

STATE OF CONNECTICUT
COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES



FINDING OF REASONABLE CAUSE

Lynn Mason
COMPLAINANT

VS.

Nathaniel Witherell
RESPONDENT

CHRO CASE NO: 1720440
EEOC/HUD NO: 16A201701156

DATE FILED: 4/17/2017
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PARTIES

COMPLAINANT:

Lynn Mason
420 Mill Road
New Canaan, CT 06840

COMPLAINANT'S REPRESENTATIVE:

Victoria deToledo, Esq.
Casper & deToledo, LLC
1458 Bedford Street
Stamford, CT 06905

RESPONDENT:

Nathaniel Witherell
70 Parsonage Road
Greenwich, CT 06830

RESPONDENT'S REPRESENTATIVE:

Valerie Maze Keeney, Assistant Town Attorney
Town of Greenwich
101 Field Point Road
Greenwich, CT 06830

JURISDICTION

- (X) The investigator concludes that the Commission has jurisdiction to receive, investigate and issue a determination upon the merits of this complaint.
- () The investigator concludes that the Commission does not have jurisdiction to receive, investigate and issue a determination upon the merits of this complaint. Therefore this complaint is dismissed due to the following:

DRAFT COMMENTS

A draft finding was sent to the parties on 09/10/18 and any comments were to be received on or before 09/26/18. Having received the parties comments and accorded them due consideration as is required by the law, the investigator remains persuaded as to the soundness of the original proposed findings.

FINDINGS OF FACT

1. Complainant, Lynn Mason, has been employed by respondent, Nathaniel Witherell (Witherell), for twenty-four (24) years as a recreational therapist.
2. Witherell is a rehabilitation and skilled nursing facility owned and operated by the Town of Greenwich.
3. Christopher Von Keyserling was a member of Greenwich's Representative Town Meeting and was an elected official of the Town of Greenwich.
4. On December 8, 2016 Von Keyserling was at Witherell. Complainant had a negative interaction with him in the auditorium. He then followed her to her office where he made inappropriate comments in the presence of the complainant as well as another female staff member, Amy DeMezzo. DeMezzo exited the office.
5. Mary Bruce, complainant's direct supervisor and Director of Therapeutic Services, entered the office and quickly exited, telling Von Keyserling she did not have time to talk to him. Complainant attempted to exit as well, not wanting to be alone with Von Keyserling.

6. As she attempted to exit the office, Von Keyserling put his hand between her legs and pinched her in her private parts.
7. Complainant reported the incident to Bruce immediately following the incident. Complainant said Bruce replied something like oh gross and walked away. Complainant went back to Bruce and said Bruce made comments about them needing Von Keyserling because of his political position. Bruce denied making such comments when questioned by the town human resource director.
8. Later that same day, complainant reported it to Lynn Bausch, Director of Nursing at Witherell. At that time, Bausch was the acting executive director while Allen Brown, Executive Director, was in Germany.
9. Neither Bruce nor Bausch reported it to human resources which was required by respondent's own policy.
10. After her reports to Bruce and Bausch, her proper chain of command, and because complainant was upset by the response from both Bruce and Bausch upon receiving the report, complainant reported the incident to Craig Whitcomb, union President, and Bill McCormick, the union Business Manager.
11. On December 9, 2016 Mary Pepe, Director of Human Resources for the Town of Greenwich, received a call from McCormick reporting the incident. Pepe was at a personal medical appointment, but contacted the local police department to alert them a report of sexual assault was likely to be made that day by complainant. She made a referral for complainant to the employee assistance program (EAP, directed her assistant to contact Von Keyserling and inform him he was prohibited from entering Witherell and set up a meeting for later that day with complainant.
12. Upon learning of the ban, Pepe testified Von Keyserling went to the human resource office and questioned if his ban from entering Witherell had anything to do with that little pinch.
13. On December 9, 2016 complainant attended a meeting at the town's human resource department. The assistant Director of Human Resources, Erica Mahoney, suggested complainant make a formal police report.
14. Following the meeting, complainant was accompanied by Mahoney and Whitcomb to the Greenwich Police Department where complainant gave a formal statement.
15. Von Keyserling was subsequently charged with fourth degree sexual assault. At the time of the fact-finding, the criminal charge was still pending.

16. Complainant met with the town on December 14, 22 and 29 of 2016 in attempts to return to work. She was seeing a psychologist by that time due to the emotional stress of the sexual assault and the lack of support she received when reporting it to Bruce and Bausch.
17. Complainant requested a change in office and her directly reporting to Bruce as an accommodation. Complainant proposed several solutions which were all rejected by respondent.
18. Brown testified he had been told complainant might never return to work. He believed she was on a leave due to trauma, and denied complainant had been attempting to return to work until mid-March 2017 when she was medically diagnosed with a psychiatric condition.
19. Brown's testimony is not credible. There were meetings regarding complainant's requests for an accommodation to return to work on December 14, 22 and 29 of 2016. Brown was aware she was out on a leave and that complainant was seeking an accommodation that would minimize her interactions with Bruce and give her alternative office space from where Bruce's office and the incident had occurred.
20. Brown's denial also conflicts with Pepe's testimony that she was constantly working with Brown to find a way to accommodate complainant's requests for an accommodation so she could return to work.
21. Pepe never visited the facility to determine if Brown's denials that there was an alternative office where complainant could be assigned were true or not, so her constant efforts to accommodate the complainant are also in question.
22. In the meetings held in December 2016, respondent had suggested complainant could have a desk in the day room on a lock unit where dementia patients resided.
23. McCormick testified complainant's back would have been to the patient population. This posed a safety issue as dementia patients can be unpredictable in their behavior. Additionally, it did not afford an atmosphere conducive to completing her daily tasks.
24. Both Whitcomb and McCormick testified Brown made a comment in the December 29, 2016 meeting that if people stopped talking about it (the incident) it would go away. Whitcomb said the town tried to sweep it under the rug. Pepe testified the union was on a witch hunt after Bruce.
25. The town could have disciplined Bruce and Bausch for their failure to report the incident to human resources, but chose not to discipline either of the women.

26. Complainant commenced a leave following the December 8, 2016 sexual assault. She was on paid administrative leave from December 9, 2016 until January 19, 2017. At that time, she began using sick time and was later reimbursed for the use of two hundred thirty five and a half hours of sick time. She was not compensated for the full leave she took as a result of respondent denying her requests for an accommodation.
27. Pepe testified she had determined Bruce and Bausch should be retrained because they had failed to immediately report the incident. Both women told Pepe they asked complainant if she wanted them to contact human resources and complainant declined.
28. Pepe said she could not corroborate the things complainant alleged the women said regarding Von Keyserling being needed or a friend- referring to political influence.
29. Pepe said it was one word against another since there were no witnesses to what or what Bruce and Bausch had or hadn't said when complainant first informed them of the incident, but it simply makes no sense complainant would decline reporting it to human resources only to contact her union to do exactly that- report it to human resources.
30. More importantly, Bruce and Bausch are mandated to report claims of sexual harassment once a claim has been made. Complainant should have been able to rely on her immediate chain of command to take action. Instead, she had to reach out to her union after reporting the incident to Bruce and Bausch.
31. Pepe said the town never questioned whether the complainant had been sexually assaulted. She testified once the matter was reported to the police, it became a criminal matter and the investigation by the town, conducted by Brown at Witherell, focused on how Bruce and Bausch had responded, not about the actual sexual assault.
32. Pepe testified she had spoken to both Bruce and Bausch, but relied on Brown to look into the grievances filed by complainant.
33. Both Bruce and Bausch received letters of counseling as a result of their failure to properly report the incident. Both women were retrained, but neither were disciplined for their inaction in reporting the sexual assault.
34. Von Keyserling has a history of inappropriate behavior known to officials of respondent, but the town had no authority to remove him from office.
35. Peter Tesei, First Selectman for the Town of Greenwich, was informed within twenty-four (24) hours of the incident by Pepe. Tesei and the Board of Selectmen

called for Von Keyserling to resign in late January 2017. Von Keyserling did not comply and was removed from office when he lost his bid for reelection in November 2017.

36. Tesei had spoken to Von Keyserling on at least one occasion for inappropriate conduct towards a female staff member. Specifically, Von Keyserling had commented to a female member of Tesei's staff that her daughter- also a town employee- had a nice rear end of something to that effect. Tesei also said his predecessor had had issues with Von Keyserling.
37. In April 2017, the complainant returned to work when she was granted an accommodation, the same one she had been denied in December 2016. Notably, the desk where she was reassigned to conduct her duties was vacant in December 2016, but respondent claimed operational needs prevented them from accommodating complainant at that time.
38. Respondent was aware of the fact complainant was traumatized by the incident and seeking professional help. It should not have taken until April 2017 for Brown to take action to resolve the issues preventing complainant returning to work. He should and could have accommodated her request in December 2016, but chose not to do so- just as he chose not to formally discipline Bruce and Bausch for their failure to follow town policy regarding reports of sexual misconduct.

DETERMINATION

- (X) After reviewing all of the evidence in the Commission's file, the investigator concludes that there is **reasonable cause** for believing that a discriminatory practice has been or is being committed as alleged in the complaint.
- () After reviewing all of the evidence in the Commission's file, the investigator concludes that there is **no reasonable cause** for believing that a discriminatory practice has been or is being committed as alleged in the complaint.

Dated and entered this 27th day of September 2018.

**COMMISSION ON HUMAN RIGHTS
AND OPPORTUNITIES**



Human Rights Representative