

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

COMPLAINANT:

Charles H. Gardner
177 South Main Street
Southington, CT 06489

EMPLOYER:

Valerie Manor
1360 Torrington Street
Torrington, CT 06790

By: John G. Zandy, Esq.
Wiggin & Dana
One Century Tower
P.O. Box 1832
New Haven, CT 06508-1832

Certified No.: 7004 1160 0007
5019 7275

Certified No.: 7004 1160 0007
5019 7282

Date Mailed: April 22, 2005

FINAL DECISION

Pursuant to Section 31-1-8 of the Regulations of Connecticut State Agencies, after reviewing the evidence, I issue my Final Decision in the above-referenced matter. I affirm in whole and incorporate the Proposed Decision of the Hearing Officer issued on April 1, 2005, a copy of which is attached hereto, as my Final Decision in this matter.



Shaun B. Cashman
Commissioner

Cc: Attorney Neale Belgrade
Office of Program Policy

DOCKET NO: FM 2002-83

DATE MAILED: April 1, 2005

COMPLAINANT-
Charles H. Gardner
177 So. Main Street
Torrington, CT 06790

EMPLOYER-
Valerie Manor
1360 Torrington Street
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EMPLOYER ATTORNEY
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CASE HISTORY

On March 10, 2003, the Division of Wage and Workplace Standards ruled the employer had not violated the complainant's Family and Medical Leave Act rights. The Commissioner found that the employer did not violate the complainant's rights under the Connecticut Family and Medical Leave Act.

The complainant filed a timely appeal from the Commissioner's determination. The Hearing Officer scheduled a hearing on the complainant's appeal on May 27, 2004.

APPEARANCES

For the complainant: None.

For the employer: Sandra Ingriselli, Sandra Wood, William Pond, and Attorney John Zandy.

FINDINGS OF FACT

1. The Hearing Officer scheduled a hearing on this matter on December 19, 2003, at 9:30am in the Hamden office. The notice of hearing was mailed to the complainant and the employer on December 10, 2003.

2. On December 15, 2003, the Hearing Officer received a letter from the complainant indicating that he could not attend the hearing on December 19, 2003, because he undergoes dialysis on Mondays, Wednesdays, and Fridays, from 6am until 10:30am. The complainant also indicated that he had no way to get to the hearing.
3. The Hearing Officer postponed that hearing since the complainant had a medical appointment and notified the employer that the hearing would be postponed.
4. The Hearing Officer then re-scheduled the hearing for Thursday, May 27, 2004, at 9am. The notice of hearing was mailed to the parties on May 7, 2004.
5. On May 21, 2004, the Hearing Officer received a letter from the complainant indicating that he can not attend the hearing because he does not have a car and is on dialysis. The complainant did not specify when he had dialysis. The complainant further requested that the employer pay him for what was done to him.
6. The Hearing Officer attempted to contact the complainant at his home phone number and his cell phone to offer the complainant the opportunity to participate in the hearing by telephone. The complainant did not respond to any message left by the Hearing Officer.
7. The Hearing Officer contacted the complainant again on May 24, 2004, and left a message on his answering machine that he could participate in the May 27, hearing by telephone. The complainant did not respond to that message.
8. The employer's attorney and the employer witnesses appeared for the hearing on May 27, 2004. The employer submitted its list of witnesses and evidence prior to the hearing as required. The complainant did not submit a witness list or produce any documents as required.
9. The employer submitted written argument requesting that the matter be dismissed because the complainant did not participate in the Referee's hearing on May 27, 2004. The employer also submitted a witness statement indicating that she saw the complainant working as a pizza delivery person and driving a blue Dodge Neon when he delivered pizza to her home.

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10. The complainant did not appear at the hearing on May 27, 2004, and has not submitted written arguments or contacted the Hearing Officer since his letter of May 21, 2004.

PROPOSED DECISION OF APPEALS REFEREE

The record establishes that the complainant received notice of a hearing scheduled on May 27, 2004, to address the complainant's contention that the employer violated his rights under the Family and Medical Leave Act. The complainant stated that he did not have transportation to travel to the hearing. The Hearing Officer made a special accommodation to allow the complainant to participate in the hearing by telephone, but the complainant failed to respond to the repeated messages left by the Hearing Officer and did not appear, nor contact the Appeals Division on May 27, 2004, regarding this case. In addition, the employer submitted evidence that the complainant is driving and has access to a vehicle, which would enable him to participate in the hearing in person. Since the complainant failed to participate in the scheduled hearing to pursue his appeal, the complainant has failed to meet his burden of proving that the employer violated his rights under the Family and Medical Leave Act. Following a review of the record, the Hearing Officer concludes that the Commissioner's decision is supported by the evidence presented and is consistent with the applicable provisions of the Connecticut Family and Medical Leave Act.

DISPOSITION AND ORDER

It is recommended that the decision by the Division of Wage and Workplace Standards be affirmed and the complainant's appeal be **dismissed**.


Jill M. Sizensky
Designated Hearing Officer