DOCKET NO. HHD-CV21-6145007-S	:	SUPERIOR COURT
MICHELLE SZELUGA	:	JUDICIAL DISTRICT
V.	:	OF HARTFORD
SINCLAIR INSURANCE GROUP, INC.	:	DECEMBER 28, 2023

MEMORANDUM OF DECISION RE: MOTION FOR SUMMARY JUDGMENT (121.00)

The defendant has moved for summary judgment (121.00) on the plaintiff's complaint (100.31), which alleges two violations of the Connecticut Fair Employment Practices Act ("CFEPA"), General Statutes § 46a-60 (b) (1): disability discrimination (First Count) and failure to accommodate (Second Count). The crux of the plaintiff's complaint is that the defendant terminated her employment because of her diagnosis of early onset Alzheimer's disease and that it failed to accommodate her disability. The defendant contends that there are no genuine issues as to any material facts on both counts of the plaintiff's complaint and that it is entitled to judgment as a matter of law. The plaintiff filed an objection (124.00), arguing that there remain questions of material fact that preclude the entry of summary judgment on both counts. The defendant filed a reply memorandum (126.00). The court heard oral argument on September 5, 2023, and now issues the following memorandum of decision.

FILED

DEC 28 2023

HARTFORD J.D.

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I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

The record reveals the following facts, which are undisputed unless otherwise indicated.

The defendant is an insurance agency in Wallingford, Connecticut, that provides insurance agent and broker services to businesses and individuals. It employed the plaintiff as an account manager from 1994 until January 21, 2020. As an account manager, the plaintiff was responsible for servicing a variety of the defendant's business clients, which included issuing insurance certificates, marketing applications for insurance coverage, composing email communications, preparing documents for submission to third parties and working independently in the office as part of the defendant's team. The plaintiff worked for the agency for many years without apparent difficulty until 2018, when the quality and quantity of her work began to deteriorate. This was observed by her coworkers, and several of the defendant's clients complained about her incompetent and untimely service. As a result of the plaintiff's mistakes, the defendant lost two clients and at least one client asked to have its account reassigned to another manager. Another client received a threat of legal action by its landlord because of a mistake made by the plaintiff.

In May of 2019, during a meeting with her supervisor, John Tillestrand, to discuss her performance issues, the plaintiff disclosed for the first time that she was suffering from early onset Alzheimer's disease. At no time, before or after this disclosure, did the plaintiff ask for any accommodation that would enable her to perform satisfactorily the essential functions of her job, even though, upon learning

of her diagnosis, the defendant repeatedly asked the plaintiff and her health care providers to propose an accommodation. Tillestrand encouraged her to take notes during their meetings to ensure that she could follow his instructions, and over several months, he reduced the book of business assigned to the plaintiff to help her manage her workload. After this adjustment, the volume of business assigned to the plaintiff was a fraction of the workload assigned to other account managers. Tillestrand's performance reviews became more negative, and on December 13, 2019, he issued a memorandum to the plaintiff advising her that her performance would be monitored for improvement over the next thirty days and that, without improvement, she would be subject to disciplinary action, up to and including termination. The plaintiff was terminated on January 21, 2020. In an application for Social Security Disability benefits filed after her termination, she stated that she had been unable to function or work as of January 19, 2020, two days before she left employment with the defendant. Since that time, the plaintiff's condition progressed to the point that she could not continue with her deposition; she has admitted that she is unable to testify in a continued deposition or at trial. Additional facts are supplied as necessary.

II. ANALYSIS

A. Legal Standard for Summary Judgment

The motion for summary judgment is designed to eliminate the delay and expense accompanying a trial where there is no real issue to be tried. See *Dowling* v. *Kielak,* 160 Conn. 14, 16, 273 A.2d 716 (1970). The standard of review applicable to motions for summary judgment is well established in our law. "Practice Book § [17-

49] provides that summary judgment shall be rendered forthwith if the pleadings, affidavits and any other proof submitted show that there is no genuine issue as to any material fact and that the moving party is entitled to summary judgment as a matter of law. . . . In deciding a motion for summary judgment, the trial court must view the evidence in the light most favorable to the nonmoving party. . . . The party seeking summary judgment has the burden of showing the absence of any genuine issue [of] material facts which, under applicable principles of substantive law, entitle him to a judgment as a matter of law . . . and the party opposing such a motion must provide an evidentiary foundation to demonstrate the existence of a genuine issue of material fact. . . . [I]ssue-finding, rather than issue-determination, is the key to the procedure. . . . [T]he trial court does not sit as a trier of fact when ruling on a motion for summary judgment. . . . [Its] function is not to decide issues of material fact, but rather to determine whether any such issues exist." (Internal quotation marks omitted.) *Northrup* v. *Witkowski,* 175 Conn. App. 223, 230-31, 167 A.3d 443 (2017), aff'd, 332 Conn. 158, 210 A.3d 29 (2019). "It is not enough for the moving party merely to assert the absence of any disputed factual issue; the moving party is required to bring forward . . . *evidentiary facts,* or *substantial evidence outside the pleadings* to show the absence of any material dispute." (Emphasis in original.) *Doty* v. *Shawmut Bank,* 58 Conn. App. 427, 430, 755 A.2d 219 (2000). The legal standard applicable to the movant is strict. See *Ramirez* v. *Health Net of the Northeast, Inc.,* 285 Conn. 1, 11, 938 A.2d 576 (2008) ("courts hold the movant to a strict standard"); see also *Anderson* v. *Gordon, Muir & Foley, LLP,* 108 Conn. App. 410, 416, 949 A.2d 488, cert.

denied, 289 Conn. 927, 958 A.2d 156 (2008). "The test is whether a party would be entitled to a directed verdict on the same facts." (Internal quotation marks omitted.) *Doty* v. *Shawmut Bank, supra,* 431.

In response to a summary judgment motion, "the party opposing summary judgment must substantiate its adverse claim by showing that there is a genuine issue of material fact together with the evidence disclosing the existence of such an issue. . . . To oppose a motion for summary judgment successfully, the nonmovant must recite specific facts in accordance with Practice Book . . . §§ 17-45 and 17-46 . . . which contradict those stated in the movant's affidavits and documents and show that there is a genuine issue of material fact for trial. If he does not so respond, summary judgment shall be entered against him." (Citation omitted; internal quotation marks omitted.) *Doty* v. *Shawmut Bank*, supra, 58 Conn. App. 430. A party opposing the motion "must provide an evidentiary foundation to demonstrate the existence of a genuine issue of material fact." *Appleton* v. *Board of Education,* 254 Conn. 205, 209, 757 A.2d 1059 (2000). Mere assertions of fact are insufficient to establish the existence of a material fact and cannot rebut properly presented evidence in support of the motion. See *Maffucci* v. *Royal Park Ltd. Partnership,* 243 Conn. 552, 554-55, 707 A.2d 15 (1998). "[A] party may not rely on mere speculation or conjecture as to the true nature of the facts to overcome a motion for summary judgment." *Doty* v. *Shawmut Bank,* supra, 58 Conn. App. 430. "The existence of [a] genuine issue of material fact must be presented by counter-affidavits and concrete evidence." (Internal quotation marks omitted.) *Pion* v. *Southern New England*

Telephone Co., 44 Conn. App. 657, 663, 691 A.2d 1107 (1997). In the context of a motion for summary judgment, a material fact "[is] a fact [that] will make a difference in the result of the case." (Internal quotation marks omitted.) *Romprey* v. *Safeco Ins. Co. of America,* 310 Conn. 304, 313, 77 A.3d 726 (2013).

"The burden of proof that must be met to permit an employment-discrimination plaintiff to survive a motion for summary judgment motion at the prima facie stage is de minim[i]s. . . . Since the court, in deciding the motion for summary judgment, is not to resolve issues of fact, its determination is whether the circumstances giv[e] rise to an inference of discrimination must be a determination of whether the proffered admissible evidence shows circumstances that would be sufficient to permit a rational finder of fact to infer a discriminatory motive." *Agosto* v. *Premier Maintenance, Inc.*, 185 Conn. App. 559, 570, 197 A.3d 938 (2018).

B. Count One: Disability Discrimination

General Statutes § 46a-60 (b) (1) of the Connecticut Fair Employment Practices Act ("CFEPA") "prohibits an employer from refusing to hire, discharging, or otherwise discriminating against any person on the basis of . . . present or past history of mental disability, intellectual disability, learning disability, [or] physical disability." (Internal quotation marks omitted.) *Barbabosa* v. *Board of Education of Manchester*, 189 Conn. App. 427, 437, 207 A.3d 122 (2019). To make a prima facie case for disability discrimination under this statute, the plaintiff must prove that: (1) she suffered from disability as defined under the law; (2) she is nevertheless able to perform the essential functions of their job, either with or without reasonable

accommodation; and (3) the defendant took an adverse employment action against her, in whole or in part, because of her protected disability. Id.; see also *Feliciano* v. *Autozone, Inc.*, 316 Conn. 65, 73, 111 A.3d 453 (2015); *Curry* v. *Allan S. Goodman, Inc.*, 286 Conn. 390, 426, 944 A.2d 925 (2008). Once the plaintiff makes out a prima facie case of disability discrimination, "[t]he employer may then rebut the prima facie case by stating a legitimate, nondiscriminatory justification for the employment decision in question. . . . The employee then must demonstrate that the reason proffered by the employer is merely a pretext and that the decision actually was motivated by illegal discriminatory bias." (Citations omitted; internal quotation marks omitted.) *Feliciano* v. *Autozone, Inc.*, supra, 74.

The parties agree that the plaintiff has established the first prong of a case of disability discrimination, namely, that the plaintiff suffered from a disability.

1. Was the Plaintiff "Qualified" for the Position

Addressing the second required element of a claim for disability discrimination, the defendant argues that the plaintiff fails to establish that she is "qualified" for the position. The defendant asserts that establishing qualification under § 46a-60 (b) (1) requires the plaintiff to prove that she can perform the essential functions of the job with or without reasonable accommodations. "To establish a prima facie case of employment discrimination pursuant to § 46a-60 (b) (1) on the basis of either a disparate treatment disability discrimination claim or a reasonable accommodation claim, a plaintiff must establish a common essential element, namely, that he or she is qualified for the position. . . . In order for an employee to be

qualified, he or she must be able to perform the essential functions of the job with or without a reasonable accommodation. . . ." (Citations omitted; internal quotation marks omitted.) *Barbabosa* v. *Board of Education of Manchester*, supra, 189 Conn. App. 437-38.

In *Barbabosa*, the plaintiff appealed from the trial court's grant of summary judgment involving the same two claims before this court: disability discrimination and failure to accommodate, in violation of CFEPA. Id., 428. In that case, the plaintiff was a school paraprofessional with a disability that hampered her attendance, and the court held that: (1) regular attendance was an essential function of the plaintiff's job as a paraprofessional; (2) she was not performing that essential function; and (3) her requested accommodation was not reasonable. For these reasons, the court held that the plaintiff was not qualified for her job and affirmed the trial court, holding that the plaintiff failed to raise a genuine issue of material fact as to the "common essential element of both her claims, namely, whether the plaintiff could perform the essential functions of her job with or without a reasonable accommodation." Id., 428-29.

Without mentioning *Barbabosa* in her opposition, the plaintiff rejects the defendant's arguments and contends that the defendant conflates the issues of qualifications and actual job performance. The plaintiff argues that, under *Gregory* v. *Daly*, 243 F.3d 687, 696-97 (2d Cir. 2001), the qualification prong is distinct from the issue of whether the qualified employee's performance is so dissatisfactory that it provides a legitimate basis for termination. Further, the plaintiff, relying on *Owens*

v. *New York City Housing Authority*, 934 F.2d 405, 409 (2d Cir.), cert. denied, 502 U.S. 964, 112 S. Ct. 431, 116 L. Ed. 2d 451 (1991), asserts that she need only make a minimal showing that she possessed the basic skills necessary to perform the job.

The plaintiff's reliance on *Owens* and *Gregory* is misplaced as these cases do not involve disability discrimination. *Gregory* dealt with the qualification prong in sex discrimination claims under Title VII while *Owens* addressed the qualification prong in an age discrimination claim under the federal Age Discrimination in Employment Act (ADEA). See *Desmond* v. *Yale-New Haven Hospital., Inc.*, 738 F. Supp. 2d 331, 346-47 (D. Conn. 2010) (finding that the plaintiff incorrectly cited to *Owens*, a case involving an ADEA); also see *Raffe* v. *American National Red Cross,* Docket No. 5:08cv00211 (NPM) (N.D.N.Y November 30, 2011) (finding that the plaintiff's reliance on *Gregory* for the proposition that the defendant's statements rise to an inference of discrimination is misplaced as the plaintiff alleged sex discrimination and not age discrimination).

The standard that the court must apply is that the employee "must be able to perform the essential functions of the job with or without an accommodation . . . ." (Internal quotation marks omitted.) *Barbabosa* v. *Board of Education of Manchester*, supra, 189 Conn. App. 438. The evidence submitted by the defendant shows that the plaintiff was unable to perform numerous essential functions of her position that were specifically identified in the account manager position description, including completing insurance certificates and applications to market insurance policies. The evidence also shows that the plaintiff was unable to complete "simple tasks" outside

of the essential functions of her position such as setting up an out of office message or editing Word documents, writing in a manner that could be understood, and working independently.[1] Lastly, in plaintiff's social security application, the plaintiff herself admits to being unable to function and work two days prior to the termination of her employment.[2] In view of these undisputed facts, the court concludes that no reasonable finder of fact could conclude that the plaintiff was able to perform the essential functions of her job when her employment was terminated.

The plaintiff's sole argument regarding her ability to perform the essential functions of her position is that it is "difficult to imagine a scenario" in which she lacked the basic skills of her position as a commercial account executive, given her long tenure in that position. However, possessing "basic skills" is not enough to prove there is no genuine issue of material fact regarding the plaintiff's ability perform the essential functions of her job under a CFEPA claim.[3]

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[1] Although the defendant identifies that these tasks as "simple tasks" these tasks are also specifically identified in the account manager position description attached to the defendant's motion for summary judgment as exhibit one. The qualifications section of such description specifically outlines that an individual employed as an account manager "must": be creative with good communication skills both verbal and written; be proficient in Microsoft Word, Excel and PowerPoint; and take responsibility for timely and accurate work.

[2] See *Kovaco* v. *Rockbestos-Surprenant Cable Co.*, 834 F.3d 128, 141 (2d Cir. 2016) (holding that unless an employee can offer a reasonable explanation to reconcile a statement in support of a social security application that she cannot work with her claims in a disability discrimination lawsuit that she can work, the employee plaintiff will be judicially estopped from claiming to be qualified for the position she held at the time of termination). The plaintiff in this case could not offer any such explanation when she was deposed.

[3] See *Mannell* v. *American Tobacco Co.*, 871 F. Supp. 854 (E.D. Va. 1994) (holding that an accountant who suffered from a loss of cognitive ability due to Chronic Fatigue Immune Deficiency Syndrome was no longer qualified for her job and

This case resembles *Langello* v. *West Haven Board of Education*, 142 Conn. App. 248, 65 A.3d 1 (2013), involving the termination of a teacher suffering from a condition that left her with a reduced capacity to store and retrieve information, depressed executive functioning, slow processing speed, and poor organizational skills. Id., 256. This disability prevented her from maintaining standards of student behavior, developing lesson plans, giving clear instructions, and conducting her classes, all of which were essential functions of her job. Id., 262-633. Based on these considerations, the Appellate Court upheld her termination, finding that she was unable to perform the essential functions of her job with or without an accommodation. Id., 265-66.

The court concludes that there is no evidence in the record to establish that, with[4] or without an accommodation, the plaintiff could perform the essential functions of her position at the time of her termination.

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granting summary judgment for the employer). See also *Jones* v. *Nationwide Life Ins. Co.*, 696 F.3d 78, 88 (1st Cir. 2012) (holding that an essential function is a fundamental job duty of the position and does not include "marginal" tasks); *Rosenquist* v. *Ottoway Newspapers Inc.*, United States District Court, Docket No. 00-CV-0802 (N.D.N.Y March 31, 2003), aff'd 90 Fed. Appx. 564 (2d Cir. 2004), cert. denied, 541 U.S. 1043, 124 S. Ct. 2175, 158 L. Ed. 2d 733 (2004) (granting summary judgment for defendant employer on a disability discrimination claim brought for the failure to rehire a reporter where the reporter suffered a brain aneurysm rending him disabled and unable to write as he could prior to the injury).

[4] The court also concludes that no reasonable factfinder could perform the essential functions of her job with an accommodation. The record does not contain any evidence that would suggest that any reasonable accommodation would have permitted her to perform the essential functions of her job. "The plaintiff bears the burdens of both production and persuasion as to the existence of some accommodation that would allow her to perform the essential functions of her employment. . . . To satisfy this burden, [the] [p]laintiff must establish both that [her] requested accommodation would enable [her] to perform the essential functions of [her] job and that it would

2. Was the Plaintiff's Termination Discriminatory or Pretextual?

The defendant argues that the plaintiff is unable to show that her termination gives rise to an inference of disability discrimination, or that the defendant's legitimate nondiscriminatory reasons for terminating her employment were pretextual. First, the defendant asserts that the plaintiff is unable to show any evidence of a discriminatory motive. Next, the defendant argues that the adverse actions against plaintiff were legitimate, because her deficiencies placed their clients at risk for lapses in insurance coverage and services, and thereby exposed the defendant to liability. Finally, the defendant argues that the plaintiff has not offered any evidence that its proffered reasons for the plaintiff's termination were a pretext for disability discrimination.

In response to these arguments, the plaintiff argues that her termination took place because of her disability. The plaintiff contends that the present case is not a pretext case and that the *McDonnell Douglas* burden shifting analysis is inapplicable. Instead, the plaintiff argues that the *McMillan* test should be employed, as the defendant terminated her for no other reason than performance issues that were related to her disability. Finally, the plaintiff argues that the defendant treated similarly situated employees differently and evaluated her performance in a subjective manner.

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allow [her] to do so at or around the time at which it is sought." *Barbabosa* v. *Board of Education of Manchester*, supra, 189 Conn. App. 445-46. The record establishes that the plaintiff did not request any accommodation and never responded to the defendant's offer to receive one from her or her health care provider.

"Claims alleging disability discrimination in violation of [the CFEPA] are subject to the burden-shifting analysis originally established by the Supreme Court in [*McDonnell Douglas*]." *McMillan* v. *New York*, 711 F.3d 120, 125 (2d Cir. 2013); see also *Curry* v. *Allan S. Goodman, Inc.*, supra, 286 Conn. 415 (stating that Connecticut courts "review federal precedent concerning employment discrimination for guidance," including disability discrimination under the CFEPA). Employing this analysis, "the burden of persuasion remains with the plaintiff [because the plaintiff is not required to prove discriminatory intent]. Once the plaintiff establishes a prima facie case, however, the burden of production shifts to the defendant to rebut the presumption of discrimination by articulating (not proving) some legitimate, nondiscriminatory reason for the plaintiff's rejection. . . . Once the defendant offers a legitimate, nondiscriminatory reason, the plaintiff then has the opportunity to prove by preponderance of the evidence that the proffered reason is pretextual." *Wallace* v. *Caring Solutions, LLC.*, 213 Conn. App. 605, 616, 278 A.3d 586 (2022). However, where it is undisputed that the plaintiff was disciplined because of her disability, pretext is not an issue, and the plaintiff need only demonstrate that she could have performed the essential functions of her job. *McMillan* v. *New York*, supra, 129. This is the *McMillan* test that the plaintiff asks the court to apply.

The parties do not dispute that the plaintiff suffered an adverse employment action when the defendant terminated her on January 20, 2020.[5] Rather, what is

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[5] "[A]n adverse employment action [has been defined] as a significant change in employment status, such as hiring, firing, failing to promote, reassignment with significantly different responsibilities, or a decision causing a significant change in

disputed by the parties is whether the defendant's action was based on a legitimate, nondiscriminatory reason or whether its reason was merely a pretext for disability discrimination. Given this, the court concludes that *McDonnell Douglas* burden shifting analysis applies here, and, as such, the plaintiff is first required to establish a prima facie claim of disability discrimination under the CFEPA, which, as addressed above, she has failed to do. Furthermore, even if the court were to employ *McMillan*, the plaintiff's argument would still fail, because the *McMillan* court held that the plaintiff must "demonstrate that, with reasonable accommodations, [she] could have performed the essential functions of the job." *McMillan* v. *New York*, supra, 711 F.3d 129. The plaintiff has failed to raise a genuine issue of material fact on this essential point.

Even if the plaintiff could make out a prima facie case of disability discrimination,[6] the court concludes that no reasonable jury could conclude that the defendant's reason was a pretext for discrimination. The defendant has provided

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benefits." (Internal quotation marks omitted.) *Amato* v. *Hearst Corp.*, 149 Conn. App. 774, 781, 89 A.3d 977 (2014).

[6] "After the [employee] has established a prima facie case, and the [employer] has produced evidence of a legitimate, nondiscriminatory reason for the employment action, [t]he [employee] retains the burden of persuasion. [The employee] now must have the opportunity to demonstrate that the [employer's] proffered reason was not the true reason for the employment decision." (Internal quotation marks omitted.) *Harris* v. *Dept. of Correction,* 154 Conn. App. 425, 431, 107 A.3d 454 (2014), cert. denied, 315 Conn. 925, 109 A.3d 921 (2015). The plaintiff may succeed in proving that the legitimate nondiscriminatory reason is pretext by "[directly] persuading the court that a discriminatory reason more likely motivated the employer or indirectly by showing that the employer's proffered explanation is unworthy of credence." *Texas Dept. of Community Affairs* v. *Burdine,* 450 U.S. 248, 256, 101 S. Ct. 1089, 1095, 67 L. Ed. 2d 207 (1981).

evidence that it terminated her because of her deficient and declining performance that put its clients and the agency at risk. "Connecticut courts have routinely held that poor job performance is a legitimate reason for taking adverse employment action against employees." *Scinto* v. *Shandex Corp.*, Superior Court, judicial district of New Haven, Docket No. CV-18-6086012-S (May 24, 2022, *Wilson, J*). Moreover, the plaintiff has not produced any evidence that the defendant's proffered reasons were pretext for discrimination. See *Alvarez* v. *Middletown*, 192 Conn. App. 606, 613, 218 A.3d 124, cert. denied, 333 Conn. 936, 218 A.3d 594 (2019) ("[A] reason cannot be proved to be a pretext *for discrimination,* unless it is shown *both* that the reason was false, *and* that discrimination was the real reason." [Emphasis in original; internal quotation marks omitted.]); see also *Stubbs* v. *ICare Management, LLC*, 198 Conn. App. 511, 523, 233 A.3d 1170 (2020) ("A plaintiff may show pretext by demonstrating such weaknesses, implausibilities, incoherences, or contradictions in the employer's proffered legitimate reasons for its actions that a reasonable [fact finder] could rationally find them unworthy of credence and hence infer that the employer did not act for the asserted non-discriminatory reasons.").

In an attempt to show that the defendant's actions were pretextual and not grounded in a legitimate non-discriminatory assessment of the plaintiff's performance, the plaintiff points to certain general statements by Tillestrand that "everyone makes mistakes" and that, as a supervisor, he needed to help all the account managers at one time or another and that the plaintiff performed "some things well." These remarks do not alter the court's conclusion, because the

undisputed evidence before the court establishes that the defendant's decision to terminate the plaintiff was based on client complaints about the plaintiff's execution of the essential functions of her job, which involved client service. "[A] court must give considerable deference to an employer's judgment regarding what functions are essential for service in a particular position." *Shannon* v. *New York City Transit Authority*, 332 F.3d 95, 100 (2d Cir. 2003).

The plaintiff also points to what she considered to be differential treatment between the plaintiff and another employee, "Kathy," who, like the plaintiff, also needed Tillestrand's help, but Kathy's need for assistance was because of her relative inexperience as an account manager. There is no evidence in the record that Kathy's performance was otherwise lacking or resulted in client complaints of the kind that the defendant received about the plaintiff's work. Finally, the plaintiff contends that the criteria by which the plaintiff's performance was evaluated was subjective, which can give rise to an inference of bias or pretext. See, e.g., *Knight* v. *Nassau County Civil Service Commission*, 649 F.2d 157, 161 (2d. Cir. 1981) (holding that an employer may not use completely subjective and unarticulated standards to judge employee performance). The record establishes that the actual reasons for the plaintiff's termination were far from subjective. Rather, they were based on complaints from clients citing objective failures by the plaintiff and their related decisions to leave the defendant for another agency. Moreover, the plaintiff's contention that the defendant usually lost business because of price may be true, but the clients who left because of

the plaintiff did not do so over price considerations; it was because of the plaintiff's deficiencies of service.

The undisputed evidence shows that the plaintiff could not perform the essential functions of her job, and the court is not persuaded that any of the plaintiff's claims of pretext rise to the level of a material fact that could defeat summary judgment.

Because there are no genuine issues of material fact regarding the reasons for the defendant's adverse employment action against the plaintiff, and the defendant is entitled to judgment as a matter of law, the court grants summary judgment as to the First Count.

C. Count Two: Failure to Accommodate

Count Two of the plaintiff's complaint alleges that the defendant failed to accommodate the plaintiff's disability and failed to engage in an interactive process with the plaintiff to determine the existence of a reasonable accommodation. The defendant argues that the court should grant its motion for summary judgment on count two of the complaint, as the *plaintiff* failed to engage in the interactive process, despite the *defendant's* offers to do so, to determine whether a reasonable accommodation existed.[7] The defendant contends that, because the plaintiff at no time made any request for accommodations, despite repeated encouragement to do so by the defendant, her claim that the defendant failed to accommodate must fail as a

[7] The defendant also argues that it's motion for summary judgment for count two of the complaint should be granted because, as addressed in the defendant's arguments directed at count one, the plaintiff is not qualified for her position.

matter of law. See *Kovachich* v. *Dept. of Mental Health & Addiction Services*, 344 Conn. 777, 803, 281 A.3d 1114 (2022) ("[a] plaintiff who fails to initiate or to participate in the interactive process in good faith cannot prevail on an employment discrimination claim under CFEPA.").

Although the plaintiff bears the burden to request an accommodation, the court notes that the defendant provided the plaintiff certain accommodations. It reduced her workload by 75 percent and advised her to take notes during meetings to serve as a reminder of her assigned tasks. The supervisor assisted her more frequently and provided guidance for the completion of her work.[8] As noted by the plaintiff, reasonable accommodations can include "job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities." *Sivio* v. *Village Care Max*, 436 F. Supp. 3d 778, 790-91 (S.D.N.Y. 2020). The court concludes that certain accommodations such as those described in *Sivio* were in place, but this finding does not relieve the plaintiff of her duty to request accommodations in the first instance or additional ones if those provided by the employer were insufficient. It was not up to the defendant employer to divine what accommodations were needed or would be

[8] The plaintiff argues that these accommodations were in place and working, and that it was therefore unlawful for the defendant to terminate the plaintiff under those circumstances. This contention has no merit as the court has already concluded that the plaintiff could not perform the essential functions of her job with accommodations.

effective. The court agrees with the defendant that, to the extent there was a specific accommodation that the plaintiff or her health care providers thought would be helpful, it was incumbent upon the plaintiff to come forward with the request and engage in the interactive process. It is undisputed that the plaintiff failed to do so. "[T]he employee bears the burden of initiating the interactive process and 'must come forward with some suggestion of accommodation . . . .'" *Kovachich* v. *Dept. of Mental Health & Addiction Services*, supra, 344 Conn. 803.

Relatedly, the plaintiff argues that the defendant should have accommodated her by requiring her peers to assist her, which was an accommodation that the plaintiff never requested and is mentioned for the first time in the plaintiff's objection. While it may be true that the plaintiff received some assistance from coworkers similar to what would be common in any workplace setting, there is no evidence before the court that a peer assistance program was in place or was ever requested before the plaintiff's termination. The defendant argues that, even if the plaintiff has asserted that claim in a timely fashion, the purported accommodation is unreasonable on its face.

The Connecticut Supreme Court has held that § 46a-60 (b) (1) requires employers to make reasonable accommodation for an employee's disability. *Curry* v. *Allan S. Goodman, Inc.*, supra, 286 Conn. 415. "If the employee has made such prima facie showing [of discrimination under the CFEPA], the burden shifts to the employer to show that such an accommodation would impose an undue hardship on its business." Id., 416. "Once a disabled individual has suggested to his employer a

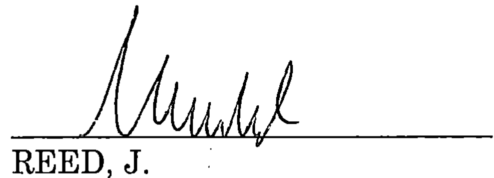
reasonable accommodation . . . the employer and the employee engage in an 'informal, interactive process with the qualified individual with a disability in need of the accommodation . . . [to] identify the precise limitations resulting from the disability and potential reasonable accommodations that could overcome those limitations.' . . . In this effort, the employee must come forward with some suggestion of accommodation, and the employer must make a good faith effort to participate in that discussion." Id. Failure of the employer to engage in the interactive process alone may be sufficient grounds for denying a defendant's motion for summary judgment, because it is, at least, some evidence of discrimination. Id. Further, "[a] plaintiff who fails to initiate or to participate in the interactive process in good faith cannot prevail on an employment discrimination claim under CFEPA." *Kovachich* v. *Dept. of Mental Health & Addiction Services*, supra, 344 Conn. 803.

There is no genuine issue of material fact regarding whether the defendant failed to accommodate the plaintiff, given that the plaintiff failed to initiate or participate in the interactive process despite several requests from the defendant to do so.[9] See *Fox* v. *Costco Wholesale Corp.*, 918 F.3d 65, 73 (2d Cir. 2019) (stating that the plaintiff's failure to accommodate claims were properly dismissed as the plaintiff never asked for an accommodation nor identified a reasonable accommodation).

[9] The evidence shows that Ms. Hudspeth, director of human resources at the defendant's company, notified the plaintiff that she would consider any reasonable accommodations that would assist the plaintiff's performance, provided the plaintiff with an accommodation form to share with her healthcare provider, reached out to remind the plaintiff about the request form, and later reiterated her desire to discuss reasonable accommodations to the plaintiff.

Further, the accommodation advanced by the plaintiff, for the first time, in her objection, was not requested during her employment and impermissibly requires the defendant to reallocate the plaintiff's essential duties to her coworkers. See *Stern* v. *St. Anthony's Health Center*, 788 F.3d 276 (7th Cir. 2015) ("[t]o have another employee perform a position's essential function, and to a certain extent perform the job for the employee, is not a reasonable accommodation").

For the foregoing reasons, the defendant's motion for summary judgment is granted.



REED, J.

Checklist for Clerk

Docket Number: HHD-CV21-6145007

Case Name: Szeluga v. Sinclair

Memorandum of Decision dated: 12/28/2023

File Sealed: **Yes** **No** X

Memo Sealed: **Yes** **No** X

This Memorandum of Decision may be released to the Reporter of Judicial Decisions for Publication XXXX

This Memorandum of Decision may NOT be released to the Reporter of Judicial Decisions for Publication

\\CO95\Common\Hartford JD Policy Manual\Sealed files\MOD memo.doc

FILED

DEC 28 2023

HARTFORD J.D.

State of Connecticut Judicial Branch
Superior Court Case Look-up

Comments

FILED
DEC 28 2023
HARTFORD J.D.

HHD-CV21-6145007-S SZELUGA, MICHELLE v. SINCLAIR INSURANCE GROUP, INC.

Prefix: HD4 **Case Type:** M90 **File Date:** 07/23/2021 **Return Date:** 08/24/2021

Information Updated as of: 12/28/2023

Case Information

Case Type: M90 - Misc - All other
Court Location: HARTFORD JD
List Type: JURY (JY)
Trial List Claim: 02/23/2022
Last Action Date: 10/16/2023 (The "last action date" is the date the information was entered in the system)

Disposition Information

Disposition Date:
Disposition:
Judge or Magistrate:

Party & Appearance Information

Party		No Fee Party	Category
P-01 MICHELLE SZELUGA Attorney: SABATINI & ASSOCIATES LLC (052654) 1 MARKET SQUARE NEWINGTON , CT 06111	File Date: 07/23/2021		Plaintiff
D-01 SINCLAIR INSURANCE GROUP, INC. Attorney: CARMODY TORRANCE SANDAK & HENNESSEY LLP (012592) P.O. BOX 1950 NEW HAVEN , CT 06509	File Date: 08/26/2021		Defendant

Viewing Documents on Civil, Housing and Small Claims Cases:

If there is an e in front of the docket number at the top of this page, then the file is electronic (paperless).

- Documents, court orders and judicial notices in electronic (paperless) civil, housing and small claims cases with a return date on or after January 1, 2014 are available publicly over the internet.* For more information on what you can view in all cases, view the Electronic Access to Court Documents Quick Card.
- For civil cases filed prior to 2014, court orders and judicial notices that are electronic are available publicly over the internet. Orders can be viewed by selecting the link to the order from the list below. Notices can be viewed by clicking the **Notices** tab above and selecting the link.*
- Documents, court orders and judicial notices in an electronic (paperless) file can be viewed at any judicial district courthouse during normal business hours.*
- Pleadings or other documents that are not electronic (paperless) can be viewed only during normal business hours at the Clerk's Office in the Judicial District where the case is located.*
- An Affidavit of Debt is not available publicly over the internet on small claims cases filed before October 16, 2017.*

*Any documents protected by law Or by court order that are Not open to the public cannot be viewed by the public online And can only be viewed in person at the clerk's office where the file is located by those authorized by law or court order to see them.

Motions / Pleadings / Documents / Case Status

Entry No	File Date	Filed By	Description	Arguable
	08/26/2021	D	APPEARANCE Appearance	
100.30	07/23/2021	P	SUMMONS	No
100.31	07/23/2021	P	COMPLAINT	No
100.32	07/23/2021	P	RETURN OF SERVICE	No