of the claim as a matter of law. Our reversal of the dismissal of the claim shall not be construed as a constituting findings of any facts or a determination of the merits of any aspect of Whitehead's remaining Title VII claim. We remand for further proceedings on the claim. The parties on remand shall be permitted to assert any and all factual and legal arguments in support of their respective positions concerning the claim.

Because Whitehead does not challenge on appeal the Commission's dismissal of any of the remaining claims she presented to the ALJ, we affirm the Commission's summary decision dismissing all other claims Whitehead asserted in her appeal from the City's suspension and termination of her employment. See Drinker Biddle & Reath LLP, 421 N.J. Super. at 496 n.5.

Affirmed in part, reversed in part, and remanded for further proceedings. We do not retain jurisdiction.