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

Complainant
Danae Mundy
26 Webster Street
New Haven, CT 06511

Employer
Albertus Magnus College
By: Paul A. Testa, Esq.
Littler Mendelson, PC
265 Church Street, Suite 300
New Haven, CT 06510

Docket No.: FM 2013-001

Date Mailed: June 23, 2016

FINAL DECISION

The undersigned, Scott D. Jackson, Commissioner of the State of Connecticut Department of Labor, hereby issues his final decision in the complaint encaptioned Danae Mundy v. Albertus Magnus College, Case No. FM 2013-001. 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 Emily C. Kaufman on December 11, 2015, 2015, the Complainant, Danae Mundy, requested an opportunity to present oral argument. On April 12, 2016, an order was issued setting the date of oral argument for May 10, 2016, 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, Danae Mundy, and counsel for Respondent, Albertus Magnus College, were fully heard. Upon the close of the hearing, the undersigned took the matter under advisement.

Having had the opportunity to fully review the administrative record in this case and giving due consideration to the oral argument presented on May 10, 2016, I hereby issue my final decision.

WHEREFORE, I affirm in whole and incorporate the Proposed Final Decision of the Hearing Officer issued on December 11, 2015, as my final decision in this matter, a copy of which is attached hereto.

6/22/2016
Dated

Scott D. Jackson
Commissioner

STATE OF CONNECTICUT
Department of Labor
36 Wolcott Hill Road
Wethersfield, CT 06109
Telephone: (860) 566-3045 Fax: (860) 263-6977

COMPLAINANT
DANAE L. MUNDY
26 Webster Street
New Haven, CT 06511

RESPONDENT
ALBERTUS MAGNUS COLLEGE
Attn: Human Resources
700 Prospect Street
New Haven, CT 06511

RESPONDENT'S ATTORNEY

LITTLER MENDELSON, P.C.
Attn: Paul A. Testa, Esq.,
Attn: George O'Brien, Esq.,
265 Church Street, Suite 300
New Haven, CT 06510

CASE NO.: FM 2013-001

DATE MAILED: December 11, 2015

PROPOSED FINAL DECISION

DANAE L. MUNDY V. ALBERTUS MAGNUS COLLEGE

HEARING DATE: July 9, 2015

HEARING LOCATION: 38 Wolcott Hill Road, Wethersfield, Connecticut 06109

APPEARANCES:

For the complainant:	Danae Mundy
For the respondent employer:	Attorney Paul A. Testa, and Andrew Foster, Vice President of Financial Services

I. CASE HISTORY

On January 22, 2013, Danae Mundy (complainant) filed a complaint with the State of Connecticut, Division of Wage and Workplace Standards (DWWS), alleging that her former employer, Albertus Magnus College (respondent), violated the provisions of General Statutes §§ 31-51kk, et. seq., An Act Concerning Family and Medical Leave from Employment (CFMLA), by terminating her for exercising her rights under the Act.

On February 19, 2013, DWWS mailed a letter to the respondent notifying it of the filing of the complaint and providing the respondent with the opportunity to respond to the complainant within twenty-one (21) calendar days. On February 25, 2013, DWWS granted the respondent's request for an extension of time to file a response, to March 26, 2013. On March 26, 2013, Attorneys George O'Brien and Paul A. Testa entered appearances on behalf of the respondent and requested that the complaint be dismissed for lack of jurisdiction. On April 26, 2013, the complainant submitted a rebuttal.

On April 13, 2015, DWWS issued a decision dismissing the complaint due to the complainant's failure to file it within the 180 days allowed by law. The decision also advised the complainant of her right to request a hearing. On April 30, 2015, the complainant filed a request for a contested case hearing. On May 6, 2015, Deputy Labor Commissioner Dennis C. Murphy mailed a Notice of Designation of Hearing Officer to the parties, designating Attorney Emily C. Kaufman as the hearing officer. On June 8, 2015, the hearing officer mailed a Notice of Contested Case Hearing and Pre-Hearing Order to the parties. On July 9, 2015, the designated hearing officer conducted the hearing at the Connecticut Department of Labor (CTDOL) office located at 38 Wolcott Hill Road in Wethersfield.

II. FINDINGS OF FACT

1. The complainant worked for the respondent beginning in January of 2007, until her discharge on April 19, 2010.

2. When the respondent hired the complainant, it provided her with a handbook, which contained all of the employer's policies, including its Family and Medical Leave Act (FMLA) policy. The complainant briefly reviewed this handbook at the time she received it.

3. Throughout the complainant's employment, the human resources department displayed any required state and federal posters, including a poster detailing employees' rights under the federal FMLA, outside its office.

4. In 2009, the respondent issued a new handbook, which included an updated FMLA policy and a copy of the federally required poster. The employer provided copies to all employees by mail and email. The complainant received this policy.

5. The respondent approved the complainant's request for intermittent leave under the CFMLA due to migraine headaches, and allowed the claimant to exercise her right to take that leave throughout her employment.

6. On April 19, 2010, the complainant returned from a brief FMLA absence and was advised that her position was eliminated. The respondent told the complainant that it did not intend to contest her claim for unemployment compensation benefits and encouraged her to apply for future openings at Albertus Magnus College. The complainant filed for and collected unemployment compensation benefits following her separation.

7. Approximately four months later, the complainant observed that the respondent had posted a job opening that she believed closely resembled the position she had previously held. The complainant applied for the position but was not contacted by the respondent.

8. In discussing her former employment with college classmates, the complainant became aware that she could file a complaint with the Connecticut Commission on Human Rights and Opportunities (CCHRO) if she believed the respondent discriminated against her during her employment.

9. The complainant filed a complaint with the CCHRO on October 15, 2010, within the 180-day period applicable to complaints filed with that agency. In her complaint, she alleged that the respondent had violated General Statutes 46a-60a(1) and the Americans with Disabilities Act. She further stated, "I believe due to utilizing my FMLA I was terminated. I therefore charge the respondent with discriminating against me because of my physical disability of chronic migraines."

10. The CCHRO conducted an investigation into her complaint over a two-year period. As a result of this investigation, the CCHRO issued a draft finding of no reasonable cause. The complainant requested and was granted a release of jurisdiction.

11. On October 12, 2012, the complainant filed an action in Superior Court alleging that the respondent discriminated against her and violated her rights under the CFMLA.

12. On January 3, 2013, the respondent filed a Motion to Dismiss the complaint on the grounds that the complainant had not exhausted her administrative remedies before pursuing a claim in court. The Superior Court granted the respondent's motion on July 21, 2014.

13. On January 22, 2013, the complainant filed a complaint with DWWS alleging that the respondent had discriminated against her and violated her rights under the CFMLA.

14. Although the complainant contacted two or three attorneys to discuss her situation following her termination, she did not retain any of these attorneys.

III. PROVISIONS OF LAW

Section 31-51qq-43 of the Regulations of Connecticut State Agencies provides, in relevant part, that:

(a) any employee, or his authorized representative, may file a complaint with the Labor Department if he believes that:

(1) his employer has interfered with, restrained or denied the exercise of, or the attempt to exercise, any rights provided under the Act;

(2) his employer discharged or caused to be discharged, or in any manner discriminated against such employee for opposing any practice made unlawful by the Act or because such employee has exercised the rights afforded to such employee under the Act;

(3) his employer has violated any provision of the Act with respect to such employee; or

(4) he has been discharged or discriminated against in any manner by an employer who is subject to the Act because such individual:

(A) has filed any charge, or has instituted or caused to be instituted any proceeding, under or related to the Act;

(b) Complaints shall be filed with the Labor Department on such form(s) as are prescribed and furnished by the Labor Department or by letter. The Labor Department may seek any additional information it deems necessary to initiate an investigation.

(c) In order to be considered timely filed, all complaints must be received by the Labor Department or postmarked within one hundred eighty days of the employer action which prompted the compliant, described in subsection (a) of this section. Any complaint received or postmarked after such one hundred and eighty day period may be considered timely filed for good cause, as defined in subsection (d) of this section.

(d) "Good cause" means any circumstances which, in the opinion of the Commissioner, would prevent a reasonably prudent individual in the exercise of due diligence from timely filing his complaint.

IV. ISSUE

The initial issue in this matter is whether the complainant, Danae Mundy, had good cause for failing to file her complaint with CTDOL's Wage and Workplace Standards within the 180-day filing period.

V. DECISION

The complainant alleges that she was not aware of her right to file a complaint with the CTDOL under the CFMLA nor advised of this avenue of redress, and that her former employer strategically steered her away from the CTDOL to prevent her from exercising her rights. In response, the respondent contends that the complaint should be dismissed for lack of jurisdiction because the complainant failed to establish good cause for filing her complaint more than 180 days after the alleged adverse action by the respondent.

The regulations governing the Connecticut Family and Medical Leave Act provide that a complaint filed after the 180-day filing period may be considered timely filed if the complainant had good cause for the late filing. Good cause is defined as "any circumstance that would prevent a reasonably prudent individual in the exercise of due diligence from the timely filing of a complaint." See Regs., Conn. State Agencies § 31-51qq-43(d). In ruling upon the issue of what constitutes good cause for the untimely filing of a complaint under CFMLA, the Labor Commissioner has invoked the doctrine of equitable tolling and drawn upon the late appeal provisions of Connecticut's Unemployment Compensation Act (CUCA), General Statutes §§ 31-222, et. seq. See, e.g., *McCarthy v. Bristol Press Company*, Case No. FM 93-15 (6/29/94); *Elliott v. Pratt & Whitney Aircraft*, FM 98-33 (1/12/00); *Cretella v. Blue Cross Blue Shield of Connecticut*, Case No. FM 93-9 (7/17/95).

1. The complainant has not established that the 180-day deadline should be equitably tolled.

Black's Law Dictionary defines the doctrine of equitable tolling as "a court's discretionary extension of a legal deadline as a result of extraordinary circumstances that prevented one from complying despite reasonable diligence throughout the period before the deadline passed." Black's Law Dictionary (10th ed. 2014). The complainant has the burden of demonstrating that equitable tolling is appropriate. *Boos v. Runyon*, 201 F.3d 178, 184-5 (2d Cir. 2000).[1] A pro se complainant's ignorance of the law and procedures does not, by itself, warrant equitable tolling. See *Downie v. Electric Boat Division*, 504 F. Supp. 1082 (D. Conn. 1980).

---

[1]Connecticut courts have relied upon federal precedent for guidance in enforcing Connecticut's statutes that prohibit employers from discriminating against their employees. See *Levy v. Commission on Human Rights & Opportunities*, 236 Conn. 96,103 (1996); *Ford v. Blue Cross and Blue Shield of Connecticut, Inc.*, 216 Conn. 40, 53 (1990); see also *Cormier* v. *Textron Lycoming*, Case No. FM 92-1 (12/23/92); *Lanza* v. *United Artist Entertainment Company*, Case No. FM 92-4 (1/10/94).

The United States Court of Appeals for the Second Circuit has articulated three principal situations in which equitable tolling is appropriate: (1) when the defendant has actively misled the plaintiff regarding the cause of action; (2) when the plaintiff has in some extraordinary way been prevented from filing an action; and (3) when the plaintiff has raised the precise statutory claim at issue but has mistakenly done so in the wrong forum. See *School Dist. of City of Allentown v. Marshall*, 657 F. 2d. 16, 20 (2d Cir.1981).

In *Downie v. Electric Boat Division*, supra, the Court held that a plaintiff's ignorance of his or her legal rights may be excused and a filing limitation period tolled if the employer failed to post a notice as required by law which would advise employees of the existence of the Age Discrimination in Employment Act, unless the employee was represented by counsel during the statutory filing period, thereby providing the employee with access to a means of acquiring knowledge of his or her rights and responsibilities. The doctrine of equitable tolling has also been applied where the court has led the plaintiff to believe that she had done all that was required of her, see *Carlile v. South Routt Sch. Dist. RE 3–J,* 652 F.2d 981, 986 (10th Cir.1981), and where affirmative misconduct on the part of the defendant may have lulled plaintiff into inaction. See *Villasenor v. Lockheed Aircraft Corp.,* 640 F.2d 207, 207–08 (9th Cir.1981) (per curiam). However, equitable tolling may not be invoked where the plaintiff fails to act diligently. See *Baldwin County Welcome Ctr. v. Brown,* 466 U.S. 147, 151 (1984) (per curiam)(complainant's pro se filing of a "right to sue letter" rather than the complaint did not toll the ninety–day period).

In the instant case, the complainant has not established that the respondent failed to provide the notices required by law, that it actively misled her, or in some extraordinary way prevented her from filing a complaint. The state FMLA requires that employers provide written notice of its CFMLA policies upon hire. See Regs., Conn. State Agencies § 31-51qq-26. The respondent met this requirement by providing the claimant with a copy of its policies when she was hired. The respondent also posted a notice required under the federal FMLA outside its human resources office, and included a copy of that poster when it circulated its updated FMLA policy in 2009.

Significantly, the federal poster specifically puts employees on notice that they may file a complaint with the USDOL if they believe their rights have been violated. The respondent's policy directs employees to contact its human resources department with questions regarding the policy itself or the FMLA process. The complainant did not attempt to file a complaint with USDOL at any time. She also did not allege that she contacted the respondent's human resources department with related questions.

The record is also devoid of any evidence to support the complainant's contention that the respondent discouraged her from contacting the CTDOL. In fact, the respondent encouraged the complainant to file for unemployment benefits with that department, and advised her that it would not contest her claim. The complainant filed for and received these benefits following her separation. The record reflects that the complainant chose not to contact the CTDOL or the USDOL; instead, she filed a complaint with the CCHRO alleging discrimination on the basis of a disability. When her complaint was dismissed by CCHRO, the claimant filed a court appeal alleging a violation of her rights under the CFMLA. The complainant has not shown that the respondent engaged in "the type of bad faith, dilatory actions that require equity to step in and

estop a statute of limitations defense." See *Dilman v.Combustion Engineering, Inc.*, 784 F.2d 57, 61 (2d Cir. 1986).

The third ground for equitable tolling is whether the plaintiff raised the precise statutory claim at issue, but has mistakenly done so in the wrong forum. In *Burnett v. New York Cent. R.R. Co.*,380 U.S. 424 (1965), the plaintiff brought an action seeking redress for railroad injuries under the Federal Employer's Liability Act (FELA) in state court, rather than in federal court. When the state court dismissed the action for improper venue, the plaintiff filed an identical action eight days later in federal court. The United States Supreme Court, in reversing the lower courts, held that the federal statute of limitations was tolled on equitable grounds since the claims made in both state and federal court were identical and the defendant was on notice that the plaintiff was actively pursuing a FELA remedy.[2]

Since *Burnett* the United States Supreme Court has more clearly defined the limited circumstances in which a party's filing an action in a wrong forum may be grounds for applying equitable tolling. In *Johnson v. Railway Exp. Agency, Inc.,* 421 U.S. 454 (1975), the Court held that equitable tolling was not appropriate because the causes of action under a Title VII discrimination claim and 42 U.S.C. 1981 are independent, separate and distinct. The Court acknowledged the plaintiff's argument that the timely filing of the EEOC charge adequately notified the employer that he was asserting a discrimination claim and permitted the employer to protect itself against a stale claim. However, the Court ultimately opined that, "[o]nly where there is complete identity of the causes of action will the protections suggested by petitioner necessarily exist and will the courts have an opportunity to assess the influence of the policy of repose inherent in a limitation period." *Id.* at fn. 14.

In *International Union of Elect., Radio and Mach. Workers v. Robbins & Myers, Inc., et al.,* 429 U.S. 229 (1976), the plaintiff was terminated for allegedly discriminatory reasons on October 25, 1971, but did not file a discrimination claim with the EEOC until February 10, 1972, after the filing deadline had passed. She argued that the time limit should be equitably tolled during the pendency of her union grievance proceeding, which she had filed timely. The Court rejected this argument, reasoning that in her grievance proceedings, the plaintiff was not "asserting the same statutory claim in a different forum, nor giving notice to respondent of that statutory claim, but was asserting an independent claim based on a contract right." *Id.* at 448. Thus, the Court held that both the grievance and the Title VII remedies should be pursued, and their deadlines should run concurrently.[3]

---

[2]The court noted that statutes of limitations are primarily designed to assure fairness to defendants, "promoting justice by preventing surprises through the revival of claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared." *Burnett v. New York Cert. R.R. Co.* at 428.

[3]The reasoning of *Burnett* and related cases has been applied by administrative agencies. See *Lewis v. McKenzie Tank Lines, Inc.,* No. 1991-STA-020 (11/24/91); *Udofot v. NASA/Goddard Space Center,* 2011 WL 6981991 (12/20/11).

In the instant case, the complainant filed a timely complaint with the CCHRO on October 15, 2010, in which she specifically asserted that the respondent violated General Statutes § 46a-60(a)(1) and the Americans with Disabilities Act by terminating her due to a physical disability. The complainant did not allege that the respondent had violated the CFMLA, or place the respondent on notice of her claim under that statute. Because the complainant was not asserting the same statutory claim in a different forum, nor providing notice to respondent of that statutory claim, the hearing officer cannot equitably toll the 180-day time statute of limitations in this case.

2. The complainant has not established that she had good cause for the untimely filing of her CFMLA complaint based on circumstances beyond her control or good faith error.

In *Cretella v. Blue Cross Blue Shield of Connecticut*, Case No. FM 93-9 (7/17/95), the Labor Commissioner considered the Unemployment Compensation Act good cause provisions in determining whether an individual had good cause for the late filing of a CFMLA complaint. These factors include when the individual became aware of, or, through the exercise of due diligence, should have become aware of the employer conduct leading to the complaint; whether the individual acted with due diligence in filing the complaint once he or she became aware of the employer's conduct; whether there were factors outside the individual's control or physical or mental impairments that prevented the complainant from filing a timely complaint. See Conn. Gen. Stat. § 31-241; see also Regs., Conn. State Agencies § 31-237g-15. The Commissioner also found that a party's familiarity with the CFMLA is a relevant consideration, as is whether the party was represented during the filing period, whether administrative error by the agency contributed in any way to the late filing, or whether the complainant was prevented from filing a complaint due to coercion or intimidation. *Id.* The presence of good faith error and the absence of prejudice to the respondent may also be considered in determining whether a reasonably prudent person had good cause for untimely filing.

The complainant in the instant case admits that she was aware of the respondent's alleged adverse action leading to the complaint prior to the expiration of the 180-day period. Although she was under a doctor's care at times during the three-year period between her separation and her filing a complaint with DWWS, the complainant does not allege, nor has she provided any documentation to support the allegation, that any mental or physical impairment prevented her from filing her complaint in a timely manner.

The complainant received all required notices of her CFMLA rights. She has not established that any actions of the employer or the agency contributed to her untimely filing of her complaint, such that her mistake in filing late might be deemed a good faith error. Moreover, the complainant did not seek clarification of her CFMLA rights from the respondent's human resources office, or the CTDOL when she was filing for unemployment compensation benefits. The complainant did not consider the information the respondent provided from the federal Department of Labor concerning the federal FMLA, or contact the USDOL. Finally, when the complainant became aware through the state court action that she had improperly failed to file a timely complaint with the CTDOL, the complainant waited nearly three weeks to file that complaint. Accordingly, the hearing officer does not find that the claimant demonstrated good cause for filing her complaint late under any of the factors set forth in *Cretella*, supra.

VI. DISPOSITION

The designated hearing officer in this matter finds that the complainant, Danae Mundy, has not established good cause for her failure to file a timely complaint as required by Section 31-51qq-43 of the Regulations of Connecticut State Agencies. Accordingly, the undersigned hearing officer proposes that the complaint be **dismissed** for lack of jurisdiction.

Emily C. Kaufman, Esq.
Designated Hearing Officer

ECK:mle