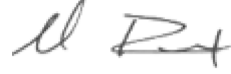


IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

Court of Appeals of New Mexico
Filed 10/1/2026 8:30 AM

CHRISTINA SENA,

Plaintiff-Appellant,


Mark Reynolds

v.

No. A-1-CA-42989

**NEW MEXICO STATE PERSONNEL
OFFICE and NEW MEXICO DEPARTMENT
OF HEALTH,**

Defendants-Appellees.

**APPEAL FROM THE DISTRICT COURT OF SANTA FE COUNTY
Bryan Biedscheid, District Court Judge**

Michael Schwarz
Santa Fe, NM

for Appellant

Miller Stratvert P.A.
Paula Maynes
Jennifer D. Hall
Philomena M. Hausler
Albuquerque, NM

for Appellees

MEMORANDUM OPINION

WRAY, Judge.

{1} Plaintiff Christina Sena was terminated from her employment as a recreational therapist 1 (RT-1) at the New Mexico Behavioral Health Institute (NMBHI) after a random drug test returned positive for marijuana. Plaintiff brought suit against

1 Defendants New Mexico Department of Health (NMDOH) and the New Mexico
2 State Personnel Office (NMSPO) for declaratory judgment; violation of the Lynn
3 and Erin Compassionate Use Act (the CUA), NMSA 1978, §§ 26-2B-1 to -10 (2007,
4 as amended through 2023); and violation of the New Mexico Human Rights Act (the
5 NMHRA), NMSA 1978, §§ 28-1-1 to -14 (1969, as amended through 2024).¹
6 Plaintiff appeals the district court’s grant of summary judgment on all three counts,
7 and we consider Plaintiff’s arguments in two categories: (1) Plaintiff was not subject
8 to random drug testing; and (2) Defendants violated the NMHRA by denying
9 Plaintiff’s request to accommodate her asserted disability. *See* Rule 1-056(C)
10 NMRA (providing the standard for summary judgment). We affirm.

11 **DISCUSSION**

12 {2} We review the district court’s grant of summary judgment de novo. *See*
13 *Romero v. Philip Morris Inc.*, 2010-NMSC-035, ¶ 7, 148 N.M. 713, 242 P.3d 280.
14 “Summary judgment is appropriate where there are no genuine issues of material
15 fact and the movant is entitled to judgment as a matter of law.” *Id.* (internal quotation
16 marks and citation omitted). The first category of arguments on appeal, regarding
17 the propriety of the random drug test, relate to Plaintiff’s request for declaratory

¹ The CUA and the NMHRA have been amended since Plaintiff was terminated from her employment. The amendments do not substantively affect our analysis, and we therefore cite the current version of the statute.

1 judgment (Count one) and the claim under the CUA (Count two). The second
2 category of arguments is tied to the NMHRA (Count three).²

3 **I. Plaintiff’s Random Drug Test**

4 {3} Random drug testing is permitted by statute for NMDOH employees who are
5 “health care providers.” *See* NMSA 1978, § 9-7-18(A) (2011). NMDOH regulations
6 also provide that “[a]ll direct health care providers” are deemed to be “employed in
7 safety-sensitive positions” and random drug testing is permitted. 7.25.2.8(A)
8 NMAC; *see* § 26-2B-9(A), (B)(2) (exempting safety-sensitive positions from the
9 employment protections afforded by the CUA). NMSPO regulations previously
10 included a “cutoff concentration” that was used to determine whether a drug test was
11 negative. *See* 1.7.8.13(B)(1) NMAC (10/1/2010).³ Plaintiff argues that (1) the RT-1
12 position did not satisfy the criteria to be subject to random drug tests; (2) the RT-1
13 position was improperly designated as safety-sensitive; and (3) the cutoff threshold
14 in the NMDOH regulation to establish the presence of drugs is arbitrary and
15 capricious. Plaintiff’s arguments implicate statutes and the administrative code, and
16 we read “[t]he statutory and administrative code provisions at issue . . . together so

²We decline to address Plaintiff’s argument that a motion in limine should have been granted, because we affirm the district court’s grant of summary judgment on all three counts. *See Crutchfield v. N.M. Dep’t of Tax’n & Revenue Dep’t*, 2005-NMCA-022, ¶ 36, 137 N.M. 26, 106 P.3d 1273 (“A reviewing court generally does not decide academic or moot questions.”).

³This regulation was amended and renumbered in 2025.

as to give effect to their meaning.” *See AMREP Sw. Inc. v. Sandoval Cnty. Assessor*, 2012-NMCA-082, ¶ 14, 284 P.3d 1118.

A. The Criteria for Random Drug Tests

{4} Plaintiff first argues that she was not subject to random drug testing because in the RT-1 position, she was not a “health care provider furnishing direct patient care.” A “health care provider” is defined by statute as “any health care staff member who is licensed, certified or otherwise authorized or permitted by law to provide direct unsupervised health care to a patient.” Section 9-7-18(E)(1); *see* 7.25.2.7(D) NMAC (same). The corresponding NMDOH regulation states that “[d]irect care” means health care providers authorized or permitted to offer health care services directly to a patient without another employee’s assistance or presence.” 7.25.2.7(A) NMAC. The evidence showed that Plaintiff was “authorized or permitted by law to provide direct unsupervised health care to a patient.” *See* § 9-7-18(E)(1). Plaintiff’s job description included the following essential duties: “[a]ssess[ing] patients, perform[ing] treatment planning, and facilitat[ing] activities using and maintaining therapy equipment, and maintaining documentation.” NMDOH offered evidence that Plaintiff provided group therapy to patients, led the groups, documented care in the medical record, and was “authorized to provide this health care without another provider’s assistance or presence.”

1 {5} Plaintiff maintains that she was not a health care provider based on evidence
2 that she was not licensed, always worked with a coworker, was directly supervised,
3 and did not provide patient care. A health care provider, however, is defined by the
4 statutes and regulations according to what an employee is authorized or permitted to
5 do—and not how a particular employee performs a job. Plaintiff’s job description
6 authorizes a person in the RT-1 position to perform direct care functions and does
7 not require supervision or the presence of another employee. Plaintiff’s evidence
8 about how she performed the job therefore does not rebut Defendants’ evidence that
9 she was authorized and permitted to provide direct care unsupervised. As a result,
10 Plaintiff was a health care provider who was subject to random drug testing.

11 **B. The Safety-Sensitive Designation**

12 {6} Plaintiff next argues that no evidence established that the State Personnel
13 Board (the Board) properly designated the RT-1 position as safety-sensitive. *See*
14 1.7.8.9(C) NMAC (2/12/2010) (“The [B]oard shall review and approve annually the
15 positions designated as safety-sensitive.”). ⁴ Specifically, Plaintiff points to
16 testimony that NMSPO receives “no justification” and “[t]here is no documentation
17 provided to [NM]SPO other than the agency’s confirmation that it does meet the

⁴This regulation was amended in 2025 and this provision, requiring annual review, was removed.

1 definition for safety[-]sensitive.” Plaintiff therefore concludes that the RT-1 position
2 “was not properly designated as safety[-]sensitive.”

3 {7} Although NMSPO has retained the ultimate authority to question and approve
4 the listings, it has delegated to the agencies any obligation to ensure that the
5 requirements for safety-sensitive positions remain satisfied. *Cf. Loc. 2238 of*
6 *AFSCME v. Stratton*, 1989-NMSC-003, ¶¶ 19-22, 108 N.M. 163, 769 P.2d 76
7 (determining that collective bargaining rules implemented by other state agencies
8 are permissible provided that the board retains the power to approve the terms of
9 employment). Defendants provided evidence that every year, NMSPO sends a
10 notification to the agencies with safety-sensitive designated positions. Agencies are
11 directed to renew their listings and “ensure that those positions continue to meet . . .
12 the definition for safety[-]sensitive.” After that review, agencies notify NMSPO of
13 “any changes or nonchanges for the Board to consider.” NMSPO compiles the
14 listings for the Board to consider, the Board reviews the listings, and the listings are
15 approved at an annual meeting. Agencies can attend the meeting and provide verbal
16 input “if the Board seeks additional clarification on changes.” The safety-sensitive
17 designation for Plaintiff’s position had “not been changed since the original
18 designation,” indicating that “the Board has not had questions on it.” Defendants
19 additionally provided un rebutted testimony that the review process described takes
20 place annually. For this reason, we conclude that the Board satisfied its obligation

1 to review the safety-sensitive designation recommended by NMDOH. As such, the
2 RT-1 position was properly designated as safety-sensitive.

3 **C. Correlation Between the Regulatory Cutoff and Safety-Sensitive**
4 **Positions**

5 {8} Plaintiff's third argument relates to the definition of safety-sensitive and the
6 threshold limits for drug use set forth in a previous version of 1.7.8.13 NMAC
7 (10/1/2010). The definition of "safety[-]sensitive" was "a position approved as such
8 by the [B]oard, including a supervisory or managerial position in which impairment
9 by drug or alcohol use would constitute an immediate or direct threat of injury to
10 public health or safety." 1.7.8.7(M) NMAC (10/30/2012).⁵ Plaintiff contends that no
11 scientific evidence correlates any amount of medical cannabis with "an immediate
12 or direct threat of injury or death," *see id.*, and for this reason, "the regulation is
13 arbitrary and capricious and not supported by substantial evidence."

14 {9} We disagree with Plaintiff, because the safety-sensitive designation correlates
15 to the objective nature of the position. The "cutoff concentration" was used to
16 determine whether a drug test was negative, *see* 1.7.8.13(B)(1) NMAC (10/1/2010),
17 but that cutoff was not associated with impairment or the definition of "safety-
18 sensitive position." Under 1.7.8.7(M) NMAC (10/30/2012), a "safety-sensitive
19 position" is a "position" the performance of which "would" pose a threat if the

⁵This regulation was amended in 2025, after the complaint in the present case was filed.

1 employee were impaired by drugs or alcohol. The regulation did not require a level
2 of a drug in an employee's system to establish that the employee was actually
3 impaired. *See id.* Instead, as the district court noted, a safety-sensitive designation
4 depends on "the nature of the position." The "safety-sensitive" designation
5 contemplates that for some positions, the risk associated with any level of alcohol or
6 drugs in an employee's system is too great.

7 {10} The essential duties and responsibilities for a person working in an RT-1
8 position at NMBHI supports such a determination. The job description includes:

9 Assesses patients, performs treatment planning, and facilitates
10 activities using and maintaining therapy equipment, and maintaining
11 documentation.

12 Provides psychosocial skills training, basic living skills and therapeutic
13 socialization activities for outpatient groups.

14

15 Facilitates and monitors clients to safely create, assemble, disassemble,
16 repair and refurbish products made from varying materials.

17 Leads clientele and institutional residents in recreational activities and
18 implements therapeutic programming that stresses improvement of
19 individual residents as part of a coordinated treatment plan.

20 Coordinates recreational activities with nursing staff and other
21 departments and works with the visual or hearing impaired to provide
22 modified recreation.

23 Arranges trips outside the institution for residents and teaches a variety
24 of sports-related life skills.

1 Attends and participates in treatment team meetings, interdisciplinary
2 care plans, completes assessments and progress notes.

3 Plaintiff worked directly in a health care setting with at-risk individuals suffering
4 from mental health disorders and substance abuse. *See* 7.21.1.7(B)(1) NMAC
5 (defining “behavioral health” as “[t]he umbrella term for mental health and
6 substance abuse,” which includes “both mental health (MH), including psychiatric
7 illnesses and emotional disorders, and substance abuse (SA), including addictive and
8 chemical dependency disorders, and includes co-occurring MH and SA disorders
9 and the prevention of those disorders”). Plaintiff testified that 90 percent of the
10 patients she interacted with were nonviolent, which indicates that the other
11 10 percent were violent. The nature of these patient interactions implicates the safety
12 of both patients and employees. Because Plaintiff was employed in a “safety-
13 sensitive position,” it was not necessary to show that she was actually impaired.
14 Instead, for this position, NMSPO has generally determined that an employee who
15 is impaired by drugs or alcohol “would constitute an immediate or direct threat of
16 injury or death to public health or safety.” *See* 1.7.8.7(M) NMAC (10/30/2012). For
17 this reason, we reject Plaintiff’s position that the regulation needed correlate a
18 particular level with impairment or that her drug test needed to correlate with a level
19 that established impairment.

1 **D. The Random Drug Test Was Justified**

2 {11} As a direct health care provider in a properly designated safety-sensitive
3 position, Plaintiff was lawfully subject to a random drug test to determine the
4 presence or absence of a prohibited substance. Having considered Plaintiff's
5 contentions related to the district court's grant of summary judgment on Counts one
6 and two, we affirm.

7 **II. The NMHRA**

8 {12} Plaintiff also contends that the termination of her employment violated the
9 NMHRA. In relevant part, "[i]t is an unlawful discriminatory practice for . . . an
10 employer, unless based on a bona fide occupational qualification or other statutory
11 prohibition, . . . to discharge . . . or to discriminate in matters of compensation,
12 terms, conditions or privileges of employment against any person otherwise
13 qualified because of . . . physical or mental disability, [or] serious medical
14 condition." Section 28-1-7(A). Under Section 28-1-7(J), an employer may not
15 "refuse . . . to accommodate a person's physical or mental disability or serious
16 medical condition, unless such accommodation is unreasonable or an undue
17 hardship." With this legal context, we provide some additional background.

18 {13} After a positive drug test result, Plaintiff received a notice of contemplated
19 action (the first NCA) that informed her that she would be terminated from her
20 employment as a result of the positive test. Plaintiff responded to the first NCA by

1 informing NMDOH that she had a disability and requested three alternative
2 accommodations: continued medical cannabis use, transfer to a non-safety-sensitive
3 position, or attempting to work without using medical cannabis. NMDOH rescinded
4 the first NCA in order to review Plaintiff’s requested accommodations but ultimately
5 denied the accommodations for three reasons: (1) the request was made after the first
6 NCA was issued; (2) federal funding might be threatened by permitting employees
7 to use medical cannabis; and (3) such an accommodation would create undue
8 hardship for NMDOH and require an indefinite exception to a rule that has a safety
9 purpose. At the summary judgment hearing, the district court determined that (1)
10 Plaintiff requested the accommodation too late; and (2) the NMHRA was not
11 violated because NMDOH concluded “that there was not, in fact, reasonable
12 accommodation under the circumstance.”⁶

13 {14} On appeal, Plaintiff maintains that requesting accommodations after the first
14 NCA was “not barred” and makes four arguments. First, Plaintiff contends that
15 federal law did not prohibit her use of medical cannabis at home, only at work.
16 Second, Plaintiff argues that NMDOH did not prove that it would lose federal
17 funding by accommodating the use of medical cannabis. Third, Plaintiff points to

⁶The district court also found that permitting medical cannabis use could negatively impact federal funding, but that finding was related to whether Plaintiff was protected by the CUA, *see* § 26-2B-9(A), and not to whether Defendants had violated the NMHRA.

1 competing federal authority on the subject of accommodations requested after a
2 notice of potential disciplinary action, to evidence that she had been discouraged
3 from seeking an accommodation, and to NMDOH's rescinding of the first NCA—
4 effectively eliminating the lateness of her request. Fourth, Plaintiff asserts that
5 because employees are often unfamiliar with their rights, public policy supports late
6 requests for reasonable accommodations. Because Defendants did consider
7 Plaintiff's late accommodation request and provided other bases for denying her
8 requested accommodations, we decline to consider Plaintiff's second and third
9 arguments. We additionally need not address Plaintiff's remaining arguments related
10 to federal law because as we explain, Plaintiff has not challenged the district court's
11 alternative holding.

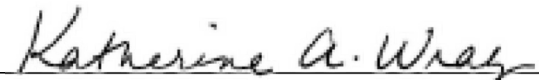
12 {15} The district court concluded that NMDOH determined that no reasonable
13 accommodation was available for Plaintiff's asserted disability. In briefing, Plaintiff
14 has not addressed this conclusion or NMDOH's determination that (1) it could not
15 reasonably accommodate Plaintiff's request to continue using medical cannabis in
16 her current position; (2) modification and subsequent application of the drug testing
17 policy would be an undue hardship; and (3) NMDOH could not reasonably
18 accommodate Plaintiff's request to transfer into a non-safety-sensitive position. At
19 oral argument, Plaintiff did not point to disputed material facts that a reasonable
20 accommodation would include allowing Plaintiff to continue to use medical

1 cannabis while in a safety-sensitive position. To the contrary, Plaintiff
2 acknowledged that if the position were properly designated to be safety-sensitive,
3 NMDOH should have accommodated her by transfer to a non-safety-sensitive
4 position. In addition to this issue, Plaintiff also raised at oral argument Defendants'
5 insufficient engagement in an interactive process to craft a reasonable
6 accommodation. These issues were not addressed in Plaintiff's briefing before this
7 Court and were therefore abandoned. *See City of Santa Fe v. Komis*, 1992-NMSC-
8 051, ¶ 22, 114 N.M. 659, 845 P.2d 753 ("Issues not briefed will not be reviewed by
9 this Court."); *Hinger v. Parker & Parsley Petroleum Co.*, 1995-NMCA-069, ¶ 45,
10 120 N.M. 430, 902 P.2d 1033 ("We do not directly address an issue raised for the
11 first time at oral argument."). As a result, even if we were to conclude that Plaintiff's
12 claim was timely, Plaintiff has not provided any basis for reversing the district
13 court's grant of summary judgment on the merits, because Plaintiff has not shown a
14 disputed issue of material fact as to NMDOH's denial of her request for an
15 accommodation. *See Blauwkamp v. Univ. of N.M. Hosp.*, 1992-NMCA-048, ¶ 14,
16 114 N.M. 228, 836 P.2d 1249 (stating that a moving party can establish a prima facie
17 case for summary judgment by "negating at least one of the essential elements upon
18 which the plaintiff's claims are grounded").

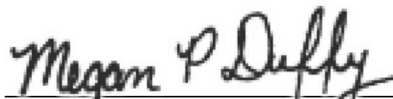
19 **CONCLUSION**

20 {16} For the foregoing reasons, we affirm.

1 {17} IT IS SO ORDERED.

2 
3 KATHERINE A. WRAY, Judge

4 WE CONCUR:

5 
6 MEGAN P. DUFFY, Judge

7 
8 ZACHARY A. IVES, Judge