

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

Lisa Jane Ballint,
Complainant

OPH/WBR No. 2010-126

v.

UCONN Managed Health Care, Dr. Steve
Lazrove,
Respondents

February 24, 2010

***Memorandum
on
Motion to Dismiss***

On January 7, 2010 the complainant¹, Lisa Jane Ballint, filed a complaint pursuant to General Statutes § 4-61dd with the Chief Human Rights Referee alleging that the respondents, UCONN Managed Health Care, et al., threatened or took adverse actions against her as a consequence of her engaging in “whistleblower” activity.

On January 29, 2010, the initial conference was held at which time the respondent filed with this tribunal a motion to dismiss the complaint. The respondent’s motion argued (1) that this tribunal lacks subject matter jurisdiction due to the complaint having been filed beyond the thirty-day period required by statute;² (2) that this tribunal lacks subject matter jurisdiction because the

¹ The complainant at the time of filing her complaint was acting pro se.

² 4-61dd (b) (3) (A) states in pertinent part: “not later than thirty days after learning of the specific incident giving rise to a claim that a personnel action has been threatened or has occurred in violation of subdivision (1) of this subsection, a state or quasi-public agency employee, an employee of a large state contractor

complainant has previously filed a grievance through her union and pursuant to her collective bargaining agreement involving the same facts alleged in the pending complaint; (3) that complainant has filed with the Commission on Human Rights and Opportunities a complaint arising out of the same facts as alleged on the pending complaint (prior pending action doctrine); and (4) that the complaint fails to state a claim upon which relief may be granted.

The complainant at the initial conference sought additional time to respond beyond the ten day period under pertinent regulation.³ This request was granted requiring the complainant's response to be filed on or before March 2, 2010. On February 3, 2010 the complainant filed her response.

For the reasons that follow, the motion to dismiss is GRANTED.

Analysis

A motion to dismiss is an appropriate means to challenge a tribunal's jurisdiction to hear an action. *Jolly, Inc. v. Zoning Board of Appeals*, 237 Conn. 184 (1996); *Upson v. State*, 190 Conn. 622, 624 (1983). The motion admits all facts well-pleaded and invokes any record that accompanies the motion, including supporting affidavits that contain undisputed facts. *Malasky v. Metal Products Corp.*, 44 Conn. App. 446, 451-52, cert. denied. 241 Conn. 906 (1997). In

or the employee's attorney may file a complaint concerning such personnel action with the Chief Human Rights Referee...."

³ See Regulations of Conn. State Agencies 4-61dd-14 (b).

evaluating the motion, the complainant's allegations and evidence must be accepted as true and interpreted in a light most favorable to the complainant and every reasonable inference is to be drawn in her favor; *New England Savings Bank v. Bedford Realty Corp.*, 246 Conn. 594, 608 (1998); and "[e]very presumption favoring jurisdiction shall be indulged." *Conn. Light & Power Co. v. Costle*, 179 Conn. 415, 421 (1980).

The complainant has alleged that on April 2009 and October 2009 she disclosed information that resulted in her suffering an adverse personnel action on September 29, 2009. The action alleged was a reduction in two categories on her "Employee Service Rating Form" from excellent to good for the period covering October 1, 2008 thru September 30, 2009. The two categories marked "good" were "cooperation" and "judgment," the remaining categories were all marked "excellent". As to her overall evaluation, the complainant received an excellent rating.⁴ Appearing at the bottom of the second page of the evaluation is the signature of Lisa Ballint and the date "9/29/09." The September 29, 2009 date as acknowledged by the complainant in her complaint, is the date she learned of the alleged adverse personnel action. Since that is the date she learned of the adverse personnel action, September 29, 2009 is also the commencement date for the thirty day filing period provided for in § 4-61dd. The complainant having filed her complaint well beyond October 29, 2009 (thirty-days from learning of the adverse action) would make her complaint time-barred.

⁴ Overall evaluation of excellent is defined as "[E]mployee regularly exceeds the requirements of the position."

“The filing requirement is comparable to a statute of limitations, with which one must comply absent factors such as consent, waiver or equitable tolling. *National Railroad Passenger Corp. v. Morgan*, 536 U.S. 101, 113 (2002) (discussing EEOC filing deadlines); *Williams v. Commission on Human Rights and Opportunities*, 257 Conn. 258, 284 (2001) (discussing filing deadlines for complainants filed under the Connecticut Fair Employment Practices Act [CFEPA]). In certain circumstances, an employer’s behavior in delaying the filing of a complaint may toll the statute of limitations. *Williams v. Commission on Human Rights and Opportunities*, 67 Conn. App. 316, 329 (2001); *Rodriquez v. Connecticut Board of Education*, No. OPH/WBR-2007-065 (Ruling on motion to dismiss, February 6, 2008).” *Cassidy v. University of Connecticut Health Center* 2008 WL 2683293. In the pending matter, the factors of consent, waiver or equitable estoppel have not been raised.

The complainant in her response seemingly acknowledges her lateness in filing by arguing that “It has been the consistent policy of OPH [Office of Public Hearings] to be lenient with pro se parties with regard to jurisdictional deadlines so long as the have made a good faith effort to comply.” The salve offered by the complainant that OPH’s policy is to be lenient with pro se litigants is one that can not remedy the mortal wound that this matter suffers from as a consequence of her untimely filing.

The complainant has provided no law (caselaw or otherwise) to support her contention that pro se litigants are to be treated in a fashion that allows statutory filing requirements to be ignored provided that they made a good faith effort to comply. The complainant appears to have mistakenly suggested a policy recognized by our courts“...to be solicitous of pro se litigants and when it does not interfere with the rights of other parties to construe the rules of practice liberally in favor of the pro se party.... Although we allow pro se litigants some latitude, the right of self-representation provides no attendant license not to comply with relevant rules of procedural and substantive law. (internal quotation marks omitted.)” *Solomon v. Connecticut Medical Examining Board*, 85 Conn. App. 854, 861 (2004). While pro se litigants are given some latitude, that latitude alone does not extend to statutory filing requirements being ignored.

Along with suggesting that her untimely filing can be overlooked as a consequence of acting pro se, the complainant also appears to argue that up until December 10, 2009 she was ignorant of the whistleblower retaliation statute. While the complainant may certainly have been unaware of the protection afforded by § 4-61dd, this ignorance does not save her from the operation of the filing requirement. *Grant v. Philpot* 2007 WL 2834539 (Conn. Super.) quoting *Kirwan v. State*, 168 Conn. 498 at 501-02 (1975). The crucial point of the statute is being aware of the adverse action. In this case, it is the complainant’s reductions in her yearly review, the significance of which was not lost on the complainant as she filed a grievance with her union on November 24, 2009.

Furthermore, complainant's "...lack of the awareness of the law and procedures does not in itself constitute an extraordinary circumstance warranting equitable tolling even for those acting pro se and claiming ignorance of the law or lack of understanding of pro se procedures." *Taylor v. Office of Public Hearings of the Commission on Human Rights and Opportunities*, 2009 WL 5777929 (Conn. Super.) See also *Downie v. Electric Boat Division*, 504 F. Supp. 1082 (D. Conn 1980), wherein the court ruled that a plaintiff's ignorance of rights under the Age Discrimination In Employment Act until informed by counsel did not toll the statute of limitations nor form the basis for equitable tolling.

There being no legal basis (consent, waiver or equitable tolling) argued or alluded to for the complainant to have filed beyond the thirty-day requirement, I must find that her complaint is time-barred.

Having found the complaint to have been untimely filed and warranting dismissal, I need not address the three additional arguments proffered by the respondent.

For the reasons given, this matter is hereby dismissed.

It is so ordered this 24th February 2010.

Thomas C. Austin, Jr.
Presiding Human Rights Referee

Lisa J. Ballint
W. Walton Jay, Esq.
Karen Duffy Wallace, Esq.
Donald Green, Esq.