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Promoting Equality and Justice for all People

November 30, 2022

CHRO ex rel. Michele Clary-Butler v. City of New Haven, Department of Elderly Services CHRO No. 1730298 Fed No. 16a2017-00278.

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. Michele Clary-Butler, Complainant

CHRO No. 1730248

v.

City of New Haven, Dept. of Elderly Services, Respondent

November 30, 2022

Final Decision

Procedural History

Ms. Clary-Butler filed her affidavit with the commission on human rights and opportunities (commission) on November 4, 2016 and filed an amendment to her affidavit on August 18, 2017. In her affidavit as amended (complaint) she alleged that the respondent City of New Haven, Department of Elderly Services (department) was her employer. She alleged that the department violated General Statutes § 46a-60 (b) (1) (4) and (5)[1] and § 53a-183, as well as Title VII and the Equal Pay Act as enforced through General Statutes § 46a-58 (a). She alleged that the department discriminated against her in the terms and conditions of her employment, discipline, pay, and work assignments. She alleged that her race was a factor in the department's actions. She further alleged that the department retaliated against her for filing a discrimination complaint with the commission.

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

The commission certified the complaint to the office of public hearings on October 25, 2017.

On November 7, 2018, the commission filed notice that pursuant to General Statutes § 46a-84 (d), it was deferring prosecution of the complaint to Ms. Clary-Butler's attorney.

The department filed its post-certification answer denying the allegations of discrimination on August 31, 2020.

On February 18, 2022, the undersigned was appointed the presiding human rights referee for this matter.

The public hearing was held on September 13, 2022. Ms. Clary-Butler; Stephen Librandi, manager of the City of New Haven's department of human resources and benefits; and Migdalia Castro, Ms. Clary-Butler's former supervisor, testified. Post-hearing briefs were due on November 15, 2022, at which time the record closed.

For the reasons set forth herein, the complaint is dismissed.

I
Parties

The parties to this action are the commission on human rights and opportunities, 450 Columbus Blvd., Hartford, Connecticut; Michele Clary-Butler, c/o Attorney John R. Williams, 51 Elm Street, New Haven, Connecticut, and the New Haven Department of Elderly Services, c/o Attorneys Jarad M. Lucan and Sheridan L. King, Shipman & Goodwin LLP, One Constitution Plaza, Hartford, 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 "Tr." followed by the page number. References to exhibits are designated by C for Ms. Clary-Butler and R for the department followed by the exhibit number. The commission did not offer any exhibits.

General

1. The City of New Haven (city) hired Ms. Clary-Butler on February 12, 2000 as a senior center director in the department of elderly services (department). Her job title has since changed to elderly service specialist. Tr. 10, 12.
2. Ms. Clary-Butler self-identifies as African-American. Tr. 39.
3. Ms. Clary-Butler supervised the East Shore Senior Center, located on Townsend Avenue in New Haven, Connecticut. Tr. 11. The East Shore Senior Center was one of three senior centers operated by the department. Tr. 110.
4. During the relevant time period, the department had six elderly service specialists, three of whom were African-American. Tr. 112.

Migdalia Castro

5. The city hired Migdalia Castro as the elderly service director for the department. She was employed from February 2014 to April 2022. Tr. 109. Her duties included overseeing three senior centers operated by the city. Tr. 110. She supervised the elderly service specialists, including Ms. Clary-Butler. Tr. 10-11, 114.

6. Ms. Castro and Ms. Clary-Butler knew each other prior to the department hiring her as director. Tr. 113.
7. Ms. Castro self-identifies as Latino, African-American, and Indian descent of Puerto Rico. Tr. 109-110.
8. Between 2014-2016, Ms. Clary-Butler and Ms. Castro had a good relationship. Tr. 27 – 28, 113.
9. The same policies and procedures applied to all the elderly services specialists in the three senior centers. Tr. 115-116, 117-118, 120; R-38.
10. As a result of Ms. Clary-Butler's failing to follow policies and procedures, beginning in 2016, Ms. Castro repeatedly reprimanded her regarding lunch breaks, leaving the center, closing the center without authorization, and improper completion of her timesheet. Ms. Clary-Butler consistently failed to adhere to policies and procedures, particularly regarding ½ hour lunch breaks. Ms. Castro had not similar problem with any of the other elderly service specialists. Tr. 115, 117-122, 135; R-13, R-17, R-21, R-22, R-53, R-62, R-66, R-71, R-73, R-75, R-78, R-79.
11. Ms. Cary-Butler found Ms. Castro's reprimands to be discrimination and harassment. Tr. 10-11, 46-50, 52-54; C-2.
12. On June 13, 2016, Ms. Castro suspended Ms. Clary-Butler as a result of Ms. Clary-Butler's mishandling of a trip to the mayor's health fair, leaving the senior center unattended for an extended period of time on March 23, 2016, inaccurately reporting her lunch break on her timesheet, and failing to follow Ms. Castro's

directives regarding attendance at a retreat. Tr. 23, 59-75, 133, 135-138; R-33, R-36, R-44, R-45, R-48.

13. Ms. Clary-Butler served her suspension on June 16 and 17, 2016. The suspension was a paid suspension. Tr. 23, 116; R-33.

14. Ms. Clary-Butler's center had been serving lunches on Fridays to seniors. The program was discontinued by the vendor, and because of funding and low participation at Ms. Clary-Butler's center. Tr. 121-123; R-52.

15. When two of the centers received donations of flat screen televisions from community groups, Ms. Castro obtained funding from the city for the purchase of a flat screen television for Ms. Clary-Butler's center. Tr. 123-125.

16. When Ms. Clary-Butler's center was the only center not selected by the Agency on Aging for an on-site cancer screening event, Ms. Castro offered to get a bus to transport people from Ms. Clary-Butler's center to another center. Ms. Clary-Butler declined. Tr. 125-126.

17. When Ms. Castro was informed that the other two centers had not included Ms. Clary-Butler's center in a planned trip to Foxwood, Ms. Castro directed the other two centers to include Ms. Clary-Butler in planning for future events and to attempt to obtain another bus for Ms. Clary-Butler's site. R-18.

Ms. Clary-Butler's internal complaint against Ms. Castro

18. On June 25, 2016, Ms. Clary-Butler filed a complaint with the City of New Haven's department of human resources. In her complaint, she alleged that her supervisor,

Migdalia Castro, had harassed and discriminated against her because of her race, age, and color. C-2.

19. Although Ms. Cary-Butler provided the names of sixteen witnesses whom she felt could provide evidence supporting her charge, Mr. Librandi, the human resource manager, only met with Ms. Castro. Tr. 89; C-2.

20. Mr. Librandi never filed a conclusion in Ms. Clary-Butler's complaint against Ms. Castro. He did not speak to Ms. Clary-Butler because he felt that he had obtained all the information he needed from Ms. Castro. Tr. 102-104.

21. Ms. Clary-Butler filed the present complaint with the commission on human rights and opportunities on November 4, 2016. C-1.

22. The department of human resources suspended its investigation of Ms. Clary-Butler's discrimination complaint against Ms. Castro because Ms. Clary-Butler filed the present complaint with the commission. Tr. 96.

23. Ms. Clary-Butler's internal complaint and commission complaint concern essentially the same matters. Tr. 16; C-1, C-2

24. Since the retirement of Ms. Castro and the hiring of a new supervisor, Ms. Clary-Butler's working environment has improved. Tr. 20.

<u>Ms. Clary-Butler's internal complaint against Georgina Dogolo</u>

25. In 2010, the department hired Georgina Dogolo in 2010 as an elderly service specialist. Tr. 33. Ms. Dogolo is Caucasian. Tr. 13. In April 2010, Ms. Clary-Butler filed a grievance because the city paid Ms. Dogolo more than it was paying her. Tr. 33; R-9, pg. 3 of 6.

26. The city paid Ms. Dogolo more than it paid Ms. Clary-Butler because Ms. Dogolo had been laid-off from another city department, and her rehire and pay scale were the result of an agreement between the city and the bargaining unit. Tr. 99-102, 138-139.

27. In 2016, the working relationship between Ms. Clary-Butler and Ms. Dogolo deteriorated considerably. Tr. 13-15; R-10, R-11, R-12, R-65.

28. The deterioration in the working relationship between Ms. Clary-Butler and Ms. Dogolo was due to testimony Ms. Clary-Butler had given at a deposition regarding Ms. Dogolo's mother that was unrelated to their employment with the department. Tr. 35-38, 91, 94-97, 127.

29. Meetings regarding the conflict between Ms. Clary-Butler and Ms. Dogolo were held with Dr. Okafor, who was Ms. Castro's supervisor; Attorney Kathleen Foster, the city's corporation counsel; Stephen Librandi, the city's manager of human resources; and union representatives. Tr. 14, 43-44, 89-90; R-81.

30. As a result of these meetings, the department separated Ms. Clary-Butler and Ms. Dogolo by assigning them to different senior centers. Tr. 43-44, 78, 92, 94, 140, 143-144; R-81.

31. As of the date of the hearing in this matter. Ms. Clary-Butler remains employed by the department and the city with no reduction in benefits or salary. Also, she and Ms. Dogolo have a positive working relationship. Tr. 20, 40.

III
Causation

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. *Wallace v Caring Solutions, LLC,* 213 Conn. App. 605, 611-612, 278 A.3d 586 (2022) "When it comes to Title VII, the adoption of the traditional but-for causation standard means a defendant cannot avoid liability just by citing some *other* factor that contributed to its challenged employment decision. So long as the plaintiff's sex was one but-for cause of that decision, that is enough to trigger the law." (Emphasis in original.) *Bostock v Clayton County*, ____ US ___, 140 S.Ct 1731, 1739, 207 L.Ed. 2d 218 (2020). While *Bostock* specifically addressed sex discrimination, the statute imposes liability on employers who discriminate because of any statutorily protected characteristic. Id, 1740.

IV
§ 46a-60 (b) (1)
Alleged race discrimination

A
Statute

In her complaint, Ms. Clary-Butler alleged that the department discriminated against her because of her race in violation of violated § 46a-60.

General Statute § 46a-60 provides in relevant part 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
Standard

To establish a prima facie case of discrimination, Ms. Clary-Butler "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] . . .. [I]n attempting to satisfy this burden, the [complainant]—once the employer produces sufficient evidence

to support a nondiscriminatory explanation for its decision—must be afforded the opportunity to prove by a preponderance of the evidence that the legitimate reasons offered by the [employer] were not its true reasons, but were a pretext for discrimination." (Internal citations omitted; internal quotation marks omitted.) Id., 506-507.

The factfinder'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." Id., 522.

"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).

C
Analysis

In the present case, with respect to the three elements of her prima facie case, Ms. Clary-Butler belongs to a protected class, African-American. Second, Ms. Clary-Butler alleged in her complaint the following adverse actions taken against her because of her race: (1) the department discriminated against her in the terms and conditions of her employment when it made her perform duties outside her job description and made her call her supervisor prior to going to City Hall to deliver work material; (2) gave her a written warning followed by a paid suspension effective June 16 and 17, 2016; (3) harassed her regarding her lunch breaks and (4) paid Ms. Dogolo, a Caucasian female, more than it paid her for the same position; and (5) delegated to her more difficult work assignments. Third, the actions taken against her began when Ms. Castro, whom Ms. Clary-Butler alleged to be Hispanic, became her supervisor.

A burden of production then shifts to the respondent to articulate legitimate, nondiscriminatory reasons for its actions. This the respondent did. Ms. Clary-Butler did not follow the polices applicable to all elderly service specialist, had repeated issues involving her attendance, and repeatedly left her senior center unattended. Ms. Dogolo received a higher salary because of an agreement with the union as a result of Ms. Dogolo having been laid-off from another city department.

As the department has articulated legitimate, nondiscriminatory reasons for its actions, the burden of persuasion now shifts to Ms. Clary-Butler to prove by a preponderance of the evidence that the department intentionally discriminated against

her. This she did not do. Rather, the credible and persuasive evidence in this case is that the department did not discriminate against her because of her race.

Although Ms. Clary-Butler's feelings of harassment began with the hiring of Ms. Castro as her supervisor, Ms. Castro, who self-identifies as Latino, African-American, and Indian (FF 7), did not act from any racial animus. The two knew each other prior to the city hiring Ms. Castro, and they initially had a positive working relationship. (FF 6, 8). The difficulties began in 2016 because Ms. Clary-Butler failed to adhere to policies and procedures applicable to all elderly senior service specialists regarding lunch breaks, leaving the center, closing the center without authorization, and improper completion of her timesheet. (FF 9, 10). Ms. Castro had not had similar problems with any of the other elderly service specialists. (FF 10).

On June 13, 2016, Ms. Castro suspended Ms. Clary-Butler. The suspension was not based on Ms. Clary-Butler's race. Rather, the suspension was the result of Ms. Clary-Butler's mishandling of a trip to the mayor's health fair, leaving the senior center unattended for an extended period of time on March 23, 2016, inaccurately reporting her lunch break on her timesheet, and failing to follow Ms. Castro's directives regarding attendance at a retreat. (FF 12, 13).

Ms. Castro did not treat Ms. Clary-Butler's senior center different from the other two because of Ms. Clary-Butler's race. The Friday lunch program at Ms. Clary-Butler's center ceased because of the vendor's decision, inadequate funding, and low participation at Ms. Clary-Butler's center. (FF 14).

When the other two centers received donations of flat screen televisions from community groups, Ms. Castro obtained funding from the city for the purchase of a flat screen television for Ms. Clary-Butler's center. (FF 15).

When Ms. Clary-Butler's center was the only center not selected by the Agency on Aging for an on-site cancer screening event, Ms. Castro offered to obtain a bus to transport people from Ms. Clary-Butler's center to another center. Ms. Clary-Butler declined. (FF 26).

When informed that the other two centers had not included Ms. Clary-Butler's center in a planned trip to Foxwood, Ms. Castro directed the other two centers to include Ms. Clary-Butler in planning for future events and to attempt to obtain another bus for Ms. Clary-Butler's site. (FF 17).

The difference in salaries between Ms. Dogolo and Ms. Clary-Butler was also unrelated to Ms. Clary-Butler's race. The city paid Ms. Dogolo more than it paid her as a result of an agreement between the city and the bargaining union following Ms. Dogolo's lay-off from another city department. (FF 26).

In 2016, the working relationship between Ms. Clary-Butler and Ms. Dogolo deteriorated considerably. Ms. Clary-Butler complained to Ms. Castro, filed an internal complaint with the city against Ms. Dogolo, and applied for a restraining order against her. (FF 27). The deterioration in the working relationship between them, however, was not due to racial animus but rather due to testimony Ms. Clary-Butler had given at a deposition regarding Ms. Dogolo's mother that was unrelated to their employment with the department. (FF 28).

Notwithstanding that the poor working relationship between Ms. Clary-Butler and Ms. Dogolo was unrelated to work, meetings regarding the conflict were held with Dr. Okafor, who was Ms. Castro's supervisor; Attorney Kathleen Foster, the city's corporation counsel; Stephen Librandi, the city's manager of human resources; and union representatives. (FF 29). As a result of these meetings, the department separated Ms. Clary-Butler and Ms. Dogolo by assigning them to different senior centers. (FF 30).

This claim is dismissed.

V

§ 46a-60 (b) (4)
Alleged retaliation

A
Statute

Ms. Clary-Butler alleged that the department retaliated against her for her previous opposition to its alleged discriminatory practices. According to Ms. Clary-Butler, the human resources department retaliated against her for filing her complaint with the commission by terminating its investigation of her two internal complaints. Tr. 19

Section 46a-60 (b) (4) provides that it is a discriminatory employment practice "[f]or any person, employer, labor organization or employment agency to discharge, expel or otherwise discriminate against any person because such person has opposed any discriminatory employment practice or because such person has filed a complaint or testified or assisted in any proceeding under section 46a-82, 46a-83 or 46a-84 . . .."

B
Standard

"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).

"For purposes of a retaliation claim, an adverse action need not be an action that affects the terms and conditions of employment, such as a hiring, firing, change in benefits, reassignment or reduction in pay. . . . Rather, a plaintiff must show that a reasonable employee would have found the challenged action materially adverse, which in this context means it well might have dissuaded a reasonable worker from making or supporting a charge of discrimination . . . . . This standard speak[s] of material adversity because. . . it is important to separate significant from trivial harms . . . . Nevertheless, a harm that may be a trivial one, may be significant for another. Put differently, [c]ontext matters . . . . For example, while a schedule change in an employee's work schedule may

make little difference to many workers, it may matter enormously to a mother with school-age children . . . . And, although a supervisor's refusal to invite an employee to lunch is normally trivial, excluding an employee from a weekly training lunch that contributes significantly to [that] employee's professional advancement may amount to adverse employment action if it deter[s] a reasonable employee from complaining about discrimination . . . . Further, in determining whether conduct amounts to an adverse employment action, the alleged acts of retaliation need to be considered both separately and in the aggregate, as even minor acts of retaliation can be sufficiently substantial in gross as to be actionable. . . Adverse actions for purposes of the antiretaliation provisions include denial of promotion . . . threats, reprimands, negative evaluations, harassment, or other adverse treatment." (Internal citations omitted; internal quotation marks omitted.) *Harmon v Univ. of Conn.*, Docket No. HHD-CV-15-6056506s, 2018 WL 1475874, *17 (Superior Court, judicial district of Hartford at Hartford, February 21, 2018).

C
Analysis

In the present case, regarding the first prima facie element, Ms. Clary-Butler engaged in a protected activity when she filed the present complaint with the commission alleging that the department had discriminated against her based on her race. The internal complaint filed with the city and the complaint filed with the commission concern essentially the same matters. (FF 23). As to the second prima facie element, the department and the city were aware of the complaint to the commission. As to the fourth element, causation, the department admitted that it suspended its investigation of Ms.

Clary-Butler's internal discrimination complaint against Ms. Castro because of the filing of the complaint with the commission. (FF 22).

As to the third prima facie element, though, Ms. Clary-Butler has not shown that the suspension of an internal investigation of her discrimination claims while a state agency investigated the same allegations of discrimination would dissuade a reasonable worker from making or supporting a charge of discrimination. Therefore, this claim is dismissed.

VI
§ 46a-60 (b) (5)
Aiding and abetting

A
Statute

In her complaint, Ms. Clary-Butler alleged a violation of General Statute § 46a-60 (b) (5). Section 46a-6(b) (5) provides that it is an illegal discriminatory practice "[f]or any person, whether an employer or an employee or not, to aid, abet, incite, compel or coerce the doing of any act declared to be a discriminatory employment practice or to attempt to do so".

B
Standard

To sustain a claim of aiding and abetting in violation of § 46a-60 (a) (5), Ms. Clary-Butler must prove first prove that a discriminatory act has occurred. A complainant "cannot sustain a claim of aiding and abetting discriminatory conduct under General Statutes § 46a-60(a)(5) where she has failed to prove that any discriminatory conduct has occurred. See *Agosto v. Premier Maintenance, Inc.,* 185 Conn. App. 559, 197 A.3d 938

(2018) (affirming trial court's grant of summary judgment on aiding and abetting count where the plaintiff could not prove a prima facie case of discrimination.)" *Natale v City of New Haven*, Docket No. NNH-CV-18-60790190s, 2019 WL 6245762, *7 (Superior Court, judicial district of New Haven at New Haven, October 19, 2019).

C
Analysis

In the present case, Ms. Clary-Butler did not sustain her burden of proof in establishing that the department discriminated against her based on her race or that the department committed an actionable retaliatory act. There can be no aiding and abetting a discriminatory practice when no discriminatory practice has been proved. Therefore, this claim is dismissed.

Further, as the complainant did not brief this claim, it is deemed waived. In addition, it is unclear not only through the brief but also from testimony as to who allegedly aided and abetted whom.

VII
§ 53a-183 as enforced by § 46a-58 (a)
Harassment in the second degree: Class C misdemeanor

A
Statute

In her complaint, Ms. Clary-Butler alleged that the department violated criminal statute § 53a-183, harassment in the second degree, as enforced by § 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."

Section 53a-183 provides that:

> (a) A person is guilty of harassment in the second degree when: (1) By telephone, he addresses another in or uses indecent or obscene language; or (2) with intent to harass, annoy or alarm another person, he communicates with a person by telegraph or mail, by electronically transmitting a facsimile through connection with a telephone network, by computer network, as defined in section 53a-250, or by any other form of written communication, in a manner likely to cause annoyance or alarm; or (3) with intent to harass, annoy or alarm another person, he makes a telephone call, whether or not a conversation ensues, in a manner likely to cause annoyance or alarm.
>
> (b) For the purposes of this section, such offense may be deemed to have been committed either at the place where the communication originated or at the place where it was received.
>
> (c) The court may order any person convicted under this section to be examined by one or more psychiatrists.
>
> (d) Harassment in the second degree is a class C misdemeanor.

B
Analysis

In the present case, Ms. Clary-Butler may be arguing that the actions taken against her by Ms. Castro and Ms. Dogolo constitute criminal harassment. Presuming that § 53a-183 is even enforceable through § 46a-58 (a), to have this statute enforced through § 46a-58 (a), Ms. Castro and Ms. Dogolo would have had to take their actions on account of Ms. Clary-Butler's religion, national origin, alienage, color, race, sex, gender identity or expression, sexual orientation, blindness, mental disability, physical disability or status as a veteran. As previously discussed, the actions they took were not on account of Ms.

Clary-Butler's race or any of the other protected characteristic. Ms. Castro expected Ms. Clary-Butler to follow the same regulations and policies that she imposed on her other staff. (FF 9). The conflict that arose between the two of them was the result of Ms. Clary-Butler not following those regulations. (FF 10, 12). The poor working relationship between Ms. Clary-Butler and Ms. Dogolo was unrelated to race or to any workplace matter. Rather, their quarrel was the result of testimony Ms. Clary-Butler gave at a deposition involving Ms. Dogolo's mother. (FF 28). Therefore, no violation of § 46a-58 (a) occurred, and this claim is dismissed.

Further, as this claim was not briefed, it is deemed waived.

VIII

Title VII (alleged race discrimination) as enforced by § 46a-58 (a)

A

Statute

In her complaint, Ms. Clary-Butler alleged that the department violated Title VII, as enforced by § 46a-58 (a), when it discriminated against her based on her race.

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."

Title VII, 42 U.S.C. § 2000e-2 (a), provides that:

It shall be an unlawful employment practice for an employer-

> (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate 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; or
> (2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

B
Standard

Title VII claims are analyzed under the three-part burden shifting framework established in in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973).

> Under the McDonnell Douglas framework, a plaintiff must first satisfy an initial burden of proving by the preponderance of the evidence a prima facie case of discrimination. . . A plaintiff may establish a prima facie case of discrimination by demonstrating that (1) they were within a protected class; (2) they were qualified for the position sought or held; (3) they were subject to an adverse employment action; and (4) the adverse action occurred under circumstances giving rise to an inference of discrimination.
>
> Once the plaintiff has met the minimal burden of stating a prima facie case, the burden shifts to the employer to articulate some legitimate, nondiscriminatory reason for the adverse employment action. . . . This burden is not a demanding one, and it requires only an explanation for the employment decision supported by evidence that, taken as true, would permit the conclusion that the reason for the decision was non-discriminatory. . . .
>
> If the employer meets this burden of production, the burden shifts back to the plaintiff, who must then prove that the employer's proffered reason was a pretext for discrimination. . . . This requires the plaintiff to submit evidence to show circumstances that would be sufficient to permit a rational finder of fact to infer that the defendant's employment decision was more likely than not based in whole or in part on discrimination.

(Internal citations omitted; internal footnotes omitted; internal quotation marks omitted.) *Chima v KX Technologies, LLC.*, Docket No. 3:21-CV-00801 (JHC), 2022 WL 13682064, *5-6 (D. Conn. October 21, 2022).

C
Analysis

In the present case, because Title VII claims are analyzed under the same three-part burden shifting paradigm as § 46a-60 claims, the resolution of the Title VII claim is the same as that of the § 46a-60 claim.

Ms. Clary-Butler established a prima facie case as she belongs to a protected class, African-American, alleged the adverse actions previously identified, and the adverse actions commenced when Ms. Castro became her supervisor.

A burden of production then shifts to the respondent to articulate legitimate, nondiscriminatory reasons for its actions. As discussed, the respondent met this burden. The policies and procedures were applied equally to Ms. Clary-Butler and other elderly service specialists. Unlike the other elderly senior specialists, Ms. Clary-Butler had repeated personnel issues. Ms. Dogolo received a higher salary was because of an agreement between the city and the union as a result of Ms. Dogolo having been laid-off from another city department.

Like the § 46a-60 analysis, once the department has articulated legitimate, nondiscriminatory reasons for its actions, the burden of persuasion now shifts to Ms. Clary-Butler to prove by a preponderance of the evidence that the department intentionally discriminated against her. This she did not do. As discussed, the credible and persuasive evidence in this case is that the department did not discriminate against her because of her race.

As previously discussed, although Ms. Clary-Butler's feelings of harassment began with the hiring of Ms. Castro as her supervisor, Ms. Castro, who self-identifies as Latino, African-American, and Indian (FF 7) did not act from any racial animus. The two knew each other prior to Ms. Castro being hired, and initially had a positive working relationship. (FF 6, 8). The difficulties began because Ms. Clary-Butler failed to adhere to policies and procedures applicable to all elderly senior service specialists. FF 9, 10). Ms. Castro did not have similar problems with any of the other elderly service specialists. (FF 10).

Ms. Castro did not suspend Ms. Clary-Butler because of her race. Rather, the suspension was the result of Ms. Clary-Butler's mishandling of a trip to the mayor's health fair, leaving the senior center unattended for an extended period of time on March 23, 2016, inaccurately reporting her lunch break on her timesheet, and failing to follow Ms. Castro's directives regarding attendance at a retreat. (FF 12).

As previously discussed, Ms. Castro did not treat Ms. Clary-Butler's senior center different from the other two centers because of Ms. Clary-Butler's race. Ms. Castro did not discontinue the Friday lunch program because of Ms. Clary-Butler's race. (FF 14). Ms. Clary-Butler's race was not a factor her center not, initially, receiving a flat screen television. Ms. Castro did not exclude Ms. Clary-Butler's center from an on-site cancer screening event because of Ms. Clary-Butler's race. Ms. Castro did not exclude Ms. Clary-Butler's center from a trip to Foxwoods because of Ms. Clary-Butler's race. Rather, people other than Ms. Castro made these decisions, and when informed of the different treatment, she acted promptly to make sure that Ms. Clary-Butler's center received the same, or access to the same, benefits as the other centers. (FF 15, 16, 17).

Likewise, the difference in salaries between Ms. Dogolo and Ms. Clary-Butler was also unrelated to Ms. Clary-Butler's race. The city paid Ms. Dogolo more than it paid her as a result of an agreement between the city and the bargaining union following Ms. Dogolo's lay-off from another city department. (FF 26).

Similarly, the deterioration in the working relationship between Ms. Clary-Butler and Ms. Dogolo was not the result of racial animus. Rather, the deterioration was due to Ms. Clary-Butler's testimony at a deposition regarding Ms. Dogolo's mother that was unrelated to their employment with the department. (FF 28). Notwithstanding that the poor working relationship between Ms. Clary-Butler and Ms. Dogolo was unrelated to work, the city and the department separated Ms. Clary-Butler and Ms. Dogolo by assigning them to different senior centers. (FF 29, 30).

This claim is dismissed.

IX

Title VII (alleged retaliation) as enforced by § 46a-58 (a)

A

Statute

Ms. Clary-Butler alleged that the department violated Title VII, as enforced by § 46a-58 (a), when it retaliated against her for filing the present complaint with the commission.

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."

The anti-retaliatory provisions of Title VII are found in 42 U.S.C. § 2000e-3 (a) which provides in relevant part that:

> It shall be an unlawful employment practice for an employer to discriminate against any of his employees or applicants for employment, for an employment agency, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to discriminate against any individual, or for a labor organization to discriminate against any member thereof or applicant for membership, because he has opposed any practice made an unlawful employment practice by this subchapter, or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subchapter.

B
Standard

Title VII prohibits employers from retaliating against employees who oppose discriminatory practices, file complaints of discriminatory treatment, or participate in an investigation.

> When analyzing retaliation claims, courts apply the *McDonnell Douglas* burden-shifting framework. . . . 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. . ..
>
> Thereafter, there is a presumption of retaliation that the defendant must rebut by articulating a legitimate, non-retaliatory reason for the adverse employment action. . . . 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.

(Internal citations omitted; internal quotation marks omitted.) *Byrne v. Yale Univ., Inc.*, 450 F. Supp. 3d 105, 117-118 (D. Conn. 2020).

In order to establish an adverse employment action to satisfy the third element of her prima facie case, Ms. Clary-Butler "must come forward with evidence suggesting that [she] suffered a materially significant disadvantage with respect to the terms of [his] employment. . . . An adverse employment action is more disruptive than a mere inconvenience or an alteration of job responsibilities. . . . Examples of materially significant disadvantages include termination, demotion, a less distinguished title, a material loss of benefits, or significantly diminished material responsibilities." (Emphasis in original; internal citations omitted; internal quotation marks omitted.) *Chima v KX Technologies,* Docket No. 3:21-CV-00801 (JCH), 2022 WL 13682064, *6 (D. Conn. October 21, 2022).

C
Analysis

In the present case, regarding the first prima facie element, Ms. Clary-Butler engaged in a protected activity when she filed the present complaint with the commission alleging that the department had discriminated against her based on her race. As to the second prima facie element, the department and the city were aware of the complaint to the commission. As to the fourth element, causation, the department admitted that it suspended its investigation of Ms. Clary-Butler's internal discrimination complaint against Ms. Castro because of the filing of the complaint with the commission.

Ms. Clary-Butler's claim that the respondent retaliated against her in violation of Title VII fails. The department did not terminate Ms. Clary-Butler employment, demote

her, deprive her of any benefits, or reduce her job responsibilities. Since the filing of the internal complaints as well as the present commission complaint, Ms. Clary-Butler has remained employed by the department with no loss of benefits or salary. (FF 24, 31). The alleged retaliatory act, suspending the investigation of Ms. Clary-Butler's internal complaints of discrimination, does not constitute a materially significant disadvantage with respect to the terms of her employment.

This claim is dismissed.

X
Equal Pay Act
as enforced through General Statute § 46a-58 (a)

A
Statute

In her complaint, Ms. Clary-Butler alleged that the department violated the Equal Pay Act as enforced by § 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."

The Equal Pay Act, 29 U.S.C. § 206 (d) provides in relevant part that:

> (1) No employer having employees subject to any provisions of this section shall discriminate, within any establishment in which such employees are employed, between employees on the basis of sex by paying wages to employees in such establishment at a rate less than the rate at which he pays wages to employees of the opposite sex in such establishment for

equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions, except where such payment is made pursuant to (i) a seniority system; (ii) a merit system; (iii) a system which measures earnings by quantity or quality of production; or (iv) a differential based on any other factor other than sex: Provided, That an employer who is paying a wage rate differential in violation of this subsection shall not, in order to comply with the provisions of this subsection, reduce the wage rate of any employee.

B
Standard

The Equal Pay Act prevents employers from discriminating among employees on the basis of sex by paying disparate wages for "equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions. . . . The Equal Pay Act is a strict liability statute, and so a plaintiff need not show an employer's discriminatory intent. . . .

To prove a violation under the Equal Pay Act, a plaintiff must first establish a prima facie case of pay discrimination by showing: (1) the employer pays different wages to employees of the opposite sex; (2) the employees perform equal work on jobs requiring equal skill, effort, and responsibility; and (3) the jobs are performed under similar working conditions. . . . [A] prima facie showing gives rise to a presumption of discrimination. . . .A plaintiff need not demonstrate that her job is identical to a higher paid position, but only must show that the two positions are substantially equal in skill, effort, and responsibility. . . . Whether different positions are substantially equivalent for the purposes of the Equal Pay Act is usually a question of fact to be resolved by a jury. . . . However, two positions may be so different such that no reasonable juror could conclude that they are substantially equal. . . .

Once a plaintiff makes a prima facie case, the burden shifts to the employer to justify the wage differential by showing that the disparity results from one of four sources: (1) a seniority system; (2) a merit system; (3) a system which measures earnings by quantity or quality of production; or (4) a differential based on "any other factor other than sex. . . . The burden of establishing one of the four affirmative defenses is 'a heavy one. . . . A job classification system that is gender-neutral on its face may qualify under the factor-other-than-sex defense only when it is based on legitimate business-related considerations. . . . Therefore, the employer bears the burden of proving that a bona fide business-related reason exists for using the gender-

> neutral factor that results in a wage differential in order to establish the factor-other-than-sex defense. . . .
>
> Once an employer establishes one of the four affirmative defenses, the burden shifts back to the plaintiff to show that the stated reason was, in fact, a pretext for sex discrimination. . . The appropriate inquiry to determine if the factor put forward is a pretext, is whether the employer has use[d] the factor reasonably in light of the employer's stated purpose as well as its other practices. . . . [A] reason cannot be proved to be a pretext *for discrimination* unless it is shown *both* that the reason was false, *and* that discrimination was the real reason. . . . In general, evidence that a stated reason for a pay differential is actually a pretext creates a triable issue of fact. . . . However, a court may reject a plaintiff's assertion as a matter of law if they offer nothing more than speculation" that a stated reason was merely a pretext for discrimination.

(Internal citations omitted; internal quotation marks omitted.) *Eisenhauer v Culinary Institute of America*, Docket No. 19 Civ. 10933 (PED), 2021 WL 5112625, *3-4 (S.D.N.Y. November 3, 2021).

C
Analysis

In the present case, Ms. Clary-Butler did not prove a prima face case because she did not establish that the department is paying its male elderly service specialists more than its female elderly service specialists. This claim is dismissed.

XI
Conclusions of Law

1. The complainant did not establish by a preponderance of the evidence that the department violated § 46a-60 (b) (1) or Title VII by discriminating against her based on her race.
2. The complainant did not establish that her race was a motivating factor in any decision made by the department.

3. The complainant did not establish that her race was one but-for cause of any action taken by the department.
4. The department's decision to suspend its investigation of the complainant's internal discrimination complaints is not an adverse employment action under § 46a-60 (a) (4) because it would not dissuade a reasonable employee from filing a discrimination complaint with the commission.
5. The department's decision to suspend its investigation of the complainant's internal discrimination complaints is not an adverse employment action under Title VII because the suspension does not constitute a materially significant disadvantage with respect to the terms of her employment.
6. Because the department's decision to suspend its investigation of her internal discrimination complaints is not an adverse employment action, the complainant did not establish by a preponderance of the evidence that the department retaliated against her in violation of § 46a-60 (b) (4) or Title VII.
7. Because the complainant did not establish by a preponderance of the evidence that the department discriminated against her based on her race or retaliated against her, the complainant did not establish that anyone aided and abetted the respondent in violation of § 46a-60 (b) (5).
8. Presuming that § 53a-183 is enforceable through § 46a-58 (a), because the complainant did not establish that any actions taken by anyone were the result of racial animus, she did not establish by a preponderance of the evidence that the department violated § 53a-183.

9. Because the complainant did not establish that the department paid men more than it paid her, she did not establish by a preponderance of the evidence that the department had violated the Equal Pay Act.

XII
Order

The complaint is dismissed.

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