

Commission on Human Rights and  
Opportunities ex rel. John Ward,  
Complainant

v.

City of Stamford, Respondent

OFFICE OF  
PUBLIC HEARINGS - CHRO  
DATE 10/27/23  
TIME 8:30 AM  
RECEIVED BY KDM

Office of Public Hearings

CHRO No. 1820545

Fed No. 16a2018001455

October 27, 2023

Ruling re: the complainant's motion to amend his complaint

I

Mr. Ward filed his affidavit of illegal discriminatory practice (complaint) with the commission on June 7, 2018. In his complaint he alleged that the respondent City of Stamford, his former employer, (Stamford) violated General Statutes § 46a-60 (b) (a) and the Americans with Disabilities Act as enforced through General Statutes section § 46a-58 (a) when it terminated his employment on the basis of his disability, PTSD and pneumonia, and his status as a veteran in the U.S. Marine Corps. The complaint was certified to the office of public hearings on January 8, 2020, and the respondent filed its post-certification answer denying the allegations of discrimination on March 12, 2020.

The hearing commenced on October 3, 2023. During the hearing, Mr. Ward orally moved to amend his complaint to add a claim of failure to accommodate his disability. Stamford objected. Mr. Ward was given the opportunity to file a written motion to amend, and Stamford and the commission were given fourteen days from the filing of the motion to file a response. The hearing was adjourned. Transcript, 51-55. Mr. Ward filed his motion to amend on October 5, 2023. Stamford filed its objection on October 19, 2023.

On October 20, 2023, Mr. Ward filed a reply and, on October 23, 2023, Stamford filed its sur-rely. The commission made no submission.

Mr. Ward's proposed amendment adds two paragraphs to his complaint.<sup>1</sup> He alleged that with reasonable accommodations he would have been able to perform the essential functions of his job. He further alleged that Stamford failed to enter into an interactive process, failed to make any accommodations, and failed to inform him of any available accommodations.

For the reasons set forth herein, the motion to amend is granted.

II

A

Amendments to a complaint are governed by General Statutes § 46a-84 (g) and Section 46a-54-79a (e) of the Regulations of Connecticut State Agencies. Section 46a-84 (g) provides that:

The presiding officer conducting any hearing shall permit reasonable amendment to any complaint or answer and the testimony taken at the hearing shall be under oath and be transcribed at the request of any party.

Similarly, § 46a-54-79a (e) provides that:

Any complaint filed pursuant to section 46a-82 of the Connecticut General Statutes may, upon motion by the complainant or the commission, be amended after the appointment of a presiding officer. Complaint amendments may include, but are not limited to, matters arising out of the investigation or evidence adduced at hearing. The presiding officer shall permit reasonable amendment of any complaint and shall allow the parties and intervenors sufficient time to prepare their case in light of the amendment. If the complainant dies, the complaint may be amended to allow a legal representative of the complainant's estate or the commission to pursue the complaint.

B

While not binding on administrative procedures, rules governing the procedure in civil actions can at times provide useful guidance. Both the General Statutes and the Practice Book provide for amendments of complaints. According to General Statutes §52-128:

The plaintiff may amend any defect, mistake or informality in the writ, complaint, declaration or petition, and insert new counts in the complaint or declaration, *which might have been originally inserted therein*, without costs, within the first thirty days after the return day *and at any time afterwards* on the payment of costs at the discretion of the court; but, after any such amendment, the defendant shall have a reasonable time to answer the same.

Emphasis added.

Similarly, Section 10-60 of the Practice Book

allows a plaintiff to amend his or her complaint more than thirty days after the return day by judicial authority, written consent of the adverse party, or filing a request for leave to amend with the amendment attached.

(Citations omitted; internal quotation marks omitted.) *Brown v. Sawtelle*, Superior Court, judicial district of New Haven, Docket No. CV -17-6070596, 2023 WL 6121128, at \*2 (Sept. 14, 2023).

Amendments to complaints have even been allowed after the commencement of trial. *CNR Landscaping & Snow Removal, LLC v. Fair Oaks Commons, LLC*, Superior Court, judicial district of Waterbury, Docket No. UWY CV-18-6039704S, 2020 WL 927644, at \*2 (Jan. 23, 2020).

## C

In determining whether a proposed amendment is reasonable, inquiry is made into the

fairness to the parties, whether the requested amendment would work any injustice upon the defendants, whether there was any negligence on the part of the plaintiff in seeking the amendment and whether the amendment would unduly delay the trial . . . .

*Rhodes v. JMS Rest., LLC*, Superior Court, judicial district of Danbury at Danbury, Docket No. DBD CV-19-6031822s, 2021 WL 2403333, at \*4 (May 19, 2021).

[A] trial court may allow, in its discretion, an amendment to pleadings before, during, or as here, after trial to conform to the proof. . . . Whether to allow an amendment is a matter left to the sound discretion of the trial court. . . . Much depends upon the particular circumstances of each case. The factors to be considered include unreasonable delay, fairness to the opposing parties, and negligence of the party offering the amendment.

(Internal quotation marks omitted.) *Welch v. Welch*, Superior Court, Docket No. FA-00-0072505, 2002 WL 1332028, at \*4 (May 17, 2002).

Although requests for leave to amend pursuant to § 10–60 are subject to the court's discretion, our courts have been liberal in permitting amendments . . . Courts traditionally deny leave to amend only if the amendment would prejudice the defendant by causing undue delay or the amendment does not relate back to the matters pleaded in the original complaint.

(Citations omitted; internal quotation marks omitted.) *Brown v. Sawtelle*, Superior Court, supra. 2023 WL 6121128, at \*2.

## III

During the commission's investigation of the present case, witnesses for Stamford testified that Mr. Ward never disclosed to them any disability and that they were unaware of any disability. C-10/R-23 , 8, 13 15, 19, 24. Mr. Ward, on the other hand, testified that

he did disclose his disability, both during the pre-hiring interview and after his hire. R-30, 3-4, 19. He also testified that on several occasions he wanted to show his doctor's note to Stamford employees that his absence was the result of a reaction to new medication he was taking for his PTSD but that they refused to accept the note. R-30, 6-7, 14-15, 19. If Mr. Ward is found to be credible on this issue, then Stamford had notice of Mr. Ward's disability and that an accommodation for attendance would need to be discussed.

Mr. Ward also testified during the investigation that he had never requested an accommodation for his disability. R-30, 12. The ADA, however, contemplates that in some cases the employer, rather than the employee, will initiate the interactive dialogue. 29 C.F.R. § 1630.2 (o), 29 C.F.R. Appendix § 1630.2 (o).

An allegation of failure to accommodate a disability does relate back to allegations of disability discrimination. The paragraphs in the proposed amendment could have been inserted into the original complaint. The hearing will not be unreasonably delayed by the granting of the motion to amend. Indeed, the hearing has already been delayed, through no fault of the parties, due to the difficulty in obtaining information and documents from the U.S. Department of Veterans Affairs and the passing of Mr. Ward's first counsel. Further, the parties will be provided with an opportunity to conduct additional production, to supplement their witnesses and exhibits, and to present additional evidence.

#### IV

In granting the motion to amend, this tribunal is not making any determination or expressing any opinion that Mr. Ward will prevail on the claims in his amendment or his complaint.

V

1. Stamford shall file and serve its answer to the amended complaint on or before December 1, 2023.

2. A telephonic status conference will be held on December 11, 2023 at 1:00 PM.

The purposes of the conference include scheduling dates for supplemental production, and related procedural and public hearing matters. The parties are instructed to call 1.866.741.9936 and enter participant code 7022515 at the scheduled date and time.

*/s/ Jon P. FitzGerald*

Hon. Jon P. FitzGerald  
Presiding Human Rights Referee

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<sup>1</sup> “11. I informed the City of Stamford in my application for employment and subsequently that I am a veteran with a disability, and the City of Stamford always had notice of that fact. With reasonable accommodations I was able to perform the essential functions of my position notwithstanding my mental health disability. The City of Stamford failed and refused (a) to enter into an interactive process with me or (b) to make any accommodations whatsoever or (c) to inform me as to any available accommodations that would have saved my career. The accommodations denied to me by the City of Stamford included but were not limited to (a) permitting me to use a route map as an aid to remembering the 100 or so stops I was obligated to make on each route each day; (b) permitting me to spend more time learning each route before I was rotated to another one; (c) allowing me time off when I suffered an adverse reaction to a prescribed medication and was advised it was unsafe to drive a heavy vehicle rather than punishing me for the absences; and (d) allowing me more time to complete my probationary period.

“12. The City of Stamford violated my right to be free from discrimination based on my PTSD disability under the Connecticut Fair Employment Practices Act, Connecticut General Statutes §§ 46a-58 and 46a-60(a)(1), and the Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq.*, and I am entitled to all forms of redress provided by law.”