



**State of Connecticut**  
**COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES**  
**OFFICE OF PUBLIC HEARINGS**

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*Promoting Equality and Justice for all People*

June 25, 2024

OPH/WBR No. 2020-438 Adam Osmond v. State of CT, DECD

**FINAL DECISION**

Dear Complainant and Respondent:

Transmitted herewith is a copy of the Presiding Referee's Final Decision in the above captioned complaint.

The decision is being sent via email to the complainant and respondent.

Very Truly yours,

*Kimberly D. Morris*

Kimberly D. Morris  
Secretary II

Cc.

Adam Osmond  
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Adam Osmond, Complainant

Office of Public Hearings  
Commission on Human Rights  
and Opportunities

v

State of Connecticut, Department of Economic and  
Community Development, Respondent

OPH/WBR 2020-438  
June 25, 2024

OFFICE OF  
PUBLIC HEARINGS -CHRO  
DATE 6-25-24  
TIME 8:20 AM  
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## FINAL DECISION

### PRELIMINARY STATEMENT

On September 9, 2020, Adam Osmond filed a whistleblower retaliation complaint (complaint) with the chief human rights referee pursuant to General Statutes § 4-61dd. In his complaint, Mr. Osmond alleged that the respondent, the State of Connecticut, Department of Economic and Community Development (DECD), violated § 4-61dd by retaliating against him for his whistleblowing. In his complaint, Mr. Osmond alleged that DECD refused to interview him for and denied him the position of supervising accountant in retaliation for his whistleblowing.

On October 14, 2022, DECD filed its answer and special defenses to the complaint.

The public hearing was held on April 9 and 10, 2024. The hearing was conducted in person at 450 Columbus Blvd., Hartford, Connecticut. The parties filed their briefs on June 17, 2024.

For the reasons stated herein, it is found that Mr. Osmond established by a preponderance of the evidence that DECD refused to interview him for the position of supervising accountant in retaliation for his whistleblowing. Monetary damages, however,

are not awarded because no economic or emotional distress evidence was presented at the public hearing.

## **I PARTIES**

The parties to this matter are Mr. Osmond of Farmington, Connecticut and the DECD, c/o Assistant Attorneys General Holly Wonneberger and Andrew Miano, 165 Capitol Avenue, Hartford, Connecticut.

## **II FINDINGS OF FACT**

In evaluating the credibility of the witnesses, this tribunal considered their appearance and demeanor on the witness stand, the consistency or inconsistency of their testimony, their memory or lack thereof of certain events, their manner in responding to questions, whether they were candid and forthright or evasive and incomplete, their interest or lack of interest in the case, and the consistency or inconsistency of their testimony in relation to other evidence, including the exhibits in the case.

References to the transcript are designated by volume number<sup>1</sup> followed by the page number(s). References to exhibits are designated by C for Mr. Osmond and R for DECD followed by the exhibit number and page number(s).

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<sup>1</sup> Volume 1 references the hearing held on April 9, 2024 and Volume 2 references the hearing held on April 10, 2024.

Based upon an assessment of the credibility of the witnesses<sup>2</sup> and a review of the pleadings, exhibits, and transcripts, the following facts relevant to this decision are found to have been proven by a fair preponderance of the evidence.

1. Mr. Osmond began working for the state in July 2000 when he was hired as a financial clerk by the department of public health (DPH). C-4:23.
2. In his October 1, 2001 to September 30, 2002 annual performance appraisal, Mr. Osmond was rated excellent in the areas of knowledge of work, quality of work, quantity of work, attendance, and ability to deal with people. C-4:39-40.
3. Mr. Osmond left state service in February 2003. Vol. 1: 30; C-4:23.
4. Mr. Osmond returned to state service in February 2004 when he was hired as an accountant at the department of children and families (DCF). Vol. 1:16; C-4:23.

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<sup>2</sup> By motion dated January 31, 2024, DECD moved to continue the public hearing because of the unavailability of one witness. The motion was denied. At the public hearing DECD again raised the issue of the witness's unavailability and whether the witness could participate remotely.

Remote testimony was denied. Vol. 1, 81-82. First, Mr. Osmond credibly established that he could not participate remotely.

Second, "[t]here is no constitutional or statutory requirement that every witness must testify in a ... hearing ...." (Internal quotation marks omitted.) *State of Connecticut, Commission on Human Rights and Opportunities v. State of Connecticut, University of Connecticut*, Superior Court, Docket No. CV9557527S, 1996 WL 737513, \*3 (Dec. 16, 1996); *Griffin v. Muzio*, 10 Conn. App. 90, 94, 521 A.2d 607, 609 (1987); *Pukalo v. State, Com'r of Motor Vehicles*, Superior Court, Docket No. 70 11 08, 1991 WL 112832, at \*4 (June 12, 1991).

Third, in its January 31, 2024 motion, DECD did not state that the witness's unavailability was due to medical reasons.

Fourth, at no time did DECD provide medical documentation that the witness's unavailability was due to medical reasons.

Finally, rather than request postponement of the entire hearing, DECD could have, but did not, request that an additional in-person date be added to the hearing schedule to accommodate any documented medical needs to its witness.

5. In his June 2004 initial probationary performance review, DCF rated Mr. Osmond as excellent in dependability. He was rated superior in quality of work, quantity of work, and ability to work with people. C-4:41.
6. In his February 6, 2004 to September 2004 annual service rating, DCF rated Mr. Osmond as excellent in quality of work and dependability. He was rated superior in quantity of work and ability to work with people. C-4:42
7. In October 2004, DCF promoted Mr. Osmond to associate accountant. C-4: 22.
8. In his October 1, 2004 to September 30, 2005 annual service rating, DCF rated Mr. Osmond as excellent in quality of work and dependability. He was rated superior in quantity of work and ability to work with people. C-4:43.
9. In his October 1, 2005 to September 30, 2006 annual service rating, DCF rated Mr. Osmond as excellent in quality of work, quantity of work, dependability, and ability to work with people. C-4:44.
10. In his September 1, 2006 to August 31, 2007 annual service rating, DCF rated Mr. Osmond as excellent in quality of work, quantity of work, dependability, and ability to work with people. C-4:45.
11. In May 2008, Mr. Osmond was again promoted at DCF to the position of supervising accountant. Vol. 1:18-19; C-4:21-22.
12. As a supervising accountant, Mr. Osmond was responsible for the management of accountant professionals within the fiscal analyst unit of DCF. C-4:21.

13. In his September 1, 2007 to August 31, 2008 annual service rating as a supervising accountant, DCF rated Mr. Osmond as excellent in quality of work, quantity of work, dependability, and ability to work with people. Due to the short time that he had been in the supervisory position he was rated as satisfactory in supervisory ability. C-4:46.
14. In February 2010, Mr. Osmond left state service. Vol. 1 19; C-4 21.
15. In May 2012, Mr. Osmond returned to state service as a social worker trainee at the department of social services. C-4:21.
16. In April 2013, DECD hired Mr. Osmond as a fiscal administrative assistant. C-4:20-21.
17. In his April 5, 2013 to August 31, 2013 initial probationary/annual service rating, DECD rated Mr. Osmond as superior in quality of work, quantity of work, dependability, and ability to work with people. C-4:47.
18. The explanations for the ratings provide in part that: "Adam thoroughly researches issues and provides suggestions for improvements." "Adam has learned the DECD loan system in a short period of time, which has helped standardize several functions that have improved the quality of the A/R and loan management processes." "Adam has LEANED some of the A/R processes, which have resulted in increased productivity." C-4:47.
19. The ratings in that evaluation were done by Cheryl Bocwinski. C-4:48. At that time Ms. Bocwinski's job title was fiscal administrative officer. Vol. 2: 11.

20. In October and November 2013, Mr. Osmond participated in LEAN program trainings and seminars. C-5.
21. LEAN is a program designed to develop processes to minimize waste and maximize efficiencies in state government. Vol. 2: 38-39.
22. Ms. Bocwinski and Mr. Osmond were co-captains in part of the LEAN training. Vol. 1:21 22, 43, 45; Vol. 2:6. C-5.
23. Mr. Osmond was selected to go to other divisions within DECD to assist in their LEAN training. Vol 2:7.
24. In his September 1, 2013 to August 31, 2014 annual service rating, Ms. Bocwinski again rated Mr. Osmond. She rated him as excellent in quality of work and quantity of work and as superior in dependability and ability to work with people. C-4:49-50.
25. The explanations for the ratings provide in part that: "Adam works independently and provides suggestions for improvements when needed." "Adam has helped to standardize several functions that have improved the quality of the A/R and loan management process." "Adam has LEANED a great deal of the A/R and loan processes, including assisting with the implementation of the ACH for our loan payments." C-4:49.
26. In December 2014, Ms. Bocwinski and Ms. Heriot submitted a request to upgrade Mr. Osmond's position from fiscal administrative assistant to accounts examiner. Vol. 1:13, 20; C-4:27-30.

- 27.** In his September 1, 2014 to August 31, 2015 annual service rating, DECD rated Mr. Osmond as excellent in quality of work and quantity of work and as superior in dependability and ability to work with people. C-4:51.
- 28.** The rating was done by Kathy Woodward, who was a supervising accountant. C-4:51.
- 29.** In his September 1, 2015 to August 31, 2016 annual service rating, Ms. Woodward downgraded Mr. Osmond's ratings. Ms. Woodward rated Mr. Osmond as superior in quality of work and ability to deal with people and as fair in quantity of work and dependability. C-4:52. This rating came after Mr. Osmond's reports to DECD management of financial irregularities. Vol. 1:13.
- 30.** In 2016 and 2017, Mr. Osmond observed financial irregularities occurring in DECD. Vol. 1:10, 47, 48, 50, 51.
- 31.** These irregularities included:
- lack of reconciliation of loans,
  - improper tracking of loans,
  - delinquent and matured loans receiving extensions without any documentation,
  - overpayments of loan processing fees,
  - delinquent borrowers receiving additional loans,
  - interest not billed to borrowers, and
  - modification of loans to keep the delinquent rate low. Vol. 1:10, 47, 48, 50, 51.

- 32.** Mr. Osmond reported these irregularities to DECD's management, including Sheila Hummel and Ms. Woodward. Vol. 1:47-50, 62-66; C-6: 2, 5, 7, 10, 17.
- 33.** When DECD took no action, Mr. Osmond reported these irregularities to the auditors of public accounts (public auditors) in 2016 and 2017. Vol. 1: 9, 47-50, 57-69.
- 34.** The public auditors investigated and substantiated Mr. Osmond's allegations of financial irregularities. They issued their findings in their March 2020 report. Vol. 1:10, 47, 48, 50, 52, 60-69; C-3.
- 35.** In his September 1, 2016 to August 31, 2017 annual service rating, Ms. Heriot rated Mr. Osmond as superior in quality of work and ability to deal with people and as satisfactory in quantity of work and dependability. C-4:55.
- 36.** Ms. Heriot's rating was an upgrade over the prior year done by Ms. Woodward. C-4:52, 55.
- 37.** In December 2017, Mr. Osmond left DECD for the position of accountant at the department of housing (DOH). C-4: 20-21.
- 38.** In his September 1, 2017 to August 31, 2018 annual service rating, DOH rated Mr. Osmond as superior in quality of work, quantity of work, and dependability. He was rated as excellent in ability to deal with people. C-4:56.
- 39.** In his September 1, 2018 to August 31, 2019 annual service rating, DOH rated Mr. Osmond as superior in quality of work, quantity of work, and dependability. He was rated as excellent in ability to deal with people. C-4:57.

40. In December 2019 and early 2020, articles were published in the media about Mr. Osmond's reports to the public auditors of DECD's financial irregularities. Vol. 1:10.
41. In February 2020, DOH promoted Mr. Osmond to the position of associate accountant. Vol. 1: 23; C-4:19.
42. In February 2020, DECD advertised to fill the position of supervising accountant (job posting). The position was open to statewide employees. R-1.
43. The job posting informed applicants that along with their fillable application forms they must include their resume. R-1.
44. The job posting informed applicants that at any point during the recruitment process they may be required to submit additional documents in support of their qualifications. The additional documentation may include a cover letter, performance reviews, attendance records, supervisory references, transcripts, and licenses. R-1:2.
45. The job posting did not prohibit applicants from submitting these additional documents with their fillable application form and resume. The job posting did not inform applicants that any additional documents would not be reviewed. R-1.
46. The job posting identified five preferred qualifications. These five were: (1) work experience using CORE modules including accounts receivable and general ledger; (2) work experience with bond fund management and related reports; (3) lead or supervisory experience for a team performing accounting

functions; (4) work experience with change initiative such as LEAN with responsibility for delivering quantifiable results; and (5) work experience developing, leading, and implementing corrective action plans in response to audit findings. R-1:4.

**47.** In February 2020, Mr. Osmond timely submitted application materials to DECD for the position of supervising accountant. Vol. 1:72; C-4; R-3, R-4.

**48.** Mr. Osmond's application material to DECD included:

- the fillable application form,
- resume,
- references from former co-workers at DPH and DCF,
- his performance appraisals,
- the 2014 request from Ms. Bocwinski and Ms. Heriot to upgrade his DECD position, and
- 2012 test scores for the position of supervising accountant. C-4.

**49.** All the documents Mr. Osmond submitted with the fillable application form and resume are part of his application materials. Vol. 2:92; R-2.

**50.** Mr. Osmond had received a higher rating on the supervising accountant exam than had the other applicants. He also scored higher than Ms. Woodward. Vol. 1:13-14; C-4:63-67.

**51.** Ms. Bocwinski and Ms. Woodward served on the reviewing panel. Their role was to compare the application forms and resumes to the job posting and preferred qualifications. Vol. 2:12-14.

- 52.** Ms. Bocwinski and Ms. Woodward made the decision that an applicant needed to have at least three of the preferred qualifications to be interviewed. Vol. 2:16-18, 21-22.
- 53.** The job posting did not inform applicants that they would need at least three of the five preferred qualifications to be interviewed. R-1.
- 54.** According to the small agency resource team applicant tracking data chart: "Candidates were selected for an interview if their application materials indicated possession of at least three of the five Preferred Qualifications." R-2.
- 55.** Ms. Bocwinski and Ms. Woodward reviewed only Mr. Osmond's fillable application form; R-3; and resume; R-4. Vol. 2:23. They did not review all the application material that Mr. Osmond had submitted. Vol. 2:27, 31.
- 56.** Based only on his fillable application form and resume, Ms. Bocwinski and Ms. Woodward determined that Mr. Osmond had only two of the five preferred qualifications: work experience using CORE modules including accounts receivable and general ledger and LEAN or supervisory experience for a team performing accounting functions. Vol. 2: 24; R-2.
- 57.** If Ms. Bocwinski and Ms. Woodward had reviewed all the application material Mr. Osmond submitted, they would have seen correspondence from Ms. Heriot that showed Mr. Osmond also had qualifying work experience with change initiatives such as LEAN with responsibility for delivering quantifiable results. This would have given Mr. Osmond another preferred qualification, for a total of 3. Vol. 2: 27; C-4:27-30.

- 58.** Ms. Bocwinski and Ms. Woodward did not select Mr. Osmond for an interview.  
Vol. 1: 11; R-2.
- 59.** At the time of Mr. Osmond's application, Susan. Shellard was the chief administrative officer at DECD. Vol 1:12.
- 60.** At the time of Mr. Osmond's application, Mitchell Samal was a human resources associate at the department of administrative services (DAS). Vol 2:65-66.
- 61.** As a human resources associate, Mr. Samal often participated in hiring decisions at DECD. Vol. 2:67.
- 62.** With respect to DECD's hiring of a supervising accountant, Mr. Samal worked in an advising position with the DECD's hiring managers to obtain OPM approval to have the position filled, post the position, set up interviews, and work through the application process. Vol. 2: 68-69.
- 63.** During the application process, Ms. Shellard contacted Mr. Samal. She requested that Mr. Samal handle the filling of this position carefully. Vol. 2:88-89.
- 64.** This request from Ms. Shellard was highly unusual and out of the ordinary. Vol 2 89.
- 65.** Ms. Shellard had never contacted Mr. Samal with a similar request for any other vacant position. Vol. 2:90.
- 66.** No one at DECD had ever contact Mr. Samal with a similar request for any other vacant position. Vol. 2:89.

- 67.** DECD subsequently filled the position with another applicant. Vol. 2: 33; R-2.  
Susan Shellard and Kathy Woodward made the decision. Vol. 2:82.
- 68.** In June 2020, Mr. Osmond found out that he had not been selected for an interview. Vol. 1:73.
- 69.** In his February 14, 2020 to August 31, 2020 annual service rating, DOH rated Mr. Osmond as satisfactory in quality of work, quantity of work, and dependability. He was rated as superior in ability to deal with people. C-4:58.
- 70.** In his September 1, 2020 to August 31, 2021 annual service rating, DOH rated Mr. Osmond as excellent in quality of work, quantity of work, and dependability. He was rated as superior in ability to deal with people. C-4: 59.
- 71.** In his September 1, 2021 to August 31, 2022 annual service rating, DOH rated Mr. Osmond as excellent in quality of work, quantity of work, and dependability. He was rated as superior in ability to deal with people. C-4:60.
- 72.** In September 2022, DOH promoted Mr. Osmond to the position of supervising accountant. Vol. 1:24, 70.
- 73.** In his September 1, 2022 to August 31, 2023 annual service rating, DOH rated Mr. Osmond as excellent in quality of work, quantity of work, and dependability. He was rated as superior in ability to deal with people and in his supervisory ability. C-4: 61.

**II**  
**APPLICABLE STATUTE**

General Statutes § 4-61dd provides in relevant part that:

(a) Any person having knowledge of any matter involving (1) corruption, unethical practices, violation of state laws or regulations, mismanagement, gross waste of funds, abuse of authority or danger to the public safety occurring in any state department or agency, any quasi-public agency, as defined in section 1-120, or any Probate Court, (2) corruption, violation of state or federal laws or regulations, gross waste of funds, abuse of authority or danger to the public safety occurring in any large state contract, or (3) corruption by an entity receiving financial assistance pursuant to title 32 that has failed to meet its contractual obligations or has failed to satisfy any condition regarding such financial assistance, may transmit all facts and information in such person's possession concerning such matter to the Auditors of Public Accounts. The Auditors of Public Accounts shall review such matter and report their findings and any recommendations to the Attorney General. Upon receiving such a report, the Attorney General shall make such investigation as the Attorney General deems proper regarding such report and any other information that may be reasonably derived from such report. Prior to conducting an investigation of any information that may be reasonably derived from such report, the Attorney General shall consult with the Auditors of Public Accounts concerning the relationship of such additional information to the report that has been issued pursuant to this subsection. Any such subsequent investigation deemed appropriate by the Attorney General shall only be conducted with the concurrence and assistance of the Auditors of Public Accounts. At the request of the Attorney General or on their own initiative, the auditors shall assist in the investigation.

\* \* \*

(e) (1) No state officer or employee, as defined in section 4-141, no quasi-public agency officer or employee, no officer or employee of a large state contractor and no appointing authority shall take or threaten to take any personnel action against any state or quasi-public agency employee or any employee of a large state contractor in retaliation for (A) such employee's or contractor's disclosure of information to (i) an employee of the Auditors of Public Accounts or the Attorney General under the provisions of subsection (a) of this section; (ii) an employee of the state agency or quasi-public agency where such state officer or employee is employed; (iii) an employee of a state agency pursuant to a mandated reporter statute or pursuant to subsection (b) of section 17a-28; (iv) an employee of the Probate Court where such employee is employed; or (v) in the case of a

large state contractor, an employee of the contracting state agency concerning information involving the large state contract; or (B) such employee's testimony or assistance in any proceeding under this section.

(2) (A) Not later than ninety days after learning of the specific incident giving rise to a claim that a personnel action has been threatened or has occurred in violation of subdivision (1) of this subsection, a state or quasi-public agency employee, an employee of a large state contractor or the employee's attorney may file a complaint against the state agency, quasi-public agency, Probate Court, large state contractor or appointing authority concerning such personnel action with the Chief Human Rights Referee designated under section 46a-57. Such complaint may be amended if an additional incident giving rise to a claim under this subdivision occurs subsequent to the filing of the original complaint. The Chief Human Rights Referee shall assign the complaint to a human rights referee appointed under section 46a-57, who shall conduct a hearing and issue a decision concerning whether the officer or employee taking or threatening to take the personnel action violated any provision of this section. The human rights referee may order a state agency, quasi-public agency or Probate Court to produce (i) an employee of such agency, quasi-public agency or Probate Court to testify as a witness in any proceeding under this subdivision, or (ii) books, papers or other documents relevant to the complaint, without issuing a subpoena. If such agency, quasi-public agency or Probate Court fails to produce such witness, books, papers or documents, not later than thirty days after such order, the human rights referee may consider such failure as supporting evidence for the complainant. If, after the hearing, the human rights referee finds a violation, the referee may award the aggrieved employee reinstatement to the employee's former position, back pay and reestablishment of any employee benefits for which the employee would otherwise have been eligible if such violation had not occurred, reasonable attorneys' fees, and any other damages. For the purposes of this subsection, such human rights referee shall act as an independent hearing officer. The decision of a human rights referee under this subsection may be appealed by any person who was a party at such hearing, in accordance with the provisions of section 4-183. . . .

\* \* \*

(4) In any proceeding under subdivision (2) or (3) of this subsection concerning a personnel action taken or threatened against any state or quasi-public agency employee or any employee of a large state contractor, which personnel action occurs not later than two years after the employee first transmits facts and information concerning a matter under subsection (a) of this section or discloses information under subdivision (1) of this

subsection to the Auditors of Public Accounts, the Attorney General or an employee of a state agency, quasi-public agency or Probate Court, as applicable, there shall be a rebuttable presumption that the personnel action is in retaliation for the action taken by the employee under subsection (a) of this section or subdivision (1) of this subsection.

#### IV CASELAW

##### Parties' burdens of proof

Section 4-61dd claims are analyzed under burden shifting framework as articulating in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802 (1973). *Department of Public Health v Estrada*, 349 Conn. 223, 253 (2024) The three shifting evidentiary burdens are: (1) the complainant's burden in the presentation of his prima facie case; (2) the respondent's burden in the presentation of its non-retaliatory explanation for the adverse personnel action; and (3) the complainant's ultimate burden of proving that the respondent retaliated against him because of his whistleblowing. *Eagen v Commission on Human Rights and Opportunities*, 135 Conn. App. 563, n. 5 (2012); *Irwin v. Lantz*, Office of Public Hearings, Docket Nos. OPH/WBR 2007-40-46 and 2007-51-56; 2008 WL 2311544, \*5 (CT.Civ.Rts.) (May 9, 2008).

##### A A complainant's prima facie burden of proof

With respect to the first evidentiary burden, a complainant's prima facie case of whistleblower retaliation has three elements: (1) the complainant must have engaged in a protected activity as defined by the applicable statute; (2) the complainant must have incurred or been threatened with an adverse personnel action; and (3) there must be a causal connection between the actual or threatened personnel action and the protected

activity. *Arone v Enfield*, 79 Conn. App. 501, 507; cert. denied, 266 Conn 932 (2003); *LaFond v. General Physics Services Corp.*, 50 F.3d 165, 173 (2d Cir. 1995); *Irwin v. Lantz*, supra, 2008 WL 2311544, \*5-7; *Stacy v. Dept. of Correction*, Office of Public Hearings, Docket No. OPH/WBR 2003-002, 2004 WL 5380919, \*2-3 (CT.Civ.Rts.) (March 1, 2004).

1

A protected activity, the first prima facie element, consists of four statutory components.

First, the respondent must be a state department or agency, a quasi-public agency,<sup>3</sup> a large state contractor, or a probate court (regulated entity). §§ 4-61dd (a) (1), 4-61dd (e) (2) (A).

Second, the complainant must be an employee of the regulated entity. § 4-61dd (e) (2) (A).

Third, the complainant must have knowledge of (1) "corruption, unethical practices, violation of state laws or regulations, mismanagement, gross waste of funds, abuse of authority or danger to the public safety occurring in any state department or agency or a quasi-public agency" or of (2) "corruption, violation of state or federal laws or regulations, gross waste of funds, abuse of authority or danger to the public safety occurring in any large state contract" or of (3) "corruption by an entity receiving financial assistance pursuant to title 32 that has failed to meet its contractual obligations or has failed to satisfy any condition regarding such financial assistance" (protected information). § 4-61dd (a).

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<sup>3</sup> Quasi-public agencies are listed in General Statutes § 1-120.

Fourth, the complainant must have disclosed the protected information to an employee of (1) the public auditors, (2) the attorney general, (3) the state agency or quasi-public agency where he is employed, (4) a state agency pursuant to a mandatory reporter statute, (4) the probate court where such employee is employed, or (5) the contracting state agency concerning a large state contractor (whistleblowing). § 4-61dd (e) (1).

## 2

To satisfy the second element of his prima facie case of whistleblower retaliation, a complainant must show that he suffered or was threatened with an adverse personnel action by a regulated entity after his whistleblowing. §4-61dd (e) (1). An adverse personnel action is “an action that would dissuade a reasonable person from whistleblowing.” *Eagen v. Comm'n on Hum. Rts. & Opportunities*, supra, 135 Conn. App. 583.

## 3

The third element of a prima facie case of a whistleblower retaliation case requires a complainant to introduce sufficient evidence to establish an inference of a causal connection between the personnel action threatened or taken and his whistleblowing.

The complainant can establish the inference of causation by three methods: (1) indirectly through circumstantial evidence; (2) directly through evidence of retaliatory animus directed against the complainant by the respondent; *Gordon v. New York City Bd. of Educ.*, 232 F.3d 111, 117 (2d Cir. 2000); or (3) by operation of statute as a rebuttable presumption; § 4-61dd (f) (4).

## B

### **A respondent's burden of proof under *McDonnell Douglas***

If a complainant establishes a prima facie case through indirect evidence, the analysis proceeds to the second burden-shifting step in which the respondent must produce a legitimate, non-retaliatory reason for its actions; *Ford v. Blue Cross & Blue Shield of Connecticut, Inc.*, 216 Conn. 40, 53-54 (1990); which, if taken as true, would permit the conclusion that there was a non-retaliatory reason for the respondent's actions. *LaFond v. General Physics Services Corp.*, supra, 50 F.3d 174. If a respondent does not produce a legitimate, non-retaliatory reason, the complainant prevails. If a respondent does produce a reason, the analysis proceeds to the third burden-shifting step.

## C

### **A complainant's subsequent burden of proof under *McDonnell Douglas***

In the third burden-shifting step, a complainant must prove by a preponderance of the evidence that he was retaliated against because of his whistleblowing. A complainant

then must satisfy her burden of persuading the factfinder that she was the victim of discrimination either directly by persuading the court [or jury] that a discriminatory reason more likely motivated the employer or indirectly by showing that the employer's proffered explanation is unworthy of credence.

(Internal quotation marks omitted.) *Ford v. Blue Cross & Blue Shield of Connecticut, Inc.*, supra, 216 Conn. 578.

A complainant "must offer some significantly probative evidence showing that the [respondent's] proffered reason is pretextual and that a retaliatory intention resulted" in the adverse personnel action. *Arnone v Enfield*, supra, 79 Conn. App. 507 (2003). "Pretext may be demonstrated either by the presentation of additional evidence showing

that the employer's proffered explanation is unworthy of credence, or by reliance on the evidence compromising the prima facie case, without more . . . ." (Internal quotations omitted.) *LaFond v. General Physics Services Corp.*, supra, 50 F.3d 174.

To satisfy this burden, a complainant "need not prove that the [respondent's] proffered reasons were false or played no role in the employment decision, but only that they were not the only reasons and that the prohibited factor was at least one of the motivating factors." (Internal quotation marks omitted.) *Pappas v Watson Wyatt & Co.*, United States District Court, Docket No. 3:04-CV-304 (EBB), 2008 WL 793597, \*8 (D. Conn. March 20, 2008).

## V ANALYSIS

### A Mr. Osmond's prima facie case

Mr. Osmond established the four statutory components of the first element of a prima facie case. First, DECD is a state department or agency. Second, Mr. Osmond was an employee of DECD at the time of his whistleblowing.

Third, Mr. Osmond had knowledge of corruption, unethical practices, violations of state laws or regulations, mismanagement, gross waste of funds, and/or abuse of authority. Mr. Osmond knew of DECD's lack of reconciliation of loans, improper tracking of loans, delinquent and matured loans receiving extensions without any documentation, overpayments of loan processing fees, delinquent borrowers receiving additional loans, interest not billed to borrowers, and modification of loans to keep the delinquent rate low. Fourth, Mr. Osmond disclosed this information to DECD management and the public

auditors. The information disclosed by Mr. Osmond would subsequently be confirmed by the public auditors' own investigation.

Mr. Osmond established the second element of a prima facie case. Following his whistleblowing he was denied an interview for the position of supervising accountant. Refusing to interview a person for promotion or hire would dissuade a reasonable person from filing a whistleblower retaliation complaint.

Mr. Osmond introduced sufficient evidence to establish a causal connection between the denial of the interview and his whistleblowing, the third element of a prima facie case.<sup>4</sup> DECD did not review all the application material that Mr. Osmond submitted. The application material submitted by Mr. Osmond demonstrated that he possessed at least three of the preferred qualifications. Her ratings of Mr. Osmond's performance evaluation while he was at DECD showed that Ms. Bocwinski knew of Mr. Osmond's LEAN experience. Ms. Shellard took the unusual step of contacting the DAS human resource associate regarding the filling of the supervising accountant position.

While the length of time between Mr. Osmond's whistleblowing and DECD's adverse action might otherwise negate the inference of a causal connection, in this case the denial of an interview was DECD's first opportunity to retaliate.

As Mr. Osmond established a prima facie case of retaliation, a burden of articulation shifts to DECD to offer a non-retaliatory explanation for its actions.

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<sup>4</sup> In his brief, Mr. Osmond argued that the two-year statutory rebuttable presumption applied in his case. It does not, however, as his whistleblowing occurred in 2016 and 2017 but DECD's failure to interview him occurred in 2020.

**B**  
**DECD's burden of production**

DECD articulated a non-retaliatory reason for its decision not to interview Mr. Osmond. Ms. Bocwinski and Ms. Woodward had decided that an applicant needed to have at least three of the five preferred qualifications to be interviewed. Based on their review of only Mr. Osmond's fillable application form and resume, they determined that he had only two of five preferred qualifications.

As DECD articulated a nonretaliatory reason for its decision, the burden shifts to Mr. Osmond to prove by a preponderance of the evidence that he was retaliated against for his whistleblowing.

**C**  
**Mr. Osmond's subsequent burden of proof under *McDonnell Douglas***

Mr. Osmond has met his burden of proving by a preponderance of the evidence that he was retaliated against for his whistleblowing.

Ms. Bocwinski had worked with Mr. Osmond, had once joined in the recommendation that his position be upgraded, twice rated Mr. Osmond as having LEAN experience, and conceded that a review of all the application materials submitted by him would have shown that he had a third preferred qualification. Ms. Shellard's inquiry to DAS regarding the selection process was highly unusual. Mr. Osmond's annual service ratings consistently document him as an outstanding worker.

There are inconsistencies between tracking data chart and testimony. According to the tracking data chart, "[c]andidates were selected for an interview if their application materials indicated possession of at least three of the five Preferred Qualifications." R-2.

Testimony was clear that the term "application materials" included all documents submitted with the fillable application form. Testimony, however, also made clear that DECD did not review all the application materials Mr. Osmond submitted.

With respect to the candidate selected for the position, her fillable application form and resume do not use the word LEAN. Also, while at DCF, Mr. Osmond had been promoted to the position of supervising accountant, the same position that he was applying for at DECD. The resume of the candidate selected by DECD does not indicate that she ever held the position of supervising accountant or any other supervisory experience. R-5.

## **VI DAMAGES**

### **A Applicable statute**

General Statutes § 4-61dd (e) (2) (A) provides in part that:

If, after the hearing, the human rights referee finds a violation, the referee may award the aggrieved employee reinstatement to the employee's former position, back pay and reestablishment of any employee benefits for which the employee would otherwise have been eligible if such violation had not occurred, reasonable attorneys' fees, and any other damages.

### **B Caselaw**

#### **1 Economic**

It is axiomatic that a plaintiff has a duty to make reasonable efforts to mitigate damages. . . . An employer seeking to reduce or avoid a back pay award bears the burden of demonstrating that a plaintiff has failed to satisfy the duty to mitigate. . . . The employer must therefore demonstrate that suitable work existed, and that the employee did not make reasonable efforts to obtain it. . . .

Whether a plaintiff made a reasonable effort to mitigate her damages under the circumstances of a particular case is a question of fact.

(Internal citations omitted; internal quotation marks omitted.) *Rossova v. Charter Communications, LLC*, 211 Conn. App. 676, 703-704, 273 A.3d 697 (2022).

## 2 Emotional distress

In assessing damages for emotional distress, this tribunal utilizes what has become known as the *Harrison* analysis.

Under the *Harrison* analysis, the most important factor of such damages is the subjective internal emotional reaction of the complainants to the discriminatory experience which they have undergone and whether the reaction was intense, prolonged and understandable. ... Second, is whether the discrimination occurred in front of other people. ... For this, the court must consider if the discriminatory act was in public and in view or earshot of other persons which would cause a more intense feeling of humiliation and embarrassment. ... The third and final factor is the degree of the offensiveness of the discrimination and the impact on the complainant. ... In other words, was the act egregious and was it done with the intention and effect of producing the maximum pain, embarrassment and humiliation.

(Internal quotation marks omitted.) *Comm'n on Hum. Rts. & Opportunities v. Cantillon*, 207 Conn. App. 668, 680, 263 A.3d 887, 895–96 (2021), *aff'd*, 347 Conn. 58, 295 A.3d 919 (2023).

## C Analysis

Mr. Osmond testified that he was seeking lost wages, vacation time, and damages. Vol. 1: 14. He provided no testimony or calculations, however, as to the amount of his lost wages. Similarly, he provided no testimony or other evidence to determine the amount of vacation time he lost, other damages he incurred, or the emotional distress he suffered.

In his post-hearing brief, Mr. Osmond requested salary step increases, backpay, and benefits as calculated in exhibit A to the brief. He also requested emotional distress damages and reimbursement of his time and expenses for the public hearing. A post-hearing brief, however, does not constitute evidence from which damages can be determined and awarded. This information needed to be presented at the public hearing through testimony and exhibits and be subjected to cross-examination by DECD.

In his post-hearing brief, he also requested pre- and post-judgment interest. Even if monetary damages were being awarded, pre-and post-judgment interest are not available against a state agency. *Connecticut Judicial Branch v. Gilbert*, 343 Conn. 90, 127, 272 A.3d 603 (2022).

## VII CONCLUSIONS OF LAW

1. Mr. Osmond established a prima facie case that DECD retaliated against him for his whistleblowing.
2. DECD articulated a non-retaliatory reason for its failure to interview Mr. Osmond for the position of supervising accountant.
3. Mr. Osmond established by a preponderance of the evidence that DECD did not interview him for the position of supervising accountant in retaliation for his whistleblowing.
4. Mr. Osmond did not establish by a preponderance of the evidence that he incurred any economic loss or emotional distress.

**VIII  
ORDER**

For two years following the date of this decision, DECD shall interview Mr. Osmond for any posted position for which Mr. Osmond applies.

*/s/ Jon P. FitzGerald*  
Hon. Jon P. FitzGerald  
Presiding Human Rights Referee