

STATE OF CONNECTICUT
DEPARTMENT OF LABOR
200 FOLLY BROOK BOULEVARD
WETHERSFIELD, CT 06109

COMPLAINANT

Kimberly Foley
146 Turkey Hills Road
East Granby, CT 06026

By: Derek Oatis, Esq.
Lobo & Associates
280 Adams Street
Manchester, CT 06042

Cert. No.: 70081140000281158730

EMPLOYER

Clinical Laboratory Partners
By: Brian Clemow, Esq.
Shipman & Goodwin
One Constitution Plaza
Hartford, CT 06103

Cert. No.: 70081140000281158723

DOCKET NO. FM 2007-24

DATE MAILED: January 15, 2009

Final Decision

Pursuant to Section 31-1-8 of the Regulations of Connecticut State Agencies, I am issuing my final decision in the above-referenced matter after reviewing the record in the case. I affirm and incorporate the Proposed Decision of the hearing officer issued on December 16, 2008, (a copy of which is attached hereto) as my final decision.


Patricia H. Mayfield
Commissioner

Enc.

STATE OF CONNECTICUT
Department of Labor
39 Marne Street
Hamden, CT 06514
Telephone: (203)230-3700 Fax: (203) 859-3350

PROPOSED DECISION OF HEARING OFFICER

KIMBERLY FOLEY
146 Turkey Hills Road
East Granby, CT 06026

V.

CLINICAL LABORATORY PARTNERS
129 Patricia M. Genova Drive
Newington, CT 06111

Docket No.: FMLA 2007-24

Date Decision is Mailed: December 16, 2008

Hearing Date: November 24, 2008

Appearances:

For the Complainant: None

For the Respondent: Peter Montagino, Vice-President, Human Resources;
Attorney Brian Clemow

CASE HISTORY

On June 12, 2007, the complainant, Kimberly Foley, filed an initial complaint with the State of Connecticut Department of Labor, Wage and Workplace Standards Division (hereinafter referred to as the "Wage and Workplace Standards Division") alleging that her former employer, Clinical Laboratory Partners, violated the provisions of General Statutes § 31-51kk, et seq., An Act Concerning Family and Medical Leave from Employment (hereinafter referred to as CFMLA). On June 14, 2007, the Wage and Workplace Standards Division notified the respondent, Clinical Laboratory Partners, that the complainant had filed a complaint, alleging that it had violated General Statutes § 31-51pp, and requested that the respondent respond to the complaint in writing, within twenty-one (21) calendar days.

On July 2, 2007, the respondent furnished the Wage and Workplace Standards Division with its response to the complainant's complaint, stating that the complainant's removal from her position was not related to her health issues. On August 15, 2007, the Wage and Workplace Standards Division notified the complainant that the respondent had filed its response to her complaint. On September 13, 2007, the complainant responded to the respondent's July 2, 2007 submission. On

June 27, 2008, the Wage and Workplace Standards Division notified the complainant and the respondent that the Wage and Workplace Standards Division had determined that, according to its investigation, the respondent had not violated the provisions of the CFMLA. The complainant filed a timely request for a contested case hearing before the Labor Commissioner pursuant to Regs., Conn. State Agencies § 31-51qq-44(e).

On July 28, 2008, the Labor Commissioner designated Attorney Eric Beckenstein as the hearing officer. On October 28, 2008, Attorney Beckenstein mailed a Notice of Contested Case Hearing and Pre-Hearing Order to the complainant and the respondent for a hearing scheduled for 10:00 a.m. on November 24, 2008, at the Hamden office of the Appeals Division. On November 24, 2008, the respondent appeared for the hearing but the complainant did not appear. Attorney Beckenstein did not proceed with the hearing.

PROPOSED DECISION

I. PROVISIONS OF LAW

Section 31-51pp(c)(2) of the General Statutes provides that: "Any employee aggrieved by a violation of this subsection may file a complaint with the Labor Commissioner alleging violation of the provisions of this subsection. Upon receipt of such complaint, the Commissioner shall hold a hearing."

Section 31-1-4(a) of the Regulations of Connecticut State Agencies provides that: "Unless precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order or default."

II. CONTENTIONS

The complainant contends that the respondent violated General Statutes § 31-51pp(a)(2) because it interfered with, restrained or denied the exercise of, or the attempt to exercise rights provided by the CFMLA, and that it discharged, caused to be discharged, or discriminated against the complainant for attempting to exercising her right to leave under the CFMLA.

The respondent has denied any violation of the CFMLA.

III. DISCUSSION

The parties were duly noticed of a hearing which was scheduled for 10:00 a.m. on November 24, 2008, at the Hamden office of the Appeals Division, by a hearing notice mailed on October 28, 2008, to the individual parties and their representatives. The parties were also ordered to provide to the hearing officer by November 17, 2008, a list of witnesses and copies of any documents the parties intended to produce at the hearing. In addition, on October 25, 2008, the hearing officer wrote the parties questioning whether the parties had any scheduling conflicts between November 10 and 24, 2008. Neither communication mailed to the complainant was returned by the U.S. Postal Service as undeliverable.

Attempts were made to contact the complainant by telephone when she did not respond to the hearing officer's November 17, 2008 order. The complainant also did not respond to the hearing officer's October 25, 2008 letter to indicate that she had any concerns about the scheduling of the hearing. The complainant failed to appear for the November 24 hearing and she has not contacted the hearing officer about pursuing her complaint under the CFMLA.

IV. CONCLUSION

The designated representative of the Labor Commissioner and the authorized hearing officer in this matter finds that the complainant has failed to prosecute the matter by failing to appear at the November 24, 2008 hearing on her complaint. The Wage and Workplace Standards Division determination remains in effect.



Eric Beckenstein
Designated Hearing Officer
Department of Labor
32 Marne Street
Hamden, CT 06514
(203) 859-3361

The parties are advised of the 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 December 30, 2008.

Mail any exception to: Commissioner of Labor, 200 Folly Brook Boulevard, Wethersfield, CT 06109. Refer to the docket number in any correspondence submitted.