State of Connecticut

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November 14, 2014

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CHRO
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RE: CHRO ex rel. Susan Senra v. Groton Open MRI LLC CHRO No. 1140018.

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
Philip Laffey, Esq. – via email only
Michael N. Lavelle, Esq. – via email only
Michele C. Mount, Presiding Human Rights Referee

Certified No. 7014 0150 0001 0774 1918 (S. Senra)
Certified No. 7014 0150 0001 0774 1901 (M Spatidol/Groton Open MRI LLC)

STATE OF CONNECTICUT
OFFICE OF PUBLIC HEARINGS

Commission on Human Rights and Opportunities ex rel. Susan Senra,
Complainant

CHRO No. 1140018

v.

Groton Open MRI LLC,
Respondent

November 13, 2014

FINAL DECISION

I
Preliminary Statement

A notice of Contested Case and Hearing Conference was sent to the parties June 14, 2013. The Honorable Ellen Bromley was assigned as the presiding referee. Referee Bromley left the Office of Public Hearings (OPH) in May of 2014 and this case was reassigned in June 2014 to the undersigned a presiding referee. Susan Senra (the complainant) was hired by Groton Open MRI (the respondent) as a part-time MRI technician. The complainant worked two days a week. After the second week of employment the complainant informed the respondent that she was pregnant. The complainant was terminated the following day after her disclosure of pregnancy. The reason proffered by the respondent was that another part-time individual desired to work full time, and it had always been its intention to hire a full time person. The issue presented in this case is whether the complainant was illegally terminated due to her gender and pregnancy in violation of General Statues sec. 46a-60a(7).

II
Findings of Fact

All procedural notices, and jurisdictional prerequisites have been satisfied and this matter is properly before this presiding officer to hear the matter and render a decision. From the evidence and testimony adduced at public hearing, the undersigned human rights referee finds the following facts relevant to the present decision:

1. The complainant is a member of one or more protected classes, pregnant females.

2. The complainant was qualified to do the job duties described in her position. (C-1)

3. As provided by law, the complainant is entitled to the relief necessary to make her whole. Relief includes back pay, prejudgment interest, emotional distress damages and post judgment interest.

4. The respondent had recently lost a full-time MRI technician, Richard Johnson (Mr. Johnson). (TR 90)

5. The respondent advertised for a fulltime position however, was unable to find someone to fill a full- time position. (EX R-1) (Ex R-1, TR 12,146)

6. The respondent then posted an advertisement for two part-time MRI technicians also on Craig's list. (EX R-1)

7. The complainant was a qualified MRI technician who applied for the part-time position that was advertised on Craig's list. (EX C-4)

8. The complainant was hired by the respondent as a part-time MRI technician in January 2010. (TR 18,19)

9. Trista Maxson (Ms. Maxson) was also hired by the respondent in January 2010, as a part-time MRI technician. (TR 59)

10. The complainant was hired to work Tuesdays and Thursdays. (TR. 17)

11. Ms. Maxson worked on Monday's Tuesdays and Fridays. (TR 69-71)

12. The complainant's first day of work was on January 14, 2010. (TR 18)

13. The complainant was hired as permanent part-time employee. (TR 20)

14. The complainant signed a W-4 form on January 14, 2010. (Ex. C-3, TR 147)

15. The complainant informed the respondent she was pregnant on January 26, 2014. (TR 22)

16. The complainant also informed the respondent that she had been able to perform all her duties, as she did with a prior pregnancy, as well as working with a stronger imagining magnet. (TR 23)

17. The complainant was concerned that she would be fired for being pregnant. (TR 184)

18. On the following day, January 27, 2010, after the complainant informed respondent that she was pregnant, the respondent terminated her. (Ex. R-5, TR 24)

19. The respondent claimed that the complainant was terminated because another employee, Ms. Maxson, wanted to convert her part-time position into a full time position and that the complainant was terminated (Ex. R-5, TR 25)

20. Ms. Maxon did not begin her full-time employment until April 30, 2010 three months after the complainant was terminated. (TR 59)

21. The respondent knew that Ms. Maxson's employment would not begin immediately. (TR 115)

22. Ms. Maxson stated that the respondent knew, at the time of her request to become the full-time, that she would not start until the first week of May. (TR 62)

23. Originally the respondent had been looking for one full time person, however no one responded to their advertisements; therefore, they hired two part-time individuals. (Ex R-1, TR 12,146)

24. Objectively, the complainant had more experience and more credentials in imaging than Ms. Maxson. (Ex R-2, C-1)

25. The respondent did not inquire whether the complainant was interested in working full time. (TR 26)

26. The respondent did not offer any per diem work to the complainant. (TR 24)

27. The respondent initially paid the complainant without taxes deducted (a 1099) for the dates that she had worked after she had filled out her W-4. (TR 26-28)

28. The complainant was upset and called Martin Convey (Mr. Convey). Mr. Convey, asked the complainant to fill out a 1099 form, which made the complainant more upset because she wanted a regular payroll check. (TR 28-29)

29. During that phone conversation Monica Compagna (Ms. Compagna) over heard Mr. Convey stating, that the complainant burned her bridges and he was now not going to even offer her per diem employment. (TR 180)

30. The respondent also employed another longstanding part-time employee, Ms. Campagna. (TR 173)

31. Ms. Campagna had been working full time to cover the loss of a past full-time employee, Mr. Johnson. (TR 90, 108)

32. Ms. Campagna testified that it was unacceptable for her to remain working a full-time schedule and she requested that 2 other part-time technicians be hired. (TR 183) See also (TR 109-110, 155)

33. Ms. Campagna had also been training both part-time MRI technicians. See (TR 75-76, EX R-3)

34. Ms. Campagna testified that she never had a discussion with Mr. Convey relating to complainant's work performance. (TR 181)

35. After terminating the complainant, Ms. Campagna had to continue working full time to complete the training of Ms. Maxson. (TR 90, 178)

36. Ms. Maxson had to continue training for one more month. (TR 163-164)

37. The complainant's initial rate of pay was $30.00 per hour which would increase to $35.00 per hour once it was deemed her training was over.

III
Law

The respondent has been charged with violating General Statutes § 46a-60 (a) (1) for terminating the Complainant 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,... to discharge from employment any individual ... because of the individual's race, color, religious creed, age, sex, marital status, national origin, ancestry, ..." *Commission on Human Rights and Opportunities ex rel. David Graves, Complainant v. Sno-White Avenue Car Wash, Respondent*, 2006 WL 4753456 (CT.Civ.Rts.).

The first the first step in determining whether the respondent has violated the applicable discrimination law is that the complainant must establish a prima facie case of discrimination. "A plaintiff can establish a prima facie case of pregnancy discrimination by showing that: (1) she is a member of a protected class; (2) she satisfactorily performed the duties required by the position; (3) she was discharged; and

(4) her position remained open and was ultimately filled by a non-pregnant employee. *See Quaratino v. Tiffany & Co.*, 71 F.3d 58, 64 (2d Cir.1995), *vacated and remanded on other grounds,* 166 F.3d 422 (1999). In the alternative, a plaintiff may satisfy the fourth element by showing that the discharge "occurred in circumstances giving rise to an inference of unlawful discrimination." *Id.* Plaintiff's burden to establish a prima facie case "is not onerous," *Texas Dep't. of Community Affairs v. Burdine,* 450 U.S. 248, 253, 101 S.Ct. 1089, 1094, 67 L.Ed.2d 207 (1981), and has been described as "minimal," *St. Mary's Honor Ctr.,* 509 U.S. at 506, 113 S.Ct. 2742. *Flores v. Buy Buy Baby, Inc.,* 118 F. Supp. 2d 425, 430 (S.D.N.Y. 2000)

"As our Supreme Court repeatedly has stated: [T]he question facing triers of fact in [employment] **discrimination** cases is both sensitive and difficult .... There rarely will be direct evidence of **discrimination**.... In recognition of this fact, we have adopted a framework that enables us to analyze **discrimination** claims based primarily on circumstantial evidence." (Citations omitted; internal quotation marks omitted.) *Board of Education v. Commission on Human Rights & Opportunities,* 266 Conn. 492, 516, 832 A.2d 660 (2003).

> A "mixed-motive" case exists when an employment decision is motivated by both legitimate and illegitimate reasons. See *Price Waterhouse v. Hopkins,* supra, 490 U.S. at 228, 109 S.Ct. at 1778–79 (plurality opinion). In such instances, a plaintiff must demonstrate that the employer's decision was motivated by one or more prohibited statutory factors. Whether through direct evidence or circumstantial evidence, a plaintiff must "submit enough evidence that, if believed, could reasonably allow a [fact finder] to conclude that the adverse employment consequences resulted 'because of an impermissible factor." *Tyler v. Bethlehem Steel Corp.,* 958 F.2d 1176, 1187 (2d Cir.1992).
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> "The critical inquiry [in a mixed-motive case] is whether [a] discriminatory motive was a factor in the [employment] decision 'at the moment it was made.' " *Miko v.*

Commission on Human Rights & Opportunities, supra, 220 Conn. at 205, 596 A.2d 396, quoting *Price Waterhouse v. Hopkins,* supra, 490 U.S. at 241, 109 S.Ct. at 1785. Under this model, the plaintiff's prima facie case requires that the plaintiff prove by a preponderance of the evidence that he or she is within a protected class and that an impermissible factor played a "motivating" or "substantial" role in the employment decision. *Price Waterhouse v. Hopkins,* supra, 258, 109 S.Ct. at 1794–95; *Mt. Healthy City Board of Education v. Doyle,* 429 U.S. 274, 287, 97 S.Ct. 568, 576, 50 L.Ed.2d 471 (1977); *Tyler v. Bethlehem Steel Corp.,* supra, 958 F.2d at 1181 ("[s]hould the plaintiff wish to prove his case as a 'mixed-motives' case, he must focus his proof directly at the question of discrimination and prove that an illegitimate factor had a 'motivating' or 'substantial' role in the employment decision").

Once the plaintiff has established his prima facie case, the burden of production and persuasion shifts to the defendant.[18] "[T]he defendant may avoid a finding of liability 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." *Price Waterhouse v. Hopkins,* supra, 490 U.S. at 258, 109 S.Ct. at 1794–95; *Mt. Healthy City Board of Education v. Doyle,* supra, 429 U.S. at 274, 97 S.Ct. at 569–70; see *Grievance of McCort,* 162 Vt. 481, 650 A.2d 504, 511 (1994) (adopting under its own antidiscrimination statute the burden shifting form of analysis for mixed-motive cases)."

Levy v. Comm'n on Human Rights & Opportunities, 236 Conn. 96, 105-07, 671 A.2d 349, 356-57 (1996) (footnotes omitted.) "This means that complainant must show that her pregnancy was a motivating factor in her termination. However, she need not show that her pregnancy was the only reason. *See Holtz,* 258 F.3d at 78; *Sutera v. Schering Corp.,* 73 F.3d 13, 17 (2d Cir.1995)." *Calabro v. Westchester BMW, Inc.,* 398 F. Supp. 2d 281, 292 (S.D.N.Y. 2005). A plaintiff may demonstrate pretext by demonstrating discrepancies in the employer's story. *See, e.g., Norville v. Staten Island Univ. Hosp.,* 196 F.3d 89, 97–98 (2d Cir.1999); *EEOC v. Ethan Allen, Inc.,* 44 F.3d 116, 120 (2d Cir.1994). *Hall v. Family Care Home Visiting Nurse & Home Care Agency, LLC,* 696 F. Supp. 2d 190, 200-01 (D. Conn. 2010) *on reconsideration in part,* No. 3-07-CV-0911 (JCH), 2010 WL 1487871 (D. Conn. Apr. 12, 2010).

III
ANALYSIS

The facts have established that the complainant was a member of the class to be protected, that she was qualified to do the job and that she suffered an adverse employment action. Based on the timing of her termination, the day after she informed the employer that she was pregnant, not hiring her full time replacement that was not pregnant for 3 months and giving conflicting testimony, the circumstances give rise to an inference of discrimination. Further, the employee from other locations that was working full-time until a replacement could be found was not pregnant and testified that she didn't want to work full-time and was overworked.

The respondent argues that its needs were better served by having a full-time employee, not two part-time employees, and that this was a legitimate business reason to terminate the complainant. This might have been an acceptable reason at the beginning of May, when Ms. Maxson started her full- time employment but not at the time of termination. The respondent's witnesses contradicted their testimony in each other's testimony several times during the hearing. They also argued that there was no part-time position ever created while there was evidence of advertising for part-time position; hiring two part-time people and having them complete IRS W-4's. Further, both part-time workers were receiving training on the respondent's MRI imaging machines.

The complainant testified that she was asked by Mr. Convey if she felt like she was ready to go solo. Based on her past experience and education she felt comfortable going solo. Ms. Campagna, who was training the part-time employees, while she was working full time, testified that Ms. Maxson was ready to go solo one month after the complainant was terminated. Ms. Campagna testified that the complainant wasn't quite ready to go solo at the time of her termination. It is reasonable to assume that complainant would have completed her training sooner, as she was more qualified and more experienced than Ms. Maxson and Mr. Convey testified he was going to offer complainant per diem employment at the time terminated her.

The respondent also argued that they wanted someone who could work at all three of their locations. Complainant was only able to part-time work in the Groton location. However, Ms. Maxson and Ms. Campagna had the ability to travel to other locations. While again this may be a valid point, it does not explain why The complainant could not continue working once Ms. Maxson began her full time employment at the beginning of May. The complainant's position was technically filled by Ms. Campagna, a non-pregnant employee. She was working full-time or part-time, until Ms. Maxson was trained and could work full time respectively. Ms. Campagna stated that she did not want to remain a full-time employee and the extra hours were causing her difficulty.

The complainant, Ms. Maxson and Ms. Campagna were all available to work part-time hours until Ms. Maxson started as a full-time employee. The respondent argued that they did not want to spend any more time training the complainant; yet they

also stated they were ready to offer her per diem employment. Those two statements are incongruous. If they were sincere about wanting Ms. Campagna to work as a per diem an employee, one of two things can be assumed. The first is perhaps they felt the complainant was ready to perform solo as a per diem employee, or second that it was to their benefit to keep training the complainant for a short time, until they felt she could perform solo as per diem. The inconsistencies in the logic and the plethora of contradicting facts presented by the respondent minimize their credibility.

In addition to the law, the logic of, "the most straightforward explanation is usually the truth," presents a valuable guide. The complainant was hired for the part-time position in Groton, she told the employer she was pregnant, and the next day he she was terminated. The reasons for the respondents termination was given as another part-time employee, who was not pregnant, who also needed more training, was going to come on board full time on the very same day as the complainant informed her employer that she was pregnant. Moreover, that employee did not start full-time employment until three months after the complainant was terminated. The respondent argues that Ms. Maxson's start date for the full-time position was later than they expected. However, Ms. Maxson testified that the respondent did know her expected start date. The respondent also argued that "it is entirely plausible that a small business, having solved its staffing problem, would save the expense of training and employee who had become superfluous." Why argue that "it is entirely plausible," if in fact that was actually the case? By the preponderance of the evidence, which includes: the timing of respondents decision to terminate the complainant, coupled with their inconsistencies in testimony and their illogical arguments, and replacement of the

complaint with non-pregnant employees, complainant has proven that respondent's legitimate business reason was a pretext. Pregnancy, not economy was the motivating reason for complainant's termination.

Based on the foregoing, the complainant has succeeded in proving that her pregnancy was the motivating factor in her termination not economy. However, it is a legitimate argument that complainant would cease to have her position once Ms. Maxson became a full-time employee. Therefore, the respondent is liable to the complainant or 27 more shifts of work between January and April 30, 2010.

IV
DAMAGES

The complainant had a duty to use reasonable efforts to find other employment to mitigate back pay damages. R*eed v. A.W. Lawrence & Co.*, 95 F.3d 1170, 1182 (2nd Cir. 1996); *Ann Howard's Apricots Restaurant, Inc. v. Commission on Human Rights and Opportunities*, 237 Conn. 2009, 229 (1996). "In order to meet this 'extremely high' burden of proving failure to mitigate, the [employer] 'must show that the course of conduct plaintiff actually followed was so deficient as to constitute an unreasonable failure to seek employment." *Evans v. State of Connecticut,* 967 F.Sup. 673, 680 (D.Conn. 1997), quoting *Bonura v. Chase Manhattan Bank,* 629 F.Sup. 353, 356 (S.D.N.Y. 1986). As in *Commission on Human Rights and Opportunities ex rel. Taranto v. Big Enough,* CHRO No. 0470316. Complainant has demonstrated amply her efforts to inquire other employment.

The complainant also seeks an award of post-judgment interest. In addition, complainant would be entitled to pre-judgment interest as well, both at a rate of ten percent compounded per annum. Pre-judgment and Post-judgment interest compensates the prevailing party when the prevailing party is deprived or does not have the use of the money between the order of payment and the actual payment by the losing party. *Commission on Human Rights and Opportunities ex rel. Taranto v. Big Enough, Inc.*, CHRO No. 0420316 (June 30, 2006) 2006 WL 47534476. The victimized person should not be deprived of the true value of the money. *Thames Talent v. Commission*, 265 Conn. 144-45 (2003.)

Ms. Maxson required another month of training before she was able to work solo. The complainant had more experience than Ms. Maxson and Ms. Campagna testified that the complainant's training was going very well. Therefore, it is reasonable to conclude that the complainant would have gone solo before Ms. Maxson. During the complainant's training she was receiving $30.00 per hour. At the time she would've gone solo she would have received $35.00 per hour. As to the complainant's prayer for attorney's fees, documentation calculated by the loadstar method or evidence was not presented to this tribunal to determine if an award of attorney's fees is proper.

V.
Order of Relief

1. The respondent shall pay within one week of the date this ruling, **back pay,** calculated at: 14 hours a week x $30.00 per hour for 2 weeks= **$840.00.** This rate calculation is based on complainant needing two more weeks of training.

2. The complainant would have continued for an additional 29 seven hour shifts at $35.00 per hour, **totaling $7,105.**

3. The respondent shall pay to the complainant statutory **post-judgment** interest at the rate of **10% per annum** from the date of this decision.

4. The respondent shall pay to the complainant statutory **pre-judgment interest for 163 weeks at the rate of 10% per annum.**

It is so ordered this 13th day of November 2014.

Michele C. Mount,
Presiding Human Rights Referee

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Groton Open MRI, LLC – via certified mail no.
Robin Kinstler-Fox, Esq. – via email only
Philip Laffey, Esq. – via email only
Michael N. Lavelle, Esq. – via email only