



State of Connecticut  
**COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES**  
**OFFICE OF PUBLIC HEARINGS**

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*Promoting Equality and Justice for all People*

MEMORANDUM

To: Sgt. James Hemingway  
[ctcivilationcase@gmail.com](mailto:ctcivilationcase@gmail.com)

Matthew Larock, AAG  
[matthew.larock@ct.gov](mailto:matthew.larock@ct.gov)

From: Kimberly D. Morris, Secretary II, OPH

Re: OPH/WBR No. 2021-458 Sgt. James Hemingway v. Auditors of Public Accounts

Date: March 7, 2022

Enclosed is the Presiding Human Rights Referee's Ruling on Respondent's Motion to Dismiss.

C.

Jon P. FitzGerald, Presiding HRR

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

Sgt. James Hemingway, Jr., Complainant

v.

Auditors of Public Accounts, Respondent

OFFICE OF  
PUBLIC HEARINGS -CHRO  
DATE 3/7/22  
TIME 2:17 PM  
RECEIVED BY [Signature]

OPH/WBR 2021-458

March 7, 2022

Ruling re: motion to dismiss and/or strike

I

On December 28, 2021, Sgt. James Hemingway, Jr., the complainant, filed a complaint (whistleblower complaint) with the chief human rights referee pursuant to General Statute § 4-61dd (whistleblower statute) against the Auditors of Public Accounts, the respondent, (Auditors). On January 14, 2022, the Auditors filed their motion to dismiss and/or strike the whistleblower complaint and, on January 24, 2022, Sgt. Hemingway filed his objection.

For the reasons set forth herein, the motion is granted and the whistleblower complaint is dismissed.

II

Section 4-61dd-15 (c) of the Regulations of Connecticut State Agencies provides:

The presiding officer may, on his own or upon motion by a party, dismiss a complaint or a portion thereof if the complainant: (1) Fails to establish subject matter or personal jurisdiction; (2) Fails to appear at a lawfully noticed conference or hearing without good cause; or (3) Fails to sustain his or her burden after presentation of evidence.

In their motion, the Auditors allege two statutory deficiencies in the whistleblower complaint that deprive this tribunal of jurisdiction. According to the Auditors: (1) Sgt. Hemingway is not and has never been employed by the Auditors and (2) the Auditors did not threaten or take any adverse personnel action against him.

"A motion to dismiss attacks the court's jurisdiction to hear the present action: the plaintiff cannot as a matter of law and fact state a cause of action that should be heard by the court. .... Every presumption is to be indulged in favor of jurisdiction. In ruling upon a motion to dismiss, the complaint is to be construed most favorably to the plaintiff." (Internal quotations omitted; internal citations omitted.) *Lueneburg v. Mystic Dental Group*, 1996 Conn. Super. LEXIS 2001 4-5. "A ruling on a motion to dismiss is neither a ruling on the merits of the action ... nor a test of whether the complaint states a cause of action. .... Motions to dismiss are granted solely on jurisdictional grounds." (Internal quotations omitted; internal citations omitted.) *Malasky v. Metal Products Corporation*, 44 Conn. App. 446, 452 (1997).

General Statute § 4-61dd (a) provides:

**Any person** having knowledge of any matter involving (1) corruption, unethical practices, violation of state laws or regulations, mismanagement, gross waste of funds, abuse of authority or danger to the public safety occurring in any state department or agency, any quasi-public agency, as defined in section 1-120, or any Probate Court, (2) corruption, violation of state or federal laws or regulations, gross waste of funds, abuse of authority or danger to the public safety occurring in any large state contract, or (3) corruption by an entity receiving financial assistance pursuant to title 32 that has failed to meet its contractual obligations or has failed to satisfy any condition regarding such financial assistance, may transmit all facts and information in such person's possession concerning such matter to the Auditors of Public Accounts. The Auditors of Public Accounts shall review such matter and report their findings and any recommendations to the Attorney General. Upon receiving such a report, the Attorney General shall make such investigation as the Attorney General deems

proper regarding such report and any other information that may be reasonably derived from such report. Prior to conducting an investigation of any information that may be reasonably derived from such report, the Attorney General shall consult with the Auditors of Public Accounts concerning the relationship of such additional information to the report that has been issued pursuant to this subsection. Any such subsequent investigation deemed appropriate by the Attorney General shall only be conducted with the concurrence and assistance of the Auditors of Public Accounts. At the request of the Attorney General or on their own initiative, the auditors shall assist in the investigation.

Emphasis added.

Section 4-61dd (e) provides in relevant part:

(1) No state officer or employee, as defined in section 4-141, no quasi-public agency officer or employee, no officer or employee of a large state contractor and no appointing authority **shall take or threaten to take any personnel action against any** state or quasi-public agency **employee** or any employee of a large state contractor in retaliation for (A) such employee's or contractor's disclosure of information to (i) an employee of the Auditors of Public Accounts or the Attorney General under the provisions of subsection (a) of this section; (ii) an employee of the state agency or quasi-public agency where such state officer or employee is employed; (iii) an employee of a state agency pursuant to a mandated reporter statute or pursuant to subsection (b) of section 17a-28; (iv) an employee of the Probate Court where such employee is employed; or (v) in the case of a large state contractor, an employee of the contracting state agency concerning information involving the large state contract; or (B) such employee's testimony or assistance in any proceeding under this section.

(2) (A) Not later than ninety days after learning of the specific incident giving rise to a claim that a personnel action has been threatened or has occurred in violation of subdivision (1) of this subsection, a state or quasi-public agency **employee**, an **employee** of a large state contractor or the **employee's attorney may file a complaint against the state agency**, quasi-public agency, Probate Court, large state contractor or appointing authority concerning such personnel action **with the Chief Human Rights Referee** designated under section 46a-57. . . .

Emphasis added.

### III

General Statutes § 4-61dd, then, has two separate and distinct procedures. The first, subsections (a) through (d), allow “any person” to file a complaint with the Auditors regarding “corruption, unethical practices, violation of state laws or regulations, mismanagement, gross waste of funds, abuse of authority or danger to the public safety” in a state agency, quasi-public agency, probate court or occurring in a large state contract. These subsections describe the procedure to be utilized by the Auditors and the Attorney General in their investigations. This is the initial route Sgt. Hemingway utilized. He made a complaint to the Auditors, who did an investigation and issued a report.

The second and distinct procedure set forth in General Statutes § 4-61dd (e) permits employees of the state, quasi-public agency, large state contractor or appointing authority, and only such employees, to file a whistleblower complaint with the chief human rights referee alleging that they have been retaliated against by the state agency, quasi-public agency or large state contractor with whom they are employed. Unlike the procedure set forth in subsections (a) to (d) which allows any person to file a complaint with the Auditors, only employees may utilize the procedure of subsection (e) to file a whistleblower complaint with the chief human rights referee. In this case, construing the whistleblower complaint most favorable to him, Sgt. Hemingway is not and has never been employed by the Auditors. Therefore, he does not have standing to file a whistleblower complaint with the human rights referee.

IV

In their motion, the Auditors also assert that they did not threaten to take or take any adverse action against Sgt. Hemingway. Section 4-61dd (e) prohibits a state agency from taking adverse personnel action against an employee who is a whistleblower. In this case, the Auditors investigated Sgt. Hemingway's complaint pursuant to § 4-61dd (a) through (d). Construing the whistleblower complaint most favorable for Sgt. Hemingway, the Auditors did not take any adverse personnel action against him. They were simply statutorily unable to provide him with the remedy he was seeking.

V

For the foregoing reasons, the whistleblower complaint is dismissed for lack of jurisdiction.

It is so ordered this 7<sup>th</sup> day of March 2022.

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

cc.

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