STATE OF CONNECTICUT
COMMISION ON HUMAN RIGHTS AND OPPORTUNITIES
OFFICE OF PUBLIC HEARINGS

Commission on Human Rights and Opportunities, ex rel. Troy B. Williams, Complainant

CHRO. NO. 0530408
EEOC NO. 16AA500960

v.

State of Connecticut Judicial Branch,
Respondent

June 29, 2011

FINAL DECISION

Procedural Background

The public hearings in this matter were held on 9 dates beginning May 11, 2010 and ending June 23, 2010. The complainant, Troy B. Williams (hereinafter referred to as either "complainant" or "Williams") appeared pro se, Commission Counsel David Kent appeared for the Commission On Human Rights and Opportunities (hereinafter referred to as "the Commission" or "CHRO") and respondent State of Connecticut Judicial Branch (hereinafter referred to as either "respondent" or "Judicial Branch") was represented by Attorney George J. Kelly Jr. of the law firm of Siegel, O'Connor, O'Donnell & Beck, P.C.

The parties have submitted post-trial briefs containing their respective proposed finding of facts and conclusions of law. The parties hereto have executed a written stipulation of facts which are set forth herein as Finding Of Facts Numbers 3-8.

Additionally, on June 8, 2010, pursuant to my request as the Presiding Human Rights Referee, Superior Court Judge Barbara Quinn, Administrative Judge for the Judicial Branch, authorized the undersigned, the pro se claimant and counsel of record to conduct a site visit to more fully understand the physical layout of the gymnasium at the Hartford Juvenile Detention Center where the subject basketball game was played. All participants were required to execute a confidentiality agreement. Said order and consent are attached hereto and made a part hereof as attachments "A" and "B". Said site visit was completed as described on Jun 8, 2010.

The original complaint in this action was filed on March 21, 2005 with the Office of Public Hearings (hereinafter "OPH") It alleged that complainant was discriminated against by respondent on the basis of race, color and physical disability for suspending Williams for five days without pay in January 2005.

Subsequently, complainant's employment was terminated in June 2005 following his participation in a May 6, 2005 basketball game with juvenile detainees at the Hartford Juvenile Detention Center. In that game, complainant became embroiled with a basketball "gripe" by the detainee whom complainant was guarding and a physical altercation ensued.

Complainant thereafter amended his original complaint claiming discrimination based on race, color and disability to include allegations that, in addition to the earlier

discrimination his termination was in retaliation for having filed the original CHRO complaint.

Upon a finding of reasonable cause, the case was certified to a public hearing. It was then assigned to me, Jerome D. Levine, as the Presiding Human Rights Referee. In addition to documentary exhibits, there was an actual videotape of the basketball game that captures the relevant events as they occurred. R-11. Respondent has defended its actions by claiming that claimant's termination was not in retaliation for the original complaint, but because it had a legitimate business reason to do so, i.e. that complainant had used excessive force against one of the detainees in the aforementioned basketball game. In addition, respondent defended its actions for the 5 day suspension claiming it was justified based on progressive discipline; that when it was imposed, it was merely the next normal and logical step in a series of disciplinary actions (previous steps included an accumulation of warnings) based on complainant's failure to comply with his employer's work rules. Respondent vigorously contested complainant's allegations of discrimination based on his claims of race, color and disability discrimination.

Finding of Facts

Based upon a review of the pleadings, exhibits, and transcripts and an assessment of the credibility of the witnesses, the followings facts relevant to this decision are found:

1. All statutory and procedural prerequisites to the holding of the public hearing having been having been met, the case is properly before me as the Presiding Human Rights Referee.
2. The State of Connecticut Judicial Branch is a state agency.
3. Troy B. Williams is African American and black. Stipulation no. 1.
4. Respondent employs more than 15 persons. Stipulation No. 2.
5. Complainant was hired by respondent as a Temporary Juvenile Detention Officer and he began work on or about June 20, 1996. On or about October 25, 2006[2], complainant was appointed Juvenile Detention Transportation Officer. Stipulation No. 3.
6. Mark Guasta, Deputy Superintendent, Hartford Detention, was complainant's supervisor during complainant's employment with the respondent. Stipulation No. 4.
7. On March 21, 2005, complainant initiated the instant CHRO complaint alleging that respondent discriminatorily imposed a five day suspension because of his race and color. Stipulation No. 5.
8. The respondent terminated the complainant's employment on or about June 24, 2005.[2] Stipulation No. 6.

9. The respondent has adopted and employs as a personnel policy a program known as "Progressive Discipline." Tr.1393, ll. 23-34 – 1394, ll. 1-8. Tr. 1413, ll. 11-24.

10. During his 9 years of employment by respondent, complainant was assigned to work under the supervision of respondent's employee, Mark Guasta. Tr. 145, l.24-146, l.4.

11. Respondent's notice of 5 day suspension detailed the complainant's prior disciplinary record and warned him that any future violations would result in serious discipline including possible termination. R-3.

12. Complainant wore a Pittsburgh Steelers football type jersey over his work attire on or about January 25, 2005 while on transportation duty. Such an outfit did not comply with the clothing attire guidelines previously promulgated by complainant's supervisor, Mark Guasta. Tr. 262, ll. 3-10, Tr. 790, ll. 2-3.

13. Complainant took strong exception to Guasta's criticism about wearing the Steeler's jersey. Tr. 791, l. 20. Tr. 792, l.6. Tr. 793, ll. 9-14.

14. It was within Guasta's rights as a supervisor to specify acceptable attire for his employees as Juvenile Transportation Officers. Tr. 797, l. 23 – 798, l.19.

15. Complainant's position was as a Juvenile Transportation Officer, transporting juvenile detainees to and from court, to and from juvenile detention facilities, and to and from medical/dental appointments. Tr. 130, 147.

16. Complainant testified that he was invited to join a detainee basketball game upon his arrival as a Juvenile Transportation Officer at the Hartford Juvenile Detention Center on May 6, 2005. Tr. 133, ll. 3-17.

17. This was not unusual and in fact was encouraged by the respondent. Tr. 1428, ll. 5-17.

18. While participating in the basketball game, respondent considered complainant to still be on duty and that his function was that of a Juvenile Detention Officer. Tr.

19. Respondent's policy, which had previously been made known to claimant, was to employ him as a teacher, mentor and role model from whom the detainees were to observe and learn good sportsmanship. Tr. 1428, ll. 9-17.

20. The level of play in the subject basketball game was too intense and more closely resembled "street ball" than the type of recreational game typically experienced by the detainees in a normal gym class. R-11, Tr.1430, ll. 11-15.

21. Complainant's level of play was too intense and aggressive as to the detainee Paul. R-11.

22. At the time of the basketball game, the detainee Paul was 16 years old, approximately six feet tall and weighed approximately 180 lbs.

23. At the time of the basketball game, complainant was a staff member, was 38 years old and approximately six feet tall and weighed approximately 180 lbs.

24. Complainant was guarding detainee Paul and knocked the ball out of his hands Paul took exception to this play and when complainant turned around, Paul started muttering a "basketball gripe." Tr. 304, ll. 1-17.

25. Complainant turned around and faced Paul, squared up and face to face. Tr. 1432, ll. 11-18, R-11.

26. Standing squarely in front of a detainee was in violation of the previous training respondent had given complainant when confronted with a hostile detainee. Tr. 1432, ll.11-18.

27. Complainant testified that he felt threatened and in danger from detainee. Tr.

28. Complainant decided to try to create space between them by employing what was an unplanned physical restraint. Tr

29. Complainant attempted to pick up detainee by lifting him under his armpits

30. Instead, complainant grabbed detainee's uniform by the collar and they struggled until two staff members, Germain Fleeting and Angel Soler reached the complainant and detainee and completed a restraint on detainee. R-11.

31. The respondent had established a written official use of force policy for its staff members when dealing with detainees. R-6, ¶ 4.A.

32. The policy states the following::

a. "{w} henever possible, control and compliance will be achieved by verbal intervention, defusing tension, warning, reprimand, direct order or disciplinary action. Force will be the course of last resort." R-6. ¶ 4. E.

b. "Force will only be used to the degree and duration necessary to achieve control of the detainee..."

c. Under no circumstances will unnecessary, inappropriate, or excessive force be used. Violation of this provision may result in discipline up to termination for the first offense." R-6 ¶ ¶ 4C and 4D.

33. As a result of this basketball game and physical restraint complainant applied to the detainee Paul, he was questioned at the Hartford Juvenile Detention Center

by Jennifer Alicea (nee Bott) the assistant superintendent at the Hartford Juvenile Detention Center. R-4.

34. When complainant became defensive and uncooperative, Ms. Bott asked him to leave the premises and she then filed a written report with Joel Riley, respondent's HR professional and Leo Arnone, then Deputy in charge of detention services. R-4.

35. Messrs. Riley and Arnone reviewed Ms. Bott's report and based upon Mr. Arnone's conclusion as to the seriousness of the incident decided that he and Mr. Riley would handle the investigation.

36. Messrs. Riley and Arnone reviewed the videotape of the basketball game 3 times along with staff reports. Tr. 1456, ll. 16-19.

37. Mr. Arnone testified that he was upset with what he saw on the basketball game videotape. Tr. 1438, ll. 20-21.

38. Mr. Riley notified complainant that there was going to be a pre-disciplinary meeting about the May 6, 2005 basketball game. CHRO-15.

39. The purpose of the pre-disciplinary meeting was to notify complainant of the potential for discipline and to give him a chance to respond CHRO- 15

40. Arnone later held a pre-disciplinary meeting with complainant at which he had a further opportunity to address the findings of the investigation. Tr. 1436, ll. 1-24 – 1437, l.1.

41. The pre-disciplinary meeting was attended by complainant, his union representative, Mr. Arnone, and Mr. Riley. Tr. 1355, l.17-1356, l.6.

42. At the meeting, Mr. Arnone explained to complainant that there were serious violations of use of force policy he saw in his review of the video. Tr. 1356, l.7 – 1357, l.13.

43. The complainant stated that he had started the restraint because he had felt threatened by the detainee Paul. Tr. 1357, ll.18-22,

44. When questioned about what he would do differently in the same situation, complainant responded that all he could think of was not to play the game Tr. 865, ll.8-13.

45. Following his investigation and meetings with complainant, Arnone recommended to William Carbone, Executive Director of CSSD, that complainant be terminated. Tr. 1403, ll. 21-24 – 1404, ll. 1-4.

46. Carbone, who had the final decision-making authority, made Arnone and Riley go over the facts again. Tr. 1402, ll. 11-19.

47. At the time of the investigation, Mr. Arnone had the following qualifications and expertise 1) Over 30 years of experience in corrections and juvenile correction. 2) Service as warden and regional director in the Connecticut Department of Corrections. 3) Superintendent of two juvenile detention centers. 4) Deputy Director for detention. Currently, he is bureau chief for juvenile services for the Connecticut Department for Children and Families. Tr. 1420, l. 9 - 1422, l.14.

48. Based on his review of the videotape, the detention center report and the results of the pre-disciplinary meeting, Mr. Arnone concluded that he had to recommend to Mr. Carbone that the complainant's employment be terminated. Tr. 1474, ll. 2-12.

49. At the meeting attended by Messrs. Arnone, and Riley, Carbone asked them to go over all of the events including the written reports, review of the videotape and the results of the pre-disciplinary meeting. Tr. 1158, l. 19 – 1159, l. 5.

50. Mr. Carbone requested them to review with him again the facts of the physical restraint that they determined mandated termination. Tr. 1159, ll. 6-10.

51. Consequently, Mr. Carbone approved the termination and signed the June 21, 2005 termination letter informing complainant of his termination and the reasons that supported it. CHRO – 16.

52. Respondent's decision to terminate complainant was not based on his race, color, disability, nor was it made in retaliation for his filing of the original complaint in this action.

53. Respondent's decision to terminate complainant was made in accordance with respondent's established written policies regarding use of force by a staff member on juvenile detainees.

Legal Analysis

The pertinent statutes involved in these proceedings are:

1) Connecticut Fair Employment Practices Act ("CFEPA"); Conn. Gen. Stat. § 46a-58(a); Conn. Gen. Stat. § 46a-60. (Discriminatory Employment Practices Prohibited).

2) Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000e-2).

3) Civil Rights Act of 1991 (42 U.S.C. § 1981a).

4) Americans with Disabilities Act (42 U.S.C. § 12101 et. seq.).

Actions under CFEPA are measured according to the three-step, burden-shifting analysis articulated by the United States Supreme Court in its decision in *McDonnell-Douglas Corp. v. Greene*, 411 U.S. 792 (1973).

Under this approach, the complainant must first meet the three-part test for proving a prima facie case. To do so, he must prove that:

1. He is a member of a protected class
2. He was qualified for his position
3. He suffered an adverse personnel action

If the complainant satisfies each part of this test, the respondent then has the burden to come forward with a legitimate reason for the employee's termination.

A. The complainant has proven that he was a member of the protected class - black and African-American and therefore, he satisfies the first prong of the *McDonnell-Douglas* test. Complainant also satisfies the second and third prongs of the test - he was qualified for his position and he suffered an adverse personnel action. Therefore, he has established a prima facie case of discrimination. The burden shifts to the respondent to establish a legitimate reason for its actions. The respondent has done so. Complainant's actions in the basketball game were so egregious and at variance with his training and his employer's expectations that termination was the only logical course of action. Complainant's dogged defense of his actions, stating that if he were in that situation again, the only alternate course of action was to not play the game, is flawed.

The record in this case is totally devoid of any direct evidence of any kind of discrimination against the complainant. I find no inference of discrimination. Obviously, with no finding of discrimination by respondent, complainant's proffered damage analysis fails and is not applicable. In reaching these conclusions, I have found the credentials, experience, analysis and testimony of respondent's witness Leo Argonne to be the most credible and persuasive. He has spent most of his adult life devoted to developing and administering enlightened corrections. The misfortune in this case is that Mr. Williams, who presents himself as likeable and a generally pleasant individual, made a major mistake. He couldn't or wouldn't own up to it and by advancing his position that the detainee's conduct should be considered along with complainant's conduct as an adult staff member, has harmed Mr. Kent's ambitious and well-crafted claims and attempted defense. Complainant set a very poor example for a gym full of juvenile detainees on the proper method of conflict resolution.

Conclusions

I have twice watched the videotape of the basketball game in question. My distinct impressions are that the level of competition was too intense. The game degenerated into what is commonly known as "street ball." This is particularly true with the match up play between the detainee Paul and the complainant. Watching the complainant's actions on the videotape, they appear unnecessarily aggressive and certainly more aggressive than appropriate for an adult supervisor playing with a whole group of detainees.

The complainant became overly caught up in the level of competition, forgot his proper role as a staff member, had at least two opportunities to de-escalate the situation, but failed to do so. He walked away from the first confrontation, but upon hearing detainee Paul's verbal basketball "gripe", he turned around to face Paul and therefore initiated a second confrontation. Bureau Chief Leo Arnone's testimony was particularly instructive and crystallized the elements of the dispute. "Well, yeah, I mean to have an incident like this occur with all the kids, with two staff in the area, those staff were put in danger, those other kids were put in danger. I mean, this isn't just about two people having an argument on a basketball court. This is about the security of a facility. This is about the safety of staff. This is about the safety of the other kids. This is about what we teach kids when we lose our temper. I mean everything we do, everything we've worked to correct in the juvenile detention system was just thrown out the window that day." Tr. 1438, ll. 1 – 11.

His many years of experience and expertise reflect the proper standards when dealing with juvenile detainees, from both a practical and legal point of view.

Most disturbing to Mr. Arnone and ultimately to me as the trier of facts were complainant's zealous defense of his actions without reflection that he might have or should have acted differently. Also disturbing is the complainant's inability to acknowledge and appreciate that a higher standard of behavior is required and expected of an adult staff member than the behavior to be expected of a 16 year old

juvenile detainee whose behavior in some respect is immature and likely to be part of the factual pattern that resulted in his becoming a juvenile detainee.

Supreme Court Justice Anthony Kennedy, in writing the majority opinion in *Donald P. Roper, et al v. Christopher Simmons*. 543 U.S.551 (2005), the decision outlawing the death penalty for crimes committed by those under the age of 18 and relying on the most recent research on the adolescent brain, stated "As any parent knows, youths are more likely to show a lack of restraint and an underdeveloped sense of responsibility than adults."... These qualities often result in impetuous and ill-considered actions and decisions." Experts say that even at the ages of 16 and 17, when compared to adults, juveniles on average are more: impulsive, aggressive, emotionally volatile, likely to take risks, reactive to stress, vulnerable to peer pressure, prone to focus on and overestimate short-term payoffs and underplay longer-term consequences of what they do and are likely to overlook alternative courses of action. **See *ABC News* Report on *USA Today* article entitled, "Experts link teen brains' immaturity, juvenile crime".** Complainant's answer to the question of what he would do differently if he had an opportunity to have, in golf terms, a "mulligan," (do-over) is unrealistic and unsatisfactory. His answer that the only thing he could think of to do differently is not to play the game shows a lack of good judgment that would give his employer doubts about the likely judgment complainant might exercise the next time he is confronted with a fractious juvenile detainee situation. It is not the proper role of this tribunal to second guess respondent's legitimate administration of its personnel rules in a case such as this in which there is no proof of any discrimination nor retaliation.

Conclusions of Law

1. The complainant has failed to prove by a preponderance of the evidence that he was discriminated against by respondent in violation of state and/or federal law based on his race (African American), color (black) or physical disability.
2. The complainant has not established a causal connection between his initial filing of the original complaint in this action and his allegations that his termination was in retaliation for doing so.
3. Even if there were such an inference of retaliation, the respondent has effectively articulated legitimate business reasons for its actions in imposing the 5 day suspension and ultimately the termination.
4. The complainant has failed to sustain his burden of proof on all the substantive allegations in this proceeding.

ORDER

I hereby order this case dismissed.

Dated at Hartford, Connecticut this 29th day of June, 2011.

Hon. Jerome D. Levine, HRR

Hon. Jerome D. Levine,
Presiding Human Rights Referee

cc. Mr. Troy B. Williams, via first class mail
David L. Kent, Esq. via first class mail
George J. Kelly, Jr. Esq. via first class mail

[1]Complainant's exhibits are identified as "C" followed by the exhibit number. Respondent's exhibits are identified as "R" followed by the exhibit number. Office of Public Hearings (OPH) exhibits are identified as "OPH" followed by the exhibit number. Transcript pages are identified as "Tr". followed by the page number. A single I indicates a single line of the transcript. A double I indicates multiple lines of the transcript.

[2] The dates set forth in Finding of Facts Numbers 5 and 8 are set forth herein as stipulated to by all parties. Upon closer examination, it becomes clear that those dates are inconsistent. The parties have represented that they will file corrected dates and/or corrected stipulations.

ATTACHMENT "A"

STATE OF CONNECTICUT
COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES

Commission on Human Rights and Opportunities, ex rel. Troy B. Williams COMPLAINANT	: CHRO No. 0530408 : :
v.	
State of CT Judicial Branch RESPONDENT	: June 8, 2010

CONSENT TO BE BOUND BY ORDER RE VISIT TO JUVENILE DETENTION CENTER

In accordance with the Order entered by the Honorable Barbara M. Quinn, Chief Court Administrator dated June 7, 2010, a copy of which is attached hereto, the undersigned acknowledges as follows:

(1) I have received a copy of this Order,

(2) I understand the terms of the Order;

(3) I agree to comply with the Order.

DATED: June 8, 2010

Jerome D. Levine
Presiding Human Rights Referee
Office of Public Hearings

ATTACHMENT "B"

ORDER

The Court, having determined that Presiding Human Rights Referee Jerome D. Levine has a legitimate interest in observing the gymnasium of the Hartford Juvenile Detention Center as part of his hearing of the discrimination complaint filed by Troy Williams, consistent with Connecticut General Statutes section 46b-124 and the policies and procedures adopted pursuant o Connecticut General Statutes section 51-36a, it is hereby ORDERED that subject to the conditions set forth below, Referee Levine, the parties and counsel, including counsel for the Commission on Human Rights and Opportunities, are authorized to tour the gymnasium at the Hartford Juvenile Detention Center at such time and date as the Center Superintendant determines will minimize the risk of contact with detainees. It is further ordered that to the extent that Referee Levine, the parties or counsel observe or otherwise learn of the identity of juveniles while at the Juvenile Detention Center, they shall not at any time disclose the name or identifying information regarding such juvenile(s) to anyone. A copy of this Order shall be provided to each person authorized to tour the Hartford Detention Center pursuant to this Order and admission to the Detention Center shall be contingent upon such person signing a statement (1) acknowledging receipt of a copy of this Order, (2) indicating his or her understanding of the Order, and (3) indicating his or her agreement to comply with the Order.

Judge of the Superior Court

6/7/2010
Date