

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

PHOENIX HOUSES OF NEW ENGLAND, INC.

DECISION OF THE HEARING OFFICER

Appearances: Monica Beck, Deputy General Counsel (employer)

Nature of Dispute: RSA 275-E: 4 I Whistle Blowers' Protection Act

Employer: Phoenix Houses of New England, Inc., 99 Wayland Ave., Providence, RI
02906

Date of Hearing: December 5, 2011 and January 19, 2012

Case No.: 42269

BACKGROUND AND STATEMENT OF THE ISSUES

The claim under the Whistle Blowers' Protection Act was filed on August 17, 2011. The claimant stated that the violations were a charge of slander against the claimant and there was an illegal order for the dispensation of medications. The claimant is seeking back pay for the time he has been out. The hearing was held over two days.

As required by Appeal of Mary Ellen Montplaisir 147 N.H. 297 (2001), this Department is required to apply a "mixed motive analysis" on the evidence presented. Because of the circumstantial nature of the evidence alleged by the claimant, the analytical framework of a "pretext analysis" is appropriate. Under this analytical framework, the claimant has the initial burden of establishing a *prima facie* case of unlawful conduct/retaliation. This requires the claimant to show:

1. he engaged in an act protected by the statute;
2. he suffered an action proscribed by the statute (discrimination/termination); and
3. there was a causal connection between the protected act he engaged and the action he suffered as a result of that protected act (discrimination and termination).

The establishment of a *prima facie* case creates a presumption that the employer unlawfully retaliated against the claimant. The burden of proof then shifts to the employer to rebut the claimant's assertions with evidence that their action was taken for legitimate, non-retaliatory reason(s). This burden of proof is only one of production. The claimant retains the burden of proof to persuade. In response to the employer's rebuttal, the claimant has the

opportunity to show that the proffered legitimate, non-retaliatory reason for the action was not the true reason for the unlawful conduct/retaliation, and that her assertion was the true reason for the unlawful conduct/retaliation. The claimant can show this by establishing that the employer's proffered reason for the action is either not credible, or by directly showing that the action was more likely motivated by retaliation in response to her protected act.

FINDINGS OF FACT

It is found by the Hearing Officer, based on the testimony and the evidence submitted for the hearing, that the claimant never established a *prime facie* case for the argument that he was slandered and that he was obligated to participate in the dispensation of medications that was illegal. The claimant provided little evidence as to the disciplinary action(s) being a part of a retaliation by the employer. The disciplinary action(s) arose out of the performance of his duties and not as retaliation for his reporting of violation(s) of law.

The employer testified credibly that any reports were dealt with and corrected. These reports did not lead to discipline. It is also found that at some point the claimant resigned his position and the resignation was accepted by the employer. The claimant did not lose his job for reporting irregularities, he resigned and it was accepted.

The complaint under the Act is invalid.

DECISION

There are no violations sustained under the Whistleblowers' Protection Act. The claim is denied.

Thomas F. Hardiman
Hearing Officer

Date of Decision: February 16, 2012

Original: Claimant
cc: Employer
TFH/all