



Maine Human Rights Commission

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INVESTIGATOR'S REPORT

E15--0546

July 11, 2016

Elizabeth Schneider (Portland)

v.

**Sunshine Pathways LLC;
Sunshine Corporation Holdings LLC;
Patrick Thompson (Nashville, TN)**

I. Complainant's Complaint:

Complainant alleged that her employment was terminated after she engaged in protected activity under the Maine Whistleblowers' Protection Act.

II. Respondent's Answer:

Respondents had notice of Complainant's allegations and declined to provide any response.

III. Jurisdictional Data:

- 1) Dates of alleged discrimination: July 10, 2015 to August 26, 2015.
- 2) Date complaint filed with the Maine Human Rights Commission ("Commission"): November 30, 2015.
- 3) Sunshine Pathways, LLC and Sunshine Corporate Holdings, LLC, which are owned by Patrick Martin Thompson, have fewer than 15 employees. the Respondents are subject to the Maine Human Rights Act ("MHRA"), the Maine Whistleblowers' Protection Act ("WPA"), and state employment regulations.
- 4) Complainant is represented by Chad T. Hansen, Esq. Respondents are not represented by counsel.
- 5) Investigative methods used: A thorough review of the written materials provided by Complainant. This preliminary investigation is believed to be sufficient to enable the Commissioners to make a finding of "reasonable grounds" or "no reasonable grounds" here.

IV. Development of Facts:

- 1) The parties in this case are as follows:

- a) Sunshine Pathways, LLC is a limited liability company registered in Tennessee. Sunshine Corporate Holdings, LLC is a limited liability company registered in Tennessee. Patrick Thompson is the owner and CEO of the two companies.
 - b) The Sunshine Respondents purchased a laboratory in South Portland, Maine at which Complainant was employed as a Lab Administrator from July 10, 2015 to August 26, 2015.
 - c) Third Parties: Supervisor was the individual on site at the South Portland lab responsible for supervision of Complainant; Lab Director was the individual responsible for directing the actions of Supervisor from a remote location; Chief of Operations was an employee of Sunshine.
- 2) Complainant provided the following in support of his position:
- a) Complainant was part of a three-member team employed at Sunshine in its South Portland location.
 - b) Complainant began working for Sunshine on July 10, 2015. After Complainant's first week of work, Complainant learned that she would be paid on a monthly basis via wire transfer and that she would not receive paystubs with her paycheck. Complainant's coworkers were to be paid in the same manner.
 - c) Complainant told Supervisor that she wished to be paid on a bi-weekly cycle and that she wished to receive paystubs. Complainant believes Supervisor spoke to Lab Director regarding her request. Complainant was later told that by the beginning of August 2015, the employees would be paid in accordance with her request. Maine law requires that employees be paid at least semi-monthly, or every 16 days.
 - d) Complainant was not paid on August 1, 2015. On August 3, 2015, Complainant received a wire transfer from Patrick Thompson personally for the hours she worked during July 2015. Complainant did not realize it, but there were no payroll deductions taken at the time.
 - e) Complainant expected to get paid on August 15, 2015, but she did not. Complainant continued to complain to Supervisor about not getting paid. Complainant believes Supervisor conveyed the complaints to Lab Director.
 - f) Complainant learned that Chief of Operations was to visit the lab on August 26, 2015 and would, among other things, determine what each employee was owed since the beginning of August 2015. On the morning of August 26, 2015, Chief of Operations arrived at the Maine lab and called a meeting with all employees. Chief of Operations explained that the company recently hired a chief financial officer and would soon start paying employees every two weeks. At the meeting, Complainant engaged the Chief of Operations in a conversation and requested to be paid in accordance with Maine laws and receive her pay for the month of August 2015. Chief of Operations said he would convey her requests to the new chief financial officer.
 - g) After the meeting ended, Complainant continued working. Complainant noticed a number of closed door meetings that occurred between Supervisor and Chief of Operations. On the afternoon of August 26, 2015, Supervisor and Chief of Operations met with Complainant and explained to her that due to a mix-up, no taxes were taken out of her first paycheck. Chief of Operations told Complainant that Sunshine decided to retroactively deduct payroll taxes from Complainant's next paycheck, making her net pay significantly less for August 2015. Chief of Operations requested that Complainant fill out a second W-4 form.

- h) Complainant left the building to make various phone calls, including one to her attorney and one to the Maine Department of Labor. When Complainant returned to the office, Chief of Operations asked to meet with her alone. When Complainant asked the purpose of the meeting, the Chief of Operations told her he felt that Complainant was not working with him to solve the problems she had identified. Chief of Operations told Complainant that she was not a good fit for the company. Chief of Operations also told Complainant that her speaking up about talking to an accountant or the Department of Labor was bad for morale. Complainant told Chief of Operations that she enjoyed working at Sunshine and that a bi-weekly payroll system should have been in place before the employees started working. Chief of Operations repeated that Complainant was not a good fit for Sunshine and told her he would cut her a final check before she left.
 - i) Complainant was given letter regarding her discharge, which listed the reason for her termination from employment as a slowdown of work at Sunshine. Complainant received her last paycheck, which was significantly less than her previous check due to the withholding of taxes for the prior month.
 - j) There was no slowdown of work at Sunshine before August 26, 2015 and that the reason given for her termination by Sunshine is pretextual.
- 3) Respondent did not respond to Complainant's allegations:
- a) The Commission sent notification of this complaint to Respondents via U.S. Mail on November 30, 2015. The address used for Respondent is the same as the address maintained by the Tennessee Secretary of State for Respondents' mailing address. The notification letter was not returned to the Commission, and is legally presumed to have been received.
 - b) The Commission sent correspondence to Respondents, again at the same address, on March 29, 2016. This letter, again not returned to the Commission, is legally presumed to have been received.
 - c) The Investigator sent another letter to Respondent, again at the same address, on May 10, 2016. This letter, again not returned to the Commission, is legally presumed to have been received.
 - d) Respondent is presumed to have had notice and an opportunity to respond to Complainant's allegations and to have declined to participate in the Commission's investigation.

V. Analysis:


- 1) The MHRA provides that the Commission or its delegated investigator "shall conduct such preliminary investigation as it determines necessary to determine whether there are reasonable grounds to believe that unlawful discrimination has occurred." 5 Maine Revised Statutes ("M.R.S.") § 4612(1)(B). The Commission interprets the "reasonable grounds" standard to mean that there is at least an even chance of Complainant prevailing in a civil action.
- 2) The MHRA prohibits discharging an employee because of previous actions that are protected under the WPA. *See* 5 M.R.S. § 4572(1)(A). The WPA protects an employee who "acting in good faith . . . reports orally or in writing to the employer or a public body what the employee has reasonable cause to believe is a violation of a law or rule adopted under the laws of this State, a political subdivision of this State or the United States". 26 M.R.S. § 833(1)(A).

- 3) In order to establish a prima-facie case of retaliation in violation of the WPA, Complainant must show that she engaged in activity protected by the WPA, she was the subject of adverse employment action, and there was a causal link between the protected activity and the adverse employment action. *See DiCentes v. Michaud*, 1998 ME 227, ¶ 16, 719 A.2d 509, 514; *Bard v. Bath Iron Works*, 590 A.2d 152, 154 (Me. 1991). One method of proving the causal link is if the adverse job action happens in "close proximity" to the protected conduct. *See DiCentes*, 1998 ME 227, ¶ 16, 719 A.2d at 514-15.
- 4) The prima-facie case creates a rebuttable presumption that Respondent retaliated against Complainant for engaging in WPA protected activity. *See Wytrwal v. Saco Sch. Bd.*, 70 F.3d 165, 172 (1st Cir. 1995). Respondent must then "produce some probative evidence to demonstrate a nondiscriminatory reason for the adverse action." *DiCentes*, 1998 ME 227, ¶ 16, 719 A.2d at 515. *See also Doyle*, 2003 ME 61, ¶ 20, 824 A.2d at 56. If Respondent makes that showing, the Complainant must carry her overall burden of proving that "there was, in fact, a causal connection between the protected activity and the adverse action." *Id.* In order to prevail, Complainant must show that she would not have suffered the adverse action but for her protected activity, although the protected activity need not be the only reason for the decision. *See University of Texas Southwestern Medical Center v. Nassar*, 133 S.Ct. 2517, 2534 (2013) (Title VII); *Maine Human Rights Comm'n v. City of Auburn*, 408 A.2d 1253, 1268 (Me. 1979) (MHRA discrimination claim).
- 5) Here, Complainant established a prima-facie case of WPA retaliation. Complainant repeatedly asked Respondents for wages to be paid in compliance with Maine law. She also reported her concerns to the Maine Department of Labor. After Complainant's requests, she met with the Chief of Operations, who told her she was not a good fit and her actions were bad for morale. The Chief of Operations terminated Complainant's employment after their meeting. These uncontested facts demonstrate a causal connection between Complainant's reports of wages paid in an untimely manner (illegal activity) and adverse employment action (termination of employment).
- 6) Respondents have chosen not to respond or controvert any of the claims Complainant raised in her Commission complaint. Since Respondents have not refuted or in any way responded to the allegations contained in Complainant's sworn Commission complaint, all material facts in her complaint are presumed to be true, since it is reasonable to draw the presumption that Respondents would have provided exculpatory or explanatory evidence if any were available. This also means that Respondents have not produced any probative evidence to demonstrate a nondiscriminatory reason for Complainant's discharge.
- 7) Retaliation in violation of the WPA and MHRA is found in this case.

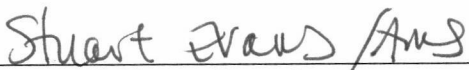
VI. Recommendation:

For the reasons stated above, it is recommended that the Commission issue the following findings:

1. There are **Reasonable Grounds** to believe that Sunshine Pathways LLC, Sunshine Corporation Holdings LLC and Patrick Thompson unlawfully terminated Elizabeth Schneider's employment in retaliation for protected activity under the WPA and MHRA; and
2. Conciliation should be attempted in accordance with 5 M.R.S. § 4612(3).



Amy M. Snerison, Executive Director



Stuart W. Evans, Investigator