STATE OF CONNECTICUT
OFFICE OF PUBLIC HEARINGS

Andrea L. Wilson, **Complainant**	:	**OPH/WBR NO: 2008-069**
v.		
State of Connecticut **Judicial Branch,** **Respondent**	:	**January 6, 2010**

ORDER
RE: Complainant's Motion to Reconsider

On December 23, 2009, the complainant filed a motion to reconsider (motion) the order granting the Respondent's motion to dismiss (Order) issued December 8, 2009. In the Order, this tribunal dismissed certain claims alleged by the complainant in her complaint that were also pursued through the grievance process pursuant to the her collective bargaining agreement, because pursuing claims in two forums is prohibited by General Statutes § 4-61dd (b) (4).

In her motion, she argues pursuant to General Statute § 4-181a that an error of fact or law should be corrected, that new evidence had been discovered which materially affects the merits of the case and which for good reasons was not presented in the agency proceeding, and other good cause for reconsideration has been shown. The respondent filed a response to the motion on January 5, 2010. It argued that General Statute § 4-181a does not apply to the present case and even if it did, § 4-181a (a) (1) only applies to matters regarding a final decision. They stated that § 4-166 (3) specifically excludes preliminary or intermediate rulings or orders. Notwithstanding this,

the respondent also argued that the complainant failed to show the existence of any error of fact or law, new evidence or other good cause, which would warrant reconsideration.

The complainant's reconsideration request is hereby denied for the following reasons.

Discussion

General Statute § 4-181a (a) (1) states a party may file a petition for reconsideration of a final decision on the ground that:

(A) An error of fact or law should be corrected;

(B) new evidence has been discovered which materially affects the merits of the case and which for good reasons, was not presented in the agency proceeding; or

(C) other good cause for reconsideration has been shown.

Section 4-181a is applicable to contested case proceedings pursuant to § 4-61dd *et seq*., however, the Order does not constitute a final decision under § 4-181a (a) (1). Section 4-166 (3) defines "final decision" and provides that "The term does not include a preliminary or intermediate ruling or order of an agency, ..." The Order was an intermediate ruling and did not terminate the proceedings. See *Girard v. Carbones Auto Body, Inc*., 35 Conn. Supp. 625, 627 (1978). "Where the party against whom judgment is rendered is still in court and the case is open, there is not the requisite finality." *Id.* at 628. Here, the complainant's complaint with its other allegations is still pending. Therefore, the standard of law articulated in § 4-181a does not apply to the present

motion. The motion will be reviewed as a motion to reconsider an intermediate ruling not a final decision.

The complainant raises three arguments in support of her reconsideration request. First, the complainant argues that an error of fact or law should be corrected in that she was not permitted to present evidence showing that she had no control over the filing of a grievance by her union. In support of this, she states that "[t]he Connecticut Board of Labor Relations has stated repeatedly that the employee does not own the grievance and really has no control over the filing of any grievance or the ability to withdraw such grievances." She argues that she was not given the opportunity to prove that she had no choice as to which venue to pursue her claims. However, the complainant was given until December 4, 2009 to respond to the motion to dismiss that was filed on August 10, 2009 and failed to do so.

Notwithstanding her failure to respond and assuming the complainant's argument to be true, § 4-61dd (b) (4) provides mutually exclusive alternatives to filing a complaint and does not articulate who initiates the grievance via the collective bargaining agreement. General Statutes § 4-61dd (b) (4) provides in relevant part: "*As an alternative* to the provisions of subdivisions (2) [notifying the attorney general] and (3) [filing a complaint with the chief human rights referee] of this subsection: (A) A state or quasi-public agency employee who alleges that a personnel action has been threatened or taken may file an appeal not later than thirty days after learning of the specific incident giving rise to such claim with the Employees' Review Board under section 5-202, or, in the case of a state or quasi-public agency employee covered by a collective bargaining contract, in accordance with the procedure provided by such contract . . . ."

(Emphasis added.) "The statute is clear that an employee has an election of mutually exclusive alternative forums in which to challenge the consequences of a specific incident, regardless of the myriad of legal claims that may arise from the incident." *Matthews v. Danaher, III, et al.,* OPH/WBR No. 2007-062, p. 4. (Ruling on Respondents' Motion to Dismiss) (February 20, 2008); see also *Jones v. State of Connecticut, Judicial Branch, et al.* OPH/WBR 2006-032, pp. 2-4 (Ruling on Motion to Dismiss and Motion to Stay) (November 9, 2006). The mere fact that the grievance process was used is sufficient under the statute to bar filing a complaint simultaneously in another forum.

Second, the complainant argues that new evidence has been discovered which materially affects the merits of the case and which for good reasons, was not presented in the agency proceeding. She states that she had researched information regarding the rights of union employees to file or withdraw grievances but due to her illness and a family member's illness she could not provide the information to this tribunal in a timely fashion. Even assuming this to be true, the complainant still did not provide this new information with her motion to reconsider and she did not request an extension of the December 4, 2009 deadline in order to provide this new information. The complainant had from August 10, 2009 until the filing of her motion to reconsider, over four months to research and provide this alleged new information and failed to do so.

Lastly, the complainant argues that good cause for reconsideration has been shown because she became ill and experienced family problems (her family member became ill and died) which caused her to be "upset and confused" resulting in her missing her deadline to file a response to the motion to dismiss. She also argues that the respondent was given additional time to file its motion to dismiss and as a pro se

party she should be given the same courtesy. This does not constitute good cause because even if the complainant could not have responded to the motion to dismiss, she could have requested an extension to file her response prior to the December 4, 2009 deadline but failed to do so.

Actually, the complainant was provided with additional time to respond to the motion to dismiss. The respondent filed its motion to dismiss on August 10, 2009 and the complainant was ordered to file a response to the motion to dismiss by September 28, 2009. Pursuant to section 4-61dd-14 (b) of the Regulations of Connecticut State Agencies, a complainant is provided with ten (10) days to respond to a motion to dismiss. However, in this case, the complainant initially was afforded forty-nine (49) days, over 1 and ½ months to respond. Then on September 21, 2009, the complainant requested an extension to file her response. This request was granted on September 29, 2009 giving the complainant until October 20, 2009 to file her response (an additional twenty-two (22) days). On October 16, 2009, during a telephonic conference with the parties, the complainant again requested more time to respond to the motion to dismiss due to personal reasons and a family illness. This tribunal yet again granted her request and ordered that the complainant respond to the motion to dismiss on or before December 4, 2009 (an additional forty-five (45) days). In total, the complainant was provided with approximately four months to respond to the motion to dismiss. The complainant was given more than sufficient time and extensions to respond to the motion to dismiss.

As previously stated, the complainant did not request an extension to file her response prior to the December 4, 2009 deadline. In fact, through her motion to

reconsider, she expresses for the first time, her need for additional time to respond to the motion to dismiss. Her request came after the December 4, 2009 deadline and after the Order on the motion to dismiss.

So Ordered,

_____
The Honorable Donna Maria Wilkerson Brillant
Presiding Human Rights Referee

c. Attorney Richard D. O'Connor (via facsimile)
Ms. Andrea L. Wilson (via regular mail)
Attorney Martin R. Libbin (via facsimile)