STATE OF CONNECTICUT
COMMISSION ON HUMAN RIGHTS AND OPPORTUNTIES
OFFICE OF PUBLIC HEARINGS

Commission on Human Rights and Opportunities, ex rel.
Oscar Acevedo, Complainant

CHRO Case No. 1820270

v.

Brentwood Hospitality, LLC, Respondent

November 13, 2019

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Ruling and Order on Motion for Summary Judgment

The complainant, Oscar Acevedo, filed a complaint with the Commission on Human Rights and Opportunities (commission) alleging a cause of action against the respondent, Brentwood Hospitality, LLC, for discrimination because of the complainant's national origin (El Salvador), ancestry (Salvadoran), physical disability (damaged knee ligament), and retaliation for previously opposing discrimination, in violation of General Statutes §§ 46a-60 (b) (1) [1] and 46a- (b) (4), and, by virtue of General Statutes § 46a-58 (a), for violations of Title VII of the Civil Rights Act of 1094, 42 U.S.C. § 2000e-2 (Tile VII), and the American with Disabilities Act of 1990, 42 U.S.C. § 12101, et seq. (ADA). [2] The respondent has now moved for summary judgment only as to the complainant's disability discrimination claim. For the reasons discussed below, the motion for summary judgment on the disability discrimination claim is granted.

Background

In his complaint, filed on December 27, 2017, the complainant claims, inter alia, that he was fired from his position working as a runner and bartender for the respondent because of his physical disability in violation of the Connecticut Fair Employment Practices Act (CFEPA) and the Americans with Disabilities Act (ADA), following a knee injury in October of 2017. On December 5, 2018, the matter was certified to public hearing. The respondent filed an answer with special defenses to the complaint on January 17, 2019. On August 30, 2019, the respondent filed a motion for summary judgment only as to the complainant's disability claim under the CFEPA and the ADA, along with a memorandum of law and documentary evidence in support of said motion. On September 13, 2019, the commission filed a response and memorandum of law with two attachments objecting to the respondent's motion for summary judgment. On September 20, 2019, the respondent filed a reply to the commission's objection.

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[1] Under the Connecticut Fair Employment Practices Act it is a discriminatory practice "(f)or an employer, by the employer or the employer's agent, except in the case of a bona fide occupational qualification or need, to refuse to hire or employ or to bar or to discharge from employment any individual or to discriminate such individual in compensation or in terms, conditions or privileges of employment because of the individual's ... physical disability..." General Statutes § 46a-60 (b) (1).

[2] Similarly, the ADA prohibits a "covered entity" from discriminating "against a qualified individual on the basis of disability in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment." 42 U.S.C. § 12112 (a).

Authority of Human Rights Referee to Rule on a Motion for Summary Judgment

I first address the commission's argument that the filing of a motion for summary judgment is not an allowable motion under the regulations governing this administrative adjudication. As recognized under previous rulings of this tribunal, the regulations confer on the presiding referee the full authority to control contested case proceedings, with the authority to rule upon "all motions and objections", including summary judgment motions. See Regs., Conn. State Agencies, § 46a-54-83a (a); *Commission on Human Rights & Opportunities ex rel. Danner v. ATOS IT Solutions and Services, Inc.*, 2019 WL 2408892, *1 (CHRO No. 1730314) (February 22, 2019) (Ruling and order on motion for summary judgment); *Commission on Human Rights & Opportunities ex rel. Perreira v. Yale New Haven Hospital*, 2016 WL 9405663, CHRO No. 1433048 (September 7, 2016) (Ruling on summary judgment); *Commission on Human Rights & Opportunities ex rel. Stephenson v. Webster Bank*, 2013 WL 8374107, CHRO No. 1110235 (August 22, 2013) (Ruling on motion for summary judgment); *Commission on Human Rights & Opportunities ex rel. Barnes v. Goodman,* 2009 WL 1941468, CHRO No. 0710395 (June 5, 2009) (Ruling on motion for summary judgment); *Commission on Human Rights & Opportunities ex rel. Carretero v. Hartford Public Schools,*2005 WL 5746419 CHRO No. 0310481 (November 28, 2005) (Ruling on motion for summary judgment); *Commission on Human Rights & Opportunities ex rel. Blake v. Beverly Enterprises-Connecticut*, 1999 WL 34765982, CHRO No. 9530630 (July 8, 1999) (Rulings on motions for summary judgment/dismissal and directed verdict). The plain purport of these rulings is that dismissals, including on motions for summary judgment, are an available option to hearing officers on grounds other than those provided in § 46a-54-88a (d) of the Regulations of Connecticut State Agencies. [3] I therefore conclude that the tribunal has the authority to rule on the respondent's motion for summary judgment.

Principles Governing Summary Judgment Motions

As the Connecticut Supreme Court has stated: "Summary judgment is a method of resolving litigation when pleadings, affidavits, and any other proof submitted show that there is no genuine issue as to any material fact ... [and] is designed to eliminate the delay and expense of litigating an issue when there is no real issue to be tried." *Wilson v. New Haven*, 213 Conn. 277, 279 (1989).

> The law governing summary judgment and the accompanying standard of review are well settled. Practice Book § [17–49] requires that judgment shall be rendered forthwith if the pleadings, affidavits and any other proof submitted show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. A material fact is a fact that will make a difference in the result of the case. The facts at issue are those alleged in the pleadings....
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> In seeking summary judgment, it is the movant who has the burden of showing the nonexistence of any issue of fact. The courts are in entire agreement that the moving party for summary judgment has the burden of showing the absence of any genuine issue as to all the material facts, which, under applicable principles of substantive law, entitle him to a

[3] Section 46a-54-88a (d) of the Regulations of Connecticut State Agencies specifically permits and sets forth the circumstances and standards pursuant to which a complaint, or a portion of a complaint, may be dismissed, namely, for failure to establish jurisdiction, failure to state a claim upon which relief can be granted, failure to appear at a lawfully noticed conference or hearing without good cause, or failure of a party to sustain his or her burden after presentation of the evidence.

> judgment as a matter of law. The courts hold the movant to a strict standard. To satisfy his burden the movant must make a showing that it is quite clear what the truth is, and that excludes any real doubt as to the existence of any genuine issue of material fact.... As the burden of proof is on the movant, the evidence must be viewed in the light most favorable to the opponent....
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> The party opposing a motion for summary judgment must present evidence that demonstrates the existence of some disputed factual issue.... The movant has the burden of showing the nonexistence of such issues but the evidence thus presented, if otherwise sufficient, is not rebutted by the bald statement that an issue of fact does exist.... To oppose a motion for summary judgment successfully, the nonmoving must recite specific facts ... which contradict those stated in the movant's affidavits and documents.... The opposing party to a motion for summary judgment must substantiate its adverse claim by showing that there is a genuine issue of material fact together with the evidence disclosing the existence of such an issue.... *The existence of the genuine issue of material fact must be demonstrated by counteraffidavits and concrete evidence."*

(Citation omitted; emphasis added; internal quotation marks omitted.) *Gianetti v. Health Net of Connecticut, Inc.*, 116 Conn. App. 459, 464-465 (2009); see also *Episcopal Church v. Gauss*, 302 Conn. 408, 421-22 (2011); *Ramirez v. Health Net of the NE, Inc.*, 285 Conn. 1, 10-11 (2008); *Vollemans v. Wallingford*, 103 Conn. App. 188, 293 (2007); *Commission on Human Rights & Opportunities ex rel. Carretero v. Hartford Public Schools*, 2005 WL 5746419, supra, *7. "Only evidence that would be admissible at trial may be used to support or oppose a motion for summary judgment." *Home Insurance Co. v. Aetna Life & Casualty Co.*, 235 Conn. 185, 202-203 (1995).

Disability Discrimination

Here, the respondent moves for summary judgment on the disability discrimination claim on the ground that the complainant cannot establish essential prima facie elements of his disability discrimination claim because he was never physically disabled within the meaning of Connecticut Fair Employment Practices Act (CFEPA) and the Americans with Disabilities Act. The respondent argues, based on medical records provided by the complainant in response to respondent's discovery request, that the complainant cannot, under applicable principles of substantive law, satisfy his burden of showing that he was physically disabled under our antidiscrimination laws, giving rise to a presumption of discrimination under the first prima facie prong of *McDonnell Douglas*.

Claims alleging disability discrimination are subject to the burden-shifting scheme established by the United States Supreme Court in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802 (1973); *Levy v. Commission on Human Rights & Opportunities*, 236 Conn. 96, 104-105 (1996). Under this standard, the complainant must first establish a prima facie case of disability discrimination; the respondent must then articulate a legitimate, non-discriminatory reason for the action complained of; and the complainant is then required to produce evidence and carry the burden of persuasion that the proffered reason is pretextual. *McBride v. BIC Consumer Products Manufacturing Co.*, 583 F. 3d 92, 96 (2d Cir. 2009). "In the disability context, a prima facie case for disparate treatment is established under the *McDonnell Douglas* framework if the [complainant] shows: (1) he suffers from a disability or handicap, as defined by the applicable statute; (2) he was nevertheless able to perform the essential functions of his job, either with or without reasonable accommodation; and that (3) the employer took an adverse employment action against him because of, in whole or in part, his protected disability. C.G.S.A. § 46a–60 (a) (1) [now

§ 46a–60 (b) (1)]." *Curry v. Allan S. Goodman, Inc.*, 286 Conn. 390, 426 (2008). As a threshold requirement, the complainant in the case at hand must establish that he has a physical disability that is protected by the applicable statutes. *Toyota Motor Manufacturing, Kentucky, Inc., v. Williams,* 534 U.S. 184, 194 (2002); *Reeves v. Johnson Controls World Services, Inc.* 140 F.3d 144, 154 (2d Cir. 1998); *Worthington v. City of New Haven*, 1999 WL 958627 (D. Conn.); *Commission on Human Rights & Opportunities ex rel. Chilly v. Milford Automatics, Inc.,* 2000 WL 35575652, *8-9, CHRO No. 9830459 (October 3, 2000).

Liability under the CFEPA: The definition of physical disability in the CFEPA is broader than the definition in the ADA. *Beason v. United Technologies*, 337 F.3d 271, 277-278 (2d Cir. 2003). Under the CFEPA, "'[p]hysically disabled' refers to any individual who has any *chronic* physical handicap, infirmity or impairment, whether congenital or resulting from bodily injury, organic processes or changes or from illness, including, but not limited to epilepsy, deafness or hearing impairment or reliance on a wheelchair or other remedial appliance or device." (Emphasis added.) General Statutes § 46a-51 (15).

Hence, to be physically disabled under the CFEPA, the complainant's handicap, infirmity, or impairment must be chronic. Id. The CFEPA, however, does not define the term "chronic," and our appellate courts have not defined the term. *Caruso v. Siemens Business Communication Systems, Inc.*, 418 F.3rd 66 (2d Cir. 2004). [4] However, Connecticut trial courts have defined it as "marked by long duration or frequent recurrence or always present or encountered ... With reference to diseases, the term chronic has been defined to mean of long duration, or characterized by slowly progressive symptoms; deepseated or obstinate, or threatening a long continuance; distinguished from acute." (Citation omitted). *Seely v. Winchester Electronics Corp.*, Superior Court, judicial district of New London, Docket No. CV 116008102 (August 2, 2013) (2013 WL 4504830, *5); see also *Marcaurel v. Champions Skating Center, LLC*, Superior Court, judicial district of Hartford, Docket No. HHDCV176082283S (March 5, 2019) (2019 WL 1568621, *1); *Tryon v. EBM-Pabst, Inc.*, Superior Court, judicial district of New Britain, Docket No. HHBCV176037028S (November 9, 2017) (2017 WL 6273698, *6); *Kovachich v. State of Connecticut, Department of Mental Health & Addiction Services*, Superior Court, judicial district of New London, Docket No. CV 13601881 (October 12, 2017) (2017 WL 5003274, *3); *Fasulo v. HHC Physicianscare, Inc.,* Superior Court, judicial district of Hartford, Docket No. HHDCV 146054624S (May 24, 2016) (2016 WL 3266434, *4); *Setkowski v. University of Connecticut Health Center, et al.,* Superior Court, judicial district of Hartford, Docket No. HHHDCV 106012794 (May 10, 2012) (2012 WL 2044802, *2); *Commission on Human Rights & Opportunities v. City of Hartford*, Superior Court, judicial district of New Britain, Docket No. CV09019485S (October 27, 2010) (2010 WL 4612700, *12).

Liability under the ADA: Under the Americans with Disabilities Act and its implementing regulations, a person is disabled if he (1) has a physical impairment that substantially limits one or more of his major life activities, (2) has a record of such impairment, or (3) is regarded as having such impairment. See 42 U.S.C. § 12102 (1); 29 CFR § 1630.2(g)(1)(i); *Sutton v. United Air Lines, Inc.* 527 U.S. 471, 478 (1999); *Wernick v. Federal Reserve Bank of New York*, 91 F.3d 379, 383 (2nd Cir. 1996).

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[4] Although the court in *Caruso v. Siemens Business Communication Systems, Inc.*, supra 418 F. 3d 66, certified to the Connecticut Supreme Court, inter alia, the question "[w]hat is the correct interpretation of 'chronic' disabilities under CFEPA," the issue was never resolved by the court as the parties reached a settlement and the certified questions were withdrawn. See *Caruso v. Siemens Business Communication Systems, Inc.*, 418 F. 3d 164 (2d Cir. 2005). *Setkowski v. University of Connecticut Health Center, et al.,* Superior Court, judicial district of Hartford, Docket No. HHHDCV 106012794 (May 10, 2012) (2012 WL 2044802, n. 4).

The ADA defines a physical impairment as "any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems, such as neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genito-urinary, immune, circulatory, hemic and lymphatic, skin and endocrine." 29 C.F.R. § 1630.2 (h) (1). The act further defines major life activities to include "caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, sitting, reaching, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, interacting with others, and working." 42 U.S.C. 12102 (2) (A). An impairment substantially limits a major life activity other than work if it prevents an individual from performing an activity that the average person in the general population can perform, or if it significantly restricts the duration, manner, or condition under which an individual can perform the activity as compared to the ability of the average person in the general population. 29 C.F.R. § 1630.2 (j) (1) (i).

Respondent Has Met Its Initial Burden of Showing Nonexistence of Material Facts

A party may provide evidence in support of, or in opposition to, a motion for summary judgment in a variety of ways, including by filing signed, supporting affidavits, certified transcripts, disclosures or written admissions. Practice Book § 17-45; *City of New Haven v. Pantani*, 89 Conn. App. 675, 678-679 (2005).

In support of its motion for summary judgment, the respondent submitted three exhibits that were disclosed by the commission in compliance with the respondent's production request, in which the respondent requested, and the commission provided, certain medical records related to the complainant's damaged knee ligaments and clearances for the complainant to return to work (R's Exhibits A-D). By providing supporting documents disclosed by the opposing party in response to discovery, the respondent has made a preliminary showing that its proffer of the complainant's medical records is properly authenticated. Practice Book § 17-45; *City of New Haven v. Pantani*, supra.

A review of the complainant's medical records shows that on October 19, 2017, he twisted his left knee when moving a heavy gas tank and that he experienced swelling in the leg and had difficulty walking for three days (R's Exhibit B). When the complainant presented for medical treatment on October 31, 2017, the injury was diagnosed as a sprain of a ligament of the left knee. Id. On October 31, 2017, the swelling had resolved. The complainant was using a hinged knee brace and could walk "okay" but was experiencing pain in the injured knee. Id. As of October 31, 2017, the complainant had no acute distress, had full range of motion in the knee, and minimal swelling. Id. Medical treatment for the injury consisted of ibuprofen, rest, and continued use of a hinged knee brace for one month. Id. The complainant was referred for six sessions of physical therapy and advised to avoid heavy labor or activities that aggravate pain. Id. He was provided with a medical excuse from work for three weeks (R's Exhibit C). A follow up appointment was scheduled for November 20, 2017, at which the complainant was cleared to return to work on November 29, 2017, without restrictions (R's Exhibits C, D).

Courts and this tribunal have held that conditions of only limited duration with no lasting or continued impact on the complainant's life or activities are not chronic and do not qualify as physical disabilities under § 46a-60 (b) (1). See *Setkoski*, supra, 2012 WL 2044802,*3 (a three-month recovery from surgery is not a physical disability); *Kucharski v. Cort Furniture Rental*, 536 F.Sup.2d 196 (D.Conn. 2007)(complications from pregnancy lasting two months do not qualify as a physical disability); *Commission on Human Rights & Opportunities ex rel. Chilly v. Milford Automatics, Inc.*, supra, 2000 WL 35575652, *9, 13 (Bell's palsy that was not a chronic condition and did not qualify as a physical disability).

The medical evidence appended to the respondent's motion in this case demonstrates the following material facts: The complainant suffered from a left knee ligament sprain; the injury resolved within approximately three weeks, and the complainant was cleared to return to work without any restrictions on November 29, 2017, six weeks after the date of the injury. There is no evidence in the report that the injury was expected to result in any lasting or continued impact on the complainant's life or activities. The respondent, in its motion and supporting exhibits, has made an affirmative evidentiary showing that there is not a factual dispute that the complainant's knee ligament injury was not a "chronic physical handicap, infirmity or impairment," as that term is defined in General Statutes § 46a-51 (15), marked by "long duration" or "threatening a long continuance." *Marcaurel v. Champions Skating Center, LLC*, supra, 2019 WL 1568621, *1.

Similarly, the respondent has made an initial showing sufficient to establish the absence of a factual dispute on an essential element of the disability discrimination claim under the narrower ADA definitions for what constitutes a physical impairment that substantially limits one or more of an individual's major life activities. Under these ADA definitions, transitory knee injuries have been found *not* to be disabling under the ADA as a matter of substantive law. *Evans v. City of Dallas,* 861 F.2d 846, 852 (5th Cir.1988) (considering claim that transitory knee injury constituted a disability under The Rehabilitation Act.) "[T]emporary, non-chronic impairments of short duration, with little or no long term or permanent impact, are usually not disabilities." *E.E.O.C. v. Chevron Phillips Chemical Co., LP*, 570 F.3d 606, 619 (5th Cir. 2009); see also *Toyota Motor Manufacturing, Kentucky, Inc., v. Williams,* supra, 534 U.S. 198 (carpal tunnel syndrome on its own not indicative of disability within meaning of ADA). Consequently, the respondent also has made an affirmative evidentiary showing that there is no genuine issue of material fact as to whether the complainant's knee ligament injury qualified as a physical disability under General Statutes § 46a-60 (b) (1) or under the ADA, as enforced through General Statutes § 46a-58 (a).

I conclude that the motion for summary judgment having been made and supported by the complainant's medical records in connection with his damaged knee ligament, the respondent has met its burden of coming forward to show, initially, the absence of any genuine issue of disputed fact on the first prima facie element of the complainant's disability discrimination claim under the Connecticut Fair Employment Practices Act or the Americans with Disabilities Act. Thus, to oppose summary judgment, the complainant must present countervailing evidentiary materials that demonstrate the existence of a genuine issue of disputed fact for determination at a public hearing on this essential element of the claim. *Ramirez v. Health Net of Northeast, Inc.*, supra, 285 Conn. 1, 10-11 (2008).

The Commission Failed to Substantiate the Complainant's Disability Discrimination Claim by Presenting Evidence Disclosing the Existence of a Genuine Issue of Material Fact

For purposes of summary judgment, the respondent, as the moving party, having met its initial burden of establishing the absence of any genuine issue of material fact on the first prima facie element of the disability discrimination claim, the nonmoving party must substantiate the challenged element of the disability discrimination claim by setting forth specific facts sufficient to establish the existence of a genuine issue of disputed fact concerning the claim.

It is incumbent on the complainant to come forward with counter affidavits and concrete evidence to make a showing sufficient to establish the existence of a factual basis for the challenged element on which the complainant will bear the burden of proof at the public hearing. *Ramirez v. Health Net of Northeast., Inc.*, supra, 285 Conn. 10-11; *Gianetti v. Health Net of Connecticut, Inc.*, supra, 116 Conn. App., 464-65; *Vollemans v. Wallingford*, supra, 103 Conn. App. at 193. A party may not simply rely on the mere

allegations of his pleading or "on mere speculation or conjecture as to the true nature of the facts to overcome a motion for summary judgment." *Buell Industries, Inc. v. Greater New York Mutual Insurance Co.*, 259 Conn. 527, 558 (2002). If the nonmoving party has failed to make a sufficient evidentiary showing that there is a genuine issue of material fact on an essential element of his case on which he has the burden of proof, then summary judgment is appropriate. *Episcopal Church v. Gauss*, supra, 302 Conn. 421-22; *Buell Industries, Inc. v. Greater New York Mutual Insurance Co.*, supra, 259 Conn. at 550; *Gianetti v. Health Net of Connecticut, Inc.*, supra.

In its response in opposition to the motion for summary judgment, the commission submitted two documentary exhibits: (1) a copy of the complaint filed on December 27, 2017, in this matter (Exhibit A), and (2) what appear to be screenshots on a computer device showing the content of electronic messages dated Friday, December 1 (Exhibit A).

The commission's submission of the complaint is insufficient to demonstrate the existence of a genuine question of material fact as to whether the complainant is disabled. As the Connecticut Appellate Court has made clear, "T]ypically [d]emonstrating a genuine issue requires a showing of *evidentiary facts or substantial evidence outside the pleadings from which material facts alleged in the pleadings can be warrantably inferred*.... Moreover, [t]o establish the existence of a material fact, it is not enough for the party opposing summary judgment merely to assert the existence of a disputed issue.... Such assertions are insufficient regardless of whether they are contained in a complaint or a brief.... Further, unadmitted allegations in the pleadings do not constitute proof of the existence of a genuine issue as to any material fact...." (Citations omitted; internal quotation marks omitted; emphasis added.) *Tuccio Development, Inc. v. Neumann*, 111 Conn. App. 588, 594 (2008).

In opposition to the respondent's motion, the commission also submits a series of computer screenshots that appear to be electronic messages. The commission argues that the electronic messages support a claim of discrimination by the respondent against the complainant because, even if he was not actually physically disabled, "the Complainant would still have a claim of discrimination on the basis of his perceived disability," and that should be sufficient to avoid summary judgment on the claim of physical disability discrimination (CHRO Objection to motion for summary judgment, p. 6). The commission's argument is unpersuasive.

Firstly, the respondent points out that there is no claim of perceived disability discrimination alleged in this case (R's Reply to CHRO's Objection, p. 2.) However, assuming arguendo that a cause of action for employment discrimination because the respondent regarded the complainant as physically disabled has been pleaded, the respondent has moved for summary judgment solely on the claim of physical disability discrimination, and not on any other cause of action asserted in the complaint.

Moreover, the several electronic messages, which appear to have been recorded, copied or reproduced by screenshots, are facially incomplete and are not properly authenticated. At a minimum, there is no evidence establishing in what year the messages were sent, the person(s) who created and/or posted them, the person(s) who received them, the computer device from which the screenshot images came, and that the integrity of the proffered records has been adequately protected. The proffered electronically stored information has not been authenticated through an affidavit of the person offering them, or in any other way.

"The purpose of the [requirement] that a motion for summary judgment be supported by appropriate documents is to establish the availability of admissible evidence bearing upon the issues raised on the

motion. Practice Book § 17-45." *Teodoro v. City of Bristol*, 184 Conn. App. 363, 384 (2018). Before any document can be considered in opposition to the respondent's motion, "'there must be a preliminary showing of [the document's] genuineness, i.e., that the proffered item of evidence is what its proponent claims it to be. The requirement of authentication applies to all types of evidence, including writings .... 'Conn. Code Evid. § 9–1(a), commentary." *City of New Haven v. Pantani*, supra, 89 Conn. App. 679. The electronic records offered by the commission in opposition to the summary judgment motion would not be admissible at public hearing and are insufficient to contradict the specific facts stated in the evidentiary materials offered by the respondent in support of the motion for summary judgment.

In opposition to the motion for summary judgment, the commission submitted two exhibits, including the complaint affidavit. The commission failed, however, to produce any evidence, other than conclusory statements unsupported by evidentiary material outside the pleadings, either through affidavits attesting to the truth and accuracy of the written test message submissions or by providing certified copies of any of the documents, to establish the existence of a genuine issue of material fact on the challenged element of the complainant's disability discrimination claim.

> It is frequently stated in Connecticut's case law that, pursuant to Practice Book §§ 17–45 and 17–46, a party opposing a summary judgment motion must provide an evidentiary foundation to demonstrate the existence of a genuine issue of material fact.... Although the court must view the inferences to be drawn from the facts in the light most favorable to the party opposing the motion ... a party may not rely on mere speculation or conjecture as to the true nature of the facts to overcome a motion for summary judgment.... A party opposing a motion for summary judgment must substantiate its adverse claim by showing that there is a genuine issue of material fact together with the evidence disclosing the existence of such an issue.... "

(Citations omitted; internal quotation marks omitted.) *Tuccio Development, Inc. v. Neumann*, supra, 111 Conn. App. 594.

The respondent's motion for summary judgment was supported with ample documentation that would be admissible at public hearing, namely the complainant's medical records disclosed by the commission in response to a document production request. The commission, on the other hand, failed to present any evidentiary foundation to demonstrate the existence of a genuine question of material fact as to whether the complainant is physically disabled under the applicable antidiscrimination statutes.

In the present situation, where the commission and the complainant have failed to come forward with any evidentiary materials that would make a prima facie showing of a disputed question of material fact on an essential element of the disability discrimination claim, or that would otherwise enable the complainant to sustain his burden of proving by a preponderance of the evidence that the respondent discriminated against the complainant in his employment because of a protected disability, the tribunal is satisfied that there is no genuine issue as to any material fact with regard to the complainant's claim of disability discrimination and the respondent is entitled to judgment as a matter of law on this issue. In the absence of any responsive evidentiary facts or substantive evidence to make out the complainant's retaliation claim and rebut the respondent's affirmative showing, a public hearing would be useless and the respondent, as the moving party, is entitled to summary judgment as a matter of law.

Conclusion

In summary, having considered the respective claims of the parties, including the undisputed factual assertions in material presented by the respondent, including documentary exhibits, and viewing the complaint and the submitted evidentiary materials in the light most favorable to the complainant, the tribunal finds that the respondent has satisfied its burden of establishing that there is no genuine issue as to material fact upon which the outcome of the case depends with regard to claim that the respondent discriminated against the complainant on the basis of his physical disability. The tribunal further finds that the complainant has not designated any factual basis, through counter affidavits or other evidentiary material from any source, to demonstrate the existence of any genuine issues of fact in support of the challenged element of complainant's disability discrimination.

For the reasons more fully set forth herein, and in accordance with the provisions of subdivision (4) of subsection (d) of § 46a-54-88a of the Regulations of Connecticut State Agencies, the respondent's motion for summary judgment is hereby granted on the claim of employment discrimination based on the complainant's physical disability only.

It is so ordered this 13th day of November 2019.

Elissa T. Wright

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Presiding Human Rights Referee

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