ARNETHA EADDY *v.* CITY OF BRIDGEPORT
(AC 36046)

Beach, Prescott and Bishop, Js.

Argued December 3, 2014—officially released April 14, 2015

(Appeal from Superior Court, judicial district of Fairfield, Hon. William B. Rush, trial referee.)

Thomas W. Bucci, for the appellant (plaintiff).

Eroll V. Skyers, for the appellee (defendant).

Opinion

BEACH, J. In order for an individual to prove that he or she has been the object of discrimination because of a perceived mental disability, the person must first show that he or she in fact has been perceived to have a recognized mental disorder. The primary issue in this case is whether the court properly found that the plaintiff had not proved that her employer perceived her to have such a disability.

The plaintiff, Arnetha Eaddy, appeals from the judgment of the trial court rendered in favor of the defendant, the city of Bridgeport. On appeal, the plaintiff claims that the trial court erred in concluding that she failed to prove that she was regarded as having a mental disability, as defined in General Statutes § 46a-51 (20), and that the trial court erred in failing to use the framework enunciated in *McDonnell Douglas Corp.* v. *Green*, 411 U.S. 792, 802, 93 S. Ct. 1817, 36 L. Ed. 2d 668 (1973), to decide whether her employment was terminated because of a perceived disability.[1] We disagree and affirm the judgment of the trial court.

In December, 2008, the plaintiff filed a claim of employment discrimination against the defendant with the Commission on Human Rights and Opportunities (commission). In September, 2009, the commission granted the plaintiff a release of jurisdiction. The plaintiff brought suit in federal court alleging employment discrimination in violation of both the Americans with Disabilities Act; 42 U.S.C. § 12112 (a); and the Connecticut Fair Employment Practices Act (CFEPA). General Statutes § 46a-60 (a) (1). The District Court rendered summary judgment in favor of the defendant with respect to the plaintiff's federal claims and declined to exercise supplemental jurisdiction over her state law claims. See *Eaddy* v. *Bridgeport*, United States District Court, Docket No. 09cv1836 (MRK) (D. Conn. April 12, 2011). The plaintiff thereafter filed suit in Superior Court in May, 2011, alleging employment discrimination under CFEPA. Specifically, the plaintiff claimed that she had suffered from an "acute psychological stress reaction" on April 25, 2008, which temporarily disabled her from performing her duties, but that by June 19, 2008, her disability had been "medically resolved," and certain treatment would protect her from a reoccurrence of the condition. The plaintiff claimed that the defendant terminated her employment because it regarded her as having a mental disability.

Following a trial to the court, *Hon. William B. Rush*, judge trial referee, stated the following: "In July of 2007, the plaintiff was hired by the defendant as a probationary police officer. Throughout the period of her employment with a field training officer, the plaintiff generally received very good ratings on various qualities. The plaintiff was then placed upon assignment with other

officers without a field training officer. On April 25, 2008, an incident occurred which the plaintiff describes as harassment or disagreements with the officer with whom she was paired. In her statement, the plaintiff described some of the various disagreements she had with her then partner. After the shift, the plaintiff went home and was very upset, and, at the suggestion of others, a voluntary psychiatric admission was made into St. Vincent's Hospital. The plaintiff was then transferred to Hall-Brooke Hospital where she remained for approximately ten days. The chief of police then directed the plaintiff to go for a psychological evaluation at Behavioral Health Consultants, LLC, and a report was prepared by Dr. [Arnold] Holzman, a clinical psychologist.

"Following her release from Hall-Brooke Hospital, and the release of the report of the psychological evaluation, the chief of police conferred with the plaintiff, [and] various officers, [and he also read] reports of some of his officers. The chief of police then wrote to the personnel director, recommending that the Civil Service Commission terminate the plaintiff's employment as a probationary police officer. The Civil Service Commission then held a hearing, which the plaintiff attended, and voted to terminate her employment.

"The report of the psychologist and the review of memos prepared by coworkers expressed concern over the plaintiff's ability to provide competent support and backup during potentially urgent situations. [The] [r]eport also noted that '[h]er report of her activities as well as recent responsibilities were essentially [in] complete opposition to that described in the memos.' The report also states that, from the plaintiff's response to items on a certain test of personality, 'it was clear that she was not being honest in answering the items . . .' [The] psychologist also described [that] her taking of the test was considered [to be] a 'fake-good' profile in which individuals are trying to appear extremely well adjusted and free from all emotional problems and symptoms. Such results . . . invalidate the test score. The clinical psychologist also concluded that 'it is my impression at this time that it is highly likely that she is not fit for duty.'

"With respect to the incident on April 25, the plaintiff's partner stated that the plaintiff removed her duty belt and placed it on the desk [and] then began to unleash a barrage of comments and complaints about the city and how corrupt it is, and that the Bridgeport Police Department is no different. The report stated that the plaintiff became visibly upset to the point of yelling. The officer also stated [that] the verbal outbursts lasted approximately two hours and [that] when they left the substation, the plaintiff continued yelling obscenities and other comments. The report also stated [that] the plaintiff apologized to other officers for her

'outbreak' and stated that 'she was under a lot of stress.' The partner then state[d], '[m]y most serious concern [is] for my safety due to the fact that she is [wary] about approaching crowds of people and groups of suspicious person[s]. The majority of times [when] I approach suspicious persons and when I look for her position, she is usually about ten to fifteen steps behind me and then begins to close at a slow pace. Multiple officers both new and veterans have noticed her 'fear of the job' and stated to me, 'be careful out here with her.' The report from a captain of the police department notes that there were several situations wherein the plaintiff had expressed frustration in front of large groups of staff members, and [the] plaintiff is scared to walk to her personal car in the police lot without an escort.

"The letter from the chief of police recommending termination of the plaintiff notes that [the] plaintiff has shown difficulty during her first four weeks on the road without a field training officer. The letter also states that several episodes have been documented where the plaintiff has become irrational, irate and uncooperative, which disrupts her ability to effectively patrol her designated sector. The letter also notes that the plaintiff is paranoid about a conspiracy to persecute her in some fashion, and she has shown an inability to get along with her partner and immediate peers. The letter also notes that the records of St. Vincent's Hospital and Hall-Brooke hospital have not been reviewed due to '[HIPAA][2] requirements.' . . .

"The plaintiff takes particular issue with the letter from the chief of police to the personnel director stating that she does not want to be a police officer in Bridgeport and [that] she took off her gun belt and refused to continue the tour of duty. The plaintiff testified at the trial [in the Superior Court] that she did take off her gun belt in order to use the bathroom facilities and that was perfectly appropriate when in [that] area. [S]he also testified that she did not refuse to continue a tour of duty and that she never stated she did not want to be a police officer anymore." The defendant terminated the plaintiff's employment on July 2, 2008.

The court concluded that none of the differences between the plaintiff's version of events and the versions of others "served to establish that the plaintiff was suffering from an existing or perceived 'mental disability' as those words are defined in General Statutes § 46a-51 (20)." The court therefore rendered judgment in favor of the defendant. This appeal followed. After oral argument, this court, sua sponte, requested that the trial court "articulate whether or not the trial court found that the plaintiff proved, by a fair preponderance of the evidence, that the defendant regarded the plaintiff as having a mental disability as that term is defined in [General Statutes §] 46a-51 (20)." The trial court articulated: "The plaintiff did not prove, by a

preponderance of the evidence, that the defendant regarded the plaintiff as having a mental disability as that term is defined in [General Statutes] § 46a-51 (20)."

The plaintiff argues that the court erred by not applying the analytical framework set forth in *McDonnell Douglas Corp.* v. *Green*, supra, 411 U.S. 792. The *McDonnell Douglas Corp.* approach is appropriately used in cases in which a plaintiff seeks to prove unlawful discrimination by inference. See *Levy* v. *Commission on Human Rights & Opportunities*, 236 Conn. 96, 107–108, 671 A.2d 349 (1996). "As our Supreme Court explained, [w]hen a plaintiff claims disparate treatment under a facially neutral employment policy, this court employs the burden-shifting analysis set out by the United States Supreme Court in *McDonnell Douglas Corp.* v. *Green*, [supra, 792]. Under this analysis, the employee must first make a prima facie case of discrimination. The employer may then rebut the prima facie case by stating a legitimate, nondiscriminatory justification for the employment decision in question. The employee then must demonstrate that the reason proffered by the employer is merely a pretext and that the decision actually was motivated by illegal discriminatory bias. . . . That test is a flexible one." (Citation omitted; internal quotation marks omitted.) *Vollemans* v. *Wallingford*, 103 Conn. App. 188, 220, 928 A.2d 586 (2007), aff'd, 289 Conn. 57, 956 A.2d 579 (2008). Our Supreme Court has "stated on several occasions that this burden shifting methodology is intended to provide guidance to fact finders who are faced with the difficult task of determining intent in complicated discrimination cases. It must not, however, cloud the fact that it is the plaintiff's ultimate burden to prove that the defendant intentionally discriminated against her . . . ." (Internal quotation marks omitted.) *Mele* v. *Hartford*, 270 Conn. 751, 768–69, 855 A.2d 196 (2004).

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. *Levy* v. *Commission on Human Rights & Opportunities*, supra, 236 Conn. 107; *Vollemans* v. *Wallingford*, supra, 103 Conn. App. 220. If the plaintiff satisfies her production burden to establish a prima facie case and the employer introduces a nondiscriminatory reason for its action, then any presumption dissolves and the plaintiff has the burden of proof to establish the elements of her action. *Craine* v. *Trinity College*, 259 Conn. 625, 637, 643–44, 791 A.2d 518 (2002). Our Supreme Court has, therefore, reversed judgments in favor of the plaintiff in situations where a prima facie burden has been satisfied, but the plaintiff has nonetheless not satisfied her burden in proving an element of

the cause of action by a preponderance of the evidence. *Perez-Dickson* v. *Bridgeport*, 304 Conn. 483, 516–17, 43 A.3d 69 (2012); *Craine* v. *Trinity College*, supra, 654. If the plaintiff has been found not to have satisfied her burden to prove that she was a member of the relevant protected class, after the presentation of evidence to the trial court, then an excursion into reasons for termination is pointless; the plaintiff cannot meet her ultimate burden of proving that the defendant discriminatorily ended her probation because of a perceived mental disability. See, e.g., *Perez-Dickson* v. *Bridgeport*, supra, 522–24. As noted previously, the *McDonnell-Douglas Corp.* burden shifting analysis is used to evaluate inferences regarding causation, which is an element different from membership in a protected class.

The determination of whether the plaintiff was perceived to have a mental disability is one of fact; therefore, the clearly erroneous standard of review is appropriate. See, e.g., *Mele* v. *Hartford*, supra, 270 Conn. 767 ("under the fact-bound nature of determinations regarding what actions, as a matter of law, may constitute employment discrimination, a clearly erroneous standard [is] most appropriate" [internal quotation marks omitted]); *Ayantola* v. *Board of Trustees of Technical Colleges*, 116 Conn. App. 531, 537–40, 976 A.2d 784 (2009); id., 540 ("we conclude that the question of whether the causal element of the prima facie case for retaliation has been satisfied is a question of fact and subject to the clearly erroneous standard of review"). "A finding . . . is clearly erroneous when there is no evidence in the record to support it . . . or when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." (Internal quotation marks omitted.) *Brittell* v. *Dept. of Correction*, 247 Conn. 148, 165, 717 A.2d 1254 (1998).

In this case, the plaintiff alleged that she was a member of the protected class of those having or regarded as having a "mental disability." The term "mental disability" is defined in § 46a-51 (20), which provides that a person who has a mental disability is "an individual who has a record of, or is regarded as having one or more mental disorders, as defined in the most recent edition of the American Psychiatric Association's 'Diagnostic and Statistical Manual of Mental Disorders' . . . ." The plaintiff argues that the trial court erred in finding that she did not prove by a preponderance of the evidence that the defendant regarded her as having a mental disability as defined in § 46a-51 (20).[3] We disagree.

The trial court's finding that the plaintiff did not meet her burden to prove that the defendant had regarded her as having a mental disability was not clearly erroneous. The plaintiff sought to prove that her employment

was terminated because the defendant regarded her as suffering from a mental disability, based at least in part on her psychological evaluation by Holzman. The defendant sought to prove that the plaintiff's employment was terminated because she was more generally not fit to be a police officer.[4] The court considered the testimony of the plaintiff, Holzman, and Eleanor Guedes, the chairperson of the Civil Service Commission. The plaintiff introduced into evidence her probationary reports, a letter from former chief of the Bridgeport Police Department Bryan T. Norwood, asking for the termination of her employment, a letter from her to Norwood explaining in her own words the incident on April 25, 2008, and the fitness for duty evaluation conducted by Holzman. The defendant introduced into evidence the deposition of Norwood and several memoranda from other police officers describing the plaintiff's job performance.

The trial court concluded: "There are numerous differences between the plaintiff's version of various events and the version as described by other officers. However, none of those differences serve to establish that the plaintiff was suffering from an existing or perceived 'mental disability' as those words are defined in General Statutes § 46a-51 (20)." The trial court's articulation further stated that "[t]he plaintiff did not prove, by a preponderance of the evidence, that the defendant regarded the plaintiff as having a mental disability as that term is defined in . . . § 46a-51 (20)."

"Where there is conflicting evidence . . . we do not retry the facts or pass upon the credibility of the witnesses. . . . The probative force of conflicting evidence is for the trier to determine." (Citation omitted; internal quotation marks omitted.) *Aetna Casualty & Surety Co.* v. *Pizza Connection, Inc.*, 55 Conn. App. 488, 498, 740 A.2d 408 (1999). "[I]t is well established that a reviewing court is not in the position to make credibility determinations. . . . This court does not retry the case or evaluate the credibility of the witnesses. . . . Rather, we must defer to the [trier of fact's] assessment of the credibility of the witnesses based on its firsthand observation of their conduct, demeanor and attitude." (Internal quotation marks omitted.) *Smith* v. *Commissioner of Correction*, 121 Conn. App. 85, 92, 994 A.2d 317, cert. denied, 297 Conn. 921, 996 A.2d 1193 (2010). Our review of the record has not left us with a definite and firm conviction that a mistake has been committed; the court reasonably could have concluded that the plaintiff was not perceived to be suffering from a mental disorder defined by the Diagnostic and Statistical Manual of Mental Disorders, but rather from a more general lack of requisite temperament. Therefore, the finding that the plaintiff was not regarded as having a mental disability as defined in § 46a-51 (20) was not clearly erroneous.

The judgment is affirmed.

In this opinion the other judges concurred.

[1] Because we conclude that the trial court's finding regarding the failure to prove a perceived mental disability is not clearly erroneous, we do not reach the plaintiff's further claim regarding the cause of the termination of her employment.

[2] See Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. § 1320 et seq.

[3] The plaintiff also claims that the trial court erred in failing to use the disparate treatment analytical framework enunciated in *McDonnell Douglas Corp.* v. *Green*, supra, 411 U.S. 802. As stated previously, there was no need to engage in the burden shifting analysis when the element of membership in the protected class was not met.

[4] "Unfitness" embraces a number of traits that are not diagnoses specifically defined in the Diagnostic and Statistical Manual of Mental Disorders, and presumably some such diagnoses do not render one unfit for duty.