

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

Sandra Lueder,
Complainant

: OPH/WBR 2005-11

v.

Southern Connecticut State
University, Respondent

: March 16, 2006

Ruling re: the respondent's motion to dismiss

By motion filed on March 6, 2006, the respondent moves to dismiss the complaint. The complainant filed an objection on March 14, 2006. For the reasons stated herein, the motion is denied.

“A motion to dismiss ... properly attacks the jurisdiction of the court, essentially asserting that the plaintiff *cannot* as a matter of law and fact state a cause of action that should be heard by the court.” (Citation omitted; emphasis in original; internal quotation marks omitted.) *Gurliacci v. Mayer*, 218 Conn. 531, 544 (1991). “A motion to dismiss admits facts well pleaded and invokes any record that accompanies the motion, including supporting affidavits that contain undisputed facts. A ruling on a motion to dismiss is neither a ruling on the merits of the action ... nor a test of whether the

complaint states a cause of action. Motions to dismiss are granted solely on jurisdictional grounds. (Citations omitted; internal quotation marks omitted.) *Malasky v. Metal Products Corporation*, 44 Conn. App. 446, 451-52 (1997). “[E]very presumption is to be indulged in favor of jurisdiction. In ruling upon a motion to dismiss, the complaint is to be construed most favorably to the plaintiff.” (Citations omitted; internal quotation marks omitted.) *Lueneburg v. Mystic Dental Group*, 1996 Conn. Super. LEXIS 2001, 5.

Construing the record most favorably for the complainant for purposes of this motion: the respondent hired the complainant as a professor in August 1981. On March 19, 2002, she disclosed information pursuant to General Statutes § 4-61dd (a). Thereafter, in May 2003, she retired from active state service and, despite her qualifications, the respondent has repeatedly refused to rehire her as an adjunct professor in retaliation for her disclosure.

In its motion, the respondent cited *Cross v. Nearine*, 1995 Conn. Super. LEXIS 498, 17-18, for the proposition that the complaint should be dismissed because the complainant lacks standing to bring this complaint as she was not an active state employee at the time of the alleged retaliation. However, the plaintiff in *Cross*, a former employee of the City of Hartford’s education department had never been a state employee. In this case, however, the complainant had been a state employee at the time she made her disclosure of information. Also, in surveying claims of retaliation under other employment statutes, it is clear that the complainant’s current status as a

retired state employee does not preclude her complaint because refusal to rehire may be the basis for a claim of retaliation. *Weissman v. Dawn Joy Fashions, Inc.*, 214 F.3d 224, 234 (2d Cir. 2000).

Hon. Jon P. FitzGerald
Presiding Human Rights Referee

c:
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