

Commission on Human Rights and
Opportunities ex rel. Lawanda Keith,
Complainant

Office of Public Hearings.

CHRO No. 1910187
Fed No. 16a201900194

v.

Department of Mental Health and Addiction
Services, Respondent

October 27, 2023

Ruling re: the respondent's motion to strike

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

I

On October 4, 2023, the department of mental health and addiction services (DMHAS) filed a motion to strike Ms. Keith's General Statutes § 46a-70 claim asserting that it did not apply to the allegations of this case. The commission and Ms. Keith filed their objections on October 24, 2023.

Section 46a-70 provides that:

(a) State officials and supervisory personnel shall recruit, appoint, assign, train, evaluate and promote state personnel on the basis of merit and qualifications, without regard for race, color, religious creed, sex, gender identity or expression, marital status, age, national origin, ancestry, status as a veteran, status as a victim of domestic violence, intellectual disability, mental disability, learning disability or physical disability, including, but not limited to, blindness, unless it is shown by such state officials or supervisory personnel that such disability prevents performance of the work involved.

(b) All state agencies shall promulgate written directives to carry out this policy and to guarantee equal employment opportunities at all levels of state government. They shall regularly review their personnel practices to ensure compliance.

(c) All state agencies shall conduct continuing orientation and training programs with emphasis on human relations and nondiscriminatory employment practices.

(d) The Commissioner of Administrative Services shall ensure that the entire examination process, including qualifications appraisal, is free from bias.

(e) Appointing authorities shall exercise care to ensure utilization of minority group persons.

II

A

Section 46a-70 (a), then, applies to allegations of discriminatory action by a state agency in the recruiting, appointing, assigning, training, evaluating, and promoting of state personnel. In the present case, however, the parties agree that the sole adverse action at issue is a five-day suspension DMHAS imposed on Ms. Keith in September 2018. Neither the commission nor Ms. Keith identify any allegation in the complaint, identify any reference in the reasonable cause finding, or offer any proposed amendment to Ms. Keith's complaint which, when construed most favorably to Ms. Keith, would suggest that recruitment, appointment, assignment, training, evaluation, or promotion are issues in this complaint.

B

In addition, General Statutes § 46a-82 (a) provides that:

Any person claiming to be aggrieved by an alleged discriminatory practice, except for an alleged violation of section 4a-60g or 46a-68 or the provisions of sections 46a-68c to 46a-68f, inclusive, may, by himself or herself or by such person's attorney, file with the commission a complaint in writing under oath, except that a complaint that alleges a violation of section 46a-64c need not be notarized. The complaint shall state the name and address of the person alleged to have committed the discriminatory practice, **provide a short and plain statement of the allegations upon which the claim is based** and contain such other information as may be required by the commission. After the filing of a complaint, the commission shall provide the complainant with a notice that: (1) Acknowledges receipt of the complaint;

and (2) advises of the time frames and choice of forums available under this chapter.

Emphasis added.

Similarly, Section 46a-54-35a provides that:

(a) A complaint shall be in writing, under oath, and shall contain the following:

(1) The name and address of the complainant, except as provided in section 46a-54-37a of the Regulations of Connecticut State Agencies;

(2) The name and address of the alleged respondent or respondents;

(3) **A plain and concise statement of the facts**, including any pertinent dates, **constituting the alleged discriminatory practices**; and

(4) Such other information as the commission may require.

(b) A timely filed complaint under oath is sufficient when the commission receives from the person making the complaint a written statement **sufficiently precise** to identify the parties and **to describe generally the action or practices complained of** which have occurred, are occurring or are about to occur and when.

Emphasis added.

In the present case, though, the complaint offers no plain statement of an allegation, a concise statement of a fact, or a sufficiently general description of a practice committed by DMHAS which, construed most favorably to Ms. Keith, would support a claim of a § 46a-70 violation.

C

Further, the commission and Ms. Keith offered no rebuttal to DMHAS' extensive discussion of caselaw and statutory interpretation as to why suspension cannot simply be read into § 46a-70.

III

Section 46a-54-88a (d) of the Regulations of Connecticut State Agencies provides in part that: "The presiding officer may, on his or her own or upon motion by a party, dismiss a complaint or a portion thereof if the complainant or the commission: (1) Fails to establish jurisdiction" In the present case, the commission and Ms. Keith have failed to allege facts which if proven would establish jurisdiction over the § 46a-70 claim. The motion to strike is granted and that claim is dismissed.

IV

The remaining statutory claims are General Statutes § 46a-60 (b) (1) and Section 504 of the Rehabilitation Act of 1973 as enforced through § 46a-58 (a).

V

As previously ordered:

1. Joint factual stipulations, if any, shall be filed on or before March 12, 2024.
2. The public hearing is scheduled for March 19, 20, and 21, 2024 commencing at 9:30 AM and recessing at approximately 4:30 PM. There will be a fifteen-minute mid-morning recess at approximately 11:00 AM, a mid-day lunch period at approximately 1:00 PM, and a fifteen-minute afternoon recess at approximately 3:00 PM. The recesses will be taken at appropriate times in a witness's testimony. The public hearing will commence promptly at the beginning of each day and the conclusion of a recess. Resumption of the hearing need not be delayed due to the unexcused absence or tardiness of a party, witness, or attorney.
3. By agreement of the parties, the hearing will be conducted via zoom.
4. Exhibits and objections thereto:
 - a. There being no objections, the commission's exhibits 2-4, 8-11, 13-16, and 42 are admitted.

b. The respondent's objections to the commission's exhibits 17-21 are overruled and the exhibits are admitted.

c. The respondent's objection to the commission's exhibit 12 is sustained and the exhibits is not admitted.

d. The respondent's objection to the commission's exhibit 1 is overruled in part and sustained in part. The first four pages, the May 21, 2018 attachment, and the September 5, 2018 attachment are admitted. The objection to the October 8, 2018 attachment is sustained and that attachment is not admitted.

e. Ruling are reserved on the respondent's objections to the commission's exhibits 5-7 and 22-41.

f. There being no objections, the complainant's exhibits 1, 3-5, and 7-11 are hereby admitted.

g. The respondent's objections to the complainant's exhibits 12-24, and 27 are overruled and the exhibits are admitted.

h. A ruling is reserved on the respondent's objections to the complainant's exhibits 2, 6, 25, 26, 28 and 29.

i. There being no objections, the respondent's exhibits 1, 2, and 4-16 hereby admitted.

j. The commission's objections to the respondent's exhibit 3 is overruled and the exhibit is admitted.

5. The parties report that there is not a need for an interpreter or other accommodation for any witness or party. Should they become aware of a need for an interpreter or accommodation, they shall file and serve timely requests for accommodations or interpreters.

6. Witnesses will be sequestered.

7. This office does not issue subpoenas. The parties are responsible the issuance and cost of any subpoenas.

8. Public hearings are contested case proceedings within the meaning of the Uniform Administrative Procedure Act. As such, the public hearing process is governed by General Statutes §§ 4-166 – 4-189; and 46a-51 – 46a-104; sections 46a-54-78a – 46a-54-98a of the Regulations of Connecticut State Agencies; and applicable case law. The

parties are noticed of §§ 4-177c and 4-178 regarding contested case evidence and objections thereto.

9. Witnesses and documentary evidence shall not be irrelevant, immaterial or unduly repetitious.

10. In administrative hearings, "hearsay evidence can be admitted, provided it has indicia of reliability and trustworthiness. See *Adriani v. Commission on Human Rights & Opportunities*, 220 Conn. 307, 319, 596 A.2d 426 (1991); *Jutkowitz v. Department of Health Services*, 220 Conn. 86, 108, 596 A.2d 86 (1991)." *Oral Care Dental Group II, LLC v. Pallett*, Superior Court, judicial district of New Britain, Docket No. HHB-CV-18-6046743 (January 14, 2020) (2020 WL 674458, 3). See also General Statutes §§ 4-177c and 4-178. Generally speaking, hearsay is an issue of the weight to be accorded rather than an issue of admissibility.

11. Each party is afforded the opportunity to call, examine and cross-examine witnesses and introduce evidence into the record, subject to the ruling of the presiding officer, applicable Regulations of Connecticut State Agencies, and applicable sections of the General Statutes. The presiding officer may examine witnesses to ensure a full inquiry into all contested facts and to ensure a fair determination of the issues. Examination beyond the scope of direct may be allowed provided the information sought is relevant and material to the issues; is required for a full and true disclosure of relevant and material facts, and is not unduly repetitious or unduly prejudicial. General Statutes §§ 4-177c and 4-178. Absent good cause, re-direct examination should be within the scope of cross examination and re-cross examination should be within the scope of re-direct examination.

12. A party seeking to call a witness for rebuttal or surrebuttal shall first provide an offer of proof as to the proposed witness, what specific testimony of which prior witness is being rebutted; why the proposed testimony is relevant, material and not unduly repetitious of the party's case in chief; and why the proposed testimony could not have been introduced in the party's case in chief.

13. Persons engaging in improper conduct during the hearing may be excluded from attendance or participation in the proceeding. General Statutes § 1-232; Regs., Conn. State Agencies § 46a-54-83a (b).

14. There will not be opening or closing statements at the public hearing.

15. At the conclusion of the public hearing, the presiding referee shall determine whether the filing of briefs is necessary. If the referee determines that the filing of briefs is necessary, the referee shall establish the terms and timeframe for their filing.

/s/ Jon P. FitzGerald

Hon. Jon P. FitzGerald

Presiding Human Rights Referee