

JDNO NOTICE**HHD-CV-17-6081372-S LASSEN, ALFRED v. CITY OF HARTFORD**Notice Issued: **05/09/2019****Court Address:**CLERK, SUPERIOR COURT
JUDICIAL DISTRICT OF HARTFORD
95 WASHINGTON STREET
HARTFORD, CT 06106**Notice Content:**Notice Issued: **05/09/2019**Docket Number: **HHD-CV-17-6081372-S**Case Caption: **LASSEN, ALFRED v. CITY OF HARTFORD**

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JDNO NOTICE**ORDER REGARDING:****09/17/2018 127.00 MOTION FOR SUMMARY JUDGMENT**The foregoing, having been considered by the Court, is hereby:
ORDER: DENIED

The plaintiff, Alfred Lassen, brought a three count complaint against the defendant, the City of Hartford, alleging disability discrimination, failure to accommodate, and retaliation in violation of General Statutes §§ 46a-60(a)(1) and 46a-60(a)(4) of the Connecticut Fair Employment Practices Act. The defendant moves for summary judgment on each of the three counts. The plaintiff opposes the motion. The motion is denied for the following reasons.

It is well established, that "[t]he party seeking summary judgment has the burden of showing the absence of any genuine issue [of] material facts which, under applicable principles of substantive law, entitle him to a judgment as a matter of law . . ." (Internal quotation marks omitted. *Stuart v. Freiberg*, 316 Conn. 809, 821, 116 A.3d 1195 (2015)). Therefore, "the burden is on [the] defendant to negate each claim as framed by the complaint." (Internal quotation marks omitted.) *Squeo v. Norwalk Hospital Assn.*, 316 Conn. 558, 594, 113 A.3d 932(2015). "[S]ince litigants ordinarily have a constitutional right to have issues of fact decided by a jury... the moving party for summary judgment is held to a strict standard . . . of demonstrating his entitlement to summary judgment." (Internal quotation marks omitted.) *Grenier v. Commissioner of Transportation*, 306 Conn. 523, 535, 51 A.3d 367 (2012). "To satisfy his burden the movant must make a showing that it is quite clear what the truth is, and that excludes any real doubt as to the existence of any genuine issue of material fact. . . ." As the burden of proof is on the movant, the evidence must be viewed in the light most favorable to the opponent. . . ." *State Farm Fire & Casualty Co. v. Tully*, 322 Conn. 566, 573, 142 A.3d 1079 (2016).

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Count One – Disability Discrimination

"To establish a prima facie case of discrimination, a plaintiff must prove four elements: (1) that she belongs to a protected class; (2) that she was qualified for the position in question; (3) that despite her qualifications, the individual suffered an adverse employment action; and (4) the adverse action occurred under circumstances giving rise to an inference of discrimination." Eaddy v. Bridgeport, 156 Conn. App. 597, 603-04, 112 A.3d 230, cert. denied, 317 Conn. 906, 114 A.3d 1220 (2015).

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The court finds that the defendant has failed to meet its burden to demonstrate that there are no disputed issues of material fact as to whether the plaintiff was qualified for the position because he could not perform the essential functions of the job, that is, being able to work all shifts, and that no accommodation existed that would have assisted the plaintiff become qualified for the position. This court recognizes that a strong consideration is given to an employer in its determination of essential functions of a job. See *Curry v. Allan S. Goodman, Inc.*, 286 Conn. 390, 420-21 n.16, 944 A.2d 925(2008). Nevertheless, "a court may not simply rely on the defendant's assertion regarding whether or not a function is essential, but must careful[ly] consider all of the relevant factors" *Martinsky v. Bridgeport*, 814 F. Supp. 2d 130, 146 (D. Conn. 2011), *aff'd*, 504 F. Appx. 43 (2d Cir. 2012). Our Supreme Court has relied on federal statutes such as 42 U.S.C. § 12111(8), and provided that "consideration shall be given to the employer's judgment as to what functions of a job are essential, and if an employer has prepared a written description before advertising or interviewing applicants for the job, this description shall be considered evidence of the essential functions of the job." (Internal quotation marks omitted.) *Curry v. Allan S. Goodman, Inc.*, *supra*, 286 Conn. 420-21 n.16. Other relevant factors may include "the amount of time spent on the job performing the function, the consequences of not requiring [the] plaintiff to perform the function, mention of the function in any collective bargaining agreement, the work experience of past employees in the job, and the work experience of current employees in similar jobs." *Martinsky v. Bridgeport*, *supra*, 146.

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The defendant claims that the plaintiff cannot work all shifts and that working all shifts is an essential component of the job of a police officer. In support of this claim that the ability to work all shifts is an essential function of the job, the defendant offers the affidavit of Dustin Rendock, Bureau Chief for the Professional Standards Bureau for the Hartford Police Department. Rendock asserts that it is an essential function of the job to be able to work all shifts, however, the documents submitted in support of the claim, the job requirements and collective bargaining agreement, do not support this conclusion, and are silent as to the issue. If the ability to work all the shifts was an essential qualification for the job of a police officer, it could be argued that this qualification would have been specifically included in these written descriptions. Additionally, the collective bargaining agreement provides an exception to the shift bidding process, stating that the bid shift system "does not impact upon management's rights to transfer employees if such changes are deemed by the Chief of Police or his or her designees to be in the best interest of the employee or of the Police Department." This language also creates a question of fact as to whether the ability to work all shifts is an essential function of the job. The absence of such inclusion, along with the conflicting evidence submitted by the parties creates a question of fact as to whether it is an essential function of the job.

Therefore, the court finds that there is a genuine issue of material fact as to whether the plaintiff could perform the essential functions of the job. The motion for summary judgment on count one is denied.

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Count Two – Failure to Accommodate

Connecticut Supreme Court has determined that Connecticut antidiscrimination statutes should be interpreted in accordance with federal antidiscrimination laws. *Curry v. Allan S. Goodman, Inc.*, supra, 286 Conn. 407. To bring a failure to accommodate claim, the plaintiff must demonstrate: "(1) he is a person with a disability under the meaning of the ADA; (2) an employer covered by the statute had notice of his disability; (3) with reasonable accommodation, he could perform the essential functions of the job at issue; and (4) the employer has refused to make such accommodations." *McMillan v. New York*, 711 F.3d 120, 125-26 (2d Cir. 2013).

As discussed, there is a genuine issue of material fact as to whether the ability to work all shifts is an essential function of the job. Thus, the motion for summary judgment on count two is denied.

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"To establish a prima facie case of retaliation, a plaintiff must show four elements: (1) that [he] participated in a protected activity; (2) that the defendant knew of the protected activity; (3) an adverse employment action against [him]; and (4) a causal connection between the protected activity and the adverse employment action." Phadnis v. Great Expression Dental Centers of Connecticut, P.C., 170 Conn. App. 79, 94-95, 153 A.3d 687 (2017). In the present case, the defendant argues that it is entitled to summary judgment on the ground that the plaintiff cannot establish a causal connection between his request for accommodation, that is, his request to work the day shift, and any adverse employment actions, which the plaintiff asserts was his separation from the department and denial of his request for re-employment. This claim, like the others, is dependent on the issue of whether, as the defendant asserts, working all shifts was an essential qualification of the job, and whether the plaintiff's day shift request was protected activity related to the employer's decision not to re-employ the plaintiff. The plaintiff provided evidence of his medical doctor's notes which provided his limitation to work day shifts. In Debra Collins Carabillo's deposition she stated that the plaintiff's ability to work all shifts was a factor in the defendant's decision to place him on the re-employment list. Since, there are disputed issues of material fact as to this claim, the motion for summary judgment on count three is denied.

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As to the defendant's argument that it had legitimate non-discriminatory reasons for its employment decisions, the court finds that the defendant has not established that "a fair and reasonable person could conclude only one way." (Internal quotation marks omitted.) *Dugan v. Mobile Medical Testing Services, Inc.*, 265 Conn. 791, 815, 830 A.2d 752 (2003).

Accordingly, the court denies the motion for summary judgment on all counts.

Per the Order of Cobb, J. on 5/9/19.

MAS/TAC dated 5/9/19.

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