

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

**COMPLAINANT:**

Roman Ostrowski  
134 Governor Street  
New Britain CT 06053

**EMPLOYER:**

Guida's Dairy Products, Inc.  
434 Park Street  
New Britain CT 06051

Richard D. O'Connor, Esq.  
Siegel, O'Connor, Schiff &  
Zangari, P.C.  
150 Trumbull Street  
Hartford CT 06103


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Date Mailed: February 4, 2002

**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 evidence in the case. I affirm in whole and incorporate the Proposed Decision of the Hearing Officer issued on December 14, 2001 and attached hereto as my Final Decision in this matter.



Shaun B. Cashman  
Commissioner, Department of Labor

Cc: Attorney Neale Belgrade  
Office of Program Policy

**PROPOSED DECISION OF HEARING OFFICER****Roman Ostrowski v. Guida's Dairy Products, Inc.**

**Case No.:** 2000-53

**Date Decision Mailed:** December 14, 2001

**Hearing Date:** September 21, 2001

**Hearing Location:** Employment Security Appeals Division  
3580 Main Street, 2nd Floor  
Hartford, CT 06120

**Appearances:** **For the Complainant:** Roman Ostrowski, Complainant  
appeared with William Gromek, Interpreter.

**For the Respondent:** Cindy Capricchio, Human Resources  
Manager appeared with Attorney Richard O'Connor.

## CASE HISTORY

On November 3, 2000, the complainant, Roman Ostrowski (hereinafter Ostrowski), filed a timely complaint with the State of Connecticut, Department of Wage and Workplace Standards (hereinafter Division), alleging that his former employer, Guida's Dairy Products, Inc. (hereinafter Guida), violated the provisions of Connecticut General Statutes Section 31-51kk et seq, An Act Concerning Family and Medical Leave From Employment (hereinafter FMLA).

On November 13, 2000, Guida requested that the complaint be dismissed because Ostrowski was not a "covered employee" under the FMLA.

On January 19, 2001, the Division notified parties Ostrowski and Guida that it had no reason to believe that employer Guida violated the provisions of the FMLA. Parties were further advised that Ostrowski was not an "eligible employee" for purposes of the FMLA because he lacked the requisite one thousand hours of service with Guida.

On February 4, 2001, Ostrowski filed a timely request for a hearing before the Labor Commissioner, Shaun B. Cashman.

On March 2, 2001, the Division mailed a "Notice of Opportunity to Participate in Pre-Hearing Settlement Conference" to the parties. Labor Commissioner Cashman designated Attorney Sherwin M. Nelson as the hearing officer if a pre-hearing conference was not requested.

A pre-hearing conference was not held in this matter because one was not requested by the parties.

Following postponements caused by scheduling conflicts with the attorney for the employer as well as the necessity to employ a qualified interpreter, the hearing was held on September 21, 2001, at the Department of Labor, Employment Security Appeals Division, 3580 Main Street #2D, Hartford, CT, before Attorney Nelson.

## FINDINGS OF FACT

1. Ostrowski worked for Guida from May 24, 2000 until August 25, 2000. He was employed as a machine operator.
2. Ostrowski worked a total of 657 1/4 hours for Guida during his employ. Most of Ostrowski's work weeks were approximately 50 hours.
3. Ostrowski was under the medical care of Rafael S. Wurzel, MD, a urologist, from August 25, 2000, until August 30, 2000, and did not work during that period of time.
4. On August 30, 2000, Ostrowski's supervisor discharged him effective August 25, 2001. The reason cited was that Ostrowski did not pass his ninety day probation for new employees.

5. Ostrowski filed a complaint with the Division on November 3, 2000, that Guida terminated him while he was out on (medical) leave.

### ISSUE

The initial issue in this matter is whether complainant Ostrowski can establish that he is an "eligible employee" for the purpose of the FMLA. In the absence of this, the hearing officer is precluded from ruling on the merits of Ostrowski's complaint.

### PROVISIONS OF LAW

Section 31-51kk of the Connecticut General Statutes defines "eligible employee" for the purposes of the FMLA as "...an employee who has been employed (A) for at least twelve months by the employer with respect to whom leave is requested and (B) for at least one thousand hours of service with such employer..."

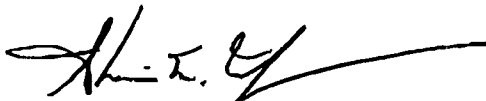
### DECISION

The record in this case clearly shows that Ostrowski lacks the necessary one thousand hours of employment and also he did not work for Guida for one year. Ostrowski barely exceeded six hundred fifty hours of employment. He was employed for approximately ninety days when he was discharged for failing to pass his probationary period.

Ostrowski has not provided any legal precedent or theory which would allow the hearing officer to consider him an "eligible employee" under the FMLA.

### DISPOSITION

The designated hearing officer finds that the complainant, Roman Ostrowski, has failed to establish that he was a "covered employee" as required under section 31-51kk of the Connecticut General Statutes. The hearing officer proposes that Commissioner Shaun B. Cashman find that the complainant has failed to establish that the complaint is covered under the FMLA and that his complaint be dismissed for lack of jurisdiction.



Sherwin M. Nelson  
Hearing Officer