

**STATE OF CONNECTICUT  
COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES  
OFFICE OF PUBLIC HEARINGS**

Joseph E. Stacy,  
Complainant

: OPH/WBR No. 2003-002

v.

State of Connecticut, et al.,  
Respondents

: September 15, 2003

Ruling re: motion to dismiss

By motion dated August 18, 2003, the respondents moved to dismiss the complaint. By correspondence dated August 21, 2003, the complainant requested an additional two weeks to hire an attorney and respond to the motion to dismiss. The complainant's request was granted and the deadline for filing a response was extended to September 9, 2003. At the time of the issuance of this ruling, neither an appearance by an attorney nor a response to the respondents' motion had been filed on behalf of the complainant.

For the reasons set forth herein, the respondents' motion is denied.

The respondents assert that the complaint should be dismissed because the complainant cannot prove an essential element of a retaliation claim: that he suffered a materially adverse employment action. The respondents acknowledge that "retaliation" was not defined in Public Act No. 02-91, amending General Statutes § 4-61dd(2). The

respondents, though, urge that the traditional legal elements of retaliation should apply: (1) that the complainant was engaged in a protected activity, (2) that the respondent was aware of the protected activity, (3) that the complainant suffered an adverse employment action, and (4) that there was a causal connection between the protected activity and the adverse employment action. According to the respondents, the complainant has not pled and cannot prove that he suffered an adverse employment action.

In reviewing a motion to dismiss, a tribunal must construe the facts alleged or implied in the complaint in a manner most favorable to the complainant. *Pamela B. v. Ment*, 244 Conn. 296, 308 (1998). In his complaint, which includes numerous attachments, the complainant alleges that the respondents terminated his employment (“Points to consider [sic]”, #8). The respondents’ investigative report, dated April 24, 2002 to Director James E. Huckabey from Captains Stuart Mendelson and Alberto Saavedra, appears to confirm that the complainant was terminated: “...Officer Stacy was called to report back to the Lt’s Office. When he arrived he was instructed by Lt. Martin and Byrd to hand over his equipment that he was being walked out.” (p. 2); “Officer Stacy was then called again to the Lt.’s Office and informed that he was being relieved of duty ....” (p.6); “Thus going to the extent of informing Officer Stacy that he was being relieved of duty.” (p. 8). Although the report also indicates that the

complainant was later told he could remain at work, termination of employment is, nevertheless, an adverse employment action.

The motion to dismiss is denied.

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Hon. Jon P. FitzGerald  
Presiding Human Rights Referee

Certification:

Mr. Joseph E. Stacy (1<sup>st</sup> class mail)

Joseph A. Jordano, Esq., Assistant Attorney General (Fax: 860-808-5340)