STATE OF CONNECTICUT
OFFICE OF PUBLIC HEARINGS

December 7, 2015

CHRO No. 1230079 - Commission on Human Rights and Opportunities, ex rel., Carnell Artis, Complainant v. Kelly Services, Respondent;

CHRO No. 1230080 - Commission on Human Rights and Opportunities, ex rel., Carnell Artis, Complainant v. Christina Kostas, Respondent; and

CHRO No. 1230184 - Commission on Human Rights and Opportunities, ex rel., Carnell Artis, Complainant v. Covidien LP d/b/a Covidien, Respondent[1]

2015 DEC -7 PM 4:03
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Ruling on the Respective Motions for a Directed Verdict filed by Respondents Kelly Services, Inc. and Christina Kostas on October 21, 2015 and filed by Respondent Covidien LP d/b/a Covidien, on October 23, 2015

The Complainant, Carnell Artis, filed three affidavits of illegal discrimination ("affidavit" or "complaint") with the Commission on Human Rights and Opportunities ("CHRO" or "commission"), on September 2, 2011, that named are respondents (1) Kelly Services, Inc., (2) Christina Kostas, an employee of Kelly Services, Inc., and (3) U.S Surgical Corporation, d/b/a Covidien. These complaints, collectively, allege violations of Conn. Gen. Stat. section 46a-60(a)(1) based on race and age, section 46a-60(a)(4) (retaliation), 46a-60(a)(5) (aiding and abetting), and section 46a-58(a), as based upon a violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e and the Civil Rights Act of 1991, and a violation of 46a-58(a) based on a violation of the Age Discrimination and Employment Act of 1967, 29 U.S.C. 621-634.[2]

On or about February 27, 2014, the commission sent provided notice to the parties that the case had been processed pursuant to section 46a-83(c)(2), the commission's early legal intervention (ELI) program, and were being sent directly to public hearing. On March 14, 2014, the undersigned was assigned the presiding human rights referee and a notice of contested case proceeding and hearing

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[1] Counsel for Respondent Covidien LP (formerly Tyco Healthcare Group LP), d/b/a Covidien, is the proper respondent, and that Covidien was wrongly named U.S. Surgical Corporation d/b/a Covidien Corporation in the complaint. See Covidien's Motion for Directed Verdict, p. 1.

[2] The complainant indicated on the affidavits that the respondents had violated the substantive provisions of the Age Discrimination in Employment Act of 1967 ("ADEA"). Section 46a-58(a) does not include "age" among its protected classes; therefore, this tribunal is not authorized to find a violation of the substantive provisions of the ADEA under that section.

conference was issued. The initial hearing conference was convened on July 30, 2014 and the hearing conference summary and order was issued that afternoon. All statutory and procedural prerequisites having been satisfied, the complaint is properly before this tribunal for hearing and decision.

A one-day public hearing for was held on October 14, 2015. The Complainant was represented by Attorney Daniel H. Kryzanski. Attorney Steven Potter appeared for the Kelly Services, Inc. and Christina Kostas. On October 21, 2015, respondent's counsel a motion for a directed verdict, arguing that the complainant submitted no evidence of discriminatory animus during the hearing. On November 2, 2015, complainant's counsel filed an objection to the motion for a directed verdict.

Based upon a thorough review of the testimony and exhibits presented during the public hearing, and my assessment of the credibility of the witnesses, I conclude that insufficient evidence was adduced during the public hearing to satisfy the complainant's burden of establishing a prima facie case for the alleged violation of 46a-60(a)(1); 46a-60(a)(5); and 46a-58(a), enforcing the Title VII prohibiting discrimination on the basis of race. The respondents' respective motions are granted.

Facts

Based upon a thorough review of the testimony and exhibits presented during the public hearing, and my assessment of the credibility of the witnesses, the following facts are found –

The complainant is an African-American male. On July 8, 2011, he was 58 years old.

In January 2011, the complainant was hired on a temporary basis by Kelly Services, Inc., to work in North Haven, Connecticut manufacturing facility of Covidien LP (formerly Tyco Healthcare Group LP). His position was a Quality Control Inspector ("QCI"). At his request, Covidien permitted Artis to begin his shift, approximately one and a half hours later than the normal start of the second shift.

Although all QCIs, including the complainant, took turns performing sampling in the warehouse, there was no formal schedule regarding the rotation of QCIs to the warehouse. The changing demands of the manufacturing schedule determined the inspection work that needed to be accomplished and assigned to each available QCI at any given time.

On July 8, 2011 , Gregory Lewis, the complainant's regular shift supervisor was out on vacation, so Ms. My Lam, the fill-in lead Quality Control Inspector, was responsible for assigning work to the QCIs. That day, the complainant's co-workers, Jason Bourgeois and Peter Grasso, both Caucasian, had arrived for their shift at 3:00 p.m. My Lam assigned them to work on inspection jobs related to high priority manufacturing needs that demanded immediate attention.

On July 8, 2011, once Artis arrived at work at 4:30 p.m., he reported to My Lam for his work assignment. She asked the complainant, a number of times, to go to the warehouse because his colleagues were otherwise occupied on time sensitive projects. There was some inventory sampling work that needed to be done. The complainant admitted to enjoying the warehouse inspection work. Nevertheless, the he refused her requests to do so because he had worked in the warehouse the day before. Artis believed that it was not his turn to work in the warehouse.

Shortly after the complainant refused to work in the warehouse, Covidien told Kelly Services, Inc. it no longer wished to engage the services of the complainant because he refused to perform a task that his supervisor asked him to do, even though the task was a routine part of his job. On July 12, 2011, received notice of his termination.

My Lam, Bourgeois, and Grasso did not meet and conspire to force the complainant to work in the warehouse.

The complainant did not report to anyone affiliated with Kelly Services, Inc., Kostas, or Covidien, prior to his termination, that he ever experienced allegedly discriminatory conduct.

Analysis

Contested Cases within the jurisdiction of the Office of Public Hearings ("OPH") are governed by the Connecticut Uniform Administrative Procedures Act ("UAPA") and the Regulations of Conn. State Agencies ("Regulations") Section 46a-54-78a, et seq. Subdivision (4) of subsection (d) of Regulations section 46a-54-88a states, "[t]he presiding officer may, on his or her own or upon motion by a party, dismiss a complaint or portion thereof if the complainant or the commission: ... (4) Fails to sustain his or her burden after presentation of the evidence." I interpret the respondents' respective motions for a directed verdict to be a motion under this provision of the regulations.

There is no dispute that the complainant belongs to one or more protected classes based on his age and race. Nor is there any dispute that he was qualified to do the QCI job. He was terminated, so he suffered an adverse employment action. The critical question, therefore, is whether the complainant has adduced sufficient evidence from which this tribunal could infer that the respondent's possessed a discriminatory animus. Although the complainant's burden is de minimus under the first prong of the familiar McDonnell-Douglas test, the complainant must present evidence from which an inference of discrimination may be made.[3]

After reviewing the arguments contained in the respective motions for directed verdict, and the complainant's objection, filed November 2, 2015, and respondent Covidien's reply to the complainant's opposition, dated November 12, 2015, as well as the pleadings, the public hearing transcript, and the exhibits entered into the record, and considering all evidence in the light most favorable to the complainant, I have determined that insufficient evidence has been adduced to satisfy the complainant's prima facie case burden for the alleged violation of Conn. Gen. Stat. Sections 46a-60(a)(1) on the basis of race or age; and/or the alleged violation of 46a-58(a) on the basis of race.[4]

The undersigned, also, has identified no evidence in the record, either direct or circumstantial, that can lead to the conclusion that the legitimate business reasons offered by respondents for terminating the complainant's employment were a pretext for discrimination. The complainant failed to produce any evidence that the reason offered by the respondents, his refusal to do his job when asked to do so, was not credible.

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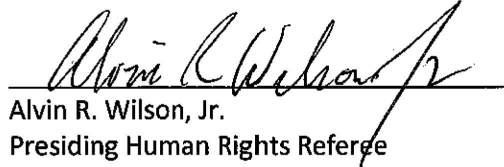
[3] The applicable test for a disparate treatment case is set forth in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1983). The complainant must show that: (1) he belongs to a protected class; (2) he was qualified for the position held; (3) he was discharged; and (4) the discharge occurred in circumstances giving rise to an inference of discrimination on the basis of his/her membership in that class. "When a plaintiff alleges disparate treatment, 'liability depends on whether the protected trait ... actually motivated the employer's decision." ... That is, the [alleged protected trait] must have 'actually played a role in [the employer's decision making] process and had a determinative influence on the outcome.' ... Recognizing that 'the question facing triers of fact in discrimination cases is both sensitive and difficult,' and that '[t]here will seldom be 'eyewitness' testimony as to the employer's mental process,' ..., the Courts of Appeals ... have employed some variant of the framework articulated in McDonnell Douglas to analyze [discrimination] claims that are based primarily on circumstantial evidence." Reeves at 141. "McDonnell Douglas and subsequent decisions have 'established an allocation of the burden of production and an order for the presentation of proof in ... discriminatory-treatment cases.' St. Mary's Honor Center v. Hicks, 509 US 502, 506 (1993)." Reeves at 142.

[4] Additionally, no evidence was adduced to support a finding that any of the respondents violated section 46a-60(a)(4) or section 46a-60(a)(5).

There is insufficient evidence from which the undersigned reasonably can conclude that the decision to terminate his employment was based on a discriminatory motive. There is no evidence that the complainant was subjected to any discriminatory treatment by the respondents or any of its employees or supervisors.

In light of the foregoing, in accordance with the provisions of Subdivision (4) of subsection (d) of § 46a-54-88a of the Regulations of Connecticut State Agencies, it is hereby ordered that the complaints be, and hereby are, DISMISSED.

So ordered this 7th day of December 2015.



Alvin R. Wilson, Jr.
Presiding Human Rights Referee