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JASON COOLING *v.* CITY OF TORRINGTON
(AC 45395)

Prescott, Elgo and Seeley, Js.

Syllabus

The plaintiff, a former member of the defendant city's police department, sought to recover damages for the defendant's alleged violations of the Connecticut Fair Employment Practices Act (§ 46a-51 et seq.). In 2008, when the defendant hired the plaintiff, he was an active member of the United States Marine Corps Reserve. He had been deployed to Iraq prior to joining the department and was deployed to Afghanistan during his employment with the department. The plaintiff suffered from significant medical conditions as a result of his deployments, including a traumatic brain injury, post-traumatic stress disorder, anxiety, depression, migraine headaches, and chronic back pain. The plaintiff worked as a patrol officer for the defendant. He was assigned to the evening shift on the basis of seniority and worked an alternating schedule that resulted in him having full weekends off only three times every sixteen weeks. In 2012, the plaintiff became the department's K-9 handler for the evening shift. In March, 2016, the defendant notified the plaintiff that he was being placed on sick leave probation for six months because he was in violation of the police union's collective bargaining agreement, as, in a twelve month period, he had called in sick in excess of four times in conjunction with his scheduled days off and/or days that he had switched his regularly scheduled shifts with that of another officer. In January, 2017, the plaintiff again was notified that he was being placed on sick leave probation and was told that the department was conducting an internal investigation into his use of sick leave. Thereafter, the plaintiff met with the then chief of police, M, and deputy chief of police, S, and informed them of ongoing stressors in his homelife. At this meeting, the plaintiff did not indicate that his sick time use was attributable to any injury, illness or disability related to his past military service. In February, 2017, the defendant formally notified the plaintiff that he was under investigation for excessive absenteeism. Thereafter, the plaintiff informed the defendant, for the first time, that he was suffering from a disability and indicated that he had used his sick time legitimately as a result of his disability. That same month, the plaintiff again was placed on sick leave probation in accordance with the terms of the collective bargaining agreement. In March, 2017, the plaintiff's psychiatrist sent a letter to the defendant recommending that it provide the plaintiff with a regular day shift schedule or with weekends off so that he could spend additional time with his family, which was important for his mental health and ongoing stability. Thereafter, the plaintiff and his attorney met with S, M, the defendant's personnel director, and its attorney, and the plaintiff asked to be assigned to a regular day shift schedule or to an evening shift position in narcotics with weekends off, in accordance with his psychiatrist's recommendation. In response, the defendant offered the plaintiff the option of either remaining in his then current assignment or moving to the day shift. It noted, however, that if he switched to the day shift, he would not be able to continue working as a K-9 handler because a K-9 officer with greater seniority was already assigned to the day shift. The defendant also indicated that it could not assign the plaintiff to the requested narcotics position because no such position existed. The plaintiff chose to remain on the evening shift as a K-9 handler. In May, 2017, the plaintiff initiated a complaint with the Commission on Human Rights and Opportunities, alleging workplace discrimination. In 2019, the plaintiff resigned from the department and received a release of jurisdiction from the commission. Thereafter, he commenced this action, claiming, inter alia, that the defendant discriminated against him on the basis of his disability by failing to engage in good faith in an interactive process to provide him with a reasonable accommodation and by subjecting him to a hostile work environment. The defendant filed a motion for summary judgment, which the trial court granted, and the plaintiff appealed to this court. *Held*:

1. The trial court did not err in concluding that the plaintiff failed to raise a genuine issue of material fact that the defendant did not sufficiently engage in the interactive process and failed to present evidence from which a jury could conclude that the defendant had acted in bad faith: the defendant presented undisputed evidence that, once the plaintiff informed it of his disability and requested an accommodation, the defendant met with the plaintiff and his attorney and offered the exact accommodation that the plaintiff had requested and his doctor had recommended, the ability to work the day shift; moreover, although the plaintiff declined the accommodation, claiming that it was offered in bad faith because, if accepted, he would not be able to remain a K-9 handler, neither the plaintiff nor his doctor had included the need to remain a K-9 handler as part of the accommodation request or had indicated that continuing as a K-9 handler was an integral part of any reasonable accommodation, and there was no indication that, after he declined the accommodation, the plaintiff ever sought any additional dialogue with the defendant that was ignored or rejected; furthermore, the defendant's refusal to create the new narcotics position requested by the plaintiff was not unreasonable, as the defendant was not required to provide the plaintiff with a particular requested accommodation or to create a new position, but only to engage in the interactive process with the plaintiff; accordingly, the plaintiff's claim failed as a matter of law and the defendant was entitled to summary judgment.
2. The trial court did not err in determining that the plaintiff failed to meet his burden of demonstrating that a genuine issue of material fact existed regarding whether the defendant had subjected the plaintiff to a hostile work environment on the basis of his disability: the conduct that the plaintiff pointed to as support for his hostile work environment claim did not, as a matter of law, individually or in the aggregate, rise to the level of severity or pervasiveness needed to overcome summary judgment because the investigation into the plaintiff's use of his sick time and his subsequent discipline were the result of the plaintiff's violations of the collective bargaining agreement, rather than any discriminatory animus toward the plaintiff, and, as such, could not reasonably factor into this court's consideration of whether the plaintiff demonstrated the existence of a hostile work environment; moreover, the plaintiff failed to establish that the defendant had acted in a discriminatory manner in engaging in the interactive process to find a mutually agreed upon, reasonable accommodation, and, contrary to the plaintiff's claim, there was no evidentiary support for the proposition that the defendant would have removed the plaintiff's canine from his possession if he had transferred to the day shift; furthermore, M's statement to the plaintiff that, in seeking an accommodation, he was not acting like a Marine was an isolated comment that did not have any real effect on the conditions of the plaintiff's employment, and the defendant's decision to send a uniformed officer to visit the plaintiff's workers' compensation doctor to obtain clarification regarding the plaintiff's ability to return to work following a work-related injury, even if undertaken with a discriminatory intent, was a onetime event that had no real impact on the plaintiff's working conditions or his ability to use his workers' compensation leave; additionally, with respect to an incident in which a photo of the plaintiff that was hanging in the department's locker room was defaced, the undisputed evidence showed that, once the matter was brought to the attention of the defendant, it removed the photo, disciplined an officer who had failed to timely report the incident, and took action to discourage such behavior in the future.

Argued April 18—officially released September 12, 2023

Procedural History

Action to recover damages for, inter alia, alleged employment discrimination, and for other relief, brought to the Superior Court in the judicial district of Litchfield, where the court, *Hon. John W. Pickard*, judge trial referee, granted the defendant's motion for summary judgment and rendered judgment thereon, from which the plaintiff appealed to this court. *Affirmed.*

Eric R. Brown, for the appellant (plaintiff).

Michael J. Rose, with whom, on the brief, was *Megan L. Nielsen*, for the appellee (defendant).

Opinion

PRESCOTT, J. The plaintiff, Jason Cooling, appeals from the summary judgment rendered by the trial court in favor of the defendant, the city of Torrington, on the plaintiff's complaint alleging violations of the Connecticut Fair Employment Practices Act (CFEPA), General Statutes § 46a-51 et seq.[1] The plaintiff alleged in his complaint that the defendant discriminated against him on the basis of disability by, inter alia, failing to engage in a good faith interactive process to provide him with a reasonable accommodation and by subjecting him to a hostile work environment.[2] On appeal, the plaintiff claims that the court improperly determined that he failed to raise a genuine issue of material fact that the defendant (1) had not engaged in the requisite good faith interactive process to discover a reasonable accommodation for his disability and (2) had subjected him to a hostile work environment. We disagree with the plaintiff and, accordingly, affirm the judgment of the court.

The record before the court, viewed in the light most favorable to the plaintiff as the nonmoving party, reveals the following undisputed facts and procedural history. The defendant hired the plaintiff in February, 2008, as a police officer with the Torrington Police Department (department). He worked for the department until his resignation in April, 2019. When hired, the plaintiff was an active member of the United States Marine Corps Reserve. Prior to joining the department, the plaintiff had been deployed to combat duty in Iraq in 2006. In 2011, while employed by the defendant, he was deployed again, this time to Afghanistan. The plaintiff suffered significant injuries as a result of his multiple deployments, including a traumatic brain injury, post-traumatic stress disorder (PTSD), anxiety, depression, migraine headaches, and chronic back pain.[3]

During his employment with the department, the plaintiff worked as an evening shift patrol officer on a 5/2, 5/3 schedule, meaning that he worked an alternating schedule that consisted of five days on and two days off followed by five days on and three days off.[4] As a result of his schedule, the plaintiff's assigned days off rotated forward one day every two weeks, meaning that he had full weekends off only three times every sixteen weeks.

In 2012, after returning to work from his Afghanistan deployment, the plaintiff was assigned as a K-9 handler. In that role, he was provided with a police dog named Remington. The plaintiff housed and cared for Remington at his home and worked with him until they retired together. Remington generally was trained as a patrol dog but also received additional training to track people and to detect narcotics. The plaintiff received special training with Remington regarding the dog's narcotic

detection functions. In addition to his special assignment as a K-9 handler on the evening shift, the plaintiff also was assigned as a member of the department's Special Response Team.[5]

As a police officer with the department, the plaintiff was a member of the Torrington Police Union, Local 442, Council 4, AFSCME, AFL-CIO (police union). Under the terms of the operative collective bargaining agreement between the defendant and the police union, employees accrued sick leave on a monthly basis. Any employee that used accrued sick leave on either the day before or after a scheduled day off on more than three occasions in any twelve month period would be placed on "sick leave probation . . . ."[6] During the resulting six month probation period, if the employee wished to use accrued sick time, he or she was required to submit a form signed by a physician to qualify for additional sick leave pay.

In March, 2016, the department notified the plaintiff by letter that he was being placed on " 'sick [leave] probation' " because he had "called in sick in excess of four times in conjunction with [his] scheduled days off and/or a [change] day in a twelve month period."[7] The start date of his six month probation period was February 28, 2016. The plaintiff neither raised any objections at that time to being placed on sick leave probation nor filed a grievance with the police union.

In January, 2017, the plaintiff was again notified by letter that he was being placed on sick leave probation for a "second time in less than a twelve (12) month period . . . ." The letter further provided in relevant part: "Your excessive absenteeism is negatively impacting the operational requirements of the department, causing unnecessary operating expenses, and is requiring others to carry the extra load. In addition, your excessive absenteeism has impaired the efficiency of the [d]epartment and the efficiency of you as a member of this [d]epartment." Finally, the letter informed the plaintiff that the department would conduct an internal investigation into the plaintiff's use of sick leave.

The plaintiff had an informal meeting on January 31, 2017, with the then chief of police, Michael Maniago, and the deputy chief of police, Christopher Smedick. At that meeting, the plaintiff advised them "of ongoing stressors in his homelife."[8] He did not mention at this meeting that his sick time use was attributable to any injury, illness, and/or disability related to his past military service.

On February 2, 2017, the defendant formally notified the plaintiff that he was under investigation for excessive absenteeism. In a memorandum dated February 8, 2017, the plaintiff notified the defendant that he was suffering from a disability and that he properly had utilized his contractually allowed sick time as a result

of that disability.[9] Prior to the February 8, 2017 notice, the plaintiff had not raised his disability as an issue to the defendant nor had he sought any accommodation for it because, as alleged in his complaint, "he did not believe that he was in need of any accommodations in order to perform the essential functions of his position, apart from his *legitimate use* of contractually provided paid sick leave." (Emphasis added.)

On February 15, 2017, the defendant issued a written reprimand to the plaintiff. The reprimand provided that the plaintiff had engaged in conduct unbecoming a police officer because, on more than three occasions, he had used his sick time in close proximity to other paid time off, which violated the terms of the collective bargaining agreement. As a result, the defendant placed the plaintiff back on sick leave probation in accordance with the collective bargaining agreement. The plaintiff received no additional discipline.

On March 8, 2017, the plaintiff's psychiatrist, Pavle Joksovic, sent a letter to the defendant indicating that the plaintiff currently was receiving psychotropic medication and supportive therapy for anxiety and depression. Joksovic stated that the plaintiff was stable and capable of performing his duties as a police officer with the help and support of his family. Joksovic nevertheless also recommended that, to maintain "proper daily function," the department should provide the plaintiff with a "regular daily shift schedule and/or no weekends as increased time spen[t] with his family would go a long way for his [ongoing] stability."

In April, 2017, after Joksovic issued his letter, the plaintiff asked for a meeting with the defendant to discuss the accommodations recommended by Joksovic. On April 26, 2017, a meeting took place between the plaintiff, his attorney, Maniago, Smedick, the defendant's personnel director, and its attorney. At that meeting, the plaintiff, consistent with Joksovic's recommendations, asked to be assigned to a regular day shift schedule or, alternatively, to an evening shift position in narcotics, which would have allowed him to work a 5/2, 4/3 schedule, meaning he would have had weekends off.

In response, the defendant offered the plaintiff the option of either remaining in his current assignment or moving to the day shift on a 5/2, 5/3 schedule. The defendant, however, informed the plaintiff that if he elected to switch to the day shift, he would no longer be able to continue as a K-9 handler. The department had three dog handlers, with one assigned to each of the three shifts. There already was a K-9 officer with more seniority assigned to the day shift who did not want to move to the evening shift. The defendant also indicated that it could not assign the plaintiff to a narcotics position because no such position existed. The plaintiff chose to continue to work the evening shift.

On May 10, 2017, the plaintiff filed a complaint with the Commission on Human Rights and Opportunities (CHRO) alleging workplace discrimination in that he had been denied a reasonable accommodation on the basis of a disability. The plaintiff eventually obtained a release of jurisdiction from the CHRO. See footnote 10 of this opinion.

On June 26, 2017, the plaintiff was injured at work during an altercation with a suspect whom the plaintiff was attempting to take into custody. The plaintiff was placed on leave pending a June 29, 2017 follow-up visit with the defendant's workers' compensation doctor. On June 29, 2017, the plaintiff provided the defendant with a note from the workers' compensation doctor that indicated that the plaintiff was fit to work his entire shift as of June 29, 2017, with limited restrictions. The plaintiff nonetheless informed the defendant that it was his understanding on the basis of his visit with the workers' compensation doctor that he should stay home. Because of the apparent contradiction between the doctor's written note and the plaintiff's understanding of the doctor's orders, the defendant asked the plaintiff to return to the doctor for further clarification. The plaintiff later returned with a note from a chiropractor who recommended that the plaintiff remain out of work until cleared by a concussion specialist. The defendant then asked the plaintiff to seek clarification from the initial workers' compensation approved doctor and not from his personal chiropractor. The defendant also ordered another police officer, Louis Gonzalez, to join the plaintiff in seeking clarification. The workers' compensation doctor informed the plaintiff and Gonzalez that the plaintiff was cleared to return to work with certain limitations. The plaintiff nevertheless remained out of work until January, 2018, on the basis of his work-related injury.

During the time the plaintiff was on leave due to the June, 2017 injury, he learned that somebody in the department had defaced a photo of him that had been hanging in the department's locker room. The photo depicted the plaintiff with several fellow police officers around the time he had returned from his Afghanistan deployment. Someone had placed a thumb tack through the plaintiff's forehead. In December, 2017, the defendant had the photo removed. The defendant held a meeting with all officers about the photo and instructed them that the department would not tolerate such conduct and that it should not be repeated. In addition, the defendant ordered an internal affairs investigation that resulted in the discipline of an officer who had failed to timely report the incident to the department.

On April 16, 2019, the plaintiff sent the defendant a letter in which he resigned effective April 29, 2019. The resignation letter stated that the plaintiff had accepted a position with Yale New Haven Health System as an

emergency management specialist.

On May 9, 2019, the plaintiff commenced this civil action against the defendant.[10] In his complaint, the plaintiff alleged that the defendant discriminated against him on the basis of his disability in violation of General Statutes § 46a-60 (b) (1) and (4). See footnote 1 of this opinion. Relevant to the present appeal are the plaintiff's allegations that the defendant failed to engage in good faith in an interactive process to provide him with a reasonable accommodation for his disability and subjected him to a hostile work environment. On January 12, 2021, the defendant filed a motion for summary judgment accompanied by a memorandum of law. Attached to its memorandum were affidavits, excerpts from depositions and other documentary evidence. On April 5, 2021, the plaintiff filed a memorandum in opposition to the defendant's motion for summary judgment that included additional documentary evidence. The court heard oral argument on January 18, 2022.

On March 23, 2022, the court issued a memorandum of decision concluding that the plaintiff failed to raise genuine issues of material fact with respect to his claims and that the defendant was entitled to judgment as a matter of law on the entirety of the plaintiff's complaint. The court first determined that the defendant's investigation of the plaintiff's use of sick time, which resulted only in a written reprimand and contractually mandated sick leave probation, neither of which significantly altered the plaintiff's working conditions, could not, as a matter of law, constitute "materially adverse employment actions to support the plaintiff's claim of discrimination on the basis of disability." Furthermore, the court concluded that, even if the investigation and reprimand were adverse employment actions, the plaintiff failed to point to any evidence that the defendant's actions give rise to a reasonable inference of discrimination. Rather, the evidence demonstrated that the defendant investigated and reprimanded the plaintiff because of his abuse of sick time in violation of the collective bargaining agreement, not due to any hostility toward his disability. Further, although the plaintiff argued to the court that the fact that he was the only police officer investigated and reprimanded for sick time abuse gives rise to a reasonable inference of discrimination, the plaintiff failed to provide the court with any evidence of "a similarly situated [officer who] was treated more favorably by the defendant than he was."

The court also determined that the defendant was entitled to judgment as a matter of law on the plaintiff's allegations of a hostile work environment. Specifically, the court explained that, even accepting as true the few isolated actions alleged by the plaintiff as constituting hostile acts, they were not sufficiently severe or pervasive as to be reasonably viewed by a jury as creating a hostile work environment.

The plaintiff had relied on the same conduct to support his claim of constructive discharge, which claim the court determined also failed as a matter of law because the record evidence did not demonstrate a work atmosphere that was so difficult or unpleasant that a reasonable person would have felt compelled to resign. Moreover, nearly one year and four months passed between the conduct alleged and the plaintiff's resignation, making it far less reasonable to link the resignation with the work environment.

The court also concluded that the defendant was entitled to summary judgment on the plaintiff's claim of retaliation. The court first noted that the plaintiff had not addressed the retaliation claim in his objection to summary judgment, including the defendant's argument that the claim should fail because the plaintiff presented no evidence that the defendant was aware of his disability when it conducted its sick time investigation. The court then concluded: "The reprimand received by the plaintiff was not due to a protected activity, rather it was a result of a violation of the collective bargaining agreement regarding sick time use. Thus, the plaintiff's claim of retaliation fails as a matter of law."

Finally, the court rendered summary judgment with respect to the plaintiff's claim that the defendant had not engaged in good faith in the interactive process necessary to provide the plaintiff with a reasonable accommodation. The court determined that the undisputed record showed that "[t]he plaintiff provided the defendant with a doctor's note that it would be beneficial for his health to work day shifts, the plaintiff requested day shifts, and the defendant offered day shifts. This is undisputed evidence that the defendant engaged in an interactive process with the plaintiff in good faith and offered a reasonable accommodation. The plaintiff has not presented evidence to show otherwise."

In sum, the court concluded that "there are no genuine issues of material fact and the defendant is entitled to judgment as a matter of law on all counts." This appeal followed.

I

The plaintiff first claims that the court improperly determined that the defendant had engaged in a good faith interactive process with the plaintiff to reasonably accommodate his disability and, thus, that the defendant was entitled to judgment as a matter of law on his claim that the defendant violated § 46a-60 (b) (1) of CFEPA. According to the plaintiff, the court "made a factual finding that was not within its purview to make when it determined that the defendant engaged in the interactive process in good faith and offered a reasonable accommodation that the plaintiff refused.

. . . The trial court should have left to the fact finder the determination as to the defendant's participation in the interactive process, the reasonableness of any offered accommodation, and whether it was done in good faith." (Citation omitted.) The defendant counters that, "[w]here an employer grants the exact accommodation that an employee requests and a doctor recommends, there can be no genuine issue of material fact that the employer did not engage in the interactive process in good faith. Such a determination need not be reserved for the jury to decide." We agree with the defendant.

We begin our analysis by setting forth our standard of review and other generally applicable principles of law that guide our review. The standards governing our review of a court's decision to grant a defendant's motion for summary judgment are well settled. "Practice Book § [17-49] provides that summary judgment shall be rendered forthwith if the pleadings, affidavits and any other proof submitted show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. . . . In deciding a motion for summary judgment, the trial court must view the evidence in the light most favorable to the nonmoving party. . . . The 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 . . . and the party opposing such a motion must provide an evidentiary foundation to demonstrate the existence of a genuine issue of material fact. . . . [I]ssue-finding, rather than issue-determination, is the key to the procedure. . . . [T]he trial court does not sit as the trier of fact when ruling on a motion for summary judgment. . . . [Its] function is not to decide issues of material fact, but rather to determine whether any such issues exist. . . . Our review of the decision to grant a motion for summary judgment is plenary. . . . We therefore must decide whether the court's conclusions were legally and logically correct and find support in the record." (Internal quotation marks omitted.) *Barbee* v. *Sysco Connecticut, LLC*, 156 Conn. App. 813, 817–18, 114 A.3d 944 (2015).

We turn to relevant state law regarding employment discrimination premised on a failure to reasonably accommodate a disability.[11] CFEPA prohibits discriminatory employment practices. Specifically, § 46a-60 (b) provides in relevant part: "It shall be a discriminatory practice in violation of this section: (1) For an employer . . . except in the case of a bona fide occupational qualification or need . . . to discriminate against any individual in compensation or in terms, conditions or privileges of employment because of the individual's . . . present or past history of mental disability, intellectual disability, learning disability, [or] physical disability, including, but not limited to, blindness, status

as a veteran or status as a victim of domestic violence . . . ."

Our Supreme Court has interpreted CFEPA, consistent with analogous federal law; see *Curry* v. *Allan S. Goodman, Inc.*, 286 Conn. 390, 403–404, 415–16, 944 A.2d 925 (2008); to require an employer and an employee to "engage in an informal, interactive process . . . [to] identify the precise limitations resulting from [an employee's] disability and potential reasonable accommodations that could overcome those limitations. . . . The need for bilateral discussion arises because each party holds information the other does not have or cannot easily obtain. . . . The employee bears the burden of initiating the interactive process and must come forward with some suggestion of accommodation, and the employer must make a good faith effort to participate in that discussion. . . . A plaintiff who fails to initiate or to participate in the interactive process in good faith cannot prevail on an employment discrimination claim under CFEPA. . . . Once the employee has initiated the informal interactive process, the employer has a duty of good faith compliance. . . . An employer's refusal to give [an employee his or her] specific requested accommodation does not necessarily amount to bad faith, so long as the employer makes an earnest attempt to discuss other potential reasonable accommodations. . . . Additionally, an employer's failure to participate in the interactive process in good faith does not give rise to per se liability but may be sufficient grounds for denying a defendant's motion for summary judgment, because it is, at least, some evidence of discrimination." (Citations omitted; internal quotation marks omitted.) *Kovachich* v. *Dept. of Mental Health & Addiction Services*, 344 Conn. 777, 802–803, 281 A.3d 1144 (2022); see also *Equal Employment Opportunity Commission* v. *Kohl's Dept. Stores, Inc.*, 774 F.3d 127, 132 (1st Cir. 2014) ("The interactive process involves an informal dialogue between the employee and the employer in which the two parties discuss the issues affecting the employee and potential reasonable accommodations that might address those issues. . . . It requires bilateral cooperation and communication." (Citation omitted.)).

"The interactive process required by law is ongoing, meaning that the provision of a temporary accommodation does not circumvent . . . the requirement to make a good faith effort to engage in [the] interactive process, if the employee so requests, to determine whether the employer might make some other reasonable accommodation on a more permanent basis. . . . The continuing obligation to engage in the interactive process in good faith fosters a cooperative dialogue between the employer and the employee and furthers their shared responsibility to fashion a reasonable accommodation. . . . If either party obstructs or delays the interactive process in bad faith by, for example, *failing to commu-*

nicate, *by way of initiation or response*, that party will be assign[ed] responsibility for the breakdown of the interactive process." (Citations omitted; emphasis added; internal quotation marks omitted.) *Kovachich* v. *Dept. of Mental Health & Addiction Services*, supra, 344 Conn. 804–805. "The employee must be candid and responsive. If the employer needs additional information concerning the employee's mental and physical condition and resultant limitations, the employee must provide it. If the employer proposes an accommodation to which the employee has an objection or concern, *the employee must express that objection or concern during the interactive process*. If the employee does not state objections or concerns during the interactive process, the court will be reluctant to hear the employee testify to them in court." (Emphasis added; footnote omitted.) C. Sullivan, "The ADA's Interactive Process," 57 J. Mo. B. 116, 117 (2001), citing *Loulseged* v. *Akzo Nobel, Inc.*, 178 F.3d 731, 737 (5th Cir. 1999); see also *McBride* v. *BIC Consumer Products Mfg. Co.*, 583 F.3d 92, 97–98 (2d Cir. 2009) (plaintiff requesting reassignment as accommodation bears burden to "demonstrate the existence, at or around the time when accommodation was sought, of an existing vacant position to which [he or] she could have been reassigned").

Here, the record is simply devoid of any evidence that the defendant failed to engage in good faith in the interactive process with the plaintiff to provide him with a reasonable accommodation. The defendant presented undisputed evidence in support of summary judgment that once the plaintiff had informed it of his disability and requested an accommodation, a meeting was held between Maniago, Smedick, the plaintiff, the plaintiff's attorney, the defendant's personnel director, and its attorney. The record shows that the plaintiff proposed that he be permitted to work day shifts instead of evening shifts. The defendant obliged him by offering him to work day shifts but indicated that continuing as a K-9 handler during the day shift was not tenable because there was no need for an additional K-9 handler on that shift. Given a choice to move to the day shift without his canine or remain on his current schedule, the plaintiff elected to remain on his existing shift. Although the parties failed to reach an agreement that fully satisfied the plaintiff regarding his request for a shift change, the record does not show that the plaintiff ever sought any additional dialogue with the defendant that was ignored or rejected. Additionally, although the plaintiff did not want to move to the day shift without his dog, neither the plaintiff nor his doctor had included the need to remain a dog handler as part of the accommodation request or indicated that continuing as a dog handler was an integral part of any reasonable accommodation. Nevertheless, even if the defendant had been made aware of that condition, an employer is not required to provide an employee with any particular requested

accommodation. See *Ezikovich* v. *Commission on Human Rights & Opportunities*, 57 Conn. App. 767, 775, 750 A.2d 494, cert. denied, 253 Conn. 925, 754 A.2d 796 (2000). Rather, it must only engage in an interactive process with the employee, and the undisputed evidence in the present case does not show that the defendant failed to do so.

The plaintiff concedes in his opposition to summary judgment that the defendant had engaged in interactive conversations with him and, in fact, offered him one of the accommodations he requested. Specifically, he noted that the defendant had "offered [him] to work the day shift *as requested*, but without his dog . . . ." (Emphasis added.) Moreover, the plaintiff acknowledged in his deposition that, although he had not received the precise accommodation he desired, he never formally pursued the subject further. Specifically, during his deposition, the plaintiff stated: "Days shift only, no dog. That was what was offered." He was then asked: "And you decided to turn it down based on your own feelings?" The plaintiff answered: "Correct." There was no indication in the summary judgment record that he explained to the defendant during negotiations that a move to the day shift, in his view, would not be an acceptable or reasonable accommodation if he was unable to continue with his special assignment as a K-9 handler, or how remaining as a K-9 handler was related to his need for an accommodation moving forward. See *Kovachich* v. *Dept. of Mental Health & Addiction Services*, supra, 344 Conn. 804–805 (employee has duty to express concerns during interactive process). He was asked during his deposition, "And did you present them with any other options?" He responded, "No."[12]

The plaintiff also admitted in his deposition that, rather than seeking to be reassigned to an existing job opening, he actually sought to have the defendant place him in a new hybrid patrol/narcotics position, one that did not then exist within the department. The following question and response is illustrative: "Q. Then the second question is: When you refer to a vacant position, there really isn't a position that was consistent with what you were looking for. You were looking for a new position, right? A. Yes, as a hybrid of patrol narcotics." The fact that the defendant offered the plaintiff one of the accommodations suggested by his doctor, although perhaps not his ideal accommodation, does not render the accommodation offered unreasonable; see *Ezikovich* v. *Commission on Human Rights & Opportunities*, supra, 57 Conn. App. 775; nor does the defendant's refusal to create a new position for which it had no business need or budget. See, e.g., *Medlin* v. *Rome Strip Steel Co.*, 294 F. Supp. 2d 279, 291 (N.D.N.Y. 2003) ("[if] a proposed accommodation is reassignment or transfer to another position, a plaintiff has the obligation at summary judgment to come forward with evidence demonstrating that the position sought existed at the

time it was requested"), citing *Jackan* v. *New York State Dept. of Labor*, 205 F.3d 562, 566 (2d Cir.), cert. denied, 531 U.S. 931, 121 S. Ct. 314, 148 L. Ed. 2d 251 (2000).

As the plaintiff correctly points out in his brief, courts have indicated that whether an accommodation is "reasonable" and whether a party acts in "good faith" are ordinarily questions of fact to be decided by a jury. See, e.g., *Paine Webber Jackson & Curtis, Inc.* v. *Winters*, 13 Conn. App. 712, 722, 539 A.2d 595 (plaintiff's "good faith" in accelerating debt was question of fact that court improperly resolved at summary judgment), cert. denied, 208 Conn. 803, 545 A.2d 1101 (1988). This does not mean, however, that a court cannot render summary judgment for a defendant if that defendant submits evidence that it engaged with the plaintiff in good faith or offered an accommodation that was per se reasonable because it was the very accommodation sought by the plaintiff, and the plaintiff fails to offer any contrary evidence in opposition to summary judgment.

On the record before us, the trial court properly concluded that the plaintiff failed to raise a genuine issue of material fact that the defendant did not sufficiently engage in the interactive process. The plaintiff also did not present any evidence in his opposition from which a jury reasonably could conclude that the defendant acted in bad faith. The plaintiff was presented with a reasonable accommodation of the day shift, albeit without the use of a K-9. The plaintiff admitted in his deposition that the offered accommodation would have allowed him to perform the essential functions of the job. The defendant had no legal obligation to offer additional accommodations more preferable to the plaintiff or to create a new position. Here, there is no disputed issue of material fact that an informal, interactive process occurred or that a reasonable accommodation was made. The plaintiff's claim fails as a matter of law and the defendant was entitled to summary judgment.

II

The plaintiff also claims that the court improperly concluded that the defendant was entitled to judgment as a matter of law with respect to the plaintiff's claim that the defendant subjected him to a hostile work environment on the basis of his disability in violation of CFEPA. The defendant responds that the court correctly determined that the conduct the plaintiff pointed to as supporting his hostile work environment allegation did not, as a matter of law, rise to the level of severity or pervasiveness needed to overcome summary judgment. Again, we agree with the defendant.

Our Supreme Court has held that "hostile work environment claims may be brought under § 46a-60 [b] (1) pursuant to that provision's prohibition of discrimination in terms, conditions or privileges of employment . . . ." (Internal quotation marks omitted.) *Patino* v.

Birken Mfg. Co., 304 Conn. 679, 696, 41 A.3d 1013 (2012). "[T]o establish a hostile work environment claim, a plaintiff must produce evidence sufficient to show that the workplace is permeated with *discriminatory* intimidation, ridicule, and insult that is *sufficiently severe or pervasive* to alter the conditions of the victim's employment and create an abusive working environment . . . . [I]n order to be actionable . . . [an] objectionable environment must be both objectively and subjectively offensive, one that a reasonable person would find hostile or abusive, and one that the victim in fact did perceive to be so. . . . Whether an environment is objectively hostile is determined by looking at the record as a whole and at all the circumstances, including the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance." (Emphasis added; internal quotation marks omitted.) *Feliciano* v. *Autozone, Inc.*, 316 Conn. 65, 85, 111 A.3d 453 (2015).

Accordingly, summary judgment is appropriate regarding a hostile work environment claim if no reasonable juror could conclude on the basis of the supporting and opposing documents submitted that the plaintiff was subjected to discriminatory working conditions that were both sufficiently severe and pervasive. See id., 88–89. Moreover, each incident relied on to support a claim of a hostile work environment must have some causal connection to discrimination. After all, like its federal analog, Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq. (2018), CFEPA "does not prohibit all verbal or physical harassment in the workplace; it is directed only at discriminat[ion] . . . ." (Emphasis omitted; internal quotation marks omitted.) *Oncale* v. *Sundowner Offshore Services, Inc.*, 523 U.S. 75, 80, 118 S. Ct. 998, 140 L. Ed. 2d 201 (1998); see also *Alfano* v. *Costello*, 294 F.3d 365, 377 (2d Cir. 2002) (noting that courts should exclude from consideration in hostile work environment cases incidents "that lack a linkage or correlation to the claimed ground of discrimination").

In support of his hostile work environment claim, the plaintiff directs our attention in his appellate brief to the following seven incidents that he viewed subjectively as offensive and argues "satisf[y] the objective components of a hostile work environment claim: [1] The defendant disciplined the plaintiff for use of sick time by issuing him a written reprimand and finding that he had violated the code of conduct after he had presented evidence of a legitimate need for the leave, and evidence of disabling conditions including depression, anxiety, PTSD, and traumatic brain injury. This was the only time an officer in the [department] had ever been investigated for sick time usage during Chief Maniago's administration, and the only time an officer

had been disciplined for it; [2] The defendant refused to accommodate the plaintiff's disabling condition by assigning him to open positions as either a narcotics investigator or special investigator—positions for which he was qualified; [3] [Maniago] began pressuring the plaintiff to stop seeking an accommodation for his disability and threatening him with a fitness for duty examination that would lead potentially to his termination from employment. In this regard [Maniago] also belittled the plaintiff by telling him that he was not acting 'like a Marine,' even though [Maniago] shamefully had no experience as a Marine and could not possibly know from firsthand experience how a 'Marine' would act when faced with PTSD, traumatic brain injury, depression, and anxiety resultant from two combat deployments in active war zones; [4] Challenging the plaintiff's need for leave after he was assaulted on duty, suffered a concussion, and was told to stay out of work by his own physician pending an exam with his own neurologist; [5] Sending a captain in uniform to visit the plaintiff's workers' compensation treating physician to intimidate him in person and force the doctor to return the plaintiff to work. This was the only time in the captain's career or [Maniago's] career that such an action was taken when an officer had been injured in the line of duty; [6] Offering the plaintiff an accommodation that demanded that the plaintiff turn over his K-9 partner back to the department for reassignment to another officer and family in order to get his preferred assignment on the day shift. This proposed 'accommodation' was made after the [defendant] was aware that [the plaintiff] was suffering from depression; had been traumatically injured in combat; and was seeking to reconnect with his family, which included his K-9 partner as an important family member; [and (7)] Continual defacement of the photograph of the plaintiff upon his return from military combat action in Afghanistan without taking any timely action to cease the defacement or accompanying intimidation." (Emphasis omitted.)

As the trial court indicated, the actions cited by the plaintiff, either individually or in the aggregate, simply do not meet the standard of objective hostility required to survive summary judgment. More specifically, the undisputed facts in the summary judgment record do not demonstrate a workplace that was permeated with discriminatory conduct that was either sufficiently severe or pervasive to rise to the level of an actionable hostile workplace.

With respect to the plaintiff's first incident, which relates to the defendant's investigation of the plaintiff's use of sick time and the resulting discipline, the trial court concluded that the plaintiff had failed to produce evidence that raised a genuine issue of material fact regarding any discriminatory intent on the part of the defendant. The court concluded that the evidence tended to show that the investigation, which began prior

to the defendant even learning of the plaintiff's disability, and the discipline that followed, were the result of the plaintiff's violations of the collective bargaining agreement, not any discriminatory animus toward the plaintiff. The plaintiff does not challenge that aspect of the court's summary judgment ruling. Said another way, without the requisite causal connection to discrimination on the basis of disability, the investigation and resulting discipline cannot reasonably factor into our consideration of whether the plaintiff has demonstrated the existence of a hostile work environment.

Similarly, the second and sixth incidents are each related to the issue of reasonable accommodation. As we concluded in part I of this opinion, the plaintiff has failed to establish that the defendant acted in a discriminatory manner in engaging in the interactive process to find a mutually agreed upon, reasonable accommodation, and the plaintiff has either not challenged or failed to provide evidence demonstrating that the defendant failed to offer a reasonable accommodation when it agreed to honor his request to transfer to a patrol position on the day shift. The plaintiff's characterization of the accommodation as requiring him "to turn over his K-9 partner back to the department for reassignment to another officer and family" is not supported by any citations to the record. Although it is undisputed that the plaintiff would not have been able to continue his assignment as a dog handler if he moved to the day shift, there is no evidentiary support for the proposition that the defendant would have removed the dog from the plaintiff and his family. The only evidence regarding the future disposition of the dog is found in the deposition testimony of Maniago, who indicated that it was his intention to allow the dog to remain with the plaintiff. In short, these two incidents cannot be properly viewed as attributing to a hostile work environment.

This leaves four alleged incidents to consider in support of the plaintiff's claim of a hostile work environment: incidents three, four, five and seven. Even assuming for purposes of summary judgment that the plaintiff can establish the requisite discriminatory intent, these incidents, individually or in the aggregate, lack the severity and pervasiveness needed to avoid summary judgment as a matter of law.

Incident three involved the isolated comment made by Maniago during the interactive process, in which he allegedly opined that the plaintiff's conduct in seeking an accommodation was not how Marines behave. The plaintiff clearly was distressed and insulted by this comment because Maniago was not himself a Marine. Even if it is assumed that it was made with discriminatory animus, however, it was an isolated comment, and the plaintiff presented no evidence that the statement or anything similar was ever repeated by Maniago or any-

one else in the department. As noted by the trial court, there is also nothing in the record from which to conclude that the offhanded comment to the plaintiff had any real effect on the conditions of employment. Unless extremely serious, a single comment, even a discriminatory one, cannot support a hostile work environment allegation. See *Holtz* v. *Rockefeller & Co.*, 258 F.3d 62, 75 (2d Cir. 2001) ("incidents of allegedly offensive conduct must also be more than episodic; they must be sufficiently continuous and concerted in order to be deemed pervasive" (internal quotation marks omitted)); *Fossesigurani* v. *Bridgeport Fire Dept.*, Docket No. 3:11-CV-752 (VLB), 2012 WL 4512772, *8 (D. Conn. October 1, 2012) ("A single comment is insufficient to constitute a hostile work environment regardless of the fact that [the] [p]laintiff felt harassed and abused by that comment. To demonstrate a hostile work environment, [the] [p]laintiff must show that there was a steady barrage of opprobrious comments reflective of disability enmity and not a single incident."). Although Maniago's comment reasonably could be viewed as offensive and perhaps even humiliating in the eyes of the plaintiff, the comment was isolated, not particularly severe, and certainly not physically threatening.

We next address incidents four and five, in which the plaintiff generally asserts that the defendant challenged his need for leave following his work-related injury, despite the advisement from the plaintiff's personal chiropractor that he remain out of work until cleared by a neurologist and, more specifically, that the defendant sent a uniformed officer to visit the plaintiff's workers' compensation doctor for the purpose of intimidating him into ordering the plaintiff to return to work. The plaintiff suggests that discriminatory intent can be inferred from the fact that the defendant had not taken the same or similar action in the past. Even if a reasonable jury could conclude that these actions were taken because of the plaintiff's disability rather than, as advanced by the defendant, to resolve a conflict in doctors' opinions, it was a onetime event that, as a matter of law, does not meet the standard of a hostile work environment. This is particularly true because the defendant's actions had no real impact on the plaintiff's working conditions or his ability to use workers' compensation leave, which he did without further incident.

The remaining incident, which occurred while the plaintiff was on workers' compensation leave, involved someone in the department defacing a photo of the plaintiff that was displayed in a common area of the department by placing a thumb tack into the photo through the head of the plaintiff. The plaintiff presented no evidence identifying the individual that defaced the photo or establishing that the incident was in any way related to his disability as opposed to some other reason. Furthermore, the undisputed evidence shows that, once the incident was brought to the attention of the

defendant, it took the incident seriously by promptly removing the photo and disciplining an officer who had failed to timely report the incident. Again, this was a onetime incident, and the defendant took action to discourage such behavior in the future.

In summary, the incidents relied on by the plaintiff, even accepting that they were motivated by some discriminatory or other improper intent, were not so extreme or pervasive to reasonably conclude that they changed the terms and conditions of the plaintiff's employment. Moreover, the plaintiff continued to work for the department and acknowledged in his deposition that he "had no further examples of harassment since returning to work" in a period of "seventeen months." Viewing the evidence in the light most favorable to the plaintiff, including all reasonable inferences, we agree with the trial court that the plaintiff has failed to meet his burden of showing that a genuine issue of material fact exists regarding whether the actions complained of amounted to a hostile work environment.

The judgment is affirmed.

In this opinion the other judges concurred.

[1] Most pertinent to the present appeal is General Statutes § 46a-60 (b), which provides in relevant part: "It shall be a discriminatory practice in violation of this section:

"(1) For an employer, by the employer or the employer's agent, except in the case of a bona fide occupational qualification or need . . . to discriminate against any individual in compensation or in terms, conditions or privileges of employment because of the individual's race, color, religious creed, age, sex, gender identity or expression, marital status, national origin, ancestry, present or past history of mental disability, intellectual disability, learning disability, physical disability, including, but not limited to, blindness, status as a veteran or status as a victim of domestic violence;

* * *

"(4) For any person, employer, labor organization or employment agency to discharge, expel or otherwise discriminate against any person because such person has opposed any discriminatory employment practice or because such person has filed a complaint or testified or assisted in any proceeding under section 46a-82, 46a-83 or 46a-84 . . . ."

Although § 46a-60 has been amended several times since the events at issue in this appeal; see, e.g., Public Acts 2022, No. 22-82, § 10; Public Acts 2022, No. 22-78, §§ 7 and 8; Public Acts 2021, No. 21-69, § 1; those amendments have no bearing on the merits of this appeal. In the interest of simplicity, we refer to the current revision of § 46a-60.

[2] The trial court construed the allegations in the plaintiff's complaint, which was not divided into separate counts, as raising "five separate causes of action sounding in the following: (1) discrimination on the basis of disability in violation of General Statutes § 46a-60 (b) (1); (2) hostile work environment under . . . § 46a-60 (b) (1); (3) constructive discharge; (4) retaliation under . . . § 46a-60 (b) (4); and (5) failure to reasonably accommodate." The court granted summary judgment as to the entirety of the complaint. The plaintiff has not challenged the trial court's ruling with respect to his claims of discrimination on the basis of disability, constructive discharge, and retaliation in the present appeal, effectively abandoning those claims. See, e.g., *Traylor* v. *State*, 332 Conn. 789, 805, 213 A.3d 467 (2019) ("[a]n unmentioned claim is, by definition, inadequately briefed, and one that is generally . . . considered abandoned" (internal quotation marks omitted)). We therefore address only the aspects of the court's judgment that the plaintiff has distinctly raised and briefed.

[3] The plaintiff's sacrifices in service to his country are unquestionably commendable. He was wounded in Iraq in June, 2006, when the vehicle he occupied hit an improvised explosive device (IED). As a result of that incident, he suffered shrapnel injuries and a traumatic brain injury. The

physical injuries and chronic stress of the deployment contributed to a significant psychological impact on the plaintiff. During his subsequent deployment to Afghanistan, the plaintiff was again exposed to IEDs, and, although he suffered no "penetrating traumas" during that second deployment, he observed five members of his ten man team suffer serious physical injuries.

[4] The department operated three shifts: a daytime shift, an evening shift, and a midnight shift. Shift assignments were made on the basis of seniority using a bidding process in accordance with the collective bargaining agreement of the Torrington Police Union, Local 442, Council 4, AFSCME, AFL-CIO, of which the plaintiff was a member.

[5] The Special Response Team was tasked with responding to special situations such as a barricaded suspect or serving certain search and arrest warrants. It functioned as what is commonly referred to as a Special Weapons and Tactics (SWAT) team. The plaintiff was chosen to be a member of the Special Response Team because of his military training as a sniper.

[6] Article V, § 15, of the collective bargaining agreement provides: "Any employee using sick leave immediately before or after his/her scheduled days off or immediately before or after a 'change day', more than **three (3)** times during any twelve (12) month period, will be placed on a sick leave probation for six (6) months, with the date of the last abuse of sick leave becoming the first day of the next twelve (12) month period. While on sick leave probation, to qualify for sick leave pay, the employees will be required to present a completed Department 'ABSENCE REPORT APPLICATION FOR SICK LEAVE' signed by a physician for each subsequent sick leave absence during the probation period. This is to be turned in upon the employee's return to work. EXCEPTIONS: extended illnesses or maternity or sick leave supported by a medical certificate in accordance with Section 8 and Section 14 of this ARTICLE."

[7] A "change day" was a day that an officer had switched his regularly scheduled work shift with that of another officer.

[8] In his deposition, Maniago stated that the plaintiff had told them "about how he's having some issues at home and his wife was having problems coping with the kids after working in school all day and she needed help, and he was hoping to be able to change his shift to the day shift and have weekends off in addition to that. . . . He said he was using sick time to help with this."

[9] The notice provided in relevant part that the following conditions were relevant to the plaintiff's use of sick time: post-traumatic brain injury, chronic migraine headaches, chronic back pain, cervical strain, irritable bowel syndrome, and PTSD.

[10] A person alleging discriminatory work practices in violation of CFEPA must exhaust his or her administrative remedies by filing a complaint with the CHRO in accordance General Statutes § 46a-82. Only after obtaining a release of jurisdiction from the CHRO, may that person then pursue an action in Superior Court. See General Statutes § 46a-100. Any such civil action must be brought within ninety days of receipt of the CHRO release. General Statutes § 46a-101 (e). General Statutes § 46a-102 further provides that any such action be filed within two years from the date of the filing of the CHRO complaint.

Here, the plaintiff obtained a release of jurisdiction from the CHRO regarding his May 10, 2017 action on April 25, 2019. The plaintiff thus has exhausted his administrative remedies and complied with all applicable statutory limitation periods.

[11] Generally, the framework that our courts employ "in assessing disparate treatment discrimination claims under Connecticut law was adapted from the United States Supreme Court's decision in *McDonnell Douglas Corp.* v. *Green*, 411 U.S. 792, 802, 93 S. Ct. 1817, 36 L. Ed. 2d 668 (1973), and its progeny. . . . We look to federal law for guidance on interpreting state employment discrimination law, and the analysis is the same under both. . . . Under this analysis, the employee must first make a prima facie case of discrimination. . . . In order for the employee to first make a prima facie case of discrimination, the [employee] must show: (1) the [employee] is a member of a protected class; (2) the [employee] was qualified for the position; (3) the [employee] suffered an adverse employment action; and (4) the adverse employment action occurred under circumstances that give rise to an inference of discrimination. . . . The employer may then rebut the prima facie case by stating a legitimate, nondiscriminatory justification for the employment decision in question. . . . This burden is one of production, not persuasion; it can involve no credibility assessment. . . . 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." (Citations omitted; internal quotation marks omitted.) *Feliciano* v. *Autozone, Inc.*, 316 Conn. 65, 73–74, 111 A.3d 453 (2015). "[I]n attempting to satisfy this burden, the [employee]—once the employer produces sufficient evidence to support a nondiscriminatory explanation for its decision—must be afforded the opportunity to prove by a preponderance of the evidence that the legitimate reasons offered by the [employer] were not its true reasons, but were a pretext for discrimination." (Internal quotation marks omitted.) *Board of Education* v. *Commission on Human Rights & Opportunities*, 266 Conn. 492, 507, 832 A.2d 660 (2003). "A plaintiff may show pretext by demonstrating such weaknesses, implausibilities, inconsistencies, incoherences, or contradictions in the employer's proffered legitimate reasons for its action that a reasonable [fact finder] could rationally find them unworthy of credence and hence infer that the employer did not act for the asserted non-discriminatory reasons." (Internal quotation marks omitted.) *Stubbs* v. *ICare Management, LLC*, 198 Conn. App. 511, 523, 233 A.3d 1170 (2020).

[12] The plaintiff claims that the court ignored evidence in determining that the defendant had engaged in the interactive process in good faith. The plaintiff argues that he was seeking an accommodation to better connect with his family "so that he could maintain his mental and emotional wellness," and removing him from his K-9 unit was directly contrary to this purpose. According to the plaintiff, the defendant knew that its offer to move the plaintiff to the day shift without his dog was a " 'poison pill' " that the plaintiff would never accept and thus was nothing more than an empty gesture that was patently unreasonable or demonstrated that the defendant was acting in bad faith regarding its obligation to engage the plaintiff in an interactive dialogue regarding reasonable accommodations. Despite the plaintiff's contentions, the undisputed summary judgment record shows that the plaintiff made no attempt to negotiate further; he simply rejected the offer and agreed to remain in his existing position. The plaintiff presented no direct evidence of the defendant's alleged ulterior motives, nor could they be reasonably inferred from the record presented, even when viewing the evidence in the light most favorable to the plaintiff.