

Maureen Mack : Office of Public Hearings
v. :
Stone Ridge Assisted Living LLC dba : OPH/WBR No. 2010-146
: November 12, 2010

Ruling re: the respondent's motion to dismiss

On September 16, 2010, the complainant, Maureen Mack, filed a complaint with the chief human rights referee. In her complaint, she alleged that the respondent, Stone Ridge Assisted Living LLC, her former employer, is a large state contractor and that it violated General Statutes § 4-61dd when it terminated her employment on April 29, 2010 in retaliation for her "whistleblowing" to the Department of Public Health.

On October 20, 2010, the respondent filed a motion to dismiss, accompanied by an affidavit from the respondent's human resources director. In its motion, the respondent asserted that it was not a large state contractor and that the complaint was untimely. The filing date for the complainant's response was on or before November 10, 2010. For the reasons set forth, the motion to dismiss is granted.

General Statutes § 4-61dd provides, in part, that: "Not later than thirty 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 concerning such personnel action with the Chief Human Rights Referee designated under section 46a-57." In this case, the specific personnel action that Ms. Mack incurred was her termination on April 29, 2010.

She did not file her complaint with the chief human rights referee, though, until September 16, 2010, which is more than thirty days after her termination.

The thirty-day statute of limitations for the filing of a whistleblower retaliation complaint can be extended only in the very limited circumstances where the complainant can prove that the doctrines of waiver, consent or equitable tolling apply. *Taylor v Office of Public Hearings*, judicial district of New Britain, Docket No. CV-09-4019897 (October 6, 2009) (2009 WL 57777929). Under the doctrine of equitable tolling, the deadline could be extended if a complainant can demonstrate that extraordinary circumstances prevented her from filing on time. *Beecher v. Dep't of Transportation*, OPH/WBR 2008-078, Motion to dismiss, p. 7 (January 7, 2009) (2009 WL 281167). Also, the respondent could be estopped from raising a defense that a complaint was untimely if a complainant could show that she knew of her cause of action but the respondent "either has misrepresented the length of the limitations period or has in some way lulled the claimant into believing that litigation was unnecessary at that time. . . . An affirmative act or statement on the part of the other party, rather than mere silence, is a necessary component of the doctrine. . . . To succeed in this argument, the claimant must show that the party sought to be estopped from raising a defense of 'untimeliness' acted with the specific intent of thwarting a timely complaint and that, in turn, the claimant acted in reliance thereupon to [her] own detriment. . . ."

(Citations omitted.) *Beecher v. Dep't of Transportation*, OPH/WBR 2008-078, Motion to dismiss, p. 6 (January 7, 2009) (2009 WL 281167).

In this case, Ms. Mack offered no evidence that the respondent waived the statute of limitations, consented to the late filing of the complaint or took any action to deter her from filing her complaint on time.

The motion to dismiss is granted and the complaint is dismissed because it was not filed within thirty days of the complainant's termination and because there is no evidence that would toll the filing deadline.

Hon. Jon P. FitzGerald
Presiding Human Rights Referee

c:
Ms. Maureen Mack
Lorenzo J. Cicchiello, Esq.
Stone Ridge Assisted Living LLC
Margaret J. Strange, Esq.