

**STATE OF CONNECTICUT
OFFICE OF PUBLIC HEARINGS**

**Andrea L. Wilson,
Complainant**

: OPH/WBR NO: 2008-098

v.

**State of Connecticut
Judicial Branch,
Respondent**

: October 16, 2009

**Ruling
RE: Complainant's Motion to Amend**

By ruling dated July 16, 2009, the complainant was authorized to amend her complaint to add the allegation of termination. On August 17, 2009, the complainant filed a motion to amend the complaint. In her motion, she proposed amending paragraph 5, to add two respondents; paragraph 8A., to change the timeframe that she disclosed information to proper individuals under the statute; paragraph 8B., to list the individuals to whom she made disclosures; paragraph 8C., to describe the information she disclosed; paragraph 9A., to state the timeframe she learned of the personnel actions taken against her; paragraph 9B., to describe the personnel actions taken against her; paragraph 9C., to state that two grievances were filed regarding her performance review and her termination, and that she will provide copies of the grievances at a later time; and paragraph 10., to state that she is unemployed.

The respondents filed an objection on August 27, 2009, arguing that by Ruling dated July 16, 2009, this tribunal limited the motion to amend to the allegation of termination only and, therefore, the complainant's motion to amend does not comply

with the ruling. They also argued that the two respondents in paragraph 5 were not decision makers in her termination. The respondents stated that in paragraph 9B., the complainant did not provide any required dates, locations or names of individuals to support the personnel actions listed, that these actions are beyond the thirty-day statute of limitations and do not constitute adverse actions under the statute. They argued that the counseling session in paragraph 9B. was already added in an earlier amendment. In addition, they argued that this tribunal lacks subject matter jurisdiction over the performance review and the termination claims because the complainant previously filed grievances. On August 28, 2009, the respondent filed a corrected objection to include exhibit 1, which are copies of the complainant's grievances.

On September 23, 2009, the complainant filed responses to the respondents' objection and corrected objection. She argued that the additional information she alleged is necessary to support the termination allegation. She argued the personnel actions are ongoing and that they do meet the requirements under the statute. She also argued that the grievance procedures do not cover retaliation and she should not be denied the right to file as a whistleblower because she is a member of a union. She argued that these issues would be more properly subject to a motion to dismiss. On October 13, 2009, the respondents filed a letter informing this tribunal that the grievances were denied after a step 3 meeting was held pursuant to the collective bargaining agreement.

The motion to amend is Denied for the following reasons:

General Statutes § 4-61dd (b) (4) provides in relevant part: “*As an alternative to the provisions of subdivisions (2) [notifying the attorney general] and (3) [filing a complaint with the chief human rights referee] of this subsection: (A) A state or quasi-public agency employee who alleges that a personnel action has been threatened or taken may file an appeal not later than thirty days after learning of the specific incident giving rise to such claim with the Employees' Review Board under section 5-202, or, in the case of a state or quasi-public agency employee covered by a collective bargaining contract, in accordance with the procedure provided by such contract*” (Emphasis added.) “The statute is clear that an employee has an election of mutually exclusive alternative forums in which to challenge the consequences of a specific incident, regardless of the myriad of legal claims that may arise from the incident.” *Matthews v. Danaher, III, et al.*, OPH/WBR No. 2007-062, p. 4. (Ruling on Respondents' Motion to Dismiss) (February 20, 2008); see also *Jones v. State of Connecticut, Judicial Branch, et al.* OPH/WBR 2006-032, pp. 2-4 (Ruling on Motion to Dismiss and Motion to Stay) (November 9, 2006).

Grievances were filed on April 20, 2009 regarding the complainant's performance review and on June 25, 2009 regarding her termination. Although the grievances were denied after a step 3-grievance meeting, the complainant still had pursued her termination and performance review claims in another forum first. “[T]he issue is not where in the process lie her grievances but whether the complainant pursued her claims

simultaneously in more than one forum. The fact that she chose one forum first and then subsequently chose another forum to appeal similar adverse personnel action/s taken against her is prohibited by General Statutes § 4-61dd (b) (4).” *Torres v. Bradford Robinson, et al.*, OPH/WBR 2008-087, p. 3 (Ruling on Motion to Dismiss) (April 14, 2009).

In *Jones*, a grievance was filed prior to filing the whistleblower retaliation complaint with the chief referee. Similarly, here, the grievances for the complainant’s termination and performance review were filed prior to the amendment to add both claims to the complainant’s already existing whistleblower retaliation complaint with the chief human rights referee. Thus, pursuant to General Statutes § 4-61dd (b) (4), the complainant cannot pursue the same claims with this tribunal. Because the complainant’s grievances were filed first (regardless of where they were in the grievance process) and then the complainant filed an amendment to add the claims of termination and performance review to her whistleblower retaliation complaint with the chief referee, the complainant’s motion to amend these claims is denied. See *Torres v. Bradford Robinson, et al.*, OPH/WBR 2008-087, p. 4 (Ruling on Motion to Dismiss) (April 14, 2009).

The motion to amend is also denied as to paragraphs 5., 8A., 8B., 8C., 9A., 9B., 9C. and 10. as being superfluous and noncompliant with the July 16, 2009 ruling. The incidents alleged in paragraph 9C., are matters that the complainant may provide as evidence in her case-in-chief at the public hearing. These incidents support her original

allegations of being treated differently, harassed, threatened and denied state and federal civil rights.

So Ordered,

The Honorable Donna Maria Wilkerson Brilliant
Presiding Human Rights Referee

- c. Attorney Richard D. O'Connor (via facsimile)
- Ms. Andrea L. Wilson (via regular mail)
- Attorney Martin R. Libbin (via facsimile)