



STATE OF CONNECTICUT
DEPARTMENT OF LABOR

Ronald F. Petronella
COMMISSIONER

May 25, 1994

Certified No. P 129 566 573

ORDER OF THE COMMISSIONER

Nancy Cannon
60 Plaza Drive
Middletown, CT 06547

Middlesex Hospital
C/O Its Attorney:
Susan Wright, Esq.
Kainen, Starr, Garfield, Wright & Escalera
55 Farmington Avenue
Hartford, CT 06105

Re: Case No. FM 91-10
Nancy Cannon v. Middlesex Hospital

Dear Parties:

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 evidence in the case and listening to the oral argument.

I affirm in whole and incorporate the Proposed Decision of the hearing officer issued on May 28, 1993 as my final decision in this matter, a copy of which is attached hereto.

Ronald F. Petronella
Labor Commissioner

cc: Attorney Heidi Lane, Program Policy

Phone (203) 566-4384

200 Folly Brook Boulevard ■ Wethersfield, CT 06109-1114
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STATE OF CONNECTICUT
DEPARTMENT OF LABOR
EMPLOYMENT SECURITY DIVISION

photo SL

Employment Sec. Appeals Div.
37 Marne Street
Hamden, CT 06514-3691
May 28, 1993

Nancy Cannon
69 Plaza Drive
Middletown, CT 06547

Robert Kiely, President
Middlesex Hospital
28 Crescent Street
Middletown, CT 06457

Re: Case No. 91-10 FM
Nancy M. Cannon
vs
Middlesex Hospital

Dear Parties:

Enclosed please find my Proposed Decision in the above matter.

Pursuant to Connecticut General Statutes 4-179, you have the right to file exceptions and present briefs and oral argument before the Commissioner files a Final Decision.

If the Commissioner does not hear from either party, in writing, by June 11, 1993, he shall proceed to render his Final Decision without further proceedings or briefs.

Very truly yours,

A handwritten signature in cursive script, reading "Geraldine H. Hawthorne".

Geraldine H. Hawthorne
Supervising Appeals Referee

GHH/h

cc Ronald Petronella, Commissioner of Labor
Attorney Susan M. Wright
Attorney Heidi Lane, Program Policy



STATE OF CONNECTICUT
DEPARTMENT OF LABOR
EMPLOYMENT SECURITY DIVISION

DECISION OF

HEARING OFFICER

Nancy Cannon v. Middlesex Hospital

Case No. FM 91-10

Date Decision is Mailed: May 28, 1993

Hearing Date: April 21, 1993

Location: Hamden, Conn.

Appearances:

For the Appellant: Les Wolmetz, Agent for the claimant, Nancy Cannon, Appellant.

For the Employer: Attorney Susan M. Wright, Gail Cavedon, Director, Medical Records, Theresa M. O'Callaghan, Director, Employee Services.

For the Administrator: Attorney Heidi Lane, Office of Program Policy, Susan A. Egan, Lead Special Investigator, Connecticut Department of Labor, Division of Occupational Safety and Health Working Conditions.

CASE HISTORY

On September 14, 1992, the Department of Labor notified the complainant that her claim, under Connecticut General Statutes 31-51dd of the Connecticut Family & Medical Leave Act had been investigated and the results thereof carefully considered. The Labor Department found that the burden of establishing that the claimant had been discriminated against, in violation of the above cited Statute, could not be sustained. The complainant's complaint was dismissed.

On September 21, 1992, the complainant appealed the decision of the Administrator and requested a hearing before the Labor Commissioner.

On April 21, 1993, a contested case hearing was held at the Connecticut Labor Department, 37 Marne Street, Hamden, Conn., before Geraldine H. Hawthorne, Supervising Appeals Referee, who was appointed the Hearing Officer in this matter by Labor Commissioner Ronald F. Petronella.

FINDINGS OF FACT

1. On August 1, 1991, Middlesex Hospital was notified, by the complainant, of her intent to resign from her position as Medical Records Clerk. In her letter of resignation, the complainant cites "medical reasons" as outlined in an attached note from her physician, as the reason for her resignation.
2. The employer had offered the complainant a three month, unpaid, leave of absence prior to August 5, 1991, when the claimant submitted her written resignation.
3. Initially, the complainant refused to accept the employer's offer of a three month unpaid leave of absence.
4. A physician's statement, that the complainant submitted to the employer, on August 5, 1991, and signed by someone other than Joseph A. Havlicek, M.D., states "I advise the above named patient to terminate her present employment due to health reasons."
5. A second physician's note, dated August 7, 1991, and signed by someone other than Joseph A. Havlicek, M.D., states "after a office visit on 8/7/91, I recommend that Nancy take a leave of absence from her job at the Medical Records Department at Middlesex Memorial Hospital. She is having acute anxiety with occasional panic attacks. RTW 11/7/91."
6. On August 7, 1991, the complainant requested, and was granted, a medical leave of absence.
7. The leave of absence form contains the following paragraph: "As the employee, I understand that if I am unable to return to work on the above date, I must contact my Department Head one week in advance of the return date. I understand that if I fail to do so that my employment

7. will be automatically terminated. I also understand that, if I am requesting or extending a medical leave, I must submit a physician's note explaining the conditions and giving an expected return date."
8. There is no expected to return to work date on the leave of absence form. It simply states that the leave of absence begin date is 8/5/91.
9. On 8/9/91, the Administrator, Unemployment Compensation, rescheduled a hearing to 8/16/91 for the purpose of determining the complainant's eligibility for unemployment compensation benefits.
10. On August 16, 1991, the complainant attested to the fact that she was available for full-time work and making employer contacts, and going on interviews, for other positions.
11. The Administrator approved the claimant's separation from employment and denied benefits on a finding that she was not physically able to work or available for work. The Examiner specifically found that "the stress involved with the office job at the Hospital would carry over into other office work she performed."
12. The complainant appealed the Administrator's determination; however, she failed to attend a Referee hearing with respect to her availability for work. The complainant stopped filing for benefits following the Administrator's disqualification. She never requested that the Administrator reopen her claim after she was released by her physician as physically able to return to work.
13. On October 28, 1991, the complainant sent a letter to the employer requesting a one month extension of her leave of absence because she had been involved in an automobile accident on October 2, 1991. The complainant enclosed a physician's note, signed by someone other than Dr. Havlicek, that states "I recommend that the above patient's leave of absence from Medical Records at Middlesex Hospital be extended for one month until 12/7/91 due to a recent automobile accident."
14. The employer refused to accept the aforementioned medical note because it did not show that the complainant was suffering from a "serious illness" or receiving continuing treatment on an in-patient, or out-patient, basis at the time that she requested the extension of her leave of absence.
15. The employer, because of the complainant's statement to the Unemployment Compensation Department, suspected that the complainant was not suffering with a serious illness.
16. On October 31, 1991, the employer sent a certified letter to the complainant, stating that her request for an extended leave of absence had not been granted. The claimant was notified that she would be terminated, effective November 5, 1991, unless she contacted her Department Manager regarding her return from the medical leave of absence. The complainant received the employer's letter on November 2, 1991.

17. On November 4, 1991, the complainant hand delivered another physician's note to the Hospital. That note reads as follows: "After an office visit on 10/25/91, I recommend that Nancy's leave of absence from the Medical Records at the Middlesex Hosp. be extended for one month, until 12/7/91. This extension is due to a motor vehicle accident Nancy was involved in recently, which caused acute anxiety and panic attacks to recur." The signature on the letter appears to be that of the physician.
18. A medical record that the complainant submitted to the Administrator shows that the claimant was treated by her physician, on October 4, 1991, after she was involved in a motor vehicle accident, on October 2, 1991.
19. The medical record shows that the complaintant had a panic attack and was very anxious. The physician prescribed Xanax 0.5 mg. The complainant also complained about aches across both shoulders and arms.
20. The medical record shows that the claimant was not seriously injured in the automobile accident.
21. The physician's notes of November 8, 1991, specifically state "seems less anxious. Lost her job at the M.H. Fired."
22. On June 15, 1992, the complainant sent a letter to the Division of Occupational Safety & Health Working Conditions Investigator indicating that she had been involved in a major auto accident and sustained injuries.
23. A June 15, 1992, medical note signed by someone other than Dr. Havlicek, read as follows: "Nancy is a patient of mine and was seen by me in my office on 8/7/91. At the time of her visit, I wrote her a note for a LOA until 11/7/91. Nancy was experiencing acute anxiety and panic attacks, which I feel is a serious enough illness requiring medical leave of absence. At that time, Nancy couldn't and shouldn't have worked anywhere."
24. On August 8, 1991, someone at Dr. Havlicek's office signed a physician's certification of claimant's health, that had been prepared by the claimant, that indicates a return to work date of August 12, 1991 with the following remarks "restrictions limited only to current work environment at Middlesex Hospital." Restrictions "none." Type of work "regular." The complaintant readily admits that she prepared the physician's certification of complainant's health and had it signed by the doctor's Secretary.
25. The Administrator's Investigator only contacted the physician by mail, on one occasion, with respect to clarification of the complainant's condition. At the time that Ms. Egan contacted the physician, she believed that it was he, the doctor, who had filled out the unemployment compensation form indicating that the claimant was physically able to work.

26. Ms. Egan, the Labor Department Investigator, never requested information, from the physician, with respect to the complainant's physical ability to work during the months of November and December 1991.
27. Hospital personnel advised Ms. Egan, the Labor Department Investigator, that the complainant might have been able to obtain an extension of her leave of absence if she had reported to work on November 5, 1991. The Investigator was not aware that the claimant had reported to the Hospital on November 4, 1991.
28. The Investigator had no explanation for the reason that the Hospital accepted a very similar medical note from the complainant in August and refused the one submitted in November.
29. Ms. Egan relied on the unemployment compensation record in reaching her decision on the complainant's eligibility for family and medical leave. She felt that the Hospital made the correct decision in denying the complainant's request for an additional four week medical leave.
30. The Investigator was satisfied with the Hospital's decision because it was made on the best medical information available to them at the time of the complainant's separation.
31. Although the employer originally offered the complainant a three or four month leave of absence, the employer would not agree to an extension of the leave of absence based on the ambiguous medical statement provided by the claimant following the motor vehicle accident.

DECISION

Connecticut General Statutes Section 31-51cc provides, in relevant part, as follows:

Sec. 31-51cc. Family and medical leave; Definitions of leave; eligibility.

(a) For the purposes of Sections 31-51cc to 51-gg, inclusive:

(1) "Person" means one or more individuals, partnerships, associations; corporations, business trusts, legal representatives or any organized group of persons;

(2) "Employer" means a person engaged in any activity, enterprise or business who has employees, but shall not include the state, municipality or a local or regional board of education or a private or parochial elementary or secondary school;

(3) "Employee" means any person engaged in service to an employer in the business of his employer;

(4) "Eligible employee" means any person engaged in service to an employer in the business of his employer for (A) twelve months or more and (8) one thousand or more hours in the twelve-month period preceding the first day of the leave;

(b) Except as provided in subsections (c) and (d) of this section and section 31-51ff, each eligible employee shall be entitled to a maximum of sixteen weeks of unpaid leave of absence within any two-year period. Such leave may be taken as (1) a family leave of absence upon the birth or adoption of a child of such employee, or upon the serious illness of a child, spouse or parent of such employee or (2) a medical leave of absence upon the serious illness of such employee. Such two-year period shall commence with the first day a leave of absence is taken pursuant to this subsection. Upon the expiration of any such leave of absence, the eligible employee shall be entitled to (A) return to the employee's original job from which the leave of absence was provided or, if not available, to an equivalent position with equivalent pay, except that 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, the employer shall transfer such employee to work suitable to his physical condition where such work is available, and (B) all accumulated seniority, retirement, fringe benefit and other service credits the employee had at the commencement of such leave. Employers may allow such service credits to accrue during the period of the leave of absence.

(c) If a husband and wife are employed by the same employer, the total number of weeks of leave to which both may be entitled under this section shall be the maximum allowed to an individual eligible employee in any two-year period except if the leave is a medical leave or for the serious illness of a child each spouse shall be entitled to the maximum leave provided in such period.

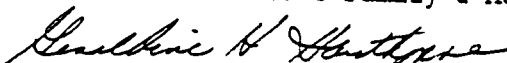
(d) To the extent the eligible employee is entitled to any other leave or benefits, the benefits granted by this section for a family or medical leave of absence shall be reduced by the amount of such other leave or benefits provided by the employer to an eligible employee upon (1) the birth or adoption of a child, (2) the serious illness of a child, spouse or parent or (3) the serious illness of the employee.

After careful review of the complainant's testimony, and all of the documentary evidence contained in the record, this Hearing Officer finds

that the complainant failed to establish that she was suffering with a serious medical condition during her initial 12 week leave of absence or when she requested the extension in November 1991. The complainant's own physician never indicated that the complainant was suffering with a serious medical problem. The medical documentation contained in the record shows that the physician, or his agent, provided the complainant with conflicting statements with respect to her physical ability to work. Initially, the physician allegedly advised the complainant to quit her job. Shortly thereafter, he recommended a leave of absence; and shortly after that, he alleged that the complainant was physically able to return to work, effective August 12, 1991, at any job that did not involve the Medical Records Department of the Hospital. Although the complainant was involved in a minor motor vehicle accident on October 2, 1991, she did not bring that fact to the employer's attention, or seek an extension of her leave of absence, until October 28, 1991. When notified by the employer that her medical documentation lacked the specific information that the employer required to extend the leave of absence, the complainant provided the employer with another very ambiguous statement from the doctor. The November 4, 1991 doctor's statement clearly states that the complainant, following involvement in the motor vehicle accident, suffered a recurrence of acute anxiety and panic attacks. However, the physician's notes of October 25, 1991, did not show that the complainant was suffering with the symptoms that he attested to in the November 4, 1991 statement that he provided to the complainant.

Under the provisions of the Family and Medical Leave Act, a "serious illness" means a disabling physical or mental illness, injury, impairment or condition that involved (A) inpatient care in a hospital, as defined in Section 19a-490, a nursing home licensed pursuant to Chapter 368v or a hospice or (B) out-patient care requiring continuing treatment or supervision by a health care provider. Black's Law Dictionary, Fifth Edition, defines serious illness as --- "an illness that permanently or materially impairs, or is likely to permanently or materially impair, the health of the applicant." The American Heritage Dictionary of the English Language defines anxiety as 1- a state of uneasiness and distress about future uncertainties; apprehension; worry, 2- a cause of such uneasiness; a worry, and 3- an intense fear or dread lacking an unambiguous cause or a specific threat. Although the record shows that the claimant was suffering with a troubled state of mind, before, during, and subsequent to her approved family medical leave, there is absolutely nothing in the record that would convince this Referee that the claimant was suffering with a "serious illness."

As the designated representative of the Department of Labor's Commissioner and the authorized Hearing Officer in this matter, the undersigned has reached the following decision: Middlesex Hospital has not disregarded its obligations to Nancy Cannon under the Connecticut Family & Medical Leave Act.



Geraldine H. Hawthorne
Hearing Officer.