

Matter of Rahilly v New York State Div. of Human Rights

2009 NY Slip Op 32495(U)

October 21, 2009

Supreme Court, New York County

Docket Number: 400983/09

Judge: Joan A. Madden

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: How Joan A. Madden

PART 11

Index Number : 400983/2009
RAHILLY, EUGENE G.
 VS.
N.Y.S.D.H.C.R.
 SEQUENCE NUMBER : 001
 ARTICLE 78

INDEX NO. _____
 MOTION DATE 6/12/09
 MOTION SEQ. NO. _____
 MOTION CAL. NO. _____

this motion to/for _____

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion petition is decided in accordance with the attached Memorandum Decision + Order + Judgment.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

UNFILED JUDGMENT
 This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 141B).

Dated: October 21, 2009

J.S.C.

Check one: FINAL DISPOSITION

NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST

REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 11

-----X
In the Matter of the Application of

EUGENE G. RAHILLY,

Petitioner,

For an Order and Judgment under Article 78 of the Civil
Practice Law and Rules,

Index No.: 400983/09

-against-

THE NEW YORK STATE DIVISION OF HUMAN
RIGHTS and GLOBAL HUE,

UNFILED JUDGMENT
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and notice of entry cannot be served based hereon. To
obtain entry, counsel or authorized representative must
appear in person at the Judgment Clerk's Desk (Room
141B).
Respondents.

-----X

Joan A. Madden, J.:

In this Article 78 proceeding, Eugene G. Rahilly (Petitioner), who is pro se, seeks an order and judgment, annulling the March 11, 2009 determination of the New York State Division of Human Rights (the Division), finding no probable cause to believe that respondent, Global Hue, engaged in an unlawful retaliatory or discriminatory practice when it terminated Petitioner's employment.

On September 18, 2006, Petitioner began his employment with Global Hue as a print producer. According to Petitioner, on July 30, 2007, he allegedly suffered a bone/knee injury while at work and received physical therapy treatments during non-work hours from September 2007 through November 2007. Petitioner maintains that he alerted the Human Resources Department at Global Hue about his injury.

On November 9, 2007, Petitioner alleges that he informed the Human Resources Department that he required knee surgery, that he would need disability leave, and that he was

concerned that his supervisors, Catherine Loiacono (Loiacono) and James Waters (Waters), were treating him in a discriminatory manner after they had learned that he may need the surgery. On November 16, 2007, Petitioner was terminated via letter from Global Hue and was told that he was no longer a "good fit" for the company.

On July 31, 2008, Petitioner filed a verified complaint with the Division charging Global Hue with unlawful discriminatory practice and retaliation in violation of section 296 of the New York State Human Rights Law, Title VII of the Civil Rights Act of 1964, and the Americans with Disabilities Act.

On March 11, 2009, the Division issued a determination and order after reviewing and investigating Petitioner's allegations. The Division determined that after one year of employment, Petitioner was terminated because of poor attitude and work performance, that Global Hue had several requests from the account management team to remove Petitioner from one of its business accounts, and that there were no other client accounts on which he could be assigned to work.

The Division determined that although Petitioner alleged that Global Hue was aware of his injury, Petitioner failed to present any evidence to support this allegation and that he violated company policy requiring that any at-work injuries be immediately reported to a manager and to the Human Resources Department.

In regards to his attendance at work, the Division found that the attendance records indicated that Petitioner worked on July 30, 2007, the alleged date of his work injury, and that the first sick day he took after the alleged injury was in August of that year. The Division also reported that Petitioner informed Waters that he had injured his knee at his previous job, that his

doctor would not authorize the surgery, and that his doctor had recommended physical therapy.

Despite the allegations by Petitioner that he had requested disability leave on November 9, 2007 to Laura Gomez (Gomez), Director of Human Resources, Global Hue maintains that no such disability leave was requested. The Division noted that no evidence was provided by Petitioner in support of this allegation. However, Global Hue did acknowledge, that during the November 9, 2007 meeting, Petitioner had expressed concerns about his supervisor, Catherine Loiacono (Loiacono), but that he did not discuss any specific discriminatory treatment.

The Division determined that, prior to Petitioner's meeting with Gomez, Loiacono had met with Gomez to discuss Petitioner's poor attitude and work performance and that despite Petitioner's description of his "exemplary" work ethic, the Global Hue account management team of Ivete Bridget, David Kleiman and Miguel DeJesus, continually requested not to work with Petitioner. While Petitioner received a \$500.00 bonus at the end of 2006, the Division noted that all employees received this bonus. Also, although some employees received a bonus in 2007 for good performance, Petitioner did not receive that increase. The Division's investigation disclosed that on the same day that Petitioner was terminated, another employee, who was not known to have a disability, and who was also supervised by Loiacono and Waters, was terminated for poor work performance.

The Division concluded that Global Hue articulated legitimate non-discriminatory business reasons for the termination of Petitioner, and that the investigation did not reveal a casual nexus between any disability and the allegations as stated in his complaint.

DISCUSSION

The standard for review of NYSDHR's probable-cause determination is whether it is

arbitrary and capricious, or lacking a rational basis. McFarland v. New York State Div. of Human Rights, 241 A.D.2d 108 (1st Dep't 1998)(citation omitted), see Holland v. Edwards 282 A.D. 353, 359 (1st Dep't 1953), aff'd, 307 NY 38 (1954).

In this case, it cannot be said that the Divisions determination was arbitrary, capricious or irrational. The record shows that in rendering its decision, the Division reviewed several documents provided by Global Hue, including a memorandum dated November 13, 2007, which was submitted by Gomez to Petitioner's employment file that outlines the decision to terminate Petitioner. The memorandum discusses a meeting Gomez had with Loiacono, in which Loiacono expressed concern with Petitioner's attitude. The memorandum also discusses a meeting with Ivette Bridget, a member of the account management team, who also displayed dissatisfaction with Petitioner's attitude in meetings.

The same memorandum also outlines a meeting Petitioner had with Gomez in which Petitioner discussed his belief that Loiacono lacked leadership, was emotionally unstable, and was unprofessional. Gomez also outlines statements made by Petitioner concerning problems he was having with the account management team and his dissatisfaction with other co-workers. In the memorandum, Gomez concluded that while personal issues between Petitioner and Loiacono exist, it was best for the client-business to terminate Petitioner from Global Hue.

The Division also reviewed two affidavits from Gomez and Danie Twymon (Twymon), the Director of Human Resources for Global Hue's Michigan office, which both emphasize that the determination to uphold Global Hue's decision was adequately supported by the direct testimony of Petitioner's co-workers.

Gomez's affidavit states that on October 29, 2007, Loiacono met with Gomez to report

performance issues that Petitioner was having. Gomez states that she met with three members of the account management team who confirmed performance issues regarding Petitioner and that based upon the request of the account team, Petitioner was terminated due to his bad attitude. Gomez also states that Petitioner never notified or contacted her to report any injury at Global Hue, did not request a need to file a worker's compensation claim or a need to request any time for short term disability.

Twymon's affidavit also emphasizes the reasoning behind the termination of Petitioner. Twymon states that Petitioner was terminated from Global Hue based on information which was submitted to the Human Resources Department regarding his poor attitude. Furthermore, Twymon states that Petitioner never notified or contacted her to report any injury which took place on the job, and did not discuss with her any need to file a worker's compensation claim or an application for short term disability.

Petitioner contends that the Division improperly found that an injury from four years earlier was to blame for Petitioner's injury, however, the Division did not make this finding, but was merely discussing the information gathered during its investigation.

Petitioner next argues that the close proximity between his complaints and his discharge reveal significant evidence of an inference of discrimination or retaliatory firing. However, it cannot be said that the Division's failure to accept this argument was irrational since there was no evidence submitted by Petitioner to support his claim that anyone was made aware of the any on-the-job injury occurring on July 30, 2007. In addition, the Division found no evidence to support Petitioner's allegation that he requested disability leave during the November 9 meeting with Gomez, in which Petitioner expressed concerns about his supervisors, but according to

respondent did not make any claim of discrimination.

Petitioner also contends that the Division's Final Investigation Report and Basis of Determination incorrectly states that Global Hue's decision to terminate Petitioner was made on October 29, 2007, which is prior to Petitioner's meeting with Gomez on November 9, 2007. While it appears that the final decision to terminate Petitioner was made on or about November 13, 2007, the record indicates that Loiacono, one of Petitioner's supervisors, met with Gomez on October 29, 2007 before the November 9, 2007 meeting to discuss Loiacono's "major concerns" regarding Petitioner's "uncooperative attitude." Accordingly, the record shows that Global Hue had serious concerns about Petitioner before the November 9, 2007 meeting in which Petitioner complained about his supervisors and purportedly informed Global Hue of his disability. Thus, even assuming the decision to terminate Petitioner was made after the November 9, 2007 meeting, any alleged error or ambiguity in the Division's determination in this regard does not provide a basis for overturning the Division's finding of no probable cause. In fact, it appears from the Division's determination that the timing of the decision to terminate was not the focus of its analysis. The record indicates that in response to a rebuttal statement from Petitioner regarding such timing, the Division pointed out Gomez noted in the November 13, 2007 memorandum that Petitioner was being terminated since "that is what is best for client business."

Finally, although Petitioner also alleges in his verified complaint that Waters and Loiacono were treating him in a discriminatory manner after they learned that he may need surgery, the Division noted that Petitioner did not disclose any specific examples of such discriminatory treatment other than a generalized allegation.

In conclusion, the Division's determination that there was no probable cause to believe that Global Hue engaged in an unlawful retaliatory or discriminatory practice when it terminated Petitioner's employment, was based upon a thorough investigation and supported by documentary evidence. There is no evidence that the Division was unreasonable, arbitrary, or capricious in rendering its decision.

CONCLUSION

Accordingly, it is

ORDERED and ADJUDGED that the petition is denied in its entirety and the proceeding is dismissed.

Dated: October 21, 2009



J.S.C.

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