DOCKET NO.: UWY-CV22-6063558-S	:	SUPERIOR COURT
TINA MENNILLO	:	JUDICIAL DISTRICT OF WATERBURY
v.	:	AT WATERBURY
E. COOK ASSOCIATES, INC. f/k/a ECI SCREENPRINT, INC.	:	April 29, 2024

MEMORANDUM OF DECISION
RE: MOTION FOR SUMMARY JUDGMENT

FACTS

The plaintiff, Tina Mennillo, filed a two-count complaint (complaint) on February 17, 2021, against the defendant, E. Cook Associates, Inc., alleging discrimination and retaliation under the Connecticut Fair Employment Practices Act (CFEPA). Count one alleges disability discrimination in violation of General Statutes § 46a-60 (b) (1). Count two alleges retaliation in violation of § 46a-60 (b) (4).

The complaint alleges the following facts.[1] On or about August 12, 2019, the plaintiff was hired by E. Cook Associates, Inc., as an Office Manager. During her employment, the plaintiff was supervised by CEO Ed Cook (Mr. Cook). The plaintiff suffers from post-traumatic stress disorder (PTSD), which is categorized as a disability under the CFEPA, and the defendant was aware of the plaintiff's disability.

The plaintiff lists several situations in the complaint where she alleges that the defendant discriminated against her, culminating in the plaintiff's termination. The situations include: (1) the defendant stereotyping the plaintiff on the basis of her disability; (2) the defendant assuming that the plaintiff was fragile; (3) Mr. Cook mocking or mimicking the plaintiff's body language to demonstrate how she looked when anxious; (4) Mr. Cook laughing when he mimicked or

[1] Additional facts will be addressed in this memorandum as necessary.

mocked the plaintiff; (5) the defendant excluding the plaintiff from management meetings where all other managers were in attendance; (6) the defendant providing office keys to every manager except the plaintiff; (7) the defendant assuming that the plaintiff's disabilities made her less reliable or responsible; and (8) all employees being permitted to work remotely except the plaintiff.

The defendant terminated the plaintiff's employment on or about March 30, 2020. The defendant informed the plaintiff that the reason she was being terminated was due to the pandemic.

On July 20, 2023, the defendant filed a motion for summary judgment. On October 18, 2023, the plaintiff filed an objection to the defendant's motion for summary judgment. The defendant filed their reply memorandum on November 1, 2023. Oral argument occurred during a remote hearing held on April 22, 2024, at which time all parties were heard.

DISCUSSION

I. Legal Standard of Review

The standard for summary judgment in Connecticut is well established. "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 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." (Internal quotation marks omitted.) *Graham* v. *Commission of Transportation*, 330 Conn. 400, 414-15, 195 A.3d 664 (2018).

"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. . . . A material fact . . . [is] a fact which will make a difference in the result of the case." (Internal quotation marks omitted.) *Doe* v. *West Hartford*, 328 Conn. 172, 191-92, 177 A.3d 1128 (2018).

"Once the moving party has met its burden, however, the opposing party must present evidence that demonstrates the existence of some disputed factual issue. . . . It is not enough, however, for the opposing party merely to assert the existence of such a disputed issue." *Ferri* v. *Powell-Ferri*, 317 Conn. 223, 228, 116 A.3d 297 (2015).

"The burden of proof that must be met to permit an employment-discrimination plaintiff to survive a summary judgment motion at the prima facie stage is de minim[i]s. . . . Since the court, in deciding a 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." (Internal quotation marks omitted.) *Agosto* v. *Premier Maintenance, Inc.*, 185 Conn. App. 559, 570, 197 A.3d 938 (2018).

The defendant moved for summary judgment, asserting that there are no genuine issues of material fact in dispute. Specifically, the defendant argues that the plaintiff cannot establish a prima facie case of disability discrimination. Lastly, the defendant asserts that the plaintiff's termination was based on a legitimate, non-discriminatory business reason.

In her objection, the plaintiff asserts that there are genuine issues of material fact and that the defendant's motion for summary judgment should be denied. The plaintiff counters that she was qualified for the job, and the adverse employment action occurred under circumstances

giving rise to an inference of discriminatory intent. The plaintiff also states that the reasoning for the termination of employment is pretextual to mask unlawful disability discrimination.

For the reasons set forth below. The motion for summary judgment is GRANTED in its entirety.

A. Count One: Disability Discrimination

In count one of her complaint, the plaintiff alleges that the defendant discriminated against her on the basis of her disability, PTSD.

Section 46a-60 (b) (1) of the CFEPA provides in relevant part: "For an employer . . . except in the case of a bona fide occupational qualification or need, to refuse to hire or employ . . . or to discharge from employment any individual or to discriminate against any individual in compensation or in terms, conditions or privileges of employment because of the individual's race, color, religious creed, age, sex, gender identity or expression, marital status, national origin, ancestry, present or past history of mental disability . . . [or] physical disability . . . ." See also, *Barbabosa* v. *Board of Education*, 189 Conn. App. 427, 437, 207 A.3d 122 (2019) ("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.").

The framework that Connecticut courts use in assessing disparate treatment discrimination claims is adapted from the United States Supreme Court's decision in *McDonnell Douglas Corp.* v. *Green*, 411 U.S. 792, 802, 93 S. Ct. 1817, 36 L. Ed. 2d 668 (1973). This court will "look to federal law for guidance on interpreting state employment discrimination law, and the analysis is the same under both. . . . Under this analysis, the employee must first make a

prima facie case of discrimination." (Citations omitted; Internal quotation marks omitted.) *Feliciano* v. *Autozone, Inc.*, 316 Conn. 65, 73, 111 A.3d 453 (2015).

"In order for the employee to first make a prima facie case of discrimination, the plaintiff must show: (1) the plaintiff is a member of a protected class; (2) the plaintiff was qualified for the position; (3) the plaintiff suffered an adverse employment action; and (4) the adverse employment action occurred under circumstances that give rise to an inference of discrimination." Id. Once the plaintiff establishes 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.) Id., 74.

i. QUALIFIED FOR THE POSITION

The plaintiff has established the first prong of the framework needed to establish a prima facie case of discrimination. The defendant does not contest that the plaintiff was disabled within the meaning of CFEPA. The defendant does, however, assert that the plaintiff's claim fails as to the second prong of the framework because the plaintiff was not 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." (Internal quotation marks omitted.) *Barbabosa* v. *Board of Education*, supra, 189 Conn. App. 438. The defendant argues that the plaintiff was not qualified for the position of Office Manager because the plaintiff lied on her resume and the plaintiff exhibited deficiencies in her employment performance, which the plaintiff had been made aware of and failed to correct. The plaintiff alleges that she was qualified

for the job of Full Charge Bookkeeper/Admin Assistant, which is the position she was terminated from.

It is undisputed that the plaintiff was hired as an Office Manager. It is further undisputed that the plaintiff lied on her resume regarding her prior experience as an Office Manager. Moreover, the record reflects that the plaintiff's responsibilities and job title changed at the end of her probationary period. Specifically, the plaintiff was given the position of Full Charge Bookkeeper/Admin Assistant. The defendant did not reduce the plaintiff's salary even though her job responsibilities were reduced. Despite the reduction in her job responsibilities, the plaintiff still struggled with the performance of these duties. Examples of the documented performance issues include making errors, inconsistent work product, difficulty prioritizing tasks, failing to complete tasks, and general disorganization.

On March 18, 2020, plaintiff replied to a co-worker's email regarding a customer's payment history. In the plaintiff's reply email to her co-worker, the plaintiff copied the customer on the email. The email included reference to the names of two other customers, which is in violation of the company's confidentiality policy contained in Employee Handbook. Following this incident, on March 30, 2020, Mr. Cook made the decision to terminate the plaintiff's employment due to the plaintiff's continued deficiencies in her job performance. The plaintiff maintains that the defendant actually informed her that she was being laid off due to the pandemic and that Mr. Cook told the plaintiff he was doing her a favor because the plaintiff could claim unemployment benefits.

An employee is qualified if he "can perform the essential functions of the employment position . . . ." 42 U.S.C. § 12111 (8) (2009). Although "[c]ourts must give considerable deference to an employer's judgment regarding what functions are essential for service in a

particular position . . . . Courts must conduct a fact-specific inquiry into both the employer's description of a job and how the job is actually performed in practice." (Citations omitted; internal quotation marks omitted.) *Stevens* v. *Rite Aid Corp.,* 851 F.3d 224, 229 (2d Cir.), cert. denied, 583 U.S. 933, 138 S. Ct. 359, 199 L. Ed. 2d 264 (2017). "Discovery may be necessary to determine whether an employee was qualified for a particular position." *Kelleher* v. *Fred A. Cook, Inc.,* 939 F.3d 465, 469 (2d Cir. 2019).

"The term 'essential functions,' which is not defined in the statutes themselves, is generally defined in ADA regulations promulgated by the Equal Employment Opportunity Commission ("EEOC") to mean the 'fundamental' duties to be performed in the position in question, but not functions that are merely 'marginal.'" (Internal quotation marks omitted.) *Stone* v. *Mount Vernon,* 118 F.3d 92, 97 (2d Cir. 1997), cert. denied, 522 U.S. 1112, 118 S. Ct. 1044, 140 L. Ed. 2d 109 (1998). "[A] court must give considerable deference to an employer's judgment regarding what functions are essential for service in a particular position. . . . But ultimately, the question whether a task constitutes an essential function depends on the totality of the circumstances." (Citations omitted; internal quotation marks omitted.) *Rodal* v. *Anesthesia Group of Onondaga, P.C.*, 369 F.3d 113, 120 (2d Cir. 2004). "Evidence of whether a particular function is essential includes, but is not limited to: (i) The employer's judgment as to which functions are essential; (ii) Written job descriptions prepared before advertising or interviewing applicants for the job; (iii) The amount of time spent on the job performing the function; (iv) The consequences of not requiring the incumbent to perform the function; (v) The terms of a collective bargaining agreement; (vi) The work experience of past incumbents in the job; and/or (vii) The current work experience of incumbents in similar jobs. . . . Usually no one listed factor

will be dispositive, and the regulations themselves state that the evidentiary examples provided are not meant to be exhaustive." (Citation omitted.) *Stone v. Mount Vernon, supra*, 118 F.3d 97.

Here, the defendant has not submitted to the court a written job description for the position of Full Charge Bookkeeper/Admin Assistant. Further, the defendant has failed to submit any evidence regarding the qualifications of other employees who have held either position in question. The defendant submitted deposition testimony where the plaintiff admitted that she lied about some of the prior work experience on her resume. In addition, the defendant has submitted deposition testimony and affidavits showing that the plaintiff struggled to complete the tasks of either position to the satisfaction of the defendant. While these facts may be undisputed, they do not equate to the plaintiff being unqualified for the position because to show "qualification" sufficiently and shift the burden of proof to the employer, the plaintiff "need not show perfect performance or even average performance . . . . [The plaintiff] need only show that [their] performance was of sufficient quality to merit continued employment, thereby raising an inference that some other factor was involved in the decision to discharge [them]." *Flowers* v. *Crouch-Walker Corp.,* 552 F.2d 1277, 1283 (7th Cir.1977). Instead, the plaintiff need only "demonstrate that she *possesses the basic skills necessary for performance of [the] job.*" (Emphasis added; internal quotation marks omitted.) *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); see also *de la Cruz* v. *New York City Human Resources Administration Dept. of Social Services,* 82 F.3d 16, 20 (2d Cir.1996) (The Second Circuit affirmed the District Court's decision, "because [the plaintiff] lacked proficiency in English comprehension and writing, he was unqualified for work in the Adoption Unit."); *Gregory* v. *Daly*, 243 F.3d 687, 696 (2d Cir. 2001) ("The role of the qualification prong is simply to help eliminate[ ] the most common

nondiscriminatory reasons for the plaintiff's rejection." [Internal quotation marks omitted.]). This court will further point to the documentary evidence submitted by the plaintiff wherein Mr. Cook sent the plaintiff an email on December 11, 2019, stating, inter alia, "you can absolutely do the functional job..." Such a statement casts doubt on the defendant's assertions that the plaintiff was not qualified for the job.

"[A] mere variation in terminology between 'qualified for the position' and 'performing . . . satisfactorily' would not be significant so long as, in substance, all that is required is that the plaintiff establish basic eligibility for the position at issue, and not the greater showing that he satisfies the employer." (Internal quotation marks omitted.) *O'Neil* v. *Woodbridge*, Superior Court, judicial district of New Haven, Docket No. CV-16-6060577-S (December 7, 2017, *Wahla, J.*).

The defendant has failed to meet its burden that there is no factual question as to whether the plaintiff was qualified for either the position of Office Manager or the position of Full Charge Bookkeeper/Admin Assistant.

ii. INFERENCE OF DISCRIMINATION

The defendant argues that the plaintiff's termination did not occur under circumstances that give rise to an inference of discrimination. The plaintiff alleges in her complaint and reiterates in her deposition testimony that she informed Mr. Cook and others at her interview that she suffers from PTSD, but the defendant denies this. Under Second Circuit law, a plaintiff alleging discrimination on account of his protected status must offer evidence that a decision-maker was personally aware of his protected status to establish a *prima facie* case of discrimination. *Woodman* v. *WWOR-TV, Inc.*, 411 F.3d 69, 87 (2d Cir. 2005) ("To defeat summary judgment, [the plaintiff] was obliged to do more than produce evidence that *someone* at

[the employer] knew her age. She was obliged to offer evidence indicating that persons who actually participated in her termination decision had such knowledge." [Emphasis in original.]); *Lambert* v. *McCann Erickson*, 543 F. Supp. 2d 265, 278 n.12 (S.D.N.Y. 2008) ("[A] plaintiff must offer evidence that a decision-maker was aware of her protected *status* to establish a prima facie case of discrimination." [Emphasis in original.]). Thus, the plaintiff testifying that Mr. Cook, the decision maker in the present case was aware of her disability satisfies this issue for the summary judgment stage.

The plaintiff alleges that Mr. Cook mocked and mimicked her PTSD and made comments such as, "there you go again" while gesturing with his hands up in the air. In the plaintiff's opinion Mr. Cook was imitating someone "crazy." Another example of the alleged evidence of discriminatory comments from Mr. Cook can be found in an email dated December 11, 2019, where Mr. Cook referred to the plaintiff as having "handled the frazzle better this time."

Plaintiff is correct that verbal comments may constitute evidence of discrimination. See, e.g., *Schreiber* v. *Worldco, LLC*, 324 F. Supp. 2d 512, 518 (S.D.N.Y. 2004) ("Verbal comments constitute evidence of discriminatory motivation when a plaintiff demonstrates that a nexus exists between the allegedly discriminatory statements and a defendant's decision to discharge the plaintiff."). Such comments must be distinguished from mere stray remarks because "stray remarks, even if made by a decisionmaker," do not constitute sufficient evidence of employment discrimination. See *Baffa* v. *STAT Health Immediate Medical Care, P.C.*, Docket No. 11-CV-4709 (JFB/GRB), 2013 U.S. Dist. WL 5234231, *12 (E.D.N.Y. September 17, 2013). To determine whether a comment is a stray remark or may be probative of discrimination, the district courts in the Second Circuit "[consider] four factors: (1) who made the remark (i.e., a decision-maker, a supervisor, or a low-level co-worker); (2) when the remark was made in

relation to the employment decision at issue; (3) the content of the remark (i.e., whether a reasonable juror could view the remark as discriminatory); and (4) the context in which the remark was made (i.e., whether it was related to the decision-making process)." *Henry* v. *Wyeth Pharmaceuticals, Inc.*, 616 F.3d 134, 149 (2d Cir. 2010), cert. denied, 562 U.S. 1279, 131 S. Ct. 1602, 179 L. Ed. 2d 516 (2011). Further, the Second Circuit has also observed that "[a]lthough evidence of one stray comment by itself is usually not sufficient proof to show age discrimination, that stray comment may bear a more ominous significance when considered within the totality of all the evidence." (Internal quotation marks omitted.) *Carlton* v. *Mystic Transportation Inc.*, 202 F.3d 129, 136 (2d Cir.), cert. denied, 530 U.S. 1261, 120 S. Ct. 2718, 147 L. Ed. 2d 983 (2000).

Applying the stray remarks analysis to the comments mentioned above reveals the following. The comments were made by Mr. Cook, a decision maker. The frazzled comment occurred in December of 2019 and the plaintiff's termination occurred a few months later in March of 2020. Whether a reasonable juror could view this comment as discriminatory is questionable.

The plaintiff analogizes the comments made in the present case by Mr. Cook to the comments made in *Testa* v. *Carefusion*, Docket No. 14-CV-5202 (JFB/AKT), 2016 U.S. Dist. WL 4099113, *5 (E.D.N.Y. Aug. 2, 2016). *Testa* dealt with a motion to dismiss wherein the allegations in the complaint must be taken as true for the purposes of the motion. Id., *4. Here, however, at the summary judgment stage there must be an evidentiary basis to confirm the allegations contained in the complaint. In the present case, the plaintiff has submitted no evidence that the remarks regarding the plaintiff being frazzled or the comment "there you go again" are in anyway related to her disability. Plaintiff's counsel asserts, without legal authority,

that Mr. Cook's comments were "designed to upset, confuse or demoralize her - playing on her PTSD."

The plaintiff's argument that the comments made by Mr. Cook were directly related to the plaintiff's PTSD are not evidence and, thus, not admissible to defeat summary judgment. Further, the plaintiff's understanding of the general symptoms of PTSD is not relevant to the court's inquiry. It is the decision-maker, Mr. Cook, that the court is analyzing. Moreover, though no evidence has been submitted by the plaintiff that Mr. Cook was aware of the general symptoms of PTSD, even if the plaintiff had provided such evidence, that too would be irrelevant, absent a causal connection between the awareness of the disability and the employment decision to terminate the plaintiff's employment. See *Miceli* v. *Mehr*, Docket No. 3:17cv00029 (VAB), 2019 U.S. Dist. WL 5727387, *12 (D. Conn. November 5, 2019), aff'd, 830 Fed. Appx. 63 (2d Cir. 2020) ("Chief Custer's general knowledge of the symptoms of PTSD is not admissible evidence in this case, absent a causal connection between this knowledge and its specific use in deciding whether to terminate [the plaintiff]. Without a causal connection, this testimony is properly – if not necessarily – excludable because the court may exclude even evidence that is relevant 'if its probative value is substantially outweighed by' the danger of, *inter alia*, unfair prejudice, or confusion of the issues, or misleading the jury, or wasting time. [A]ny probative value to this testimony is far outweighed by its potentially prejudicial effect." [Emphasis in original; internal quotation marks omitted.]).

Thus, the court concludes that there is no evidence submitted to support the claim that the termination of the plaintiff's employment occurred under circumstances giving rise to an inference of discrimination.

iii. LEGITIMATE NON-DISCRIMINATORY REASON FOR TERMINATION

Even if the court had not so concluded, the burden would shift to the defendant to put forth a legitimate non-discriminatory reason for the termination. In the present case, the plaintiff's documented performance deficiencies demonstrate legitimate reasons as to why the plaintiff was terminated by the defendant. The plaintiff would have to prove that this proffered reason is in fact false and pretext for illegal discrimination, however, the evidence provided by the plaintiff does not support this.

Further, the defendant alleges that the "same actor inference" applies to defeat the plaintiff's claims of discrimination. The defendant argues that because Mr. Cook was involved in both the hiring and the firing of the plaintiff that the same actor inference strongly mitigates against the possibility of a discriminatory motive. This court agrees. "[W]hen the same actor hires a person already within the protected class, and then later fires that same person, it is difficult to impute to [them] an invidious motivation that would be inconsistent with the decision to hire." (Internal quotation marks.) *Collins* v. *Connecticut Job Corps*, 684 F. Supp. 2d 232, 250 (D. Conn. 2010). The defendant has provided a legitimate non-discriminatory reason for the termination of the plaintiff's employment - performance issues. The person who made the decision to terminate the plaintiff was Mr. Cook, and he happens to be the same individual who hired the plaintiff in the first place. The plaintiff claims that she informed Mr. Cook that she had PTSD at her interview, however, it is illogical for Mr. Cook to have known about the plaintiff's PTSD, and decide to hire her, only to turn around and fire the plaintiff for the same condition. Thus, the same actor inference is applicable to the present case under these circumstances.

Therefore, the defendant's motion for summary judgment as to count one is GRANTED.

B. Count Two: Retaliation

In count two of the complaint, the plaintiff alleges retaliation in violation of CFEPA § 46a-60 (b) (4). Specifically, the complaint alleges that the defendant "retaliated against [the] plaintiff for opposing discrimination" and the "[p]laintiff reported to [the] defendant that she was being treated unfairly due to her health condition."

Section 46a-60 (b) states in relevant part: "It shall be a discriminatory practice in violation of this section . . . (4) For any person, employer, labor organization or employment agency to discharge, expel or otherwise discriminate against any person because such person has opposed any discriminatory employment practice or because such person has filed a complaint or testified or assisted in any proceeding under section 46a-82, 46a-83, or 46a-84."

"To establish a prima facie case of retaliation, a plaintiff must show four elements: (1) that [she] participated in a protected activity; (2) that the defendant knew of the protected activity; (3) an adverse employment action against [her]; and (4) a causal connection between the protected activity and the adverse employment action." *Ayantola* v. *Board of Trustees of Technical Colleges*, 116 Conn. App. 531, 536, 976 A.2d 784 (2009); see also, *Phadnis* v. *Great Expression Dental Centers of Connecticut, P.C.*, 170 Conn. App. 79, 96, 153 A.3d 687 (2017) ("Because the plaintiff fails to allege a prima facie case of retaliation, the defendant is entitled to summary judgment as a matter of law . . . .").

In their motion for summary judgment, the defendant asserts that the retaliation claim fails because the plaintiff did not engage in protected activity and there is no causal connection between the alleged protected activity and the plaintiff's termination. The plaintiff does not address the retaliation claim in her objection. At oral argument, plaintiff's counsel confirmed that

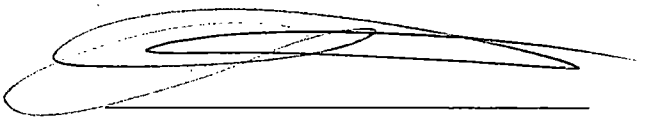
the plaintiff is not raising an objection to the motion for summary judgment on the retaliation count.

Because the plaintiff has not submitted evidence demonstrating that she engaged in protected activity or that there was any causal connection to the termination of her employment, the claim for retaliation fails. For these reasons, the defendant's motion for summary judgment is GRANTED as to count two.

II. CONCLUSION

Accordingly, the defendant's motion for summary judgment is GRANTED in its entirety.

SO ORDERED



PARKINSON, J.

4-29-24 Copy emailed to Reporter of Judicial Decisions this date. Judgment entered in accordance with this Memorandum of Decision.
Lauren Quan Assist. Clerk