STATE OF CONNECTICUT
DEPARTMENT OF LABOR
200 Folly Brook Boulevard
Wethersfield, CT 06109

Complainant
Queen Allen

29 Park Avenue
Bloomfield, CT 06002

Employer
Verizon Wireless

By: Peter C. Moskowitz, Esq.
Jackson Lewis P.C.
666 Third Avenue
New York, NY 10017

Docket No.: FM 2011-030

Date Mailed: 4.14.15

FINAL DECISION

The undersigned, Sharon M. Palmer, Commissioner of the State of Connecticut Department of Labor, hereby issues her final decision in the complaint encaptioned Queen Allen v. Verizon Wireless, Case No. FM 2011-030. This decision is issued pursuant to Conn. Gen. Stat. § 4-180 and Sections 31-1-8 and 31-51qq-47 of the Regulations of Connecticut State Agencies.

Following the issuance of the Proposed Decision of Hearing Officer Micheala L. Mitchell on March 11, 2014, the Complainant, Queen Allen, requested an opportunity to file exceptions and present briefs and oral argument. In response thereto, April 16, 2014, was set as the deadline for submission of briefs.

On December 9, 2014, an order was issued setting the date of oral argument for January 21, 2015, and on that date the undersigned commenced a hearing affording Complainant and Respondent an opportunity for oral argument pertaining to the Proposed Final Decision and to fully address any legal claims and exceptions thereto. At said hearing, Complainant, Queen Allen, and counsel for Respondent, Verizon Wireless, were fully heard. Upon the close of the hearing, the undersigned took the matter under advisement.

Having had the opportunity to review the brief submitted by Complainant, fully reviewing the administrative record in this case and giving due consideration to the oral argument presented on January 21, 2015, I hereby issue my final decision.

WHEREFORE, I affirm in whole and incorporate the Proposed Final Decision of the Hearing Officer issued on March 11, 2014, as my final decision in this matter, a copy of which is attached hereto.

4/13/15
Dated

Sharon M. Palmer
Commissioner

STATE OF CONNECTICUT
Department of Labor
200 Folly Brook Boulevard
Wethersfield, Connecticut 06109

PROPOSED FINAL DECISION OF HEARING OFFICER

Queen M. Allen v. Verizon Wireless

Docket No.: FMLA 2011-030

Date Decision is Mailed: March 11, 2014

Hearing Date: January 30, 2014

Appearances:

For the Complainant: Queen M. Allen, Complainant.

For the Respondent: Attorney Sarah R. Skubas, Jackson Lewis, P.C.; Attorney Peter C. Moskowitz, Jackson Lewis, P.C.; Attorney Wayne Paschke, Verizon Wireless; Stephanie Williams, Claims Support Specialist, MetLife; Katie Phipps, Human Resources Business Partner, Verizon Wireless; Deb Bushman, Supervisor for Business Support Center, Verizon Wireless; Diane Anderson, former Analyst-Human Resources, Verizon Wireless.

CASE HISTORY

On July 11, 2011, the Complainant filed a complaint with the State of Connecticut Department of Labor, Wage and Workplace Standards Division (hereinafter referred to as Wage and Workplace Standards Division), alleging that her former employer, Verizon Wireless, violated the provisions of General Statutes §§ 31-51cc, et seq., An Act Concerning Family and Medical Leave from Employment (hereinafter referred to as the CFMLA).

On October 4, 2011, the Respondent responded to the Wage and Workplace Standards Division contending that the complaint was without merit.

On June 14, 2013, the Wage and Workplace Standards Division notified the parties that it had investigated the Complainant's complaint and determined that the Respondent did not violate the CFMLA.

On September 20, 2013, the Complainant requested a contested case hearing pursuant to Section 31-51qq-44(e) of the Regulations of Connecticut State Agencies.

On July 10, 2013, Commissioner Sharon M. Palmer designated Attorney Erika Foster as the conditional designated mediator and Attorney Micheala Mitchell as the designated hearing officer in the case. The Complainant declined to participate in a settlement conference.

Designated Hearing Officer Mitchell conducted a prehearing conference with the parties on December 12, 2013, at 38 Wolcott Hill Road, Wethersfield, CT.

On January 30, 2014, Hearing Officer Mitchell conducted a contested case hearing concerning the Complainant's complaint at 645 South Main Street, Middletown, Connecticut.

FINDINGS OF FACT

1. The Complainant commenced work for the Respondent on November 8, 2004, as a Customer Service Representative. The Respondent promoted the Complainant to a Coordinator position in December 2005. The Complainant held that position until her separation from employment on January 14, 2011.

2. At all relevant times, the Respondent was a covered employer under the provisions of the CMFLA.

3. The Respondent's third party administrator, MetLife, administers both requests for leave under the CFMLA and applications for Short Term Disability (STD) benefits on behalf of the Respondent.

4. MetLife uses the same process to gather information to determine an employee's eligibility under the federal Family and Medical Leave Act as it does under the CFMLA.

5. The Respondent does not participate in the process utilized by MetLife to approve or deny leave to its employees under the CFMLA, nor does it receive copies of medical documentation submitted to MetLife in support of an employee's request for leave under the CFMLA.

6. During her six-year tenure with the employer, the Complainant submitted requests for CFMLA leave to MetLife on May 22, 2006, December 6, 2006, January 16, 2007, January 25, 2007, October 23, 2008, February 3, 2009, February 20, 2009, September 11, 2009, February 8, 2010, July 13, 2010, and November 15, 2010.

7. MetLife granted the Complainant's May 22, 2006, January 16, 2007, February 3, 2009, and February 8, 2010 CFMLA leave requests.

8. MetLife denied the requests for CFMLA leaves which the claimant filed on December 6, 2006, January 25, 2007, October 23, 2008, and September 11, 2009, because the Complainant did not submit a completed Healthcare Provider Information form to substantiate her requests. It also denied the Complainant's February 20, 2009 request because the Complainant's medical

documentation did not support a claim of serious illness.

9. MetLife approved the Complainant's February 8, 2010 claim for intermittent CFMLA leave through August 22, 2010. The Complainant's approval ended when she did not submit a Healthcare Provider Information update to MetLife to extend that leave.

10. On November 15, 2010, the Complainant did not report to work. In an email which the Complainant sent to her Supervisor, Deb Bushman, she wrote, "I am going to file for today. Thanks!" Bushman responded, "Oh sorry to hear that. Is this pending std? What was your first day out? Hope you feel better." The Complainant replied, in relevant part, "I am going to put a claim in to Metlife."

11. On November 15, 2010, the Complainant submitted a request for CFMLA leave to MetLife.

12. From November 15, 2010, through December 31, 2010, the Complainant sent daily email notifications to Bushman each day that she was scheduled to work, indicating that she would be absent. The Complainant did not specify the reason for her absences in these emails.

13. On November 16, 2010, MetLife mailed an eligibility letter and a rights package to the Complainant at the address that she provided in her leave request. The rights package included a document entitled, "Your Rights and Obligations Under the Family and Medical Leave Act," and a blank Health Care Provider Certification form.

14. The eligibility letter advised the Complainant, in relevant part: "You must have the above required forms completed and returned to MetLife by the beginning of your absence or within 15 calendar days of the date of this letter (whichever is later) or your leave request may be delayed or denied."

15. On November 16, 2010, the Complainant sent an e-mail to Bushman wherein she wrote, "Hi Deb, I am going to be out today." Bushman replied, "Okay thanks feel better. Please text, call or email each day until your (sic) approved."

16. On November 23, 2010, the Complainant filed a claim with MetLife seeking (STD) benefits.

17. Immediately following this event, MetLife issued an email notification to the Complainant acknowledging receipt of her STD claim.

18. MetLife also mailed a letter to the Complainant, dated November 23, 2010, to inform her that an "FML claim" had been initiated along with the STD claim. The letter informed the Complainant that her STD claim number was 541011238804. The letter further advised the Complainant that: "It is your responsibility to ensure that your health care provider(s) submits medical documentation in support of your Short Term Disability Claim to MetLife by December 10, 2010. This information should clarify and or include medical records test results and/or treatment notes... To

avoid claim processing delays or payment disruptions, please immediately complete the enclosed 'Authorization to Disclose Information About Me' form and return it to us at the address on the form or you may fax it to 1-800-230-9531."

19. The "Authorization to Disclose Information About Me" form authorizes MetLife to communicate directly with an employee's healthcare provider to obtain information to make a determination regarding the employer's claim.

20. On November 24, 2010, the Complainant sent an email to Bushman. She wrote, "Hi Deb. I am going to be out today. My claim number is 541011238804."

21. On December 1, 2010, the Complainant sent an email to Bushman to advise that she would not report to work that morning. Bushman asked the Complainant, via email, "Hi, Have you gotten anything from Metlife yet?" The Complainant responded by email, "I spoke to Metlife. I haven't gotten a letter yet. I have an appointment tomorrow."

22. On December 3, 2010, the Complainant sent an email to Bushman. She wrote, "Hi Deb, I'm going to be out today. I have another appointment."

23. The Complainant did not submit a signed "Authorization to Disclose Information About Me" form to MetLife.

24. MetLife did not receive a completed Health Care Provider Certification form or any other medical documentation from the Complainant or a physician.

25. On December 6, 2010, MetLife sent a letter to the Complainant advising her that her CFMLA request had been denied because she failed to provide the required Health Care Provider Certification form. MetLife also electronically notified the Respondent of its decision to deny the Complainant's request for CFMLA leave via its "dashboard" system. The dashboard is an electronic system that MetLife uses to communicate an employee's claim status to the Respondent using a claim status and claim reason code.

26. On December 7, 2010, the Complainant sent an email that read, "Hi Deb, I will be out today." Bushman replied, "[Okay], please make sure you are communicating with metlife."

27. On December 8, 2010, the Complainant informed Bushman, "I will be out today. I will fax over some info to Metlife." However, Metlife did not receive any medical documentation from the Complainant or her physician after that date.

28. On December 13, 2010, MetLife mailed a letter to the Complainant informing her that it had denied her STD claim due to lack of medical evidence. MetLife also notified the employer of the denial via the dashboard system.

29. The Complainant did not return to work after November 15, 2010.

30. On December 20, 2010, Diane Anderson, former Analyst-Human Resources for Verizon Wireless, mailed a letter to the Complainant via overnight mail. Anderson wrote, in part: "The role that my team has with unplanned time off such as this is to ensure that your unexcused time is somehow accounted for. I am reaching out to see whether there is anything additional the Company can consider in terms of your absence."

31. Anderson also wrote: "Enclosed is a set of Workplace Arrangement Request forms and a Medical Release form. You and your physician will need to complete these forms in order for the Company to consider any type of workplace arrangement. These forms will need to be returned to me by Monday, December 27, 2010...If you do not require any type of reasonable accommodation we expect you to return to work by Monday, December 27, 2010. Please note that even if you return to work on December 27, 2010, we will need documentation substantiating your absence from November 15, 2010 to the present. Please contact me in advance of Monday December 27, 2010 so that I can help facilitate your return."

32. Anderson warned the Complainant that she would be placed on an "Unauthorized Leave of Absence" if she failed to submit the completed Workplace Arrangement Request forms or return to work by December 27, 2010. Specifically, she wrote: "Placement on an Unauthorized Leave of Absence means that your absence is subject to termination of employment for job abandonment."

33. The return receipt for the December 20, 2010 letter was signed as received on December 23, 2010 by "C. Allen."

34. The Complainant did not return the Workplace Arrangement Request forms to Anderson by December 27, 2010. She also did not call Anderson.

35. On December 30, 2010, the Complainant sent an email to Bushman wherein she wrote, "I won't be in today." Bushman responded, "Okay, we are closed tomorrow so you do not need to email until Monday. Please make sure that you have contacted MetLife and are up to date with them as we do not have any approval at this time."

36. On January 3, 2011, Anderson called the Complainant. The Complainant did not answer the phone. Anderson left a detailed voice mail message for the Complainant to advise her that she was calling to inquire about her absence from work and to follow up on the December 20, 2010 letter.

37. On January 3, 2011, Anderson sent a second letter to the Complainant via overnight mail to inform her that she had been placed on an Unauthorized Leave of Absence. In the letter, Anderson reiterated that the Complainant's employment was subject to termination for job abandonment. She

also wrote, "...if you do not return to work by Monday, January 10, 2011, with documentation in hand, the Company will conclude that you have elected to abandon your position...."

38. The return receipt for the January 3, 2011 letter was signed for as received by "L. Nelson" on January 5, 2011.

39. On January 6, 2011, the Complainant called Anderson. During their conversation, the Complainant acknowledged receipt of Anderson's letters and disclosed frustration with her medical providers' inability to determine the cause of her illness. The Complainant explained that her receipt of Anderson's letters was delayed because she had been staying with her mother. The Complainant never asked the employer or MetLife to redirect her mail to her mother's address.

40. Anderson reminded the Complainant that she needed medical documentation to assist her in keeping her job and that if none was received by the close of business on January 10, 2011, she would have no alternative but to move forward in terminating her for job abandonment. The Complainant responded that she understood.

41. The Complainant did not return to work and did not send any medical documentation to Anderson by January 10, 2011.

42. On January 14, 2011, the Respondent terminated the Complainant's employment for job abandonment and for her failure to provide medical documentation to cover her extended absence.

I. PROVISIONS OF LAW

Section 31-51ll. Family and medical leave: Length of Leave; eligibility; intermittent or reduced leave schedules; substitution of accrued paid leave; notice to employer, provides, in relevant part, that:

> (a)(1) Subject to section 31-51 mm, an eligible employee shall be entitled to a total of sixteen workweeks of leave during any twenty-four month period, such twenty-four month period to be determined utilizing any one of the following methods: (A) Consecutive calendar years; (B) a fixed twenty-four-month period, such as two consecutive fiscal years or a twenty-four-month period measured forward from an employee's first date of employment; (C) a twenty-four-month period measured forward from an employee's first day of leave taken under sections 31-51kk to 31-51qq, inclusive; or (D) a rolling twenty-four-month period measured backward from an employee's first day of leave taken under sections 31-51kk to 31-51qq, inclusive.
>
> (2) leave under this subsection may be taken for one or more of the following reasons:...(D) Because of a serious health condition of the employee.

Section 31-51nn. Family and medical leave: Employment and Benefits Protection.

> (a) An eligible employee who takes leave under section 31-51 ll for the intended purpose of the leave shall be entitled on return from such leave (1) to be restored by the employer to the position of employment held by the employee when the leave commenced; (2) if the original position of employment is not available, to be restored to an equivalent position with equivalent benefits, pay, and other terms and conditions of employment; or, (3) in the case of a medical leave, if the employee is medically unable to perform the employee's original job upon the expiration of such leave, to be transferred to work suitable to such employee's physical condition if such work is available.

Section 31-51pp. Family and medical leave: Prohibited acts.

> (a)(1) It shall be a violation of sections 5-248a and 31-51kk to 31-51qq, inclusive, for any employer to interfere with, restrain or deny the exercise of, or the attempt to exercise, any right provided under said sections.
>
> (2) It shall be a violation of sections 5-248a and 31-51kk to 31-51kk to 31-51qq, inclusive for any employer to discharge or cause to be discharged, or in any manner discriminate, against an individual for opposing any practice made unlawful by said sections or because such employee has exercised the rights afforded such employee under said sections.

Section 31-51qq-25 of the Regulations of Connecticut State Agencies provides, in relevant part, as follows:

> (a) The FMLA prohibits interference with an employee's rights under the law, and with legal proceedings or inquiries relating to an employee's rights. More specifically, the law contains the following employee protections:
>
> > (1) An employer is prohibited from interfering with, restraining, or denying the exercise of (or attempt to exercise) any rights provided by the Act.
> >
> > (2) An employer is prohibited from discharging or causing to be discharged or in any other way discriminating against any person (whether or not an employee) for opposing or complaining about any unlawful practice under the Act or because such employee has exercised the rights afforded to such employee under the Act....
>
> (b) Any violations of the Act or these regulations constitute interfering with, restraining, or denying the exercise of rights provided by the Act. "Interfering with" the exercise of an employee's rights would include, for example, not only refusing to authorize FMLA leave,

> but discouraging an employee from using such leave. It would also include manipulation by a covered employer to avoid responsibilities....
>
> (c) An employer is prohibited from discriminating against employees or prospective employees who have used FMLA leave. For example, if an employee on leave without pay would otherwise be entitled to full benefits, the same benefits would be required to be provided to an employee on unpaid FMLA leave. By the same token, employers cannot use the taking of FMLA leave as a negative factor in employment actions, such as hiring, promotions or disciplinary actions; nor can FMLA leave be counted under "no fault" attendance policies.

II. PARTIES' CONTENTIONS / ISSUE STATEMENT

The Complainant contends that the Respondent interfered with the exercise of her rights under the Connecticut Family and Medical Leave Act, in violation of General Statutes §§ 31-51kk, et. seq., by denying her a leave under that Act. The Complainant further contends that the Respondent has discharged, discriminated and retaliated against her for exercising his rights under the CFMLA.

The Respondent denies that it interfered with the Complainant's CFMLA rights and denies that it discharged or otherwise discriminated against the Complainant because she requested leave under the CFMLA. The issues raised in this case are whether the Respondent violated the CFMLA because it interfered with the Complainant's exercise of her rights under the CFMLA, or discharged, caused to be discharged, or in any manner discriminated against the Complainant for exercising her right to leave under the CFMLA.

III. DISCUSSION

A. THE RESPONDENT DID NOT INTERFERE WITH THE COMPLAINANT'S EXERCISE OF THE RIGHTS AFFORDED HER UNDER THE CONNECTICUT FAMILY AND MEDICAL LEAVE ACT.

Section 31-55qq-25(a) of the Regulations of Connecticut State Agencies provides that an employer may not engage in conduct that interferes with an employee's exercise of his or her rights under the CFMLA. To assert a claim for interference, the complainant has the burden to show that he or she is entitled to CFMLA leave, but need not show that the employer intended to interfere with that leave. *Cendant Corp. v. Commissioner of Labor*, 276 Conn. 16, 883 A.2d. 789 (2005). If an employer interferes with an employee's exercise of his or her rights under the Act, it violates the CFMLA, regardless of the employer's intent. *Id.*

However, when an employer has advised an employee of the probable consequences of his or her failure to provide adequate medical documentation to substantiate a request for leave under the CFMLA, and the employee does not provide adequate medical documentation as required, the employee is estopped from

asserting that an employer interfered with his or her rights under the CFMLA. *Clare v. Catholic Family Services*, FMLA Case No. 99-44 (3/9/01). Moreover, there is no violation of the CFMLA if there is no medical evidence establishing that an employee was seriously ill when he or she requested leave. *Cannon v. Middlesex Hospital*, FMLA Case No. 91-10 (5/28/93).

In the case before the hearing officer, the Respondent utilizes a third party administrator, MetLife, to administer CFMLA and STD requests made by its employees. The Respondent does not participate in MetLife's determination process. On November 15, 2010, the Complainant submitted a request for CFMLA leave to MetLife.

The evidence submitted by both parties during the January 30, 2014 hearing indicates that MetLife required the Complainant to submit medical certification to support her leave request. Specifically, on November 16, 2010, MetLife sent correspondence to the Complainant that included a Health Care Provider Certification form. In that correspondence, MetLife advised the Complainant that she had 15 calendar days to return the completed form to MetLife or her CFMLA request would be denied. The Complainant never submitted the completed Health Care Provider Certification form to MetLife. The Complainant failed to provide the Respondent's third party administrator, MetLife, with adequate medical documentation substantiating that she had a serious health condition within a reasonable period of time. The Complainant also did not present any medical evidence at the January 30, 2014 hearing to support a finding that she had a serious health condition when she requested leave on November 15, 2010. Accordingly, the hearing officer concludes that the Complainant did not meet her burden of showing that the Respondent interfered with the exercise of her rights under the CFMLA.

B. THE RESPONDENT DID NOT DISCRIMINATE OR RETALIATE AGAINST THE COMPLAINANT BECAUSE SHE EXERCISED HER RIGHT TO REQUEST LEAVE UNDER THE CONNECTICUT FAMILY AND MEDICAL LEAVE ACT.

Where the Complainant alleges discrimination for exercising his or her rights under the CFMLA and there is no direct evidence of the employer's intent, the *McDonnell Douglas Corp.* burden-shifting framework applies. *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 803 93 S. Ct 1817, 36 L.Ed.2d 668 (1973); *Cendant Corp. v. Commissioner of Labor*, 583 Conn. 16, 583 A. 2d (2005); *Jarmilik v. Yale University*, FMLA 2006-76 (10/22/08). First, the Complainant must establish, by a preponderance of the evidence, a *prima facie* case of retaliation. "The burden of establishing a *prima facie* case (of discrimination) is not a heavy one. One might characterize it as minimal." *Carlton v. Mystic Transp., Inc.*, 202 F.3d 129, 134 (2d Cir.2000); *Wiechman v. Chubb & Son*, 552 F. 2d 271 (D. Conn. 2008). To establish a *prima facie* case of retaliation, the complainant must prove that: (1) he or she exercised her rights under the CFMLA; (2) the Respondent took an adverse employment action against him or her; and (3) a causal connection exists between the exercise of his or her rights under the CFMLA and the Respondent's adverse employment action. A causal connection may be established either indirectly by showing that the protected activity was followed closely by discriminatory treatment, or through other evidence such as disparate treatment of fellow employees who engaged in similar conduct, or directly through evidence of retaliatory animus directed against a plaintiff by a defendant. See *Hammond v. City*

of Bridgeport, 139 Conn. App. 687, 88 A. 3d 259 (2012). The trier of fact must determine whether a temporal relationship between an employee's protected activity and an adverse action is causally significant. See *Ayontola v. Board of Trustees of Technical Colleges*, 116 Conn. App 784 (2009).

If the Complainant meets his or her initial burden, the burden shifts to the Respondent to articulate some legitimate, nondiscriminatory reason for taking the adverse employment action. Once the Respondent offers a nondiscriminatory reason for its actions, the Complainant must prove that the reason provided by the employer is merely a pretext and that his or her exercise of his or her rights under the CFMLA was the real reason for the adverse employment action. See *Sista v. CDC Ixis N. Am., Inc.*, 445 F.3d 161, 174 (2d Cir.2006); *Jamilik v. Yale University*, FMLA 2006-76 (10/22/08).

In *Roundtree v. Securitas Security Services, Inc.*, 2012 WL 631848 (D.Conn 2/27/12), the District Court of Connecticut ruled that if a Complainant never produces a medical certification of a serious illness, that individual has not exercised his or her rights under the FMLA or CFMLA. The court further stated that if there was no exercise of the rights under the Act, the Complainant cannot establish a *prima facie* case of retaliation.

The Complainant in the instant case did not satisfy her burden of proving a *prima facie* case of discrimination or retaliation. The Complainant asserted that the Respondent subjected her to a pattern of discrimination because the Respondent denied her prior requests for CFMLA on December 6, 2006, January 25, 2007, October 23, 2008, and September 11, 2009. The record reveals, however, that the aforementioned claims were denied because the Complainant did not submit a completed Healthcare Provider Information form to MetLife to substantiate her claims. Conversely, MetLife granted the Complainant's May 22, 2006, January 16, 2007, February 3, 2009, and February 8, 2010 CFMLA leave requests because she complied with all of the requirements necessary for MetLife to determine that she was eligible to take leave.

The Respondent argued that the Complainant's final absence between November 15, 2010, and January 14, 2011, was not protected by the CFMLA. The hearing officer agrees. The Respondent placed the Complainant on notice that she needed to provide a completed Health Care provider certification when she requested CFMLA leave on November 15, 2010. The Complainant failed to comply. Therefore, although the Complainant made a CFMLA request on November 15, 2010, she did not fully assert her rights under the CFMLA because she did not provide adequate medical documentation to substantiate that she had been diagnosed with a serious illness to MetLife by the established 15-day deadline.

The hearing officer notes that in *Roundtree*, the employer asked the employee to clarify whether he was requesting time off for an FMLA reason, in addition to providing a medical certification, and that the employee did neither. In the instant case, the Respondent acknowledged that the complainant made a request for FMLA leave. However, even if the hearing officer were to conclude that the Complainant's preliminary request constituted an exercise of her CFMLA rights, and that the Complainant has met the "minimal burden" necessary to establish a causal connection and a *prima facie* case of discrimination, the Complainant has not met her burden of proving that the reason provided by the employer for her discharge

was a pretext. The Respondent in this case offered a legitimate, nondiscriminatory reason for discharging the Complainant, which was her failure to provide medical documentation to substantiate the need for her extended absence and her failure to return to work. Consequently, the Complainant must prove that the reason provided by the employer is merely a pretext and that her exercise of her rights under the CFMLA was the real reason for the adverse employment action.

A Complainant can demonstrate pretext by showing weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions in the respondent's proffered legitimate reasons for its actions that a reasonable fact finder could find them unworthy of credence. See *Combs v. Plantation Patterns*, 106 F.3d 1519, 1538 (11th Cir.1997); *Richmond v. ONEOK, Inc.*, 120 F.3d 205, 209 (10th Cir.1997). When a Respondent advances conflicting reasons for its actions at various stages of the process, the proffered reason may be considered unworthy of belief. See *Cleveland v. Home Shopping Network, Inc.*, 369 F.3d 1189, 1194-95 (11th Cir.2004).

However, a Complainant cannot succeed in demonstrating pretext simply by quarreling with the wisdom of the employer's reason or substituting his or her own business judgment for the Respondent's judgment. See *Diaz v. Transatl. Bank*, 367 Fed. Appx. 93, 97 (11th Cir.2010); *Chapman v. AI Transp.*, 228 F.3d 1012, 1030 (11th Cir.2000). Rather, the Complainant must rebut the employer's stated reason with evidence of pretext. *Id.* A Respondent may discharge a Complainant for a good reason, a bad reason, a reason based on erroneous facts, or for no reason at all, as long as its action is not for a discriminatory reason. *Abel v. Dubberly*, 210 F.3d 1334, 1339 n. 5 (11th Cir.2000).

The Complainant in this case has not established that the employer's stated reason for discharge was a pretext and that the real reason was because she attempted to exercise her rights under the CFMLA. Despite the fact that the claimant had not reported to work since November 15, 2010, and that MetLife denied the Complainant's CFMLA claim on December 6, 2010, the Respondent attempted to work with the Complainant to remain employed. The Respondent gave the Complainant until January 10, 2011, to provide medical evidence to substantiate her need to take the extended absence, or in the alternative, to grant her a work-related accommodation. The Complainant reported her absences via email to her supervisor Deb Bushman on a daily basis. On December 7, 2010, and December 30, 2010, Bushman responded by encouraging the Complainant to maintain contact with MetLife because the Respondent had not received any authorization from MetLife to cover her absences.

On December 20, 2010, Diane Anderson, former Analyst-Human Resources for Verizon Wireless, mailed a letter to the Complainant enclosing a Workplace Arrangement Request form due by Monday, December 27, 2010. Despite Anderson's directive to the Complainant to contact her to facilitate her return, and to complete the form, the Complainant did not call Anderson return and did not complete the form. She also did not return to work.

The Respondent did not discharge the Complainant after she failed to respond by the December 27, 2010 deadline. On January 3, 2011, Anderson left a detailed voice mail message for the Complainant to advise her that she was calling to inquire about her absence from work and to follow up on the December 20,

2010 letter. The same day, Anderson sent a second letter to the Complainant via overnight mail to inform her that she had been placed on an Unauthorized Leave of Absence and to warn the Complainant that her employment was subject to termination for job abandonment. She also wrote, "...if you do not return to work by Monday, January 10, 2011, with documentation in hand, the Company will conclude that you have elected to abandon your position...."

The Complainant finally called Anderson on January 6, 2011. During their conversation, the Complainant disclosed that her receipt of Anderson's letters was delayed because she was temporarily staying with her mother. While the hearing officer acknowledges the Complainant's testimony regarding the delay, there is no evidence in the record that the Complainant updated her address with MetLife or the Respondent to reflect the change in her living arrangements. Additionally, the return-receipts cited by Anderson indicate that someone signed for Anderson's letters at the claimant's address of record before each of the deadlines established in her correspondence.

Even if the Complainant did not immediately receive Anderson's letters, she told Anderson that she understood that she would be terminated if she failed to report to work or submit the required medical documentation by January 10, 2011. The Complainant did not send any medical documentation to Anderson or return to work by January 10, 2011. The Respondent afforded the Complainant numerous opportunities to preserve her employment although she was not covered under the CFMLA; therefore, the hearing officer concludes that the Complainant was discharged for legitimate, non-discriminatory reasons.

IV. CONCLUSION

The Complainant has failed to demonstrate that the Respondent interfered with or restrained the exercise of her rights under the CFMLA pursuant to General Statutes § 31-51pp(a)(1) and Regs., Conn. State Agencies §§ 31-51qq-25(a)(1) and (b).

The Complainant has not met her burden of proving that the Respondent discharged or discriminated against her in retaliation for her exercising his right to CFMLA leave pursuant to General Statutes § 31-51pp(a)(2) and Regs., Conn. State Agencies §§ 31-51qq-25(a)(2) and (c).

Michaela L. Mitchell

Attorney Michaela L. Mitchell
Designated Hearing Officer

The parties are advised of their right to file an exception and present a brief and/or oral argument to the Commissioner before a final decision is issued. The deadline for filing an exception is March 25, 2014.

Mail any exceptions and briefs to: Commissioner of Labor, 200 Folly Brook Boulevard, Wethersfield, Connecticut, 06109. Refer to the docket number in any correspondence submitted.