OFFICE OF CONGRESSIONAL WORKPLACE RIGHTS
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Washington, DC 20540-1999

Jane Doe,[1]	)	
Appellant,	)	
	)	Case No. 19-AC-81 (FM)
v.	)	
Office of the Architect of the Capitol	)	
Appellee.	)	

Before the Board of Directors: Barbara Childs Wallace, Chair; Barbara L. Camens; Alan V. Friedman; Roberta L. Holzwarth; and Susan S. Robfogel, Members.

DECISION OF THE BOARD OF DIRECTORS

The appellant's amended claim form in the instant case alleged that her employing office, the Office of the Architect of the Capitol (AOC), violated the Americans with Disabilities Act (ADA) and Rehabilitation Act provisions of the Congressional Accountability Act (CAA), 2 U.S.C. § 1311(a)(3), when it failed to properly engage in an interactive process and failed to provide her with a reasonable accommodation of her disability. The Merits Hearing Officer (MHO) entered an Order granting the AOC's motion for summary judgment on all claims.

The appellant has timely petitioned the Board to review the MHO's Order, and the AOC has filed a Response in opposition to the appellant's petition for review (PFR). Our review discloses genuine disputes over material facts such that summary judgment should not have been entered against the appellant's accommodation claims. Therefore, upon due consideration of the Hearing Officer's Orders, the parties' briefs and filings, and the

[1] We refer to the appellant herein using the pseudonym "Jane Doe" in order to maintain the confidential nature of these proceedings on remand. *See* 2 U.S.C. § 1416.

record in these proceedings, we GRANT the appellant's PFR, VACATE the Order granting summary judgment, and REMAND this case for a hearing on the merits.

I. Facts and Procedural History

Unless otherwise noted, the following facts are undisputed:

The appellant is employed by the AOC as a Visual Communication Program Specialist at the Capitol Visitor Center (CVC). The appellant's position description states: "The work is primarily sedentary in an office setting but may require walking throughout the CVC to review exhibits and public interest in handouts and display." The appellant agrees that her job duties do not involve any tasks that require carrying, lifting, pushing, pulling, or driving. She further states that she is physically able to perform all of her job duties either by teleworking or at the job site, that is, with or without reasonable accommodations. At all relevant times, the appellant had a telework agreement that permitted her to telework 1 day each week throughout the year.

In July 2019, the appellant, who is right-handed, was involved in an auto accident, resulting, *inter alia*, in a fractured right shoulder. On August 8, 2019, she requested information concerning the Family and Medical Leave Act (FMLA) from the CVC reasonable accommodation manager, Katie Klein. Klein provided the requested information and responded: "If you apply for FMLA, we can use that as medical documentation to support your accommodation, as long as it has enough information for us to see what you need: diagnosis, what limitations you will have and for how long."

The appellant's initial FMLA leave request, which the AOC granted, was for continuous absence from work from August 15 to October 21, 2019, with intermittent leave thereafter for one to two episodes per month, and 2 days for each episode. That request was supported by medical documentation from her medical provider, Marc Rankin, M.D., who stated that the appellant had undergone a "major surgical procedure to her right shoulder that required immobilization for a period of time, followed by 6 to 8 weeks of rehabilitation." He further stated that the appellant was unable to perform any activity that involved "any use of her right upper extremity" and that "flair-ups of pain can occur up to 9 months after surgery. The pain can be incapacitating and expected to last up to forty-eight hours."

On October 17, 2019, Klein advised the appellant that her request had been approved for an extension of her continuous FMLA leave until November 4, 2019. In addition, she stated in part that "it sounds like you're requesting a reasonable accommodation. The request form is attached [,] and I would need medical documentation to support the request. . . . Let me know what questions you have. Feel free to call me too if it's easier."

On October 30, 2019, the appellant submitted an email requesting several accommodations for a temporary disability, including: (a) an "ergonomic evaluation and adjustments asap if needed to CVC and AOC workstations"; (b) the right to telework 3 days per week for 12 weeks after her return to work, beginning December 2, 2019; (c) the right to telework 2 days per week thereafter through May 2020; and (d) flexible daily work hours from 7 a.m. to 7 p.m. In support of her request, the appellant also submitted documentation from a physical therapist, which stated in part:

> [The appellant] is receiving physical therapy for a rotator cuff surgery. She would benefit from teleworking 3x/week to start and a flexible schedule to allow for physical therapy sessions and adequate rest for recovery. She can decrease to 2x/week after 12 weeks. Please allow up to 9 months of a flexible schedule for adequate healing.

On November 1, 2019, Klein informed the appellant that she had received the reasonable accommodation request; however, Klein advised the appellant that the medical documentation she provided on October 30, 2019 was insufficient because it did not specifically reference her medical restrictions and limitations. Klein asked the appellant to provide supplemental medical documentation that identifies "the activity or activities the impairment limits."

The appellant returned to work on November 4, 2019. On November 12, 2019, she emailed to Klein a "Certificate of Health Care Provider for Employee's Serious Health Condition [FMLA]" signed by Dr. Rankin. In the certificate, Dr. Rankin identified the job functions that the appellant was unable to perform as: "No carrying, lifting, pushing, or pulling. No ladder climbing. No driving." Further, in response to the question on the certificate to "Describe other relevant medical facts … ([which] may include symptoms, diagnosis, or any regimen of continuing treatment such as the use of specialized equipment)," Dr. Rankin stated that the appellant had "sustained a right shoulder fracture dislocation for which she underwent surgery on August 12, 2019. The procedure was uncomplicated; however, the recovery course will necessarily be a protracted one in order to regain full range of motion and strength. Her post op pain has improved, yet she continues to experience stiffness, limits in her range of motion, strength, and endurance. She will benefit from further outpatient rehabilitation."

On November 12, 2019, Klein consulted with a CVC Human Resources Specialist and with an Employee Relations Specialist in the Office of Diversity, Inclusion and Dispute Resolution regarding the appellant's medical submission. All agreed that the medical documentation was insufficient to explain which of the appellant's job duties were impacted by her limitations. On November 13, 2019, Klein's supervisor, Tom Casey, agreed with Klein's recommendation that the appellant's request be granted only to the extent of teleworking for 2 days per week for 8 weeks.

On November 15, 2019, Klein called the appellant and left her a voicemail message about the accommodation request, asking her to call back. The appellant did not

call back, but she sent Klein an email that day stating that she had received Klein's voicemail as she was walking into physical therapy, and asking Klein to send her an email with the response. By email dated November 18, 2019, Klein notified the appellant that the AOC had granted some of her requests including an ergonomic assessment and a flexible work schedule between 7 a.m. and 7 p.m. Klein further advised the appellant that:

> Your request to telework for three days per week for 12 weeks and two days per week for subsequent weeks through May 2020 was not approved. Your request is not supported by the updated medical documentation you provided on Tuesday, November 12. However, you have been approved to telework two days per week for up to 8 weeks. We understand you have regular appointments and this may help you save leave. CVC management will review this request periodically to ensure there is ample work to justify your request to telework. We may also revisit this request if conditions change or in the event of a change in business operations. . . .
>
> Please let me know what questions you have. You're welcome to call me or come by my office. . . .

The appellant did not respond to Klein's email.

On November 20, 2019, the appellant filed a claim form with the OCWR alleging that the AOC violated the FMLA when it failed to properly engage in an interactive process and failed to provide her with a reasonable accommodation of her disability on November 18, 2019 and continuing thereafter.

On December 11, 2019, Klein spoke with the appellant by telephone. According to Klein's sworn statement, during this telephone conversation, Klein said she was following up on a brief discussion the appellant had with the Chief Executive Officer of the CVC, in which the appellant mentioned her reasonable accommodation request. Klein offered to discuss the reasonable accommodation process and to provide more information to the appellant. Klein further averred in her sworn statement that the appellant declined the offer and stated that she was "going to a judge."

Pursuant to a scheduling order issued on December 30, 2019, the appellant filed an amended claim on January 15, 2020. In the amended claim, she alleged that the AOC violated the ADA provisions of the CAA by failing to properly engage in an interactive process and failing to provide her with a reasonable accommodation of her disability. The parties thereafter engaged in, and completed, discovery, exchanged witness lists and copies of all exhibits, and completed voluntary mediation. On March 2, 2020, the AOC filed a motion for summary judgment; on March 16, 2020, the appellant timely filed an opposition to the motion; and on June 9, 2020, the MHO issued an order granting

summary judgment in favor of the AOC, concluding that it was the appellant, and not the AOC, who improperly terminated the interactive process.[2]

As an initial matter, the MHO determined that the appellant was disabled; that she is a qualified employee because she is employed by the AOC; and that she is able to perform all of the essential functions of her job, with or without accommodations. The MHO rejected the appellant's claim that the AOC had failed to properly engage in an interactive process and failed to provide her with a reasonable accommodation of her disability, however, noting that the appellant failed to specify that her request to telework was related to her commute, as opposed to her ability to perform her responsibilities in the workplace. The MHO found that, although both parties had engaged in the interactive process by requesting and providing from the appellant's medical providers information about her medical condition and its impact on her abilities, there was nothing in the medical information that identified that the reason for the request to telework was difficulties she was having with the commute. Although the appellant's medical documentation specified that the job functions she could not perform included "no driving," among other restrictions, the MHO stressed that the undisputed evidence showed that the appellant's position description does not identify any of the restricted actions, including driving, as part of her job duties, and further, that the appellant did not specifically advise Klein that she sought to telework in order to accommodate difficulties arising during her commute to and from work. Accordingly, the MHO concluded that the AOC, seeing no need for telework to accommodate the essential functions of the appellant's work, properly denied her request in part as unnecessary.

The MHO also rejected the appellant's contention that it was the AOC that improperly terminated the interactive process, determining that "an employer cannot be found to have violated the ADA when responsibility for the breakdown of the 'informal, interactive process' is traceable to the employee and not the employer." Specifically, the MHO noted that in Klein's November 18, 2019, email communicating the AOC's response, Klein had invited the appellant to ask any questions she had, and further stated that the appellant was welcome to call her or come by her office. The MHO concluded that the appellant's reaction to the AOC's decision was to shut down any further

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[2] In approximately February 2020, the AOC conducted an ergonomic assessment of the appellant's needs for equipment. Following that assessment, on February 28, 2020, Klein submitted requests for a footrest, an ergonomic keyboard, a wrist rest, and a vertical mouse. (That equipment arrived in June 2020.) On March 12, 2020, the appellant participated in a custom desk chair fitting at the AOC. In mid-March 2020, the AOC followed federal and state guidelines issued in response to a declared global coronavirus (Covid-19) pandemic. According to these guidelines, all AOC employees who could telework were asked to remain at home and complete their work assignments from home. The appellant began teleworking five days per week on March 16, 2020.

conversation about her requests for accommodation in favor of taking her issues to "a judge." Had the appellant explained her reasons for the telework request, the MHO observed, she would have only then given clear notice that the accommodation request pertained to her commute rather than her work responsibilities.

The MHO also rejected the appellant's contention that the AOC had failed to properly inquire into her submitted medical documentation. Noting that the appellant had replied "no" when AOC asked whether she was alleging that her limitations prevented her from performing the essential functions of the job, the MHO concluded that the appellant ought to have realized that the AOC was unaware that her request to telework was unrelated to her ability to perform her job duties and instead pertained to her commute. Without further information from the appellant about why she was requesting telework accommodations for a job she claimed she could do without any accommodations, the MHO concluded that the AOC could not be held to be on notice of the reasons for appellant's requests. "Instead of responding to her employer's decision on her request to telework by explaining the specific reason for the request," the MHO observed, the appellant:

> simply disengaged from the process and appears to be solely responsible for its termination. [She] did not challenge the conclusion of the [AOC], nor did she attempt to understand the basis for it. Indeed, even after the [appellant] disengaged, Ms. Klein attempted to reopen the interactive process, but the Claimant refused. Accordingly, the facts appear to be undisputed that [the AOC] properly engaged in the interactive process upon receiving notice of the [appellant's] request for accommodations for her shoulder surgery up to, and even after, the time when the [the appellant] terminated the process.

Accordingly, the MHO granted the AOC's motion for summary judgment on all claims.

II. Analysis

A. Standard of Review

The Board's standard of review requires it to set aside a Hearing Officer's decision if it determines the decision to be: (1) arbitrary, capricious, an abuse of discretion, or otherwise not consistent with the law; (2) not made consistent with required procedures; or (3) unsupported by substantial evidence. 2 U.S.C. § 1406(c); *Rouiller v. U.S. Capitol Police*, Case No. 15-CP-23 (CV, AG, RP), 2017 WL 106137, at *6 (Jan. 9, 2017). In making determinations under subsection (c), the Board shall review the whole record, or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error. 2 U.S.C. § 1406(d).

B. Summary Judgment

Section 4.10(d) of the Board's Procedural Rules provides that a MHO may, after notice and an opportunity for the parties to address the question of summary judgment, issue summary judgment on the claim. Similarly, section 7.01(b)(9) provides: "Merits Hearing Officers . . . shall have all powers necessary to . . . rule on all motions . . . including motions for summary judgment."

The Board reviews a decision granting a motion for summary judgment *de novo*. *Patterson v. Office of the Architect of the Capitol*, No. 07-AC-31 (RP), 2009 WL 8575129, at *3 (OOC Apr. 21, 2009). Summary judgment is appropriate if there are no genuine issues of material fact and the movant is entitled to summary judgment as a matter of law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247 (1986); OOC Procedural Rule 4.10(d). In determining whether the nonmoving party has raised a genuine issue of material fact, the Board must view the evidence in the light most favorable to the nonmoving party and must draw all reasonable inferences in that party's favor. *U.S. Capitol Police & Lodge 1, FOP/U.S. Capitol Police Labor Comm.*, No.16-LMR-01 (CA), 2017 WL 4335144, at *3 (OOC Sep. 26, 2017); *see also Talavera v. Shah*, 638 F.3d 303, 308 (D.C. Cir. 2011).

To defeat a motion for summary judgment, the nonmoving party must "designate specific facts showing that there is a genuine issue for trial," *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986), and the moving party can establish its entitlement to judgment by showing the lack of evidence to support the nonmoving party's case. *Conroy v. Reebok Int'l,* 14 F.3d 1570, 1575 (Fed. Cir. 1994); *Edward E. Eastham v. U.S. Capitol Police Bd.*, No. 05-CP-55 (DA, RP), 2007 WL 5914213, at **3-4 (OOC May 30, 2007) (affirming summary judgment when complainant "failed to proffer evidence" that would permit the inference of unlawful conduct required to establish complainant's prima facie case). The nonmoving party is required to provide evidence in support of her claims, not merely assertions, allegations, or speculation. *See Robert Solomon v. Office of the Architect of the Capitol*, No. 02-AC-62 (RP), 2005 WL 6236948, at *8 (OOC Dec. 7, 2005) (holding that at the summary judgment stage, claims must be supported by evidence, which distinguishes a decision on a motion for summary judgment from a decision on a motion to dismiss). However, neither this Board nor the MHO may make credibility determinations or weigh the evidence. *See Burley v. Nat'l Passenger Rail Corp.*, 801 F.3d 290, 296 (D.C. Cir. 2015).

C. ADA Statutory Framework

The CAA applies the rights and protections established by sections 102 through 104 and 107(a) of the ADA (42 U.S.C. §§ 12112 through 12114 and 12117(a)) related to disability discrimination. 2 U.S.C. § 1311. In general, the ADA, as applied by the CAA, provides employees who have mental or physical impairments the right to receive reasonable accommodations in the work place and allows them to bring claims against

employing offices who discriminate against them on the basis of their accommodation requests. The ADA, as applied by the CAA, also requires employing offices to make reasonable accommodations for employees with disabilities absent undue hardship for the employing office, and, as discussed below, it requires both employing offices and employees to participate in an interactive process in which both parties are required to consult with each other in good faith to select and implement an appropriate accommodation for both the employing office and employee. Unless it would be an undue burden, it is discriminatory to not make reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an employee. 42 U.S.C. § 12112.

The employee bears the burden to provide either constructive or actual notice of her disability and possible need for accommodation. *Chenari v. George Washington Univ.*, 2016 WL 1170922 (D.D.C. Mar. 23, 2016). Generally, to trigger the interactive process, an employee must request an accommodation, which can be done by simply informing the employer of the need for some accommodation and does not require a formal request. The request may be oral or in writing. The ADA does not require employers to speculate about the accommodation needs of employees and applicants; rather, the individual requesting the accommodation has an obligation to provide the employer with enough information about the disability to determine a reasonable accommodation. Additionally, although an employee need not use any magic words, or even use the term "accommodation" in the request, an employee must be clear in indicating the need for an accommodation because of a medical condition. *See generally*, *Anthony Katsouros v. Office of the Architect of the Capitol*, Nos. 07-AC-48 (DA, RP), 09-AC-10 (DA, FM, RP), 2013 WL 5840233 (OOC Sept. 19, 2013).

When a qualified individual with a disability has requested a reasonable accommodation to assist in the performance of a job (and the needed accommodation is not obvious), the employer, using a problem-solving approach, should: 1) analyze the particular job involved and determine its purpose and essential functions; 2) consult with the individual with a disability to ascertain the precise job-related limitations imposed by the individual's disability and how those limitations could be overcome with a reasonable accommodation; 3) in consultation with the individual to be accommodated, identify potential accommodations and assess the effectiveness each would have in enabling the individual to perform the essential functions of the position; 4) consider the preference of the individual to be accommodated; and 5) select and implement the accommodation that is most appropriate for both the employee and the employer. This interactive process requires an element of good faith on both sides. *EEOC, Disability Law Compliance Manual* § 2:20 (June 2016). An employer may require an employee to provide documentation as part of the interactive process where the disability and need for accommodation are not obvious. *Ward v. McDonald*, 762 F.3d 24 (D.C. Cir. 2014).

Because the interactive process imposes mutual obligations on employing offices and employees, an employing office cannot be held liable for a failure to accommodate if a breakdown in that process is attributable to the employee. *Ali v. McCarthy*, 2016 WL

1446120 (D.D.C. Apr. 12, 2016). Similarly, if the breakdown in the process is attributable to the employing office, and there exists a reasonable accommodation that was not granted, this would constitute an adverse employment action in the context of discrimination under the ADA. *Id.* To establish that a request has been denied, a claimant must show that the employing office either ended the interactive process or participated in the process in bad faith. *Id.*

In order to survive summary judgment on her reasonable accommodation claim, the appellant must show that she requested reasonable accommodations that would have allowed her to perform the essential functions of her job and that the AOC failed to provide them. *Graffius v. Shinseki*, 672 F. Supp. 2d 119, 126 (D.D.C. 2009); *cf. Langon*, 959 F.2d at 1060 (motion for summary judgment was improperly granted as to an employee's failure to accommodate claim to the extent the claim is based on the employer's denial of her request to telecommute). Participation is the obligation of both parties, however, so an employer cannot be faulted if after conferring with the employee to find possible accommodations, the employee then fails to supply information that the employer needs or does not answer the employer's request for more detailed proposals. *Taylor v. Phoenixville Sch. Dist.*, 184 F.3d 296, 317 (3d Cir. 1999).

D. The Parties' Contentions

The appellant contends that, contrary to the MHO's determination, it was the AOC that disengaged from the interactive process when it denied the appellant's requests for reasonable accommodation in a "final decision" dated November 18, 2019, i.e., Klein's email of that date. The appellant asserts that the medical documentation that she provided between August and November 2019 clearly identified her restrictions and that Klein erroneously concluded that the appellant had failed to provide adequate information about her limitations. The appellant further contends that it was incumbent upon the AOC to ask the appellant or her medical providers for clarification or explanation about her medical limitations if it considered her documentation to be inadequate, but that the AOC improperly failed to do so. Specifically, the appellant stresses that her medical documentation noted she was limited from, among other things, "driving." Thus, the appellant asserts, the AOC should have considered or, at the very least, inquired further to alleviate any confusion or misconceptions concerning the appellant's driving restrictions and the relation to her daily commute to work.

The appellant also contends that the MHO incorrectly construed Klein's November 18, 2019 email as an invitation to continue engaging in the interactive process. Rather, the appellant contends, Klein only invited the appellant to ask questions about the contents of the email and decision, which was effectively a denial of the appellant's initial accommodation request, as is evidenced by the lack of any further inquiry about the appellant's accommodation needs or invitation to supplement the record with additional documentation or explanation. Rather, the appellant contends, it was Klein's November 18, 2019 email that effectively terminated or "cut off" the interactive process

with regard to the complainant's request for telework when the AOC issued a "take it or leave it" accommodation of 2 days telecommuting per week.

The appellant further asserts that the MHO erroneously concluded that her reaction to Klein's email was to "shut down any further conversation about her requests for accommodation." She points to evidence in the record that on various dates between November 21, 2019 and February 5, 2020, she interacted and communicated orally and by email with Klein and an AOC Occupational Safety and Health (OSH) Specialist about her medical condition and reasonable accommodation requests.

The appellant also contends that the MHO's conclusion that the AOC had no way of knowing that her accommodation request was related to her commute to work fails to recognize record evidence that in or around December 2019, the appellant informed her third-level supervisor that due to the AOC's denial of her request for telework as a reasonable accommodation, she was having a difficult time managing the pain and the stress of traveling to and from work. Although Klein subsequently advised the appellant that the supervisor was not part of the interactive process, the appellant contends that Klein improperly failed to reinitiate the interactive process or inquire further about the appellant's limitations or need for telework.

The AOC responds that the MHO properly viewed the appellant's medical documentation as inadequate and that the AOC had no way of knowing that her medical restriction of "no driving" pertained to her inability to commute, rather than her ability to perform the essential functions of her position. It also asserts that the MHO properly determined that the appellant should have viewed Klein's email as a clear invitation to continue the interactive process, and that it was the appellant, not the AOC, who improperly and prematurely terminated that process. The AOC contends that the appellant's characterization of the email as a "final determination" ignores the fact that Klein attempted to inquire further on December 11, 2019, but the appellant said no. Without the appellant's cooperation and permission, the AOC notes, Klein could not have followed up with the medical providers directly.

Moreover, despite numerous opportunities to do so, the AOC asserts, the appellant failed to tell anyone at the AOC that her physical limitations were affecting her ability to travel to and from work, until she answered the AOC's interrogatories in February, 2020. As a result of the appellant's failure, the AOC and appellant never engaged in the interactive process over how to accommodate the limitations on her ability to travel to and from her workstation. The AOC further contends that the appellant's contention that she continued to engage in the interactive process is belied by the fact that her subsequent communications with Klein and the OSH Specialist concerned the appellant's other accommodation requests, not telecommuting.

The AOC further contends that it had no reason to know that the appellant's physical limitations were affecting her ability to travel to and from her workstation because of the information contained in the medical documentation she submitted on

November 12, 2019. Thus, the AOC contends, the MHO correctly determined that appellant failed to provide the AOC with sufficient notice of the basis for her request to telework as an accommodation. Specifically, the AOC contends that the appellant provided medical documentation that stated she was unable to perform certain job functions, including driving, but her position did not require that she perform any of these functions. In other words, the AOC contends, the appellant's medical documentation did not indicate that any abilities or activities relating to the essential functions of her position were affected by her physical limitations.

E. The Appellant is Entitled to a Hearing on the Merits

We have viewed the evidence in the light most favorable to the appellant, as we must on summary judgment, and find that there are genuine issues of material fact as to whether either party abandoned the interactive process, or participated in that process in bad faith, before the AOC had the information it needed to determine the appropriate accommodation in this case. For example, we find genuine issues of fact on whether Dr. Rankin's restriction of "no driving" was sufficient to place the AOC on notice that the appellant's accommodation request pertained to her ability to commute, on the one hand, or whether the AOC properly disregarded it on the grounds that the essential functions of the appellant's position did not include driving, on the other. We also believe that a reasonable factfinder could conclude that Klein's email of November 18, 2019 was a final determination on the appellant's accommodation requests, rather than an invitation to continue the interactive process. Further, we find a genuine issue of disputed material fact on whether the appellant improperly terminated the interactive process, or whether she genuinely believed that Klein was only inviting her to contact her with questions about a decision which was already final.

Thus, there are genuine disputes of material fact as to whether either party improperly caused a breakdown in the interactive process, leading to the partial denial of the appellant's request for accommodation. Therefore, summary judgment should not have been granted. *See Langon v. Dep't of Health & Human Servs.,* 959 F.2d 1053, 1061 (D.C. Cir. 1992) (genuine factual disputes about whether employee provided sufficient information concerning the severity of her illness to invoke the agency's work-at-home policy precluded summary judgment); *Butler v. Washington Metro. Area Transit Auth.,* 275 F. Supp. 3d 70, 86 (D.D.C. 2017) (finding genuine factual disputes as to who was responsible for any breakdowns in the interactive process); *Lenkiewicz v. Castro,* 118 F. Supp. 3d 255, 265 (D.D.C. 2015) (dispute of material fact existed as to whether agency's denial of request to telework was due to failure to engage in a good-faith interactive process); *Woodruff v. LaHood,* 777 F. Supp. 2d 33, 43 (D.D.C. 2011) (finding genuine dispute as to whether agency engaged in the interactive process in good faith prior to discontinuing plaintiff's maxi-flex and telecommuting privileges); *see also Baert v. Euclid Beverage, Ltd.,* 149 F.3d 626, 633–34 (7th Cir.1998) (reversing the district court's grant of summary judgment to the employer because disputes of fact remained about which party caused the breakdown in the interactive process).

In assessing the evidence on this appeal from a grant of summary judgment we do not, of course, reach any conclusions as to the ultimate merits of the appellant's case. *Breen v. Dep't of Transp.*, 282 F.3d 839, 843–44 (D.C. Cir. 2002). At this stage of the litigation, however, it is apparent that a genuine issue of material fact precludes summary judgment on the ground stated by the MHO. Accordingly, the judgment of the MHO is reversed, and the case is remanded for further proceedings.

ORDER

We GRANT the appellant's Petition for Review, VACATE the Order granting summary judgment, and REMAND this case for a hearing on the merits.

It is so ORDERED.

Issued, Washington, DC, March 18, 2021