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COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES
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Promoting Equality and Justice for all People

September 8, 2022

CHRO ex rel. Hwie Ling Ong Bello v. Global International, Inc. CHRO No. 1830005 Fed No. 16a201701356.

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 via email to the commission, complainant and respondent.

Very Truly yours,

Kimberly D. Morris
Secretary II

cc.

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

Commission on Human Rights and Opportunities ex rel. Hwie Ling Ong Bello,
Complainant

v.

Globex International Group, Inc.,
Respondent

CHRO No. 1830005

September 8, 2022

FINAL DECISION

Preliminary statement

Hwie Ling Ong Bello filed her affidavit of illegal discrimination practice (complaint) with the Commission on Human Rights and Opportunities (commission) on July 5, 2017. Ms. Bello alleged that Globex International Group, Inc. (Globex), her former employer, committed an illegal discriminatory employment practice against her. According to Ms. Bello, Globex violated four statutes: General Statutes § 46a-60 (b) (1),[1] Title VII of the Civil Rights Act of 1964, the American Disabilities Act, and the Age Discrimination in Employment Act. She alleged three protected bases: her age, familial status, and physical disability (allergy). She further alleged that the respondent committed three adverse acts: terminating her employment, retaliating against her for requesting an accommodation for her disability, and failing to engage in an interactive process to determine a reasonable accommodation for her allergy.

[1] General Statutes § 46a-60 was amended by No. 17-118 of the 2017 Public Acts, which added a new subsection (a) regarding definitions and redesigned the existing subsections (a) and (b) as (b) and (c). Although the complaint and parties reference the earlier version of the statute, for clarity, this decision references the current revision of the statute where applicable.

On April 24, 2019, the commission certified the complaint to public hearing and, on June 18, 2019, Globex filed its post-certification answer denying the allegations of discriminatory conduct.

The public hearing was held on March 1, 2 and 3 and May 10, 2022. Post-hearing briefs were due on August 24, 2022, at which time the record closed.

For the reasons stated herein, the commission and Ms. Bello have not proven that Globex committed a discriminatory practice. The complaint is dismissed.

I
Parties

The parties to this action are the Commission on Human Rights and Opportunities, 450 Columbus Boulevard, Hartford, Connecticut; Hwie Ling Ong Bello, c/o Attorney T. Jessica Johnson, 224 Farmington Avenue, Hartford, Connecticut, and Globex International Group, Inc., c/o Attorney Stuart M. Katz, Cohen and Wolf, P.C. 1115 Bridgeport, Connecticut.

II
Findings of Fact

Based upon a review of the pleadings, exhibits, and transcripts and an assessment of the credibility of the witnesses, the following facts relevant to this decision are found (FF). References to the transcript are designated by Volume number and "Tr." followed by the page number.[2] References to exhibits are designated by CHRO for the commission, C for Ms. Bello and R for Globex followed by the exhibit number.

Stipulated facts

[2] Note that for each day, the transcript pagination begins anew with page 1.

1. All procedural, notice, and jurisdictional prerequisites have been satisfied and this matter is properly before the presiding referee for hearing and decision.
2. Ms. Bello was hired as a full-time employee and was provided with copies of Globex's policies regarding attendance.
3. Ms. Bello was employed by Globex from November 28, 2016 to January 6, 2017.

General

4. Globex provides multinational risk management services to commercial insurance companies in over 160 countries. C-1. It partners with insurance companies to provide them with the ability to write multinational insurance programs for commercial lines. Volume 3, Tr. 11.
5. At the times relevant to this complaint, Globex had more than 20 employees. Volume 1 Tr. 41 – 43; C-21, C-22.
6. Globex was a commercial tenant in the building that included at least two other tenants. Volume 1 Tr. 35 – 36.
7. On or about October 11, 2016, Ms. Bello saw a job posting on Craig's List for Globex's Shelton, Connecticut office. Volume 1 Tr. 20; C-1.
8. The posting was for the position of account/network assistant. C-1. This was an entry level position. Volume 1 Tr. 30
9. On October 11, 2016, Ms. Bello emailed Globex expressing interest in the position. She received a reply to schedule an interview. Volume 1 Tr. 22; C-3, C-34.
10. On October 12, 2016, Ms. Bello had a telephonic interview with Asha Gehani of Globex. Volume 1 Tr. 22 – 23; C-3.

11. On October 21, 2016, Ms. Bello went to Globex's Shelton office for in-person interviews with Linda Gryak, the office manager, and with Ning Xu. Ms. Xu was Ms. Gehani's supervisor. Volume 1 Tr. 24 – 25. She also met briefly with Ms. Gehani. Volume 1 Tr. 26.
12. Ms. Bello explained to Ms. Gryak, Ms. Xu, and Ms. Gehani that a work/life balance was important as she needed to be close to home for her mathematically gifted daughter whom she needed to mentor and track behavioral issues. Volume 1 Tr. 26, 29-30.
13. Ms. Bello met most of the qualifications listed on the job posting. Volume 3 Tr. 13, 168.
14. Globex offered Ms. Bello the position and she accepted. Volume 1 Tr. 25; C-4.
15. Ms. Gehani and Ms. Xu hired Ms. Bello. Volume 3 Tr. 12.
16. Although Globex provided medical insurance, Ms. Bello chose to keep her own insurance through the end of the calendar year and enroll in Globex's plan effective January 1, 2017. Volume 1 Tr. 53; Volume 2 Tr. 121-123.
17. Ms. Bello's first day of work was November 28, 2016. Volume 1 Tr. 33; R-3.
18. At the time she began working at Globex, Ms. Bello was 58 years old. Volume 1 Tr. 14.

Episodes of coughing

19. During the first week in December 2016, Ms. Bello began coughing heavily. She attributed the coughing to construction dust that was filtering into the Globex office

from work being done in an adjoining office suite for another tenant. Volume 1 Tr. 50. Her coughing could be heard throughout the office. Volume 1 Tr. 100; R-14.

20. The coughing triggered shortness of breath. Volume 2 Tr. 66. If she got away from her desk to go outside, the coughing and shortness of breath subsided. Volume 2 Tr. 66 – 67.

21. The symptoms subsided during the weekend. The symptoms reoccurred when she returned to work and increased during the work week. Volume 2 Tr. 67.

22. Ms. Bello did not seek treatment at that time because she did not have a primary care physician and the University of Bridgeport Community Clinic, where she usually sought naturopathic care, was getting ready to close for the Christmas break. Volume 2 Tr. 11 – 12. Ms. Bello did not consider going to a walk-in clinic. Volume 2 Tr. 199 – 201.

23. Ms. Bello asked Ms. Gehani if she could take breaks from the construction dust by going outside in the parking lot. Ms. Gehani said yes. Volume 1 Tr. 100; Volume 2 Tr. 12; Volume 3 Tr. 23, 120. There were no limitations on how many of these breaks Ms. Bello could take. Volume 3 Tr. 120.

24. Ms. Bello asked if she could work in the office kitchen. Ms. Gehani said yes. The kitchen, though, was not always available as other employees complained she was coughing while they were eating lunch. Volume 2 Tr. 51 – 52, 69; Volume 3 Tr. 42-43.

25. Ms. Bello asked if she could use the conference rooms. Ms. Gehani said yes. The conference rooms, however, were not always available as other employees used

them to telephone clients or to hold meetings. Volume 2 Tr. 70; Volume 3 Tr. 41 - 42.

26. Employees are eligible to work from home one day per month after six months of continuous service. C-18 p. 10. Although she was not eligible to work from home, Ms. Bello was allowed to work from home on December 8, 2016 because she was not feeling well and was coughing. Volume 3 Tr. 22 – 23; R-3; R-23.

27. On December 19, 2016, Ms. Gehani suggested Ms. Bello leave and work from home as she was not feeling well. Volume 2 Tr. 13; Volume 3 Tr. 22; R-14

28. After leaving work on December 19, 2016, Ms. Bello telephoned a friend who was a naturopathic doctor. The doctor provided Ms. Bello with supplements that provided relief. Volume 2 Tr. 201 – 204. On her way home, Ms. Bello notified Ms. Gehani that she would not be available at her computer for an hour as she had errands to do related to picking up her naturopathic medicine. R-14.

29. Later, on December 19, 2016, Ms. Bello suggested to Ms. Gehani that she take December 20, 2016 as an unpaid sick day. The request was approved. Volume 1 Tr. 51; Volume 3 Tr. 28 – 29; C-19; R-14.

30. On December 20, 2016, Ms. Bello suggested that she take additional unpaid sick days. Ms. Xu and Ms. Gehani approved the request and return after the Christmas holiday. They told Ms. Bello that working remotely would not be feasible. Volume 1 Tr. 50-51; Volume 2 Tr. 13 – 14, 72 - 73; Volume 3 Tr. 47; R-15.

31. Ms. Bello took unpaid sick days on December 21, 22 and 23, 2016. Volume 1 Tr. 54; R-3.

32. During her employment with Globex did Ms. Bello did not produce any medical documentation regarding any allergy or that the construction dust was triggering her coughing. Ms. Gehani was aware that Ms. Bello did not feel well but Ms. Bello did not disclose that she had a disability. Volume 2, Tr. 112, Volume 3 Tr. 117 – 118, Volume 4 Tr. 8.

33. Ms. Bello's coughing in the office was the result of a comprehensive totality of leaf raking and dust. It was a total aggregate of impacts or irritants, the last one being the construction dust. Volume 2 Tr. 209.

34. Ms. Bello never asked to move her workspace location to another site in the office. Volume 4 Tr. 9.

35. Ms. Bello never requested air filters. Volume 3 Tr. 120; Volume 4, Tr. 9.

36. Ms. Bello did not ask Globex for an air purifier. Volume 2 Tr. 196.

37. Ms. Bello never asked to be permanently reassigned to the kitchen or conference rooms. She never indicated that she needed a permanent reassignment. Volume 3 Tr. 119.

38. No medical evidence of allergies or any other disability was proffered at the public hearing.

Tardiness

39. Globex's employee manual required employees to notify their manager if they were going to be tardy within fifteen minutes of the 8:30 AM start time. C-18. Ms. Bello interpreted this to mean that she could notify Globex between 8:15 AM and 8:45 AM that she would be late. Volume 1 Tr. 47. Globex interpreted this to mean that an employee had to call in by 8:15 AM, fifteen minutes prior to the start time. Volume 3 Tr. 187.
40. On December 2, 2022 at 8:01 AM, Ms. Bellow notified Globex that she would be fifteen minutes late to work because she had to do preparation work for the plumber. R-10. She arrived thirty-five minutes late. R-3.
41. On December 6, 2016 at 8:34 AM, Ms. Bello notified Globex that she would be fifteen minutes late to work. R-3, R-11.
42. On December 9, 2016 at 8:30 AM, Ms. Bello notified Ms. Gehani that she would be fifteen minutes late because she had errands to do. R-12. She was 20 minutes late. R-3.
43. On December 19, 2019 at 8:30 AM, Ms. Bello notified Ms. Gehani that she would be fifteen minutes late to work because she had a meeting at her daughter's school. R-3, R-13.
44. On January 3, 2016, Ms. Bello was fifteen minutes late to work because of traffic. Several other employees were also late to work that day because of traffic. Volume 2 Tr. 26 – 27; Volume 3 Tr. 150 – 151; R-3.

45. Ms. Gehani had several conversations with Ms. Bello after her tardiness about the importance of being on time. Volume 3 Tr. 88 – 89, 186 – 187.

Job performance

46. Ms. Bello had a team meeting with Ms. Gehani and Ms. Gryak on December 1, 2016. Volume 1 Tr. 75; C-17. She also had one-on-one training with Ms. Gryak on December 5th and 8th and one-on-one training with Ms. Gehani on December 27, 2016. Volume 1 Tr. 80 – 81; C-17.

47. Nearly one month into her employment, Ms. Bello still had not properly set up her voicemail on the company supplied iPhone. Volume 3 Tr. 112; R-15. The voice mail was important because the office had no land line, and the iPhone was used to communicate with internal and external parties. Volume 3 Tr. 112.

48. As of January 3, 2017, Ms. Bello was still not properly tracking her time. Volume 3 Tr. 127; C-46B; R-16.

49. On January 5, 2017, Ms. Gehani proofread a draft email Ms. Bello had prepared that was going to be sent to a prospective business partner in Colombia. Ms. Gehani told Ms. Bello that she had misspelled the country of Colombia. Ms. Bello had spelled it "Columbia". Ms. Bello sent the email without correcting all the misspellings. Volume 3 Tr. 70 – 72; C-32; R-20.

50. As of January 6, 2017, Ms. Bellow had not figured out a way to proofread paperless documents. C-32; R-20.

51. On January 6, 2017, Ms. Gehani told Ms. Bello that they would begin twice daily trainings. Volume 1 Tr. 94.

52. Ms. Bello received negative feedback for her informality in an email to a potential customer. Volume 1 Tr. 95.

53. Ms. Bello was not able to use the equipment provided or to follow instructions after Ms. Gehani had discussed them with her during in-person meetings. Typos were one example. Also, Ms. Bello was not able to follow the instructions on the guiding system they use at Globex in the division of responsibilities in contacting outside parties. Volume 3 Tr. 111.

54. Ms. Bello's emails were not always professional. She would sometimes use the templates provided by Globex and sometimes not. Volume 3 Tr. 112 – 113, 116.

55. Ms. Bello did not always follow the task assignment system set up on the Globex's Google calendar. Volume 3 Tr. 114 – 115; R-18.

56. Ms. Bello had to be reminded to do items on her to-do list and did not always follow directions. Volume 3 Tr. 123.

Termination

57. Ms. Xu made the decision to terminate Ms. Bello. Volume 3 Tr. 163.

58. On the afternoon of January 6, 2017, Ms. Xu met with Ms. Bello and notified her that her employment was terminated. Volume 1 Tr. 61. Ms. Xu told Ms. Bello that she was not a good fit. Volume 3 Tr. 164.

59. Ms. Bello's sick days did not play a part in the decision to terminate her employment. Volume 3 Tr. 121.

60. Ms. Bello's health was not a factor in the decision to terminate her employment. Volume 3 Tr. 121.

III

§ 46a-60 (b) (1)

A
Statute

In her complaint, Ms. Bello alleged that Globex violated § 46a-60 (b) (1) when it discriminated against her on the basis of her age, familial status, and physical disability by terminating her employment and by failing to engage in an interactive process to determine an accommodation for her allergy to the construction dust.

General Statute § 46a-51 (15) defines physical disability as a "any chronic physical handicap, infirmity or impairment, whether congenital or resulting from bodily injury, organic processes or changes or from illness, including, but not limited to, epilepsy, deafness or being hard of hearing or reliance on a wheelchair or other remedial appliance or device".

General Statute § 46a-60 then provides that

> (b) 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 refuse to hire or employ or to bar or to discharge from employment any individual or to discriminate against any individual in compensation or in terms, conditions or privileges of employment because of the individual's race, color, religious creed, age, sex, gender identity or expression, marital status, national origin, ancestry, present or past history of mental disability, intellectual disability, learning disability, physical disability, including, but not limited to, blindness or status as a veteran . . ..

B
Protected basis

Ms. Bello alleged that Globex took adverse action against her because of her age, familial status, and physical disability (allergy manifesting itself in coughing triggered by construction dust from a neighboring office suite). With respect to age, as neither the commission nor Ms. Bello briefed this argument, it is deemed waived. Further, there is insufficient credible evidence to find that Ms. Bello's age was a factor in any decision that Globex made. This claim is dismissed.

With respect to familial status, as neither the commission nor Ms. Bello briefed this argument, it is deemed waived. Further, as familial status is not one of the enumerated protected classifications under § 46-60 (b) (1), this claim is dismissed.

The remaining protected basis is physical disability, and the adverse actions are termination, failure to engage in an interactive dialogue, and retaliation.

C
Termination under § 46a-60 (b) (1)

"To establish a prima facie case of discrimination [a complainant] must present evidence that: (1) [she] belonged to a protected class; (2) [she] was subject to an adverse employment action; and (3) the adverse action took place under circumstances permitting an inference of discrimination." *Tomick v. United Parcel Serv., Inc.*, 157 Conn. App. 312, 333, 115 A.3d 1143 (2015), aff'd, 324 Conn. 470, 153 A.3d 615 (2016).

"Once the complainant establishes a prima facie case, the employer then must produce legitimate, nondiscriminatory reasons for its adverse employment action. . . . This burden is one of production, not persuasion; it can involve no credibility

assessment." (Internal citation omitted; internal quotation marks omitted.) *Board of Education v. Commission on Human Rights & Opportunities,* 266 Conn. 492, 506, 832 A.2d 660 (2003).

"Once the employer produces legitimate, nondiscriminatory reasons for its adverse employment action, the complainant then must prove, by a preponderance of the evidence, that the employer intentionally discriminated against him. . . ..Although intermediate evidentiary burdens shift back and forth under this framework, [t]he ultimate burden of persuading the trier of fact that the [employer] intentionally discriminated against the [complainant] remains at all times with the [complainant] . . .." (Internal citations omitted; internal quotation marks omitted.) (Internal citation omitted.) Id., 506 -507.

In the present case, the commission and Ms. Bello did not establish a prima facie case that Ms. Bello's termination was the result of disability discrimination. Although Ms. Bello testified that her coughing was the manifestation of allergies to the construction dust, she provided no medical testimony, medical documentation, or medical evidence that she suffers from allergies or that her coughing was an allergic reaction to the construction dust. (FF 32, 38.) In the absence of medical evidence of a disability, a complainant cannot establish a prima facie case of disability discrimination. *Feliciano v Autozone, Inc.*, 142 Conn. App. 756, 763-764, 86 A.3d 911 (2013), rev'd and remanded on other grounds, 316 Conn 65, 111 A.3d 453 (2015).

Presuming that the commission and Ms. Bello established a prima facie case, Globex articulated non-discriminatory reasons for its decision to terminate Ms. Bello's

employment: there were ongoing issues with her job performance and tardiness. (FF 39-56).

The commission and Ms. Bello did not offer persuasive evidence that Globex's reasons are pretext for discrimination. First, Ms. Bello did not provide medical reports to Globex or at this hearing regarding any disability. (FF 32-38.)

Second, the parties dispute whether Ms. Bello ever told Globex that she was physically disabled, (FF 32) and no documents or emails were proffered that Ms. Bello told Globex she was physically disabled. Globex could not have taken adverse personnel action based on a disability that it had no knowledge of. Third, and more important, Globex documented the repeated issues that it had with Ms. Bello's job performance and with her repeated tardiness for reasons that were unrelated to her coughing or allergy. (FF 39-45.)

"To prove pretext, the plaintiff may show by a preponderance of the evidence that [the defendant's] reason is not worthy of belief or that more likely than not it is not a true reason or the only true reason for [the defendant's] decision to [terminate the plaintiff's employment] .... A plaintiff may show pretext by demonstrating such weaknesses, implausibilities, inconsistencies, incoherences, or contradictions in the employer's proffered legitimate reasons for its action that a reasonable [fact finder] could rationally find them unworthy of credence and hence infer that the employer did not act for the asserted non-discriminatory reasons." (Internal citations omitted; internal quotation marks omitted.) *Stubbs v ICare Management, LLC*, 198 Conn. App. 511, 522-523, 233 A.3d 1170 (2020).

Further, "[t]he [fact finder's] disbelief of the reasons put forward by the defendant (particularly if disbelief is accompanied by a suspicion of mendacity) may, together with the elements of the prima facie case, suffice to show intentional discrimination. Thus, rejection of the defendant's proffered reasons will permit the trier of fact to infer the ultimate fact of intentional discrimination, and ... upon such rejection, [n]o additional proof of discrimination is required .... *St. Mary's Honor Center* v. *Hicks*, 509 U.S. 502, 511, 113 S. Ct. 2742, 125 L. Ed. 2d 407 (1993). (Internal quotation marks omitted.) *Jackson* v. *Water Pollution Control Authority*, 278 Conn. 692, 706, 900 A.2d 498 (2006).

In the present case, though, Globex's explanation for terminating Ms. Bello's employment is credible. Her job performance issues were documented, she did not notify Globex that she would be tardy until the day of her tardiness, and the reasons for her tardiness were unrelated to her coughing or any allergy. (FF 39-45.) Ms. Bello's use of sick days and her coughing were not factors in Globex's decision to terminate her employment. (FF 59, 60.)

D

Failure to reasonably accommodate under § 46a-60 (b) (1)

Although in her complaint Ms. Bello did not allege that Globex failed to accommodate her disability, the commission raised the issue in its brief. In a claim of failure to reasonably accommodate, a complainant must establish that "(1) he is disabled within the meaning of the [statute], (2) he was able to perform the essential functions of the job with or without a reasonable accommodation, and (3) [the defendant], despite knowing of [the plaintiff's] disability, did not reasonably

accommodate it. . . . . If the employee has made such a prima facie showing, the burden shifts to the employer to show that such an accommodation would impose an undue hardship on its business." (Internal citations omitted; internal quotation marks omitted.) *Curry v Allan S. Goodman, Inc.*, 286 Conn. 390, 415-166, 944 A.2d 925 (2008).

In the present case, the commission and Ms. Bello have failed to establish a prima facie case. First, by not producing medical evidence of Ms. Bello's allergies (FF 32, 38) they did not establish that Ms. Bello is disabled within the meaning of the statute. In the absence of medical evidence of a disability, a complainant cannot establish a prima facie case of disability discrimination. *Feliciano v Autozone, Inc.*, supra, 142 Conn. App. 763-64.

Second, they did not establish that she was able to perform the essential functions of her job with or without a reasonable accommodation. Attendance is an essential job function; *Ezikovich* v. *Commission on Human Rights & Opportunities*, 57 Conn. App. 767, 775–76 n.5, 750 A.2d 494, cert. denied, 253 Conn. 925, 754 A.2d 796 (2000); and Ms. Bello was repeatedly tardy for reasons unrelated to her claimed disability of allergies. (FF 39-45.)

Third, Globex was not aware that Ms. Bello's coughing was the result of a disability. She never told Globex she had an allergy or that she was disabled. (FF 32.)

In addition, Globex gave Ms. Bello every accommodation she requested (FF23-31), yet her job performance did not improve and she continued being tardy. (FF 39-56). Globex is not obligated to conduct a hardship analysis for an accommodation Ms. Bello did not request.

E

Failure to engage in the interactive process under § 46a-60 (b) (1)

Ms. Bello further alleged that Globex failed to engage in an interactive process with her regarding a reasonable accommodation for her disability.

> Once a disabled individual has suggested to his employer a reasonable accommodation, federal law requires, and we agree, that the employer and the employee engage in an "informal, interactive process with the qualified individual with a disability in need of the accommodation ... [to] identify the precise limitations resulting from the disability and potential reasonable accommodations that could overcome those limitations." 29 C.F.R. § 1630.2(*o*) (3). In this effort, the employee must come forward with some suggestion of accommodation, and the employer must make a good faith effort to participate in that discussion. See *Humphrey v. Memorial Hospitals Assn.,* 239 F.3d 1128, 1137 (9th Cir. 2001), cert. denied, 535 U.S. 1011, 122 S.Ct. 1592, 152 L.Ed.2d 509 (2002); see also *Saksena v. Dept. of Revenue Services,* supra, Commission on Human Rights & Opportunities, Opinion No. 9940089 (citing employer's duty to engage in interactive process in good faith).

Curry V Allan S. Goodman, Inc., 286 Conn. 390, 416, 944 A.2d 925 (2008).

> The plaintiff bears the burdens of both production and persuasion as to the existence of some accommodation that would allow her to perform the essential functions of her employment . . .. To satisfy this burden, [the] [p]laintiff must establish both that [her] requested accommodation would enable [her] to perform the essential functions of [her] job and that it would allow [her] to do so at or around the time at which it is sought.

(Internal citation omitted; internal quotation marks omitted.) *Barbabosa v. Board of Education,* 189 Conn. App. 427, 445-46, 207 A.3d 122 (2019).

> Both this court and numerous federal courts have recognized that attendance at work is a necessary job function. An employee who is unable to come to work on a regular basis [is] unable to satisfy any of the functions of the job in question, much less the essential ones.... [Federal Circuit Courts of Appeals] have also held that regular and reliable attendance is a necessary element of most jobs. (Citations omitted; internal quotation marks omitted.) *Ezikovich* v. *Commission on Human Rights & Opportunities*, 57 Conn. App. 767, 775–76 n.5, 750 A.2d 494, cert. denied, 253 Conn. 925, 754 A.2d 796 (2000) . . . .

Id., 438.

In the present case, the commission and Ms. Bello did not establish that she is a qualified individual with a disability as they provided no medical evidence of any disability. (FF32-38.) In the absence of medical evidence of a disability, a complainant cannot establish a prima facie case of disability discrimination. *Feliciano v Autozone, Inc.*, supra, 142 Conn. App. 763-64.

Further, Globex is not required to engage in an interactive dialogue to accommodate a disability of which it has no knowledge. (FF 32.) Nonetheless, Globex certainly was aware that Ms. Bello was having a negative reaction to the construction dust. To the extent that it was required to engage in an interactive dialogue it did so: Globex gave Ms. Bello every accommodation Ms. Bello suggested. (FF 23-31.)

The initial burden of production and persuasion are on Ms. Bello to identify some accommodation that would enable her to perform the essential functions of her job. Regular, reliable attendance is an essential job function. Yet, none of the accommodations Ms. Bello requested and received either improved her job performance or ended her tardiness. (FF 23-56.)

F
Retaliation under § 46a-60

Ms. Bello alleged that Globex retaliated against her on January 6, 2017 for engaging in a protected activity when it terminated her employment. The anti-retaliatory provision is found not in § 46a-60 (b) (1) but in § 46a-60 (b) (4), which Ms. Bello did not

allege that Globex had violated. Had she alleged such a violation, the commission and Ms. Bello would have failed to prove the claim.

> Federal and state law retaliation claims are reviewed under the burden-shifting approach of *McDonnell Douglas* [*Corp.*] . . . The plaintiff must first establish a prima facie case of retaliation. To establish a prima facie case of retaliation, an employee must show (1) the employee was engaged in protected activity; (2) the employer was aware of that activity; (3) the employee suffered an adverse employment action; and (4) there was a causal connection between the protected activity and the adverse employment action.
>
> Once a prima facie case of retaliation is established, the burden of production shifts to the employer to demonstrate that a legitimate, [nondiscriminatory] reason existed for its action. ... If the employer demonstrates a legitimate, nondiscriminatory reason, then [t]he burden shifts ... back to the plaintiff to establish, through either direct or circumstantial evidence, that the employer's action was, in fact, motivated by discriminatory retaliation.

(Internal citations omitted; internal quotation marks omitted.) *Luth* v. *OEM Controls, Inc.*, 203 Conn. App. 673, 690, 252 A.3d 406 (2021).

In the present case, it is unclear that Ms. Bello has established the elements of a prima facie case. While requesting a reasonable accommodation can be a protected activity[3], it is not clear that Ms. Bello was disabled or was making a request for an accommodation due to a disability. Also, Globex was unaware that Ms. Bello was making a request for an accommodation for a disability. (FF 32.) Presuming that Ms. Bello

[3] "There is a split amongst the Connecticut courts regarding the issue of whether a request for accommodation is a protected activity." *Stubbs v. iCare Management, LLC*, Superior Court, judicial district of New Haven, Docket No. NNH-CV-17-6069309-S (January 18, 2019), 2019 WL 645679, *6 rev'd and remanded on other grounds, 198 Conn. 511, 233 A.3d 1170 (2020)

established a prima facie case, Globex articulated a legitimate, nondiscriminatory reason for its decision: Ms. Bello's job performance and tardiness. (FF 39-56.)

As previously discussed, the commission and Ms. Bello did not establish that Globex's decision to terminate her employment was motivated by discriminatory retaliation. Globex documented its ongoing issues with Ms. Bello's job performance and her tardiness. (FF 32-56.) Ms. Bello's use of sick days and her coughing did not factor into Globex's decision to terminate her employment. (FF 59, 60.)

IV
Age Discrimination in Employment Act
as enforced through General Statute § 46a-58 (a)

Ms. Bello alleged that Globex discriminated against her on the basis of her age in violation of the Age Discrimination in Employment Act as enforced through General Statute § 46a-58 (a).

Section 46a-58 (a) provides that:

> 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, gender identity or expression, sexual orientation, blindness, mental disability, physical disability or status as a veteran.

Because "age" is not one of the enumerated protected classifications under § 46a-58 (a), this claim is dismissed.

V
Title VII
as enforced through General Statute § 46a-58 (a)

A
Familial Status and Title VII

Ms. Bello alleged that Globex discriminated against her on the basis of familial status in violation of Title VII as enforced through § 46a-58 (a).

Section 46a-58 (a) provides that:

> 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, gender identity or expression, sexual orientation, blindness, mental disability, physical disability or status as a veteran.

"[B]ecause familial status . . . is not a protected class under Title VII", *Van Soeren v. Disney Streaming Service*, Docket No. 19 Civ. 10196 (NRB). 2020 WL 6131255, *3 (S.D.N.Y. October 16, 2020) and because familial status is not one of the enumerated protected classifications under § 46a-58 (a), this claim is dismissed.

B
Retaliation under Title VII

Ms. Bello alleged that Globex violated Title VII when it retaliated against her by terminating her employment.

> Title VII prohibits employers from retaliating against employees who oppose discriminatory practices, file complaints of discriminatory treatment, or participate in an investigation. 42 U.S.C. § 2000e-3(a). When analyzing retaliation claims, courts apply the *McDonnell Douglas* burden-shifting framework. *Hicks v. Baines*, 593 F.3d 159, 164 (2d Cir. 2010); *see also McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802–05, 93 S.Ct. 1817, 36 L.Ed.2d 668 (1973). Initially, the plaintiff must establish a prima facie

> case by demonstrating: "(1) participation in a protected activity; (2) that the defendant knew of the protected activity; (3) an adverse employment action; and (4) a causal connection between the protected activity and the adverse employment action." *Hicks*, 593 F.3d at 164 (quoting *Jute v. Hamilton Sundstrand Corp.*, 420 F.3d 166, 173 (2d Cir. 2005)).
>
> Thereafter, there is a presumption of retaliation that the defendant must rebut by articulating "a legitimate, non-retaliatory reason for the adverse employment action." *Jute*, 420 F.3d at 173. Finally, if the defendant proffers such a reason, "the presumption of retaliation dissipates and the employee must show that retaliation was a substantial reason for the adverse employment action." *Ibid.*

Byrne v. Yale Univ., Inc., 450 F. Supp. 3d 105, 117-118 (D. Conn. 2020).

In the present case, the commission and Ms. Bello have not established the elements of a prima facie case. It is not clear that Ms. Bello was participating in a protected activity as it is unclear that Ms. Bello was making a request for an accommodation due to a disability. Further, given the lack of medical documentation of a disability or notice of a disability, Globex was unaware aware that Ms. Bello was making a request for an accommodation for a disability. (FF 32.)

Presuming that Ms. Bello established a prima facie case, Globex articulated a legitimate, nondiscriminatory reason for its decision: Ms. Bello's job performance and tardiness. (FF 39-56.) The commission and Ms. Bello, though, failed to show that retaliation was a substantial reason for the termination. Globex documented its ongoing issues with Ms. Bello's job performance and her repeated tardiness. (FF 40-56.) Globex's decision to terminate Ms. Bello's employment was not passed in whole or in part on Ms. Bello's use of sick days or her coughing. (FF 59, 60.)

VI

Americans with Disabilities Act
as enforced through General Statute § 46a-58 (a)

A
Failure to Engage in an Interactive Dialogue under the ADA

Ms. Bello alleged that Globex violated the Americans with Disability Act by not engaging in an interactive process to determine an accommodation to her allergy and coughing.

> However, there is no independent cause of action under the ADA . . . for a failure to properly engage in the interactive process, nor is that issue necessarily dispositive as to a reasonable accommodation claim. *See, e.g.*, *McElwee v. County of Orange*, 700 F.3d 635, 642 (2d Cir. 2012) ("[A]n employee may not recover based on his employer's failure to engage in an interactive process if he cannot show that a reasonable accommodation existed at the time of his dismissal."); *Jacobsen*, 22 N.Y.3d at 838 ("[T]he employer's decision to engage in or forgo an interactive process is but one factor to be considered in deciding whether a reasonable accommodation was available for the employee's disability at the time the employee sought accommodation.").

Greenbaum v New York City Transit Authority, United States Court of Appeals, Second Circuit, Docket No. 21-1777, 2022 WL 3347893, *5 (August 15, 2022).

In the present case, this claim is dismissed because there is no cause of action under the ADA for failing to engage in an interactive dialogue. Nonetheless, Globex granted Ms. Bello every accommodation she requested. (FF 23-31.) None of these accommodations resulted in a better job performance or ended her tardiness, both of which were unrelated to her disability. (FF 23-45).) Ms. Bello did not identify any accommodation to her coughing that would have improved her job performance or ended her tardiness.

B

Disability Discrimination under the ADA

Ms. Bello alleged that Globex discriminated against her on the basis of her disability, that is her coughing which Ms. Bello attributed to an allergic reaction to construction dust from renovations to an adjoining office of another tenant.

> In order to prevail on a claim for disability discrimination under the ADA, a burden-shifting analysis applies: (1) plaintiff must establish a prima facie case of discrimination; (2) if plaintiff meets her prima facie case, the burden of production shifts to defendant to offer non-discriminatory reasons for its decision; and (3) plaintiff then bears the burden to demonstrate that the articulated reasons are merely pretextual and that the reason is discrimination. *Heyman v. Queens Vill. Comm. for Mental Health for Jamaica Cmty. Adolescent Program, Inc.*, 198 F.3d 68, 72 (2d Cir. 1999).
>
> To establish a prima facie case, a plaintiff must demonstrate that: (1) the defendant is covered by the ADA; (2) plaintiff suffers from or is regarded as suffering from a disability within the meaning of the ADA; (3) plaintiff was qualified to perform the essential functions of the job; and (4) plaintiff suffered from an adverse employment action because of [her] disability or perceived disability." *McMillan v. City of New York*, 711 F.3d 120, 125 (2d Cir. 2013).

Norman v NYU Langone Health System, 492 F. Supp 3d 154, 165 (S.D.N.Y. 2020); aff'd, *Norman v. NYU Langone Health Sys.*, No. 20-3624-cv (L), 20-3745-cv (XAP), 2021 WL 5986999 (2d Cir. Dec. 17, 2021).

The commission and Ms. Bello did not establish a prima facie case. The commission and Ms. Bello did not establish that she was or was regarded as suffering from a disability within the meaning of the ADA. Ms. Bello did not provide medical reports to Globex or at this public hearing regarding any disability. (FF 32,38.) "Courts in the Second Circuit have consistently held that when a plaintiff fails to offer any medical evidence substantiating the specific limitations to which he claims he is subject

due to his conditions, he cannot establish that he is disabled within the meaning of the ADA." (Internal quotation marks omitted). *Buotote v Illinois Tool Works, Inc.*, 815 F. Supp. 2d 549, 557 (2011). Further, her repeated tardiness for reasons unrelated to her coughing or allergy establish that she could not meet the essential job function of reliable, predictable attendance.

Presuming the commission and Ms. Bello established a prima facie case, Globex articulated non-discriminatory reasons for its decision to terminate Ms. Bello's employment: her job performance and her tardiness. (FF 32-56.)

As Globex articulated non-discriminatory reasons for its decision, the burden then shifts back to the commission and Ms. Bello to demonstrate that the articulated reasons are pretextual and that discrimination is the real reason for the termination. This burden they have not met. The parties dispute whether Ms. Bello ever told Globex that she was physically disabled, and no documents or emails were proffered that Ms. Bello told Globex she was physically disabled. (FF 32.) Globex could not have taken adverse personnel action based on a disability that it had no knowledge of. More important, Globex documented the repeated issues that it had with Ms. Bello's job performance and with her repeated tardiness for reasons that were unrelated to her coughing or any allergy. (FF 32-56, 59, 60.)

C

Failure to Accommodate under the ADA

Ms. Bello alleged that Globex violated the ADA by failing to accommodate her disability of allergies.

The ADA requires that an employer afford an employee a reasonable accommodation for a known disability unless doing so would impose an undue hardship on the employer. *See* 42 U.S.C. § 12112(b)(5)(A). "Discrimination in violation of the ADA includes, *inter alia*, 'not making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability.' " *McBride v. BIC Consumer Prod. Mfg. Co.*, 583 F.3d 92, 96 (2d Cir. 2009) (quoting 42 U.S.C. § 12112(b)(5)(A)). A qualified individual is "an individual who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires." 42 U.S.C. § 12111(8). Courts look to whether the plaintiff was disabled at the time the accommodation was sought. *See Emanuel v. New York*, No. 8 Civ. 1250, 2009 WL 4277075, at *7 & n. 7 (S.D.N.Y. Nov. 25, 2009) (finding medical incident two months after request for an accommodation not probative as to whether plaintiff was disabled at the time an accommodation was sought); *Van Ever v. N.Y. State Dep't of Corr. Servs.*, No. 99 Civ. 123448, 2000 WL 1727713, at *3 (S.D.N.Y. Nov. 21, 2000) ("Thus, a plaintiff must first demonstrate substantial impairment of a major life activity at the time the accommodation is sought to trigger the reasonable accommodation requirement of the ADA.")

To establish a prima facie case for failure to accommodate, a plaintiff must demonstrate that:

> (1) plaintiff is a person with a disability under the meaning of the ADA; (2) an employer covered by the statute had notice of [her] disability; (3) with reasonable accommodation, plaintiff could perform the essential functions of the job at issue; and (4) the employer has refused to make such accommodations.

McBride, 583 F.3d at 97 (internal quotation marks, citation, and alterations omitted). "The plaintiff bears the burdens of both production and persuasion as to the existence of some accommodation that would allow her to perform the essential functions of her employment." *Id.* Under the burden-shifting framework applied in failure to accommodate cases, after the plaintiff satisfies her burden of "production and persuasion as to the existence of an accommodation that is facially reasonable," the burden "shifts to the defendant to rebut the reasonableness of the proposed accommodation," which "is in essence equivalent to the burden of showing, as an affirmative defense, that the proposed accommodation would cause the defendant to suffer an undue hardship." *163 *Wright v. N.Y. State Dep't of Corr.*, 831 F.3d 64, 76 (2d Cir. 2016) (internal quotation marks, citation, and alterations omitted).

Norman v NYU Langone Health System, supra, 492 F. Supp 3d 162 – 163.

In the present case, the commission and Ms. Bello did not establish a prima facie case of failure to accommodate. First, by not providing any medical evidence of a

disability, the commission and Ms. Bello did not establish that she has a disability under the meaning of the ADA. (FF32, 38.) "Courts in the Second Circuit have consistently held that when a plaintiff fails to offer any medical evidence substantiating the specific limitations to which he claims he is subject due to his conditions, he cannot establish that he is disabled within the meaning of the ADA." (Internal quotation marks omitted). *Buotote v Illinois Tool Works, Inc.*, supra, 815 F. Supp. 2d 557.

Second, it is not clear that Globex had notice of Ms. Bello's disability. As discussed, no medical documentation of a disability was provided to Globex, and Ms. Bello has not established that she told Globex that she had a disability. (FF 32.)

Third, even after receiving the accommodations she requested, Ms. Bello continued to be tardy, thus not performing the essential job function of regular attendance. (FF 39-45.)

Fourth, Globex did not refuse to make accommodations. Globex made every accommodation Ms. Bello requested. (FF 23-31.)

The burden on Globex to rebut the reasonableness of Ms. Bello's proposed accommodations does not arise until she satisfies her burden of production and persuasion to identify the existence of any accommodation that would allow her to perform the essential functions of her job and be facially reasonable. Globex cannot reasonably accommodate a disability of which it has no knowledge. Nonetheless, Globex certainly was aware that Ms. Bello was having a negative reaction to the construction dust and it gave Ms. Bello every accommodation she asked for. (FF 23-31.) Yet, none

of the accommodations Ms. Bello sought improved her job performance or ended her tardiness. (FF 39-45).

D
Retaliation under the ADA

Ms. Bello alleged that Globex violated the ADA by retaliating against her.

> "The ADA makes it unlawful for an employer to 'discriminate against any individual because such individual has opposed any act or practice made unlawful by this chapter or because such individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this chapter.' " *Treglia v. Town of Manlius*, 313 F.3d 713, 719 (2d Cir. 2002) (quoting 42 U.S.C. § 12203(a)). Making a good faith request for an accommodation is a protected activity. *Weixel*, 287 F.3d at 149.

Norman v NYU Langone Health System, supra, 492 F. Supp 3d 166.

> Under the ADA, a plaintiff must show that she "(i) ... was engaged in protected activity; (ii) the alleged retaliator knew that [she] was involved in protected activity; (iii) an adverse decision or course of action was taken against [her]; and (iv) a causal connection exists between the protected activity and the adverse action." *Natofsky*, 921 F.3d at 353 (internal quotation marks omitted). A causal connection may be shown either "(1) indirectly, by showing that the protected activity was followed closely by discriminatory treatment, or through other circumstantial evidence such as disparate treatment of fellow employees who engaged in similar conduct; or (2) directly, through evidence of retaliatory animus directed against the plaintiff by the defendant." *Id.* (internal quotation marks omitted).
>
> "Claims for retaliation [under the ADA] are analyzed under the same burden-shifting framework established for Title VII cases." *Treglia v. Town of Manlius*, 313 F.3d 713, 719 (2d Cir. 2002). Therefore, "[o]nce a plaintiff establishes a prima facie case of retaliation, the burden shifts to the defendant to articulate a legitimate, non-retaliatory reason for the challenged employment decision." *Id.* at 721. "If a defendant meets this burden, the plaintiff must point to evidence that would be sufficient to permit a rational factfinder to conclude that the employer's explanation is merely a pretext for impermissible retaliation." *Id.* (internal quotation marks omitted).

Id., 2021 WL 5986999, *4-5 (2d Cir. Dec. 17, 2021).

As has been discussed, in the present case, Ms. Bello did not establish a prima facie case. Given the lack of medical documentation of a disability, it is not clear that Ms. Bello was engaged in a protected activity of requesting an accommodation due to a disability or that Globex knew she was requesting an accommodation for a disability. (FF 32.)

Presuming Ms. Bello established a prima facie case, Globex articulated a legitimate, nondiscriminatory reason for its decision: Ms. Bello's job performance and tardiness. (FF 39-56.) The commission and Ms. Bello, though, failed to show that retaliation was a reason for the termination. Besides simply articulating a legitimate, non-retaliatory reason for the termination, Globex provided credible exhibits and testimony documenting its ongoing issues with Ms. Bello's job performance and her repeated tardiness. (FF 39-56.)

VII
Comparators

In their briefs, the commission and Ms. Bello identify as evidence of discrimination and retaliation other employees and circumstances that they argue were similar to Ms. Bello but were treated differently. They point to other employees who arrived after 8:30 AM but, unlike Ms. Bello, incurred no adverse employment action. As the respondent persuasively explained and the commission and Ms. Bello did not rebut, these employees had permission for their work-related tardiness. Some, because of their commuting distance, had made an agreement with Globex at the time of their hire that they could arrive after 8:30 AM. (Volume 3 Tr. 156 – 157, 161 -162, 183 188 – 189.) Others, because they worked after 5:30 PM to service customers in Asia who were

obviously in a different time zone, were allowed to arrive late. (Volume 3 Tr. 171.) In both these situations, Globex and the employees had reached their agreements prior to the day of their tardiness. Ms. Bello, however, called Globex the morning of her tardiness to say that she would be late for reasons unrelated to any disability or job reason. (FF 39-44.)

The commission and Ms. Bello also note that a criticism of Ms. Bello's job performance was her misspelling of the country Colombia. They provided documents prepared by other employees who had also misspelled the country. First, there was no evidence that these employees, unlike Ms. Bello, been specifically told to correct the spelling before the documents were distributed. (FF 49.) Second, the documents prepared by others were internal memoranda or meeting agenda. Globex is rightly embarrassed by Ms. Bello's misspelling because it was in her email to a potential customer in Colombia. (FF 49.)

VIII
"Mixed motive" analysis

In its brief, the commission argued that Ms. Bello proved her discrimination claim under a "mixed motive" analysis. The analysis is the same for both federal and state law.

> 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).

> "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. "[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."*107 *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).

(Internal footnotes omitted.) *Levy v. Commission on Human Rights & Opportunities,* 236 Conn. 96, 105–06.

In the present case, as previously discussed, in the absence of medical evidence of a disability (FF32, 38), the commission and Ms. Bello cannot establish a prima facie case under either state or federal law of a disability. *Feliciano v Autozone, Inc.*, supra, 142 Conn. App. 763-64; *Buotote v Illinois Tool Works, Inc.*, supra, 815 F. Supp. 2d 557 (2011).

Also as previously discussed, even if the commission and Ms. Bello established a prima facie case, Globex by a preponderance of the evidence offered persuasive

evidence that it would have made the same decision to terminate Ms. Bello's employment for reasons of job performance and tardiness unrelated to any impermissible factors. (FF 39-56.) Ms. Bello's use of sick days and her health were not factors in Globex's decision to terminate her employment. (FF 59, 60.)

IX
Causation standard

Our appellate court in *Wallace v Caring Solutions, LLC,* 213 Conn. App. 605, 278 A.3d 586 (2022) recently discussed that the causation test for discrimination cases under Connecticut law is the motivating factor test; that is, a complainant must prove only that illegal discrimination was a cause in a respondent's adverse action; while the causation test for federal ADA and ADEA discrimination cases is a but-for test; that is, a complainant must establish that the illegal discrimination was the cause of a respondent's adverse action.[4]

In the present case, for the reasons previously discussed, the commission and Ms. Bello did not prove relative to the state claims that illegal discrimination was a cause of Globex's decision to terminate Ms. Bello's employment. (FF 59, 60.)

Further, the commission and Ms. Bello did not establish relative to the federal discrimination claims that illegal discrimination was the cause or even a cause of Globex's decision to terminate Ms. Bello's employment. (FF 59, 60.)

[4] Although, the "United States Supreme Court made clear in *Bostock* v. *Clayton County,* 140 S. Ct. 1731, 207 L. Ed. 2d 218 (2020) that there can be multiple but-for causes for an employment decision." *Wallace v Caring Solutions, LLC,* 213 Conn. App. 605, n. 11 (2022)

X

Conclusions of law

1. The commission and Ms. Bello failed to establish a prima facie case under either the pretext or mixed motive analysis because Ms. Bello's repeated tardiness for reasons unrelated to her alleged disability showed she could not perform an essential function of her job which is regular, predictable attendance.
2. The commission and Ms. Bello failed to establish a prima facie case under either the pretext or mixed motive analysis because they proffered no medical evidence either to Globex during her employment or at the public hearing that Ms. Bello suffers from any disability.
3. Under the pretext analysis, Globex's articulated explanation for why it terminated Ms. Bello's employment was her job performance and her tardiness. The commission and Ms. Bello did not sustain their burden that the Globex's articulated explanation was a pretext for discrimination based upon Ms. Bello's age, disability, or familial status.
4. Under the mixed motive analysis, Globex established by a preponderance of persuasive evidence that it would have terminated Ms. Bello's employment for reasons of tardiness and job performance.
5. The commission and Ms. Bello did not sustain their burden that Globex failed to engage in an interactive dialogue.
6. The commission and Ms. Bello did not sustain their burden that Globex failed to reasonably accommodate Ms. Bello's disability.

7. The commission and Ms. Bello did not sustain their burden that Globex's termination of her employment was retaliatory.

XI
Order

The complaint is dismissed.

It is so ordered this 8th day of September 2022.

/s/ Jon P. FitzGerald
Hon. Jon P. FitzGerald
Presiding Human Rights Referee

cc.

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