State of Connecticut

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March 4, 2015

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CHRO
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RE: CHRO ex rel, Khoa Phan v. Hartford Police Department CHRO No. 1210181.

FINAL DECISION

Dear Complainant/Respondent/Commission:

Transmitted herewith is a copy of the Presiding Referee's Final Decision in the above captioned complaint.

The decision is being sent by certified mail, return receipt requested to the complainant and the respondent. The return post office receipt shall be proof of such service.

Very Truly yours,

Kimberly D. Morris
Secretary II

cc.

Robin Kinstler-Fox, Esq. – via email only
Nathalie Feola-Guerrieri, Esq. – via email only
Nicole C. Chomiak, Esq. – via email only
Michele C. Mount, Presiding Human Rights Referee

Certified No. 7014 0150 0001 0774 3141 (K. Phan)
Certified No. 7014 0150 0001 0774 3134 (Hartford Police Department)

STATE OF CONNECTICUT
OFFICE OF PUBLIC HEARINGS

Commission on Human Rights and Opportunities ex rel. Khoa Phan,
Complainant

v.

City of Hartford, Police Department,
Respondent

CHRO No. 1210181

March 4, 2015

FINAL DECISION

I.

PRELIMINARY STATEMENT

On November 25, 2011, Khoa Phan ("Complainant") filed an Affidavit of Illegal Discriminatory Practice with the Commission on Human Rights and Opportunities ("CHRO") alleging that the Hartford Police Department ("Respondent") discriminated against him when Respondent terminated his employment as a result of his ancestry: Asian/Vietnamese. Complainant alleged that Respondent violated General Statutes §§ 46a-58(a) and 46a-60(a)(1) as well as Title VII of the Civil Rights Act of 1964 as amended, and the Civil Rights Act of 1991.

The complaint was certified to the Office of Public Hearings ("OPH") on April 15, 2013. The case was originally assigned to Ellen Bromley, a Human Rights Referee, and then in April of 2014 the case was reassigned to the undersigned. After having status conferences and amending the schedule for the proceedings, Complainant and Respondent had the opportunity to submit and object to witness and evidence lists in advance of the public hearing. The public hearing was held on August 26, August 27, August 28, and September 8, 2014. Following the hearing, Complainant and Respondent filed post-hearing briefs.

II.

FINDINGS OF FACT

Based upon review of the pleadings, exhibits, and transcripts as well as an assessment of the credibility of the witnesses, the following facts relevant to this decision are found:

A. Field Training, Probationary Period, Evaluations, and Termination

1. Complainant is a member of a protected class: his nationality is Vietnamese. (Tr. 46).
2. Complainant was hired as a police officer for the Hartford Police Department on December 14, 2009. (Tr. 6).
3. Complainant graduated from the police academy on July 2, 2010. (Tr. 10).
4. After graduating from the academy, Complainant became a probationary police officer (PPO). (Tr. 10, CHRO Ex. 4).
5. Probationary police officers participate in a field training program, which involves probationary police officers riding along with a sergeant who serves as a field training officer (FTO). (Tr. 11).
6. The field training program lasts several weeks and involves different rotations with different field training officers. (Tr. 11).
7. There are four phases to the field training program.
8. During the field training program, FTOs complete daily observation reports (DOR) evaluating the PPO working with them. (Tr. 12).
9. A PPO must pass each phase of the field training program in order to move on to the next phase.

10. Needing to repeat a phase of the field training program is not an automatic ground for termination. (Tr. 13).
11. Other PPOs have had to repeat phases of the field training program. (Tr. 606).
12. Complainant's FTO for Phase I of the field training program was Officer Citta. (Tr. 12).
13. Phase I of the field training program lasted two weeks. (Tr. 12).
14. Complainant passed Phase I of the field training program. (Tr. 12).
15. Complainant's FTO for Phase II of the field training program was Officer Boland. (Tr. 13-14).
16. Phase II of the field training program lasted four weeks. (Tr. 13-14).
17. Complainant did not pass Phase II with Officer Boland. (Tr. 13-14).
18. Complainant repeated Phase II with Officer Billings and passed Phase II after repeating the phase. (Tr. 13-14).
19. Complainant's FTO for Phase III of the field training program was Officer Benvenuto. (Tr. 15).
20. Complainant passed Phase III of the field training program. (Tr. 15).
21. Complainant's FTO for Phase IV of the field training program was Officer Citta. (Tr. 15).
22. Complainant worked with Officer Citta again for Phase IV and he evaluated the improvement of complainant's skills. (Tr. 15).
23. PPOs always returned to their FTO from Phase I when completing Phase IV. Complainant passed Phase IV and therefore completed the field training program. (Tr. 15, CHRO Ex. 5).

24. Complainant was performing his job at an acceptable level when he passed Phase IV of the field training program. (Tr. 506).

25. After completing the field training program by passing Phase IV, Complainant was a Hartford Police Officer who was still in his probationary period, and could work on his own without an FTO riding with him. (Tr. 27).

26. The full probationary period for new officers lasts for one year starting with the commencement of the field training program. (Tr. 609).

27. On or about October 29, 2010, after Complainant completed his field training program, Complainant received a Probationary Employee Performance Evaluation indicating his performance was satisfactory. (Tr. 23-24, CHRO Ex. 6).

28. During the probationary period, after the field training program is completed, the Sergeant in charge of the shift a PPO worked completed a DOR for each day the PPO worked. (Tr. 28).

29. All Sergeants are supervisors and communicate amongst each other. (Tr. 561).

30. Sergeant's generally work in the "Sergeant's room" in the headquarters. (Tr. 45, 50).

31. Sergeants Cicero, Marinelli, and Kessler were promoted to Sergeant together. (Tr. 701-02).

32. Sergeants Cicero, Marinelli, and Kessler socialize outside of work every once in a while. (Tr. 702).

33. On the DORs, the Sergeant evaluated the PPOs performance in the areas of appearance, attitude, interpersonal skills, care of equipment, performance in certain skills such as patrol, investigation, phones and radio, conflict, report writing, and policies and procedures. The Sergeant would indicate whether the work as superior,

satisfactory, or unsatisfactory in each area, and there was a place for comments. (Tr. 28, CHRO Ex. 7-10, 12-15).

34. Complainants DOR summaries for October and November showed acceptable work. (Tr. 31, CHRO Ex. 7, 8).

35. Complainant's monthly summary report for November included 2 superior ratings, 6 unsatisfactory ratings, and the rest were satisfactory. (Tr. 31).

36. Sergeant Creter testified that unsatisfactory DORs come up once in a while as new officers are still learning the ropes of the job. He stated, "We understand that mistakes are going to be made." (Tr. 439).

37. Chief Hevron also acknowledged that new officers would make some mistakes. (Tr. 775).

38. Complainant's DOR summaries in December showed acceptable work with 2 superior ratings, 7 unsatisfactory ratings, and the rest were satisfactory. (Tr. 33, CHRO Ex. 9).

39. On the DOR dated December 5, 2010, Sergeant Vilcinskas noted that Complainant's performance had improved from the previous month. (CHRO Ex. 9).

40. Some of the unsatisfactory evaluations in December were caused by uniform issues. For example, Complainant wore a knit hat, but he was not aware the knit hat violated the uniform policy because Complainant had seen other officers dressed in a similar manner. (Tr. 34-35, CHRO Ex. 9).

41. Complainant's overall DOR summaries in January 2011 had 2 unacceptable ratings and the rest were all acceptable. (Tr. 36, CHRO Ex. 10).

42. Complainant passed his first probationary employee performance evaluation for the period ending on January 2, 2011. The evaluation was presented to Complainant on February 25, 2011. (Tr. 36-37, CHRO Ex. 11).

43. On or about February 25, 2011, Complainant met with Lieutenant Bergenholtz and Sergeant Russo to discuss his performance for the period ending on January 2, 2011. (Tr. 39).

44. Complainant testified he did not raise any concerns with the officers at this meeting because he thought that he was passing and performing satisfactorily. (Tr. 39).

45. During the meeting on or about February 25, 2011, Lieutenant Bergenholtz told Complainant he had heard that Complainant had been yelling at Sergeant Kessler. (Tr. 39).

46. Complainant denied yelling at Sergeant Kessler, however he did state that he was going to file a grievance against Sergeant Kessler. (Tr. 39).

47. Lieutenant Bergenholtz told Complainant that Complainant was lucky Lieutenant Bergenholtz was not Sergeant Kessler because if Complainant had said that to him, he would have pulled Complainant into the Chief's office and fired him immediately. (Tr. 39, 318, 331).

48. Complainant was scared after hearing that from Lieutenant Bergenholtz, so he did not try to further explain his problems with Sergeant Kessler. (Tr. 40).

49. After the incidents with Sergeant Kessler, two Lieutenants told Complainant they heard he had yelled at the Sergeant. (Tr. 56).

50. After the incidents with Sergeant Kessler, Complainant's DOR ratings changed. (Tr. 57).

51. Several DORs noted that Complainant had been argumentative or confrontational and that report writing had become a problem. (Tr. 57).

52. Prior to the incidents with Sergeant Kessler, Complainant's DORs had not previously listed argumentative or confrontational behavior or report writing as problems. (Tr. 57, 332).

53. For the month of February, Complainant's summary DOR reported his performance was unsatisfactory. (Tr. 57, CHRO Ex. 12).

54. In Complainant's February summary DOR, Lieutenant Bergenholtz noted that "[Complainant] has received unsatisfactory remarks in overall attitude throughout [the] probationary period. [Complainant] was argumentative with two supervisors on separate occasions while being counseled . . . ." (CHRO Ex. 12).

55. Contrary to this report, Complainant received no unsatisfactory marks in "attitude" for January 2011 (Tr. 58, CHRO Ex. 10), one unsatisfactory mark in "overall attitude" for December 2010 (Tr. 58, CHRO Ex. 9), and one unsatisfactory mark in "overall attitude" for November 2010 (Tr. 58, CHRO Ex. 8).

56. Complainant did not question Lieutenant Bergenholtz about his comments during Complainant's performance review meeting because Complainant was shocked and afraid after Lieutenant Bergenholtz commented about pulling Complainant into the Chief's office and firing him. (Tr. 58).

57. Following the incident with Sergeant Kessler, Sergeant Cicero made negative comments on Complainant's DOR for February 4, 2011, referencing Complainant being argumentative and confrontational. (Tr. 59).

58. Sergeant Cicero had never made these comments before. (Tr. 59).

59. On February 8, 2011, Sergeant Marinelli also gave Complainant an unsatisfactory DOR. (Tr. 59).

60. On February 16, 2011, Sergeant Cicero wrote an interoffice memo to Lieutenant Cacioli describing an incident in which he observed that Complainant only had five DORs in his folder while other PPOs had approximately forty DORs in their folders. (Tr. 545-46, CHRO Ex. 43, Resp. Ex. 11).

61. Sergeant Cicero's interoffice memo led to a meeting with Lieutenant Hightower. (Tr. 5445-46, CHRO Ex. 43, Resp. Ex. 11).

62. On February 18, 2011, Lieutenant Cacioli sent and interdepartmental memo to Captain Bernier reiterating the February 16 incident, noting Complainant's unsatisfactory DOR ratings, and discussing Sergeant Kessler's memo from February 14, 2011. (CHRO Ex. 44).

63. On March 28, 2011, Sergeant Cicero wrote a memo to Lieutenant Cacioli summarizing issues with Complainant, referencing an incident on February 15, 2011, and indicating there was a performance deficiency in Complainant's use of the MDT system. (Tr. 566, CHRO Ex. 46, Resp. Ex. 11 A-2).

64. There is no DOR from Sergeant Cicero for Complainant on or near February 15, 2011. (Tr. 566, CHRO Ex. 12).

65. There is no DOR in February which references Complainant's use of the MDT system. (CHRO Ex. 12).

66. On March 28, 2011, Sergeant Cicero sent another interoffice memo to Lieutenant Cacioli which repeated the issues from the February 14, 16, and 18, 2011 memos. (CHRO Ex. 46).

67. Complainant's DOR summary for March 2011 indicated one unsatisfactory rating, one superior rating, and the remainder satisfactory ratings in the area of overall attitude. (CHRO Ex. 13).

68. Lieutenant Bergenholtz noted in the summary that "[Complainant] continues to receive unsatisfactory ratings in overall attitude . . . ." (Tr. 65).

69. Complainant's DOR summary for April 2011 was acceptable. (Tr. 66, CHRO Ex. 14).

70. Complainant's February and March DOR summaries were prepared by Lieutenant Bergenholtz, and both were dated April 20, 2011. (Tr. 67, CHRO Ex. 12, 13).

71. Complainant met with Lieutenant Bergenholtz to discuss his February and March performance evaluations on April 20, 2011. (Tr. 67).

72. During the meeting on April 20, 2011, Lieutenant Bergenholtz did not tell Complainant that his position was in jeopardy. (Tr. 68).

73. Complainant's DOR summary for May 2011 was acceptable. (Tr. 69, CHRO Ex. 15).

74. Complainant's DOR summary for May 2011 was completed on June 7, 2011. (Tr. 69, CHRO Ex. 15).

75. Complainant met with Lieutenant Bergenholtz to discuss his April and May performance evaluations on June 7, 2011. (Tr. 70).

76. Complainant testified he was pretty happy with his evaluations so he did not say anything to Lieutenant Bergenholtz. (Tr. 70).

77. Complainant received a Probationary Employee Performance Evaluation dated June 6, 2011, which indicated a need for improvement for the period ending April 2, 2011. (Tr. 71-72, CHRO Ex. 16).

78. Again, Complainant was not told his position was in jeopardy. (Tr. 72).

79. Complainant's probationary period was scheduled to end on July 2, 2011. (Tr. 72).

80. By June 2011, Complainant had several months of acceptable performance, two months of unsatisfactory performance, and then two months of acceptable performance. (CHRO Ex. 7-15).

81. It is not uncommon for PPOs to have some unsatisfactory reports. (Tr. 717).

82. Lieutenant Cacioli wrote a memo to Captain Bernier about Complainant's performance. (Tr. 712, Resp. Ex. 11 A-5).

83. Lieutenant Cacioli did not conduct any independent investigation into the issues raised in his memo. (Tr. 716).

84. Complainant was terminated on June 18, 2011. (CHRO Ex. 33).

B. <u>Incidents with Sergeant Kessler</u>

85. Complainant had two negative experiences with Sergeant Kessler. (Tr. 40).

86. Complainant's first negative experience with Sergeant Kessler occurred on or about January 23, 2011. (Tr. 42).

87. Complainant and Sergeant Leonard had been working on a report for a motor vehicle accident. (Tr. 43).

88. When Complainant finished the report and went to have it signed by Sergeant Leonard, Sergeant Leonard's shift had ended, and Sergeant Kessler was on duty. (Tr. 43).

89. Complainant asked Sergeant Kessler to review the report. (Tr. 43).

90. Sergeant Kessler made negative comments to Complainant about his report. (Tr. 43).

91. Sergeant Kessler asked Complainant how long he had been working at HPD and then told Complainant that his report "is probably the shittiest thing I've ever read. How did you come up with such bullshit with seven months of training Phan?" (Tr. 43).

92. Complainant offered to contact Sergeant Leonard to obtain clarification for the report, but Sergeant Kessler refused. (Tr. 44).

93. Sergeant Kessler then criticized Complainant's grammar and threw his report in the trash. (Tr. 44).

94. Complainant revised the report and discussed it with Sergeant Kessler. (Tr. 45).

95. Sergeant Kessler ultimately approved the report with very few changes. (Tr. 45).

96. Sergeant Kessler than asked Complainant if the victim, in the report that Complainant wrote, was Chinese. (Tr. 46).

97. Complainant responded that he did not know, but he thought the victim spoke Cantonese. (Tr. 46).

98. Sergeant Kessler then asked Complainant, "What are you?" (Tr. 46).

99. Complainant replied that he is Vietnamese. (Tr. 46).

100. Complainant testified that Sergeant Kessler replied, "Vietnamese, Cantonese, it's all the same shit Phan." (Tr. 46).

101. When Complainant asked Sergeant Kessler to sign off on an overtime card, Sergeant Kessler refused and stated that Complainant was lucky he "didn't wipe [his] ass with [Complainant's] report" and then swore at Complainant. (Tr. 46).

102. Complainant's second negative experience with Sergeant Kessler occurred in February 2011 on the midnight shift. (Tr. 48).

103. Complainant had to revise a domestic warrant and needed to have it signed by Sergeant Kessler as Sergeant Kessler was the supervisor available. (Tr. 50).

104. Sergeant Kessler again criticized Complainant's grammar and report-writing skills. (Tr. 50).

105. Complainant had a bachelor's degree in mathematics. (Tr. 50)

106. Sergeant Kessler asked Complainant if he had gone to college and if he had taken an English class there to which the complainant replied, "many." (Tr. 50-51).

107. Sergeant Kessler spent 15-20 minutes giving Complainant a grammar lesson. (Tr. 51).

108. Sergeant Kessler asked if Complainant was born in the United States, and when Complainant indicated he came to the U.S. when he was 11, Sergeant Kessler said that explained the problem because English is a tough language. (Tr. 52).

109. Sergeant Kessler kept laughing at the complainant. (Tr. 52)

110. Sergeant Kessler asked Complainant if Hartford citizens have a hard time understanding him. (Tr. 52).

111. Sergeant Kessler also remarked that hard core criminals must be laughing at Complainant when Complainant tells them what to do, and that the criminals are probably "goofing on you behind your back, right." (Tr. 52).

112. Complainant asked Sergeant Kessler to stop. (Tr. 52).

113. Sergeant Kessler responded by referencing the stripes on his arm which meant that he was "the man," that he was in charge, and that he would determine when it was over. (Tr. 52).

114. Complainant felt like Sergeant Kessler kept him in office for 3 hours just to humiliate him. (Tr. 53)

115. Complainant again asked Sergeant Kessler to stop or Complainant would file a grievance against him. (Tr. 52).

116. Sergeant Kessler then ordered Complainant out of the office. (Tr. 52).

117. Sergeant Kessler signed Complainant's warrant and warned Complainant that he should be careful what he says to him or Complainant "won't be around long." (Tr. 52).

118. Complainant testified that he felt the comments about his grammar and accent were racist remarks. (Tr. 53).

119. Moving forward, Complainant tried to avoid Sergeant Kessler or only interact with him in public. (Tr. 53).

120. Complainant testified that he did not yell at Sergeant Kessler at either meeting. (Tr. 56).

121. Sergeant Kessler told other Sergeants about his concerns with Complainant, that Complainant had raised his voice when speaking to him, and that atmosphere became heated between Complainant and him. (Tr. 220).

122. Sergeant Kessler also spoke to Sergeant Yergeau about Complainant's performance. (Tr. 263).

123. On or about February 14, 2011, Sergeant Kessler sent an interoffice memo to the Commander of the Police Academy about Complainant. (Tr. 220, CHRO Ex. 42).

C. <u>Previous Complaints</u>

124. The City of Hartford and the Hartford Police Department have a Zero Tolerance Policy for harassment and discrimination. (Resp. Ex. 5).

125. Sergeant Kessler's testimony indicated that he had complaints of discrimination filed against him by others. (Tr. 227-232).

126. In April 2011, an anonymous complaint was filed, which alleged that Sergeant Kessler had made degrading and racial comments towards Hartford citizens and fellow officers. (Tr. 228, CHRO Ex. 30).

127. Sergeant Paul West filed another complaint about incidents occurring in September 2012. (Tr. 229-31, CHRO Ex. 31).

128. Sergeant West's complaint alleged that Sergeant Kessler made disparaging remarks about his family members and complained about the treatment of another officer. (Tr. 230, CHRO Ex. 31).

129. The incidents were substantiated, and Sergeant Kessler was counseled by Lieutenant Peterson in May 2013. (Tr. 230-31, CHRO Ex. 32).

130. Sergeant Kessler was also suspended for 10 days for these comments. (Tr. 234, CHRO Ex. 32).

131. Sergeant Kessler is still employed by Respondent despite his violations of Respondent's Zero Tolerance Policy. (CHRO Ex. 32, Resp. Ex. 5, 23).

D. <u>The Hat Piece Incident</u>

132. During Complainant's field-training program, on or about July 19, 2010, Complainant lost his hat piece while he was working in the police department's report writing room. (Tr. 17).

133. The report writing room is a secured area, but civilian janitorial staff can move about it, and civilians may be present while being interviewed by police officers. (Tr. 463).

134. Complainant lost his hat piece during Phase II of the field training program. (Tr. 18).

135. Complainant testified that he reported the lost hat piece to his FTO, Officer Boland. (Tr. 18).

136. Complainant testified that Officer Boland instructed Complainant to keep looking for the hat piece. (Tr. 19).

137. Lieutenant Hightower told Complainant he was aware that Complainant had lost his hat piece on or about August 11, 2010. (Tr. 19).

138. Lieutenant Hightower instructed Complainant to write a report about the lost hat piece. (Tr. 19, CHRO Ex. 17 A-1).

139. Complainant wrote a case incident report about the lost hat piece. (Tr. 21).

140. Complainant testified that Officer Boland instructed him to include in the report that Complainant had reported the lost hat piece to Sergeant Weston. (Tr. 21).

141. Complainant included in the report that he had reported the lost hat piece to Sergeant Weston. (Tr. 21, CHRO Ex. 17 A-1).

142. Complainant had not reported the lost hate piece to Sergeant Weston, but he testified that he included this information in the report because he was told to "listen to these guys, learn from them and don't talk back." (Tr. 171).

143. Complainant testified that Sergeant Weston was angry with Complainant for including untrue information about Complainant informing Sergeant Weston about the lost hat piece. (Tr. 21).

144. Complainant corrected his report after being instructed to do so by Sergeant Weston. (Tr. 21, CHRO Ex. 17 A-2).

145. On or about August 11, 2010, Complainant told Sergeant Weston that his FTO, Officer Boland, had instructed him to write the report and include that Complainant had reported the lost hat piece to Sergeant Weston. (Tr. 23-24).

146. After hearing this information, Sergeant Weston told Complainant to be careful. (Tr. 23-24).

147. After discussing the incident with Sergeant Weston on or about August 11, 2010, Complainant did not hear anything else about his lost hat piece until February 2011. (Tr. 24).

148. Complainant received a new hat piece from Lieutenant Allen on or about September 20, 2010. (Tr. 24).

149. On February 18, 2011, Complainant was contacted by the Policy Academy, using questions issued through Sergeant Rousseau, asking whether Complainant still had his hat and hat piece. (CHRO Ex. 17).

150. Complainant thought the issue had been closed six months prior. (Tr. 60).

151. Complainant believes the hat piece issue was raised in February 2011 because of Sergeant Kessler. (Tr. 62).

152. Sergeant Kessler's letter to Lieutenant Bergenholtz was sent about four days prior to Complainant's receipt of the questions from the Policy Academy. (Tr. 62).

153. Complainant responded to Sergeant Rousseau's questions and was interviewed on or about March 18, 2011. (Tr. 63).

154. CHRO Ex. 12, part A-3 contains Complainant's responses to Sergeant Rousseau's questions.

155. Complainant indicated that when he could not find his hat, he reported it to Officer Boland, and Officer Boland instructed him to continue to look for it. (CHRO Ex. 12 part A-3).

156. Complainant testified that, during the interview, he told Sergeant Russo and Lieutenant Bergenholtz that Officer Boland instructed him to write in his memo that he had notified Sergeant Weston about losing his hat piece. (Tr. 74).

157. Lieutenant Bergenholtz and Sergeant Weston never wrote anything about Officer Boland in their investigation report, and they never interviewed Officer Boland. (Tr. 74-75, 644, CHRO Ex. 17).

158. Information about Complainant's statements that he was instructed by Officer Boland to include in his report that Complainant reported the lost hat piece to Sergeant Weston was never part of the report presented to the Chief. (Tr. 76-77).

159. Lieutenant Bergenholtz relied on statements made as part of Sergeant Rousseau's investigation into the hat piece incident to determine whether there were issues with Complainant's truthfulness. (Tr. 310-312, Resp. Ex. 12).

160. Sergeant Rousseau testified that he concluded Complainant lied because "Sergeant Weston is a very conscientious and dedicated individual. He just put in his 20 years of spectacular service for the City and . . . I've always known him to be very trustworthy." (Tr. 643).

161. Lieutenant Bergenholtz testified that his meetings with Complainant were part of a performance review process, not a termination process. (Tr. 313).

162. Complainant received no feedback about the hat piece incident until after he was dismissed. (Tr. 63).

E. <u>The Taser Incident</u>

163. On or about June 4, 2011, there was an incident with Complainant, two other officers, and a Taser. (Tr. 78).

164. Complainant was a Taser-certified officer; the other officers present at the incident were not. (Tr. 78).

165. A Taser is a "non-lethal" weapon. (Tr. 79).

166. It is up to the discretion of the taser-certified officer to determine whether to utilize the taser. (Tr. 682-683)

167. It is not usual or common to discipline an officer for not employing his taser. (Tr. 689)

168. The incident in question was captured on a dashboard camera. (Tr. 81).

169. Complainant arrived on the scene of the incident after Officers Hopkins and Ruiz were present. (Tr. 81).

170. Officers Hopkins and Ruiz were standing near a suspect when Complainant arrived. (Tr. 83).

171. Complainant approached, lowering his radio, and there was an altercation. (Tr. 83, CHRO Ex. 19).

172. Complainant testified he pulled out his Taser, but the suspect and the officers were entwined while combating with each, so he did not have a clear shot. (Tr. 83).

173. Complainant subsequently put away his Taser, and the suspect was physically subdued. (Tr. 83).

174. At this time, the parties were on the ground behind the police car and a tree, and were out of view of the camera. (CHRO Ex. 19).

175. After the incident occurred, Complainant was called by Sergeant Yergeau who questioned Complainant about why he did not use his Taser on the suspect. (Tr. 84-85).

176. Sergeant Yergeau was Complainant's shift sergeant. (Tr. 84-85).

177. Complainant told Sergeant Yergeau he did not use the Taser because he did not think he had a clear shot. (Tr. 85).

178. Sergeant Yergeau asked Complainant why he did not use his Taser when an officer instructed him to do so, and Complainant responded that he did not hear an instruction to use the Taser. (Tr. 85).

179. Sergeant Yergeau accused Complainant of lying because both other officers said Complainant was instructed to use the Taser. (Tr. 85).

180. Sergeant Yergeau wrote the incident up on a memo to Lieutenant Bergenholtz. (Tr. 86, CHRO Ex. 18).

181. Sergeant Yergeau's memo alleged that Complainant was instructed to use his Taser before the suspect struck Officer Hopkins, but Complainant failed to do so. (CHRO Ex. 18).

182. Sergeant Yergeau's memo also alleged that Complainant failed to tell the truth about being told to use the Taser, first stating that he did not hear the officer say to use the Taser. Complainant later added that he did not believe he had a clear shot at the suspect. (CHRO Ex. 18).

183. Complainant met with the Chief on June 18, 2011. (Tr. 88).

184. When Complainant met with the Chief on June 18, 2011, he was given a copy of Sergeant Yergeau's memo and was told that his lack of truthfulness was one of the main reasons he was being dismissed. (Tr. 88, CHRO Ex. 18).

185. The Chief also had the June 16, 2011 memo from Lieutenant Bergenholtz evaluating Complainant's performance. (CHRO Ex. 47).

186. During the meeting, Complainant asked the Chief to watch the video of the Taser incident, but the Chief told him there was no need to do so. (Tr. 88).

187. Lieutenant Bergenholtz attached Sergeant Yergeau's memo to Complainant's final performance review, which was sent to the Chief. (Tr. 321, Resp. Ex. 10).

188. Sergeant Rousseau testified that Sergeant Yergeau found Complainant to be less than truthful. (Tr. 645).

189. Sergeant Rousseau relied on these allegations against Complainant to find the other Sergeants more credible than Complainant. (Tr. 645).

190. Sergeant Rousseau, while watching the recording of the Taser incident during the Public Hearing, did not identify the correct individuals as the suspect and victim. (Tr. 653).

191. Sergeant Rousseau indicated that there were several instances where Complainant could have used his Taser on the suspect, but the individual Sergeant Rousseau identified was not the suspect. (Tr. 654).

192. Officer Ruiz's statement about what occurred during the Taser incident differed from Sergeant Yergeau's written statement about the incident. (Tr. 728, 731, CHRO Ex. 18).

193. Officer Ruiz stated that he told Complainant to use his Taser on the suspect after Officer Hopkins had been struck by the suspect and was on the ground. (Tr. 728, 731, CHRO Ex. 48, Resp. Ex. 10).

194. The officer and suspect were rolling on the ground after the suspect hit the officer. *Id.*

195. Sergeant Yergeau's depiction of the Taser incident was incorrect according to Officer Ruiz, who had been present at the scene. (Tr. 734).

196. The recording of the incident that was captured on the dash board camera was played several times during the hearing. (Tr. 648, 649, 650-652, 656)

197. The recording showed that an ambulance pulled up to the sight of the altercation almost immediately after the suspect and the officer engaged in a physical exchange. (See video C Ex-)

198. There were 6 officers on the scene, an ambulance, at least one EMT, the suspect and the suspect's brother all at the scene, which created chaos. *Id.*

199. It could not be conclusively established that the ambulance had its siren on when it pulled up as the recording did not have sound, however its lights were flashing. *Id.*

200. Most of what happened between the suspect and the officer occurred behind a tree, next to the parked ambulance, which sometimes obscured the view from the dash camera recording. *Id.*

201. The tree was in between the complaint and the officer when suspect lunged at the officer. *Id.*

202. The undersigned pointed out that when Respondent's witnesses testified, it was contrary to the recorded version of what was happening. The video and witness's narration occurred simultaneously. (Tr. 647-656)

203. The undersigned was able to observe that the video was consistent with Complainant's version of the event. *Id.*

204. Witnesses testified that the undersigned was wrong even when the recording clearly rebutted the witness's testimony of what occurred. (See Tr. 647-656)

205. This recording and the refusal of the witnesses to acknowledge they remembered incorrectly seriously damaged the respondent's credibility. (See Tr. 647-656)

206. The witnesses with regard to the taser incident gave inconsistent and inaccurate testimony.

III.

LAW

A. Allegations

Respondent has been charged with violating § 46a-60 (a) (1) by discriminating against Complainant because of his race, color, national origin, ancestry and/or alienage. As set forth in § 46a-60 (a), "It shall be a discriminatory practice in violation of this section: (1) For an employer, by the employer or the employer's agent, except in the case of a bona fide

occupational qualification or need ... to discriminate against such individual in compensation or in terms, conditions or privileges of employment because of the individual's race, color, religious creed, age, sex, marital status, national origin, ancestry ...." It is well established that Connecticut's anti-discrimination statutes are coextensive with the federal law on this issue and, therefore, this case will be analyzed using both the prevailing Connecticut and federal law. *See Pik-Kwik Stores, Inc. v. Comm'n on Human Rights & Opportunities*, 170 Conn. 327, 331 (1976). State courts look to federal fair employment case law when interpreting Connecticut's antidiscrimination statutes, but federal law should be used as a guide and not the sole resource in interpreting state statutes. *See State v. Comm'n on Human Rights & Opportunities*, 211 Conn. 464, 470 (1989); *see alsoWroblewski v. Lexington Gardens, Inc.*, 188 Conn. 44, 53 (1982).

Complainant alleged that Respondent violated Title VII of the Civil Rights Act of 1964 as amended, and the Civil Rights Act of 1991. This provision establishes that an employer commits and unlawful employment practice if he "fail[s] or refuse[s] to hire or [discharges] any individual, or otherwise [discriminates] against any individual with respect to his compensation, terms, conditions or privileges of employment, because of such individual's race, color, religion, sex or national origin . . . ." 42 U.S.C. § 2000e-2(a).

Further, Complainant alleged that the respondent violated General Statutes § 46a-58(a) which provides: "It shall be a discriminatory practice in violation of this section for any person to subject, or cause to be subjected, any other person to the deprivation of any rights, privileges or immunities, secured or protected by the Constitution or laws of this state or of the United States, on account of religion, national origin, alienage, color, race, sex, sexual orientation, blindness or physical disability." General Statutes § 46a-58 (a) has expressly converted a violation of federal antidiscrimination laws into a violation of Connecticut antidiscrimination laws. *Trimachi v.*

Connecticut Workers Compensation Comm., No. CV 970403037S 2000 WL 872451, at *7 (Conn. Super. Ct. June 14, 2000) (internal quotation marks omitted); *Comm'n on Human Rights & Opportunities ex rel. Phillip Baroudjian v. North East Transp. Co., Inc.*, 2008 WL 3019695, at *6. *See also CHRO v Bd. of Educ. of the Town of Cheshire,* 270 Conn. 665 (2004). The Tribunal's analysis on this issue has been thorough and consistent since the decision in *Trimachi* in 2000, and in the Connecticut Supreme Court decision in *Cheshire* in 2004.

B. Mixed Motives

There are two general methods to allocate the burdens of proof: (1) the mixed-motive Price Waterhouse model; Price Waterhouse v. Hopkins, 490 U.S. 228, 246, 109 S.Ct. 1775, 1788, 104 L.Ed.2d 268 (1989); and (2) the pretext McDonnell Douglas–Burdine model. Texas Dept. of Community Affairs v. Burdine, 450 U.S. 248, 252–56, 101 S.Ct. 1089, 1093–95, 67 L.Ed.2d 207 (1981); McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802, 93 S.Ct. 1817, 1824, 36 L.Ed.2d 668 (1973). "The important distinction between these two models, for purposes of the present case, is that the mixed-motive model requires that a plaintiff prove only that a protected trait was a substantial or motivating factor in the employer's adverse action. The fact that proper considerations may also have played a role does not relieve an employer from liability. In contrast, under the pretextual model, the plaintiff must prove, even if only inferentially, that the adverse employment action would not have occurred "but for" improper considerations. Once a plaintiff has made a prima facie showing of disparate treatment, two distinctions are crucial in determining whether the facts of a given case will trigger a pretext or a mixed motives analysis. First, the pretext theory applies in cases involving a single motive for the disparate treatment, whereas the mixed motives theory applies in multiple motive cases, in

which there is at least one improper motive and one proper motive." (Emphasis added.) Commission on Human Rights & Opportunities v. Sullivan, 285 Conn. 208, 226–27, 929 A.2d 541 (2008). "The Court has made clear that 'mixed-motives' cases ... are different from pretext cases such as McDonnell Douglas and Burdine.... In mixed-motives cases, however, there is no one 'true' motive behind the decision. Instead, the decision is a result of multiple factors, at least one of which is legitimate." (Citation omitted; internal quotation marks omitted.) Price Waterhouse v. Hopkins, supra, 490 U.S. at 260 (White, J., concurring). *Dwyer v. Waterfront Enterprises, Inc.*, No. CV126032894S, 2013 WL 2947907, at *6 (Conn. Super. Ct. May 24, 2013) This case lends itself to a mixed-motive analysis.

Whether through direct evidence or circumstantial evidence, a [complainant] must submit enough evidence that if believed, could reasonably allow a fact finder to conclude the adverse employment consequences resulted because of an impermissible factor.... Under this model, [complainant's] prima facie case requires that the [complainant] prove by a preponderance of the evidence that [1)] he or she is within a protected class and [2)] that an impermissible factor played a motivating or substantial role in the employment decision .... Once the [complainant] establishes a prima facie case, the burden of production and persuasion shifts to the [respondent]. The [respondent] may avoid a finding of liability [under state law] only by proving by a preponderance of the evidence that it would have made the same decision even if it had not taken the [impermissible factor] into account ...." (Citations omitted; internal quotation marks omitted.) Taylor v. Dept. of Transportation, 2001 WL 104350, 7 (Conn. Super.); See also Levy v. Commission on Human Rights & Opportunities, supra, 236 Conn. 106-07; Price Waterhouse v. Hopkins, 490 U.S. 228 (1989).

"Direct evidence of discrimination "may include evidence of actions or remarks of the employer that reflect a discriminatory attitude . . . or [c]omments [that] demonstrate a discriminatory animus in the decisional process." *Levy* v. *Commission on Human Rights & Opportunities*, 236 Conn. 96, 110 (1996) (citations omitted). Circumstantial evidence requires the fact finder to take "certain inferential steps before the fact in question is proved." *Tyler* v. *Bethlehem Steel Corp.*, 958 F.2d 1176, 1183 (2d Cir. 1992). For example, evidence consisting of a statement by a decision-maker "to the effect that older employees have problems adapting to new employment policies . . . this statement constitutes circumstantial evidence (in that it requires an inference from the statement proved to the conclusion intended) that a discriminatory motive played a motivating factor in the challenged employment decision." *Stacks* v. *Southwestern Bell Yellow Pages*, 996 F.2d 200, 202 n.1 (8th Cir. 1993) (citations omitted; internal quotation marks omitted.). Regardless of whether the evidence is direct or circumstantial, "the plaintiff must present evidence showing a specific link between discriminatory animus and the challenged decision." *Id.* Therefore, a complainant may establish a prima facie case under the mixed-motive analysis by presenting evidence that is either "direct" or "circumstantial." *Comm'n on Human Rights & Opportunities ex rel. Phillip Baroudjian v. North East Transp. Co., Inc.*, 2008 WL 3019695, at *7-8.

IV.

ANALYSIS

In the instant case, Complainant established a prima facie discrimination case. First, Complainant is a member of a protected class; he is Vietnamese/Asian. Complainant's testimony at the Public Hearing revealed that he also speaks with an accent. Second, complainant had graduated from the police academy, successfully completed the field training

program, and received satisfactory overall reviews during his time as a probationary police officer until his incidents with Sergeant Kessler. During Complainant's first incident with Sergeant Kessler, Sergeant Kessler made negative remarks about Complainant's report, particularly about Complainant's grammar. Complainant revised the report as demanded by Sergeant Kessler. But, Sergeant Kessler also questioned Complainant about his ethnicity. Sergeant Kessler ultimately asked Complainant "what he was," to which Complainant responded that he was Vietnamese. When Sergeant Kessler commented about the ancestry of the subject of Complainant's report, who was also Asian, and asked whether he spoke Chinese, Complainant answered that he thought the subject may have been Cantonese. Sergeant Kessler retorted that Vietnamese and Cantonese were all the same "shit." Sergeant Kessler made more disparaging remarks about Complainant's ancestry during their second incident. Sergeant Kessler again criticized Complainant's grammar while reviewing Complainant's revised warrant and asked Complainant whether he had taken an English class. Sergeant Kessler commented on the difficulty of the English language and suggested that this was why Complainant's reports were unsatisfactory. He then asked Complainant if suspects ever "goof" on him behind his back. Sergeant Kessler's comments and actions towards Complainant stemmed from Complainant's Vietnamese ancestry. This is evidence that complaint's termination was sustainably motivated by an impermissible factor.

Complainant provided evidence that his performance reviews and DORs were satisfactory until his incidents with Sergeant Kessler. When a probationary police officer graduates from the police academy, he must complete a field training program. The field training program includes four segments, and PPOs are supervised by three different FTOs for

the four segments. One FTO supervises a PPOs first and last segment. This puts this officer in the best position to identify improvements. FTOs complete evaluations for the PPOs every day.

Complainant successfully completed the field training program. Complainant needed to repeat one of the phases, but passed that segment the second time around. During the Public Hearing, Complainant testified that needing to repeat a phase of field training was not an automatic ground for termination. This claim was substantiated as Complainant's employment was not threatened at the time; Complainant merely needed to repeat that particular phase. Complainant completed the rest of the field training program without issue and became a Hartford Police Officer who was still in his probationary period.

After PPOs complete the field training program, they are still in a probationary period. During this probationary period, Sergeants monitor PPOs' performance and complete daily observation reports for each day. Prior to Complainant's first incident with Sergeant Kessler in February 2011, Complainant showed acceptable performance. DORs include ratings for appearance, overall attitude, and interpersonal skills, care of city or departmental owned facilities, and equipment. Complainant's DORs from November 2010 to January 2011 indicate Complainant performed to a satisfactory level. Complainant received a few, individual catagory, unsatisfactory ratings in particular areas during this time, but Sergeant Creter testified that PPOs receive unsatisfactory in some of the categories from the DORs from time to time because they are still learning about the job. Chief Hevron also acknowledged that new officers would make some mistakes as they learned. Aside from the few, category unsatisfactory ratings, two of which pertained to Complainant being out of uniform, Complainant's overall performance was acceptable to Respondent.

Then, in February 2011, Complainant had two negative experiences with Sergeant Kessler. On two separate occasions, Sergeant Kessler made disparaging remarks towards Complainant's Vietnamese ancestry. Sergeant Kessler reviewed Complainant's report and revised search warrants while negatively commenting on Complainant's grammar, questioning Complainant as to his background in the English language, and suggesting that suspects mock him behind his back because of his accent. Complainant asked Sergeant Kessler to stop making offensive comments, but Sergeant Kessler warned Complainant to be careful what he said. Sergeant Kessler then indicated Complainant was argumentative and confrontational; Sergeant Kessler included this information in a memo to Lieutenant Bergenholtz. Complainant's DORs had never previously included comments or unsatisfactory remarks about Complainant behaving argumentatively or confrontationally. Kessler also did not make a credible witness, he appeared insincere and defensive about his treatment of the Complainant and his previous discipline involving discriminatory behavior.

In addition, Sergeant Kessler had previously been disciplined for making discriminatory and/or racist remarks. In the past, other officers filed complaints about disparaging statements Sergeant Kessler made. Sergeant Kessler had to attend sensitivity training as a result of the past complaints and was suspended for ten days. Sergeant Kessler's history lends itself to supporting the argument that Respondent's reasons for terminating Complainant were discriminatory.

As a result of Sergeant Kessler's comments and report that Complainant was argumentative and confrontational, Complainant began receiving DORs with negative comments about his attitude. Complainant's DORs from February and March include complaints from other Sergeants about Complainant's work and attitude. Sergeants Cicero and Marinelli, both friends of Sergeant Kessler, gave Complainant negative DORs in February, after which Sergeant

Cicero wrote a memo to Lieutenant Cacioli complaining about Complainant's maintenance of his DOR file. Sergeant Cicero's memo also referenced a performance deficiency from February 15, but Sergeant Cicero did not complete a DOR for Complainant any time on or around February 15, 2011. Exhibits illustrate the changes in Complainant's performance evaluations, and testimony from the Public Hearing about the camaraderie and socializing of Sergeant Kessler with other Sergeants demonstrate that Sergeant Kessler's discriminatory animosity towards Complainant motivated or influenced other officers to complain about Complainant's performance.

Second, following Complainant's negative experiences with Sergeant Kessler, the issue of Complainant's lost hat piece resurfaced after it eight months. Complainant lost his hat piece in July 2010. He reported that he lost the hat piece to his FTO and then wrote an incident report. Complainant received a spare hat piece in September, and he did not hear anything about the issue until February 2011. From September 2010 to February 2011, Complainant did not receive disciplinary warnings and there were all indications that the issue was closed. In February 2011, after complainant's incident with Kessler, Sergeant Rousseau gave Complainant written interrogatories about losing his hat piece. Complainant made a false entry in the incident report by stating that he notified Sergeant Weston that he lost his hat piece; though Complainant never reported the lost hat piece to Sergeant Weston, Complainant testified that his FTO instructed him to include that in his incident report. Complainant, however, was reported to be untruthful, and no investigation was made into Complainant's FTO and the instruction this officer gave. The shift in Complainant's DORs, the return of the hat piece incident, and the one-sided investigation into Complainant's truthfulness further evidences Respondent's discriminatory animus as a motivating reason for Complainant's termination.

Third, similar to revisiting Complainant's lost hat piece, Sergeant Yergeau raised issue with Complainant's truthfulness as a result of a situation in which Complainant did not use his Taser on a suspect. Complainant arrived on a scene where two officers were attempting to apprehend a suspect. During the subsequent scuffle, one of the Officers, Officer Hopkins, was hit by the suspect. Sergeant Yergeau wrote a report about and testified about this incident. He reported and testified that Complainant was instructed to use his Taser before Officer Hopkins was hit. In contrast, Officer Ruiz testified that Complainant was not instructed to use his Taser until after the suspect was on the ground. Complainant maintains he did not use his Taser because he did not have a clear shot of the suspect, and he did not hear either officer instruct him to do so. The incident was caught on a dashboard camera, and the video was watched as part of the Public Hearing. Although the video lacks audio, the video shows that Complainant's inaction did not cause Officer Hopkins to be hit. Furthermore, Sergeant Rousseau testified while the video was played during the Public Hearing, and Sergeant Rousseau identified the wrong individuals as suspect and victim. Sergeant Rousseau testified that there were several instances at which time Complainant could have used his Taser on the suspect, but Sergeant Rousseau did not correctly identify the suspect while making these assertions nor could he be specific about an opportunity to use the taser. Despite the inconsistent stories, Complainant was never asked by Sergeant Yergeau or by the Chief about what happened during this incident. The dashboard camera video was never reviewed to substantiate complaint's version of the event. Respondent's failure to properly investigate the Taser incident was evidence that Complainant's truthfulness was not the catalyst behind his dismissal. Respondent's reasons for terminating complainant indicated a more nefarious, impermissible motive for termination existed, namely his ancestry.

Sergeant Kessler's discriminatory conduct towards Complainant and his memo about Complainant's performance deficiencies spurred the discriminatory action by Respondent against Complainant by causing other supervisory officers to complain about Complainant's attitude, work performance, and truthfulness. Complainant's performance had been satisfactory until his meetings with Sergeant Kessler, and the untimely investigation into Complainant's hat piece followed by the one-sided investigation into Complainant's decision not to use his Taser is strong circumstantial evidence of a discriminatory animus. Respondent's lack of credibility combined with Complainant's evidence successfully demonstrated that his termination was substantially motivated by his ancestry.

In the instant case Respondent is liable for the discriminatory animus of Sergeant Kessler. Sergeant Kessler made discriminatory and disparaging remarks to Complainant. Following complainant's interaction with Sergeant Kessler, reported that Complainant was argumentative and confrontational and caused other supervisory officers to make similar comments leading to unsatisfactory ratings on Complainant's DORs. The evidence presented showed that the unsatisfactory reports for "overall attitude" included some comments about Complainant being argumentative or confrontational. Sergeant Kessler also wrote memos to his superiors about Complainant's performance, and these memos spurred memos from other supervisory officers, which complained about Complainant's performance. Sergeant Kessler poisoned the well for the Complainant.

V.

CONCLUSION

Respondent indicated that Complainant was terminated for unsatisfactory attitude during his probationary period and for lack of truthfulness, especially with regard to the taser incident.

During testimony, it became apparent that Respondent focused on complainant's alleged lack of truthfulness. Respondent alleged that complaint could not be trusted because he lied about reporting his lost hat piece to his "boss" and lied about not hearing a command to fire his taser. Based on the preponderance of the evidence the "lack of truthfulness component" is not a credible factor in complainant's termination. The incident regarding the taser, which was caught by a dashboard camera, conforms to the complainant's version of the events in question. The hat piece incident is again suspect as an illustration of lack of truthfulness as the investigation came more than 9 months after the incident appeared closed.

Rather than convincing the tribunal that the complaint was untruthful, it was Respondent's truthfulness that came into question given their adamant refusal to change their testimony, even when confronted with video evidence that rebutted their testimony. It was as if the Respondent thought continually denying the visual evidence to the contrary, it would make it so. These denials seriously damaged the witnesses' credibility and demonstrated their own lack of truthfulness.

Respondent produced DORs for complainant containing unsatisfactory ratings in areas such as attitude and questioned witnesses about incidents involving complainant's performance. Areas that were identified as being unsatisfactory in the early stages of Complainant's training had improved over the course of complainant's employment. Additionally, testimony indicated that it was not unusual for cadets to have issues in the beginning of their training. Further, it is highly suspect that the a incident involving the investigation of Complainant's missing hat piece, which was concluded 8 months earlier, and his honestly involving the taser incident were the most the most substantial reasons for his termination. To the contrary, it is more likely that the impermissible factor of the Complainant's ancestry motivated the termination. Many of the

DOR reports were tainted with discriminatory animus; therefore, it is difficult to discern if there were any real, let alone motivating, non-discriminatory reasons for terminating the complainant. For the foregoing reasons it is found that, Respondent illegally discriminated against Complainant when Respondent terminated him from his position as a probationary police officer. Respondent violated General Statutes §§ 46a-58(a) and 46a-60(a)(1) as well as Title VII of the Civil Rights Act of 1964 as amended, and the Civil Rights Act of 1991.

VI.

DAMAGES

When the presiding referee determines that unlawful discrimination has occurred, he is authorized to award relief (see General Statutes § 46a-86), the goal of which is to restore the employee to the status he would have enjoyed but for his unlawful termination. Kirsch v. Fleet Street, Ltd., 148 F.3d 149, 166 (2d Cir. 1998); Saulpaugh v. Monroe Community Hospital, 4 F.3d 134, 144 (2d Cir. 1993), cert. denied, 510 U.S. 1164 (1994); Worthington v. City of New Haven, 1999 WL 958627 *14 (D.Conn. 1999).

"General Statutes § 46a-86 (b) specifically authorizes an award of back pay for lost wages. Back pay awards may include commissions, merit increases, and fringe benefits, so long as the complainant can prove, rather than merely speculate, that he would have earned these absent the discriminatory act." Equal Employment Opportunity Commission v. Joint Apprenticeship Committee of the Joint Industry Board of the Electrical Industry, 186 F.3d 110, 124 (2d Cir. 1999); Saulpaugh v. Monroe Community Hospital, supra, 4 F.3d at 145. Back pay awards run from the date of termination to the date of judgment, Kirsch v. Fleet Street, supra, 148 F.3d at 167, but may be tolled earlier if the complainant assumes a new position with equal or higher salary, or under other circumstances such as retirement or cessation of job-seeking. Id.

at 168; Nordquist v. Uddeholm Corp., 615 F.Supp. 1191, 1203–04 (D.Conn. 1985)." Comm'n on Human Rights & Opportunities ex rel. Adam Szydlo v. EDAC Technologies Corporation, 2007 WL 4258347, at *18.

Respondent's deprivation of Complainant's right to a work in an environment free of discrimination constitutes a violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2003 and the Civil Rights Act of 1991, enforced as a violation of state law through General Statute § 46a-58 (a) and enables Complainant and the Commission to seek the remedies available to them under § 46a-86 (c) (Citations omitted.) See Comm'n on Human Rights & Opportunities ex rel. Ramseur v. Colonial Chimney and Masonry, Inc., 2005 WL 4828677 (CHRO No. 0440130, November 28, 2005) (citations omitted.); Comm'n on Human Rights & Opportunities ex rel. Joselin Correa v. La Casona Restaurant, 2008 WL 7211987 (CT.Civ.Rts.insert date of decision)

"The issue of awarding emotional distress damages in employment claims arising from Title VII violations [a breach of federal law] has been fully analyzed in prior decisions and rulings. See Comm'n on Human Rights & Opportunities ex rel. John Crebase v. Proctor & Gamble Pharmaceuticals, Inc,. CHRO No. 0330171, pp. 69-71 (July 12, 2006). Emotional distress damages pursuant to § 46a-86 (c) may be awarded for violations of § 46a-58 (a) as was ordered in Crebase, supra. Subsequently, this tribunal continued to decide, in the affirmative, the issue of awarding emotional distress damages for violations of Title VII employment claims that are covered under § 46a-58 (a). As a result, emotional distress damages have been awarded for violations of Title VII as enforced through § 46a-58 (a) in Commission on Human Rights & Opportunities ex rel. Randall L. Saex v. Wireless Retail, Inc., CHRO NO. 0410175, July 26, 2006; Commission on Human Rights & Opportunities ex rel. Rosa DiMicco v. Neil Roberts,

Inc., CHRO No. 0420438, September 12, 2006; Commission on Human Rights & Opportunities ex rel. Correa v. La Casona Restaurant, CHRO No. 0710004, April 28, 2008; Commission on Human Rights & Opportunities ex rel. Jane Doe v. Claywell Electronics, CHRO No. 0510199, December 9, 2008; and Commission on Human Rights & Opportunities ex rel. Jennifer Swindell v. Lighthouse Inn, CHRO NO. 0840137, January 29, 2009. Commission on Human Rights and Opportunities ex rel. Samuel Braffith, CHRO NO. 0540183 November 13, 2009.

Criteria to be considered when awarding damages for emotional distress include: the complainant's subjective internal emotional reaction to the respondents' actions; the public nature of the respondents' actions; the degree of offensiveness of those actions; and the impact of those actions on the complainant. Comm'n on Human Rights & Opportunities ex rel. Peoples v. Belinsky, supra, 1988 WL 492460; Comm'n on Human Rights & Opportunities ex rel. Aguiar v. Frenzilli, CHRO No. 9850105, pp. 9-15 (January 14, 2000). Complainant sought damages for garden-variety type of emotional distress. In garden-variety emotional distress claims the evidence of suffering comes mainly from the testimony of the witness. Patino v. Birken Manufacturing Co., 304 Conn. 679 (2012). Mr. Phan testified he gained weight, had sleeplessness nights and isolated himself from family and friends due to his termination.

Mr. Phan's prayer for relief consisted of $210,596.00 which was back pay ($288,766) – unemployment ($43,795) + interim income ($34,375) = $210,596. Additionally, he requested pre- and post- interest at the statutory rate of 10% per annum and emotional distress damages in the amount of $50,000.

Mr. Phan's pray for relief included reinstatement or in the alternative for front pay if reinstatement is inappropriate. Reinstatement in this case may not be practical, given the military style of operation inherent in a police force. There must be an intrinsic trust among

officers and an acceptance for team members for the safety of the officers and the public. Nevertheless, front pay is too tentative given the complainant's status at the time of termination. While the respondent did not prove by a preponderance of the evidence that the decision to terminate the complainant would have been made absent discriminatory animus, it is possible that complainant had areas that needed improvement. Further, little or no evidence of front pay damages was presented at the hearing.

ORDER

1. Within one week of the date of this decision, Respondent shall pay to Complainant the following damages:

2. Respondent shall pay back pay in the amount of **$210,596.00, plus pre-judgment interest at a rate of 10% per annum.**

3. **Respondent shall pay post judgment interest, which** shall accrue on the unpaid balance at the rate of 10% per annum from the date payment is due.

4. Respondent shall pay emotional distress damages in the amount of **$25,000.00**

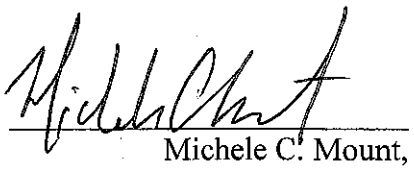
5. Complaint's personnel file shall be revised to reflect that the Complainant was not terminated.

6. Respondent shall cease and desist from all acts of discrimination prohibited by state or federal law, and shall provide a nondiscriminatory work environment pursuant to state and federal law.

7. Respondent shall post in prominent and accessible locations, visible to all employees and applicants for employment, such notices regarding statutory antidiscrimination provisions as the commission shall provide. Respondent shall post the notices within three working days of their receipt.

8. Respondent shall not—and shall ensure that employees do not retaliate against the complainant, relatives of the complainant or any person who participated in this proceeding.

It is so ordered this 4th day of March 2015.



Michele C. Mount,
Presiding Human Rights Referee

cc.

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