

APPENDIX A

Decision of the Vermont Supreme Court of Appeal Denying Motion for Reargument

VERMONT SUPREME COURT
109 State Street
Montpelier VT 05609-0801
802-828-4774
www.vermontjudiciary.org



Case No.

22-AP-197

ENTRY ORDER

JULY TERM, 2023

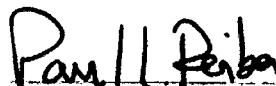
Zephrynn (Stephanie) Hammond* v.
University of Vermont Medical Center

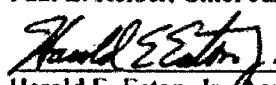
} APPEALED FROM:
} Superior Court, Chittenden Unit, Civil
} Division
} CASE NO. 945-10-19 Cncv

In the above-entitled cause, the Clerk will enter:

Plaintiff's motion for reargument fails to "state with particularity the points of law or fact--presented in the briefs upon the original argument--that . . . the Court has overlooked or misapprehended and that would probably affect the result." V.R.A.P. 40(b)(1). The motion is therefore denied.

BY THE COURT:


Paul L. Reiber, Chief Justice


Harold E. Eaton, Jr., Associate Justice


Karen R. Carroll, Associate Justice


William D. Cohen, Associate Justice


Nancy J. Wables, Associate Justice

APPENDIX B

Motion for Reargument

IN THE SUPREME COURT OF THE STATE OF VERMONT

SUPREME COURT DOCKET NO: 22-AP-197

ZEPHRYN (STEPHANIE) HAMMOND

APPELLANT

v.

UNIVERSITY OF VERMONT MEDICAL CENTER

APPELLANT

MOTION TO REARGUE

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Pro Se Litigant

MOTION TO REARGUE

PRETEXT:

Proving the defendant's legitimate, non-discriminatory reasoning for terminating my employment is a lie would show pretext although evidence need not be of "smoking gun variety." AV2-41. The defendant's reasoning: corrective action due to my performance. AV2-43.

Although a pro se litigant, I do know right from wrong and what I experienced the last 10 months of working at UVMMC, ending in termination, was an avoidable injustice.

I tried showing pretext in my appeal, although ineffectively, with the following: Investigation delayed and not thorough. Ms. Cortright didn't document my race complaint 6/5/18 or produce the write-ups proving my errors. Co-workers were not issued corrective action for errors (comparators) or treated as poorly. Ms. Cortright fabricated reasoning for verbal warning and isn't credible. Corrective action based on a majority of false allegations, deviated from UVMMC policy and was retaliatory. I was set-up for failure. Ms. Cortright deviated from UVMMC policy to illegally punish me. Past work history doesn't align with the last 10 months of employment.

INVESTIGATION DELAYED AND NOT THOROUGH

Thorough investigation immediately following my race and disability complaints would've prevented most of what I suffered through and termination? Ms. Cortright should've stopped the discriminatory treatment I

began receiving from Ms. Mitchell after I made the first verbal race complaint on 6/5/18, instead I was sent to speak to her myself, and I did 6/8/18 which ultimately ended my career. AV1-171 to 173, AV1-232, AV2-271, AV2-347 and AV3-155 to 156. I followed up with Ms. Cortright 6/11/18 about speaking to Ms. Mitchell. AV1-296. Cortright later only mentioned my complaint, after issuing the letter of understanding. AV1-207 to 208.

On 7/27/18 I met with Ms. Armstrong for the first time having made complaints about race and disability including: being retaliated against after my race complaint 6/5/18(verbal warning), being forced to work on IHC and triage which weren't accommodating, and the harsh punishment I received for using an accommodation (told not following protocol). AV1-203 to 204, AV2-215, AV2-231 to 237, and AV3-161. She carelessly wrote "race" in a separate column of her notes, not to be addressed until 1/9/19. AV2-193 and 231. I told her and Ms. Gallagher, I recently (adulthood) learned from Ms. Cortright, after she discussed Ms. Mitchell's treatment possibly being racially motivated with Ms. Carpenter, that being racist isn't solely using derogatory language, but treatment, since prior to that I didn't consider her racist and now agreed. AV1-358 and AV3-141. She noted "disability" off to the left in her notes minimizing its significance. AV2-228 and AV2-231.

In my evaluation appeal of 2018, again, I attempted to make a complaint about my treatment which I felt was due to my disabilities and race, but again, Ms. Cortright failed to address this in her response to my appeal. AV1-166, and AV1-251 to 252.

In February of 2019, I met with another HR representative, because the environment was toxic and treatment was getting worse. AV1-254 and AV2-270

to 273. She questioned myself, and Ms. Cortright (perpetrator), then concluded she couldn't substantiate my claim. AV2-275 and AV2-277. She never questioned Ms. Cortright about the toxic work environment or the fact that I was being bullied. AV1-279 and 281. She said Ms. Cortright had valid reasons (allegations) for issuing corrective action which would've been disproven had she listened to my recordings when we met, reviewed my evidence, and questioned co-workers before ending the investigation. AV2-273, AV2-275, and AV3-177. I was never given a deadline to submit my evidence etc., but the investigation ended and I was terminated before I had a chance to. AV1-182, AV2-275, and AV2-311.

MS. CORTRIGHT DIDN'T DOCUMENT MY RACE COMPLAINT 6/5/18 OR
PRODUCE THE WRITE UPS PROVING MY ERRORS

When I complained about Ms. Mitchell's racially motivated behavior, I asked Ms. Cortright if she still thought Ms. Mitchell possibly be racist. AV2-346. Ms. Cortright admitted we met in early June of 2018 to discuss issues I had related to Ms. Mitchell. AV1-369 and AV1-394. Ms. Cortright was responsible for taking notes during meetings we had which would prove I made a race complaint. AV2-339 to 340.

I was told all my mistakes/errors were written up (who, what, when, where, why) but haven't seen any in the record as proof that Ms. Cortrights claims of my incompetence hold true. AV1-234, AV1-324.

COWORKERS NOT ISSUED CORRECTIVE ACTION FOR ERRORS OR TREATED
POORLY (COMPARATORS)

Mr. Barker/Rowe testified he was spoken to by Ms. Mitchell 1-2 times a week for errors, and was shown 1-2 errors a month with his slides on Mr. Tembruells benches but was never given any corrective action for too many errors, let alone terminated. AV2-100 and AV2-130. I made less errors purposely subjected to a hostile work environment and was terminated. AV1-184, AV1-234, AV1-409, and AV2-272.

In 2017, my shift was 4:30AM-12:30PM, and I was told I'd get a verbal warning if I didn't go to break at 10 AM because it was against UVMMC policy, even with a doctor's note although I received a verbal warning 6/22/18 because I was told I don't alter my break which is ridiculous. AV1-192 and AV1-403. Regardless as to when I left, I returned by 10:30, which didn't disrupt workflow, allowing Mr. Tembruell his break even though he worked the same shift. AV1-373, AV1-392, AV1-403, AV2-225, and AV2-311. In 2018 my break was switched to 10:45 because I was working from 4:00AM-12:30PM not because my accommodation was finally put in place. AV1-392, and AV3-192 to 195.

Compared to everyone else, I was punished more harshly, treated poorly/differently, monitored, and disciplined more by the leads. AV1-204 to 205, AV1-321 to 325, AV1-408 to 410 and AV2-169 to 170. Ms. Cortright wanted me to believe she was allowed to single me out because I received a verbal warning. AV1-232 to 234. Having Crohn's Disease and being timed when using the bathroom forced me to limit bathroom usage to twice a day in fear of being terminated. AV2-230 and AV2-454.

**MS. CORTRIGHT FABRICATED REASONING FOR VERBAL WARNING AND
ISN'T CREDIBLE**

I asked several times for specific examples for issuing the verbal warning from 6/22/18 until 3/30/19. AV1-222, 226 to 228, 232, 236 to 237. I was given many false allegations from after 6/22/18 and told making an exhaustive list wouldn't be of any value which contradicts her testimony. AV2-352 to 354. AV1-191 and 192. Ms. Cortright told Ms. Gallagher I was issued the verbal warning for my tone when I muttered jeezum crow to Ms. Mitchell in annoyance on 7/27/18. AV1-196, 203 and 278. Pointing out that Ms. Cortright was relying on one lie to justify another isn't a distraction, it's the truth. AV1-203 to 204. She wouldn't allow me access to my personnel file to review write-ups she claimed were in it, so I reported this to Ms. Armstrong and she said whatever I was looking for wouldn't be there although I wanted to see the entire file. AV2-238. Ms. Gallagher reviewed my file, which is concerning since I wasn't allowed. AV1-283, and AV2-333 to 334.

False allegations always involved Ms. Cortright, Ms. Mitchell (IHC, specialty benches), or Ms. Buskey (charge tech) and I never saw write-ups (documentation). AV1-207, AV1-211, AV1-223 to 224, AV1-226, AV3-13, and AV3-17 to 18. Sometimes I asked to see my errors and Ms. Cortright said it wasn't possible if slides were sent out, rather than providing the surgical number to track it. AV2-387, AV3-265 and 266.

CORRECTIVE ACTION BASED ON A MAJORITY OF FALSE ALLEGATIONS,

DEVIATED FROM UVMMC POLICY, AND WAS RETALIATORY

A warning before the verbal warning should've been issued considering Ms. Cortright claimed to have met with me over 10 times prior and/or an investigatory meeting held to go over concerns that would warrant possibly

receiving it, as Ms. Armstrong outlined. AV1-278, and AV2-206. It was unexpected. AV1-396.

After making a race complaint 6/5/18, I was issued a verbal warning 6/22/18 for no reason as mentioned previously. One of the allegations Ms. Cortright listed falsely accused me of fixing a kidney specimen on 7/4/18 without leaving a note about which step it was in although I told her I never touched it, but documented it as a communication issue. AV1-227 and AV3-17. Without this first step being warranted, I shouldn't have been issued the letter of understanding, especially with no mention of these concerns just 10 days prior. AV1-296.

Counseling/coaching sessions never took place. AV2-206 to 207, AV2-339. The only coaching session Ms. Armstrong suggested we have was regarding floaters but Ms. Cortright ignored me several times, then months later I was told I was responsible for 50% of the lab total. AV2-271.

I reported Ms. Cortright to Ms. Armstrong 7/27/18 and received a very poor evaluation rating 8/14/18. AV1-204 to 205. I continued to report my concerns to Ms. Armstrong for months, was issued a letter of understanding 11/22/18, then told my concerns regarding Ms. Mitchell would be addressed.

The letter of understanding issued 11/20/18 was against UVMMC protocol since verbal warning wasn't warranted, and stated I made 2 errors and had 2 unprofessional interactions with a co-worker (just Ms. Mitchell). AV2-206 to 207 and AV3-20. I was taking notes in a meeting unaware Ms. Mitchell was speaking to me because she refused to use my name so I was accused of ignoring her and Ms. Cortright assumed I ignored Ms. Mitchell in the backroom too. AV1-207, and AV3-20. Ms. Cortright claimed we met over 10 times since the verbal warning

although I called the meetings to speak about my treatment but was given corrective action or accommodations discussed. AV1-207, AV2-271, and AV3-20. I was accused of not following protocol and wrongfully punished because I had to sit (accommodation) to label slides on 7/27/18. AV1-203 to 204. Those that weren't fond of me wouldn't pick up my slides as they did for others when away from their stations delaying patient slides but I was blamed for having used the bathroom. AV1-184.

Ms. Armstrong questioned Ms. Mitchell 1/14/19 then I was placed on her benches for 4-5 weeks in a row with the work environment as toxic as could be. AV1-233 and AV1-301.

A final written warning was issued 2/20/19, hours after I was questioned by Ms. Gallagher regarding my claim of a retaliatory hostile work environment. AV1-357, and AV3-23 to 24. Ms. Cortright came up with a list of concerns she said had taken place since 11/20/18, and again most of them were false or Ms. Cortright purposely misconstrued my words. AV1-223 to 224 and AV1-232 to 234. For example I was falsely accused of leaving the lab for nearly half my shift which is absurd and never happened. AV1-224. Again, I was told I don't follow protocol, but never told which one (IHC protocol on 7/27/18 only one). AV1-232. I never denied responsibility for errors I did in fact make, I wasn't the slowest tech as she claimed, I wasn't confrontational so others were afraid to speak to me, and I notified leads if I was to be late for reporting to the next bench. AV1-227, AV1-233, AV1-405, AV1-407, and AV2-107 to 108. I never told Ms. Cortright I did things my way, I said I did things differently with accommodations in place, but she continued to misconstrue my words constantly. AV1-398. Ms. Cortright claims my slides had chatter but this was

fixed after having worked with Mr. Tembruell and everyone experienced this. AV1-223, and AV3-149. I did in fact leave a slide in methanol but Ms. Kerr did as well and was never reprimanded. AV1-163, AV1-223 and AV3-267. I was blamed for delaying patient care when Ms. Mitchell neglected to tell me she had set-up a processor for a bone marrow when it was finished fixing. AV1-223 and AV1-400 to 401. Oftentimes, Ms. Mitchell would tell me to perform tasks in a certain order one day but the next would change it making it seem as if I was wrong. AV1-224, AV1-232, and AV1-282. Told double checking with Ms. Mitchell if she needed my assistance was a performance issue but I'm told I don't communicate. AV1-182 and AV1-224. I left for break notifying Ms. Mitchell and Ms. Buskey they'd need to take care of patients' slides that would soon be ready to send out but they chose not to, which was their responsibility which delayed patient care but I was blamed. AV1-224. Ms. Cortright said I failed to take ownership when I was falsely accused of being responsible for 50% of the lab floaters even after I was accidentally sent the data disproving this. AV1-24. This is why she avoided coaching sessions. AV1-279.

Ms. Cortright was investigated by Ms. Gallagher 3/6/19 and was furious with me. AV1-276. She told me I could no longer work Saturdays, made more of an effort to avoid me (no response to emails), and continued to falsely accuse me of things that weren't true. AV1-163, AV1-232 to 234.

Termination was 4/3/19. AV3-30. Ironically, Ms. Cortright claimed she didn't see the emails I sent both weekends prior to my termination regarding matters that she ultimately terminated me for, which was never an issue in the past with her. AV1-226 and AV1-160 to 161. I was ill 3/23/18, needed to leave early so I emailed Ms. Cortright that I would do my best to get the embedding

done. AV1-397. She said I should've called although she blocked my number. AV1-280 and AV1-396. I loaded everything from the specimen drop off area. AV3-136. If the specimen existed, I hadn't seen it, I didn't miss it (used interchangeably) which I admitted assuming it was behind a stack of folders I did remember seeing. AV1-33, AV1-161, AV3-136 to 137, and AV3-258. I never saw a write-up and was told verbally. AV2-372 to 374.

Ms. Cortright told me I could work 4/1/19, but if I chose not to she'd code it as scheduled herself, since I wasn't on the schedule. AV1-160 and 161. I emailed her that I wasn't going to work 4/1/19 but she never responded and then claimed I was a no call/no show. AV1-160, AV1-286, AV1-310, and AV2-427. Mr. St. John was aware of this before I was terminated and never looked into it. AV1-160.

I WAS SET-UP FOR FAILURE AFTER 6/5/18

Subjected to retaliatory treatment by the leads shortly after my race based complaint 6/5/18 to Ms. Cortright, I became very ill, I began making mistakes I wouldn't ordinarily make which I took responsibility for given the circumstances but continued to deny any false allegations even though Ms. Cortright said denying them increased risk of patient harm (gaslighting me). AV1-163, AV1-188, AV1-207, AV1- 234, AV2-271, AV2-380, AV3-32-34, AV3-36, AV3-38, AV3-40 to 41. AV3-249 to 250, and AV3-265

Their first retaliatory punishment I received after making my complaint 6/5/18, was purposely scheduling me on Ms. Mitchell's benches and triage, which weren't accommodating so I stood most of the day. AV1-164, AV3-180 to 186. Ms. Cortright knew Ms. Mitchell treated me poorly, and Ms. Buskey wasn't fond

of me but assigned me to their benches for 1-3 weeks at a time which turned into 4-5. AV1-233 and AV2-271.

Cortright set unreal expectations for me, subjecting me to a very toxic work environment, failed to accommodate me, timed me when using the bathroom, and denied me a full break at times all while expecting me not to make the few honest errors I did make. AV1-171 to 172, AV1-184 to 185, AV1-194, AV1-234, AV1-244 and AV2-349. Being told I ignored the leads because they wouldn't use my name then issued corrective action for this is not right. Ms. Cortright was aware she was subjecting me to an environment that aggravated my Crohn's symptoms yet didn't have the heart to stop. AV2-272.

MS. CORTRIGHT DEVIATED FROM POLICY TO ILLEGALLY PUNISH ME

On 7/27/18 I was illegally punished for using an accommodation for plantar fasciitis when labeling IHC slides. AV1-187 to 188, AV2-215, AV2-236. After doing this for over a month, Ms. Mitchell started harassing me on 7/27/18, then reported a complete fabrication to Ms. Cortright so I was punished although I was following protocol. AV1-244, AV3-252 to 254. Ms. Cortright had Ms. Mitchell physically change the IHC protocol to reflect what she told Mr. St. John to make it seem as if I wasn't following protocol. AV1-187 to 188. When I asked her about it she gave different excuses: Ms. Mitchell's always updating procedures, the one procedure wasn't updated yet, they were switching from paper to media lab, I saw the wrong protocol, and that it was just an unfortunate situation that I wasn't punished for. AV1-33, AV1-187 to 188, AV1-282, AV2-391.

**PAST WORK HISTORY DOESN'T ALIGN WITH THE LAST 10 MONTHS OF
EMPLOYMENT**

My performance evaluations from 2017 and 2018 differ drastically and were both performed by Ms. Cortright, one before and the other after my race complaint and prove her retaliatory motive. AV1-405 and AV2-435. I received a rating of excellent for several years prior. AV1-199 and AV1-383. I couldn't prevent the stray criticisms Ms. Mitchell submitted into my evaluations regarding communication and constructive criticism even though they were false. Ms. Cortright testified she had seen my past evaluations prior to termination, proving she falsely brought to light criticisms from the past, however defense argues she never saw them. AV2-34 and AV2-335. One example is not using my name when addressing me, accusing me of ignoring them, then she made it seem as if I had longstanding communication issues since Mitchell (specialty benches) said/did the same in past evaluations.

AV1-207, AV1-278, AV3-276.

STATE OF VERMONT
VERMONT SUPREME COURT

ZEPHYRYN HAMMOND

Appellant

v.

DOCKET NO. 22-AP-197

THE UNIVERSITY OF VERMONT
MEDICAL CENTER

Appellee

CERTIFICATION OF COMPLIANCE AS TO WORD COUNT

I, Zephrynn Hammond, certify pursuant to V.R.A.P.32(a)(7)(c) that the Brief of the appellant has been calculated using Google Docs Word Count as consisting of approximately, 2996 words (not including title page or this certificate).

Burlington, Vermont, this 30th day of June, 2023.

Zephrynn Hammond

BY: /s/Zephryn Hammond

Pro Se Litigant

APPENDIX C

The Vermont Supreme Court of Appeals Decision to Affirm Summary Judgment to the
Defendant

ENTRY ORDER

JUN 02 2023

2023 VT 31

SUPREME COURT DOCKET NO. 22-AP-197

FEBRUARY TERM, 2023

Zephrynn (Stephanie) Hammond } APPEALED FROM:

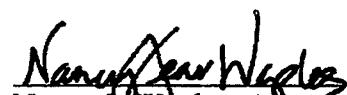
v. } Superior Court, Chittenden Unit,
} Civil Division

University of Vermont Medical Center } CASE NO. 945-10-19 Cncv

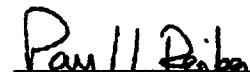
In the above-entitled cause, the Clerk will enter:

Affirmed.

FOR THE COURT:


Nancy J. Waples, Associate Justice

Concurring:


Paul L. Reiber, Chief Justice


Harold E. Eaton, Jr., Associate Justice


Karen R. Carroll, Associate Justice


William D. Cohen, Associate Justice

NOTICE: This opinion is subject to motions for reargument under V.R.A.P. 40 as well as formal revision before publication in the Vermont Reports. Readers are requested to notify the Reporter of Decisions by email at: JUD.Reporter@vermont.gov or by mail at: Vermont Supreme Court, 109 State Street, Montpelier, Vermont 05609-0801, of any errors in order that corrections may be made before this opinion goes to press.

2023 VT 31

VERMONT SUPREME COURT
FILED IN CLERK'S OFFICE

No. 22-AP-197

JUN 02 2023

Zephrynn (Stephanie) Hammond

Supreme Court

v.

On Appeal from
Superior Court, Chittenden Unit,
Civil Division

University of Vermont Medical Center

February Term, 2023

Helen M. Toor, J.

Zephrynn Hammond, Pro Se, Burlington, Plaintiff-Appellant.

Elizabeth K. Rattigan and Brendan Sage of Downs Rachlin Martin PLLC, Burlington, for
Defendant-Appellee.

PRESENT: Reiber, C.J., Eaton, Carroll, Cohen and Waples, JJ.

¶ 1. **WAPLES, J.** Plaintiff Zephrynn Hammond appeals the decision of the civil division awarding summary judgment to defendant University of Vermont Medical Center on plaintiff's claims of employment discrimination and retaliatory discharge.¹ We affirm.

I.

¶ 2. Defendant terminated plaintiff's employment in April 2019. In October 2019, plaintiff filed a complaint alleging that defendant had discriminated and retaliated against plaintiff

¹ This Court previously granted plaintiff's motion to amend the case caption to reflect their chosen name and to use plaintiff's preferred pronouns (they/their/them) in this opinion.

based on plaintiff's race and disabilities in violation of the Vermont Fair Employment Practices Act (FEPA). In February 2022, defendant moved for summary judgment, which plaintiff opposed.

¶ 3. The following facts were undisputed for purposes of summary judgment. Plaintiff is African American. From 2002 until April 2019, plaintiff was employed by defendant in its histology laboratory, which processes patient tissues and specimens. Plaintiff's last position was as a senior histotechnologist.

¶ 4. Plaintiff experienced several medical issues while employed with defendant for which plaintiff requested leave or accommodations, including Crohn's disease, hysterectomy surgery, a shoulder injury, and plantar fasciitis.² Plaintiff received approval for several accommodations, including limitations on lifting, more frequent breaks and changing their break time, and sitting rather than standing. Plaintiff was also granted many weeks of leave under the Family and Medical Leave Act.

¶ 5. Over the years, plaintiff's written performance-evaluation ratings were generally positive. However, the evaluations contained criticisms about plaintiff's poor communication, lack of respect for a supervisor, resistance to guidance and suggestions, lack of maturity, pushback when asked to do tasks, and attitude. In a self-review completed in 2009, plaintiff stated that "[o]verall, my attitude could be a bit better." Plaintiff and a coworker, Jeannette Mitchell, did not get along. Another coworker testified that Mitchell micromanaged everyone in the lab but was particularly critical of plaintiff.

² Plaintiff conceded that they received accommodations for their medical conditions but asserted in their statement of disputed facts that the accommodation setting a 10:45 a.m. break time was insufficient because, although it allowed plaintiff to take Crohn's medication at 11:15 a.m., it interfered with plaintiff's medication schedule when not at work. However, it is not clear that plaintiff ever raised this specific issue with Cortwright, and plaintiff testified at deposition that taking their medication at 11:15 a.m. was "not a problem." On appeal, plaintiff does not rely on this assertion to support their disability discrimination claim.

¶ 6. Until 2016, plaintiff was supervised and evaluated by Judith Carpenter. In 2017, Valerie Cortwright became plaintiff's new supervisor. Cortwright had worked in the histology department since 2004. Plaintiff and Cortwright were friendly and had socialized together. According to plaintiff, their relationship changed when Cortwright was promoted. Cortwright was the only supervisor in the histology department and managed several other employees.

¶ 7. In June 2018, Cortwright gave plaintiff a verbal warning about "some longstanding issues that we are confident can be improved." In an email memorializing the verbal warning, Cortwright identified four areas that needed improvement, including accepting and completing assigned tasks; maintaining professionalism in interacting with colleagues; adequately communicating with colleagues regarding workflow issues, including informing others if plaintiff needed to leave the work area or was unable to complete a task; and "accepting responsibility for [their] conduct, and working actively to foster a positive work environment and productive relationships with colleagues."³

¶ 8. A week later, Cortwright sent plaintiff another email providing specific examples of the conduct that Cortwright had identified in the earlier email. Cortwright stated that there had been instances when plaintiff was asked to complete a task but had suggested that another coworker or Cortwright do the task themselves. On multiple occasions, plaintiff had reported late to certain assignments. Plaintiff also frequently failed to respond when spoken to by Cortwright

³ The parties disagree about what precipitated the verbal warning. Cortwright told human resources officer Colleen Gallagher that plaintiff had snapped at Mitchell. Plaintiff asserts that this explanation was false because the incident when they snapped at Mitchell actually occurred in late July. According to plaintiff, the June 22 verbal warning was issued in retaliation for their complaint to Cortwright on June 5, 2018, that Mitchell's behavior was racially motivated. However, the record does not support plaintiff's assertion that they complained to Cortwright of racial discrimination on June 5. Plaintiff testified that they told Cortwright on that date that Mitchell was being "super condescending" and "harboring all this negativity," and referred to a previous conversation between Cortwright and former supervisor Carpenter about whether Mitchell could be racist. This oblique reference to alleged past speculation between Cortwright and Carpenter about Mitchell's motivations cannot reasonably be construed as a complaint by plaintiff that Mitchell was targeting plaintiff due to their race.

or Mitchell. Cortwright stated that plaintiff had left the work area without informing coworkers, resulting in confusion over what step a sample was in or where it had come from. Cortwright stated that much of the lab's work was time sensitive and that by leaving the work area without notifying coworkers, plaintiff put completion of important tasks at risk.

¶ 9. Plaintiff's 2018 performance evaluation rated them as "meeting many expectations," which was a lower rating than plaintiff had received previously. Plaintiff sought reconsideration of the evaluation, alleging that Cortwright had been influenced to give them a lower rating by Mitchell. Plaintiff asserted that Mitchell was seeking revenge against plaintiff because the previous supervisor thought highly of plaintiff. Plaintiff also stated, "I can't help but feel discriminated against for reasons beyond my control, i.e.: Crohn's, plantar fasciitis, shoulder injury, post-op, and lastly my race? I can't help but think race has something to do with it." Cortwright met with plaintiff to review the evaluation and subsequently sent plaintiff a letter stating that she would revise some of the language in the evaluation, but that plaintiff's overall rating would remain unchanged.

¶ 10. In November 2018, Cortwright provided plaintiff with a "letter of understanding." The letter stated that this was "the second level of corrective action" concerning plaintiff's performance. The letter identified similar issues as the verbal warning, including leaving the work area for extended periods without informing colleagues, not communicating with colleagues in a respectful manner, and questioning assigned tasks in a manner that was disruptive to workflow. The letter also stated that "you frequently deny responsibility for errors that were clearly yours, and you do not demonstrate an understanding of the risk these errors pose to patient care."

¶ 11. Plaintiff met with Cortwright and a human resources (HR) officer, Lisa Armstrong, in January 2019 to discuss the corrective action and plaintiff's working relationship with Mitchell. After the meeting, Armstrong sent an email to plaintiff and Cortwright to summarize what was discussed at the meeting. The summary did not mention any allegation that plaintiff had been

discriminated against based on their race or medical condition. Instead, the summary stated that plaintiff felt Mitchell was condescending to plaintiff, was always judging plaintiff, and simply did not like plaintiff.

¶ 12. Plaintiff met with another HR officer, Colleen Gallagher, shortly afterward. Plaintiff told Gallagher that plaintiff and Mitchell had always had issues, and that Mitchell had said that she did not like plaintiff because she felt the previous supervisor, Judith Carpenter, had always favored plaintiff. Plaintiff also told Gallagher that before Cortwright became supervisor, plaintiff asked Cortwright if she thought Mitchell was racist. Cortwright said she did not know. Later, when Cortwright became supervisor, she said that Mitchell was not racist. Gallagher's note stated that “[plaintiff] said [they] never thought [Mitchell] was racist but [they] recently learned that being racist doesn't just mean someone using racist terms,” but can also include when someone is treated differently due to their race. Plaintiff told Gallagher that it was hard to prove that plaintiff was being treated differently because of their race but they did not know of another reason. Plaintiff stated that they were the only African American in the department.

¶ 13. Gallagher investigated plaintiff's complaint and subsequently wrote to plaintiff that she could not substantiate that plaintiff had been targeted or discriminated against. Gallagher stated that plaintiff could send her any additional documentation and she would review it. Plaintiff did not send Gallagher any additional information.

¶ 14. In February 2019, Cortwright issued a “final written warning” to plaintiff. The letter stated that plaintiff had continued to deny responsibility for mistakes, often refused to follow directions and established processes, and felt that they should only be held accountable for actual, and not potential, patient harm. Plaintiff appealed the final written warning internally. Cortwright upheld the warning, stating that the concerns listed were valid and that she was not confident that plaintiff would address them going forward. Plaintiff then appealed to Cortwright's supervisor, who also upheld the warning.

¶ 15. In April 2019, Cortwright terminated plaintiff's employment. In a letter, Cortwright stated that since the final written warning was issued in February, there continued to be concerns with plaintiff's performance, "most recently a missed specimen on 3/23/19 and a no call no show on Monday 4/1/19." Plaintiff did not dispute that in late March 2019 they failed to see an urgent bone marrow biopsy for which they were responsible and missed a blinking red light signaling that a voicemail message had been left regarding the biopsy. With regard to the "no call no show," plaintiff asserted that Cortwright told plaintiff that they "had the option" not to work that day. Plaintiff did not appeal the termination.

¶ 16. Plaintiff testified at deposition that they were the only African American who worked in the lab in 2018 and 2019, although they were not the only person of color. Although plaintiff felt "singled out" by some colleagues, plaintiff could not recall those individuals making any offensive comments to plaintiff about race. Cortwright testified that she was never told of such comments by others.

¶ 17. In addition to the above facts, plaintiff alleged that the following facts were material to their claim. Plaintiff alleged that "Mitchell engaged in a near-constant campaign of criticisms, micromanagement, and condescending and belittling behavior toward plaintiff that she did not release on anyone else," and that other coworkers confirmed this. Plaintiff asserted that Mitchell and other coworkers did not like plaintiff because plaintiff had been the former supervisor's favorite. Plaintiff complained to Cortwright about Mitchell's behavior, but Cortwright failed to act. Two of plaintiff's coworkers were concerned about how Mitchell treated plaintiff. However, neither of them told management or testified at deposition that Mitchell's treatment was related to plaintiff's race or medical conditions.

¶ 18. Plaintiff also points to testimony by another histotechnologist, Elisha Johnson, that she once heard a male lab employee refer to plaintiff as an "urban princess" outside of plaintiff's earshot, which Johnson assumed was a reference to plaintiff's color. Plaintiff testified that the

male lab employee was “the type of person that has, like, a Confederate flag on his car.” The male employee never made an offensive comment to plaintiff about race.

¶ 19. Plaintiff told HR officers that fifty percent of the mistakes for which plaintiff was criticized in the letter of understanding were not plaintiff’s fault. Plaintiff asserted that the letter falsely stated that Cortwright met with plaintiff ten times to discuss performance issues, because some of the conversations were actually prompted by plaintiff’s complaints.

¶ 20. In a June 2018 email to Cortwright, plaintiff asked why they were being made uncomfortable for having to use the bathroom so much when they needed to do so due to Crohn’s disease. Plaintiff also sent an August 2018 email to HR officer Armstrong, which referred to plaintiff being criticized for needing to sit rather than stand. In a February 2019 email to Cortwright and Armstrong, plaintiff mentioned medical restrictions that caused plaintiff to do things differently or more slowly than other employees.

¶ 21. Based on these facts, the civil division concluded that plaintiff had established a prima facie case that plaintiff’s termination was motivated by racial discrimination. However, it ruled that defendant had articulated a legitimate basis for the termination decision, namely, the performance issues identified in plaintiff’s evaluations and during the disciplinary process, and plaintiff had failed to prove that defendant’s proffered reasons were pretextual. The court determined that plaintiff failed to establish a prima facie case that plaintiff’s termination was the result of disability discrimination. Finally, the court concluded that the fact that plaintiff was terminated shortly after complaining of possible racial and disability discrimination created a prima facie case of retaliation, but that defendant offered legitimate nondiscriminatory reasons for termination and plaintiff had failed to show that the stated reasons were false. It therefore granted summary judgment to defendant on each of plaintiff’s claims. This appeal followed.

II.

¶ 22. On appeal, plaintiff argues that the trial court erred in granting summary judgment because there were numerous factual disputes that, if resolved in plaintiff's favor, support their claims of racial and disability discrimination and retaliation. We conclude that plaintiff failed to present sufficient evidence to create a genuine issue of fact on any of their claims, and therefore affirm the decision below.

¶ 23. We review a decision granting summary judgment de novo, using the same standard as the trial court. Wentworth v. Fletcher Allen Health Care, 171 Vt. 614, 616, 765 A.2d 456, 459 (2000) (mem.). “The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” V.R.C.P. 56(a). In determining whether there exists a genuine dispute as to any material fact, we accept the allegations made by the party opposing summary judgment as true if they are supported by affidavits or other admissible evidence, and we draw all inferences in favor of the nonmoving party. Robertson v. Mylan Lab'ys, Inc., 2004 VT 15, ¶ 15, 176 Vt. 356, 848 A.2d 310. A dispute of fact “is material only if it might affect the outcome.” In re Est. of Fitzsimmons, 2013 VT 95, ¶ 13, 195 Vt. 94, 86 A.3d 1026 (quotation omitted). “Where the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no genuine issue for trial.” Kelly v. Town of Barnard, 155 Vt. 296, 305 n.5, 583 A.2d 614, 619 n.5 (1990) (quotation omitted).

¶ 24. We begin by reviewing the legal framework applicable to employment discrimination and retaliatory discharge claims brought under Vermont's FEPA. The FEPA makes it unlawful for an employer to discriminate against any individual based on race or disability, or to discharge or otherwise retaliate against an employee because the employee opposed discriminatory practices. 21 V.S.A. § 495(a)(1), (8). The FEPA “is patterned on Title VII of the Civil Rights Act of 1964, and the standards and burdens of proof under [the] FEPA are identical

to those under Title VII.” Hodgdon v. Mt. Mansfield Co., Inc., 160 Vt. 150, 161, 624 A.2d 1122, 1128 (1992).

¶ 25. When, as in this case, the evidence of discrimination is circumstantial rather than direct, we apply the three-part framework set forth by the United States Supreme Court in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). Robertson, 2004 VT 15, ¶ 18. Under that framework, to avoid summary judgment on a claim of employment discrimination or retaliation, the plaintiff must first establish a prima facie case by demonstrating that they suffered an adverse employment action under “circumstances which give rise to an inference of unlawful discrimination.” Texas Dep’t of Cmty. Affs. v. Burdine, 450 U.S. 248, 253 (1981). The elements of a prima facie case vary depending on the type of claim being asserted and the facts of each case. Robertson, 2004 VT 15, ¶ 25. If the plaintiff establishes a prima facie case, it becomes the employer’s burden to articulate “a legitimate, nondiscriminatory reason for the challenged conduct.” Gauthier v. Keurig Green Mountain, Inc., 2015 VT 108, ¶ 15, 200 Vt. 125, 129 A.3d 108. If the employer comes forward with a legitimate explanation for the conduct, then the plaintiff has the ultimate burden of proving “that the proffered reason was a ‘mere pretext’ for discrimination. Id. (quoting Murray v. St. Michael’s Coll., 164 Vt. 205, 210, 667 A.2d 294, 299 (1995)). Using this framework, we analyze each of plaintiff’s claims in turn.

A. Racial Discrimination Claim

¶ 26. We first consider plaintiff’s claim that their termination was motivated by racial animus. To establish a prima facie case of racial discrimination under the FEPA, plaintiff must show that (1) they belonged to a protected group; (2) they were qualified for the position; (3) they suffered an “adverse employment action”; and (4) “the circumstances surrounding this adverse employment action permit an inference of discrimination.” Robertson, 2004 VT 15, ¶ 25. Plaintiff’s burden at this initial stage is “relatively light.” Hodgdon, 160 Vt. at 159, 624 A.2d at

1127; see also Carpenter v. Cent. Vt. Med. Ctr., 170 Vt. 565, 566, 743 A.2d 592, 595 (1999) (mem.) (describing plaintiff's burden of proof in prima facie case as "minimal" and "de minimis").

¶ 27. It is undisputed that plaintiff has established the first three elements of a prima facie case: plaintiff is African American, was qualified for the senior histotechnologist position, and suffered an adverse employment action in the form of termination. Defendant argues, however, that the circumstances surrounding plaintiff's termination do not give rise to an inference of discrimination because plaintiff failed to demonstrate that non-African-American employees who were treated more favorably had similar performance issues as plaintiff. See Shumway v. United Parcel Serv., Inc., 118 F.3d 60, 64 (2d Cir. 1997) (stating that to establish fourth element of prima facie case for gender discrimination, plaintiff had to show she was treated differently than other similarly situated males, and those comparators must be "similarly situated in all material respects"). We are not persuaded that the law requires such a specific showing at the initial stage of the McDonnell Douglas inquiry in every case. "[B]ecause the facts inevitably vary in different employment discrimination cases, . . . the prima facie proof required in a given case will depend on the specific facts in question." McGuinness v. Lincoln Hall, 263 F.3d 49, 53 (2d Cir. 2001). As the Second Circuit has explained, the comparator in a disparate-treatment claim must be similarly situated, not "identically situated." Id. at 54. Thus, "[i]n the run of the mill discrimination cases, . . . a plaintiff can make a showing of disparate treatment simply by pointing to the adverse employment action and the many employees who suffered no such fate." Abdu-Brisson v. Delta Air Lines, Inc., 239 F.3d 456, 467 (2d Cir. 2001).

¶ 28. Here, plaintiff testified at deposition that they were the only African-American person who worked in the lab during 2018 and 2019; that their supervisor, Cortwright, constantly watched plaintiff, did not allow plaintiff to take a full break when others were permitted to do so, and gave plaintiff longer assignments to a particular location than others were given; that coworkers had observed that Mitchell, the lead histotechnologist in the lab, singled out plaintiff

for harsher criticism and feedback than other technologists; and that Cortwright relied on Mitchell's opinions about plaintiff's performance in evaluations and in the disciplinary process that ultimately led to termination.⁴ We agree with the trial court that this evidence was sufficient to meet plaintiff's "very light burden" of showing that the circumstances surrounding their termination suggest unlawful discrimination based on race. Robertson, 2004 VT 15, ¶ 30; see also Boulton v. CLD Consulting Eng'rs. Inc., 2003 VT 72, ¶ 16, 175 Vt. 413, 834 A.2d 37 (holding that plaintiff established prima facie case of discrimination based on sex by showing she was qualified female engineer who lost her managerial position and was replaced by male manager); cf. Shumway, 118 F.3d at 64 (holding plaintiff failed to meet fourth element of prima facie case because individuals to whom she attempted to compare herself reported to different supervisors than she did).

¶ 29. Because plaintiff established a prima facie case of race-based discrimination, the burden shifted to defendant to produce a "legitimate, nondiscriminatory reason for the challenged conduct." Murray, 164 Vt. at 210, 667 A.2d at 299. "In order to prevent summary judgment in favor of the plaintiff at this stage, the employer's explanation must, if taken as true, permit the conclusion that there was a nondiscriminatory reason for the adverse action." Gauthier, 2015 VT 108, ¶ 20 (quotation omitted).

¶ 30. Here, defendant provided such a reason: the performance issues identified in plaintiff's evaluations and during the progressive disciplinary process. These included poor communication, lack of attention to detail, resistance to constructive feedback, the missed biopsy in March 2019, and plaintiff's "no call no show" on April 1, 2019. Plaintiff was counseled about communication and other issues as early as 2008, when plaintiff was still under the supervision of Judith Carpenter, with whom plaintiff had a good relationship. "Terminating an employee because

⁴ Plaintiff alleged that the person hired to replace them was Caucasian but presented no admissible evidence to support this assertion.

he fails to perform satisfactorily is a legitimate and nondiscriminatory reason to end his employment.” Cicero v. Borg-Warner Auto., Inc., 280 F.3d 579, 588 (6th Cir. 2002). Further, “[a] legitimate reason for discharge may include the plaintiff’s lack of improvement in the specific areas in which she was counseled.” Doucette v. Morrison Cnty., Minn., 763 F.3d 978, 983 (8th Cir. 2014) (quotation omitted).

¶ 31. Once defendant produced a legitimate, nondiscriminatory justification for terminating plaintiff’s employment, the burden shifted back to plaintiff to demonstrate an issue of fact about whether defendant’s reason was pretextual. “Bluntly stated, to show pretext, a plaintiff must establish that the defendant’s proffered legitimate, nondiscriminatory reason is a lie.” Gauthier, 2015 VT 108, ¶ 22.

¶ 32. Plaintiff asserts that many of the reasons identified by defendant for disciplining plaintiff were false or did not occur in the way that defendant characterized them. Plaintiff argues that the June 2019 verbal warning was based on false accusations and that when asked for examples of the conduct outlined in the verbal warning, Cortwright identified incidents that occurred after the verbal warning. Plaintiff also asserts that some of the specific instances of poor performance identified by Cortwright in the letter of understanding and written warning were inaccurate, and that plaintiff was unfairly blamed for errors that they did not make. Plaintiff claims that Gallagher failed to conduct a full and fair investigation of plaintiff’s claims of racial and disability discrimination. Plaintiff also asserts that the missed bone marrow specimen was actually Mitchell’s fault.

¶ 33. Without more, these arguments are insufficient to show pretext. “[A]n employer need only honestly believe in its proffered legitimate, nondiscriminatory reason for the challenged adverse employment action in order to prevail on a motion for summary judgment at the pretext stage.” Gauthier, 2015 VT 108, ¶ 29. Thus, “arguing about the accuracy of the employer’s assessment is a distraction because the question is not whether the employer’s reasons for a

decision are right but whether the employer’s description of its reasons is honest.” Id. ¶32 (quotation omitted).

¶ 34. While plaintiff claims that defendant had its facts wrong and that its investigation was inadequate, plaintiff has not demonstrated “weaknesses, implausibilities, inconsistencies, or contradictions in the employer’s proffered legitimate, nonretaliatory reasons for its action” from which a jury could infer that the reasons were pretextual. Zann Kwan v. Andalex Group LLC, 737 F.3d 834, 846 (2d Cir. 2013). To the contrary: defendant consistently identified a pattern of poor communication, resistance to feedback, and lack of concern about how errors jeopardized patient safety as reasons for disciplining plaintiff, and it consistently identified the missed bone marrow specimen and plaintiff’s April 2019 “no call no show” as the ultimate reasons for firing plaintiff. Plaintiff admits that these two latter incidents occurred.⁵ Plaintiff also conceded that they had communication issues as early as 2008 and that their former supervisor made other criticisms similar to those later identified by Cortwright. Plaintiff has failed to provide other evidence from which a jury could conclude that plaintiff’s termination was actually motivated by race, such as evidence that other, non-African-American employees who had similar performance issues were not disciplined or terminated, or that defendant deviated from its normal policy or practice in how it treated plaintiff.⁶ See Boulton, 2003 VT 72, ¶¶ 19-24 (analyzing claim of pretext based on allegedly differential treatment of male managers who were similarly situated); Mellin v. Flood Brook Union Sch. Dist., 173 Vt. 202, 212, 790 A.2d 408, 418 (2001) (recognizing that employer’s

⁵ Although plaintiff argues that Cortwright indicated in an email that they had permission not to attend work on April 1, 2019, this evidence is not in the record.

⁶ The only statement that could potentially be construed as evidencing racial animus—the “urban princess” remark—was made by a male histotechnologist outside of plaintiff’s presence. There is no evidence that this individual was involved in the termination decision or that Cortwright was aware of his remark. “A statement will not be considered direct evidence of an employer’s discriminatory intent if it is made by an individual who was not a participant in the decision-making process.” Robertson, 2004 VT 15, ¶ 20 (quoting 1 L. Larson, *Employment Discrimination* § 8.07[3], at 8–86 (2d ed. 2003)).

failure to follow established policy may be evidence of pretext). Under these circumstances, defendant was entitled to summary judgment on plaintiff's racial-discrimination claim.

B. Disability Discrimination Claim

¶ 35. We turn to plaintiff's claim that they were terminated because of their disabilities. To establish a *prima facie* case of disability discrimination based on an adverse employment action, a plaintiff must show that: (1) they were an individual with a disability; (2) the employer was notified of their disability; (3) they were "otherwise qualified to perform the job, with or without reasonable accommodations"; and (4) they "suffered an adverse employment action because of [their] disability." *Sista v. CDC Ixis N. Am., Inc.*, 445 F.3d 161, 169 (2d Cir. 2006) (quotation omitted). It is undisputed that the first three factors were satisfied. However, plaintiff failed to provide evidence sufficient to create an inference that their termination was related to their disabilities.

¶ 36. The record shows that plaintiff had multiple medical conditions of which defendant was aware and that defendant had provided various accommodations to plaintiff over the years, including allowing plaintiff to sit rather than stand, limiting the amount of weight plaintiff had to lift, granting multiple leave requests, and allowing plaintiff to take frequent breaks. Plaintiff acknowledges these accommodations but asserts that they were harassed and ultimately terminated due to their medical conditions.

¶ 37. Plaintiff first argues that Jeannette Mitchell bullied and harassed plaintiff and that another coworker "rolled her eyes" when plaintiff asked for help. Plaintiff points to no evidence that this behavior was connected to plaintiff's disabilities. Plaintiff also contends that Cortwright gave plaintiff negative performance reviews for taking breaks that had been approved and were necessary to manage plaintiff's Crohn's symptoms and shoulder and foot pain. This is a mischaracterization of the record. In the reviews, Cortwright criticized plaintiff not for taking the breaks, but for leaving the work area without communicating to coworkers that they were doing

so, sometimes in the middle of a task. Plaintiff also claimed that they were criticized for sitting rather than standing when they had been given permission to sit. However, neither the 2018 performance evaluation nor the disciplinary warnings mention sitting as an issue. Finally, plaintiff asserted that another coworker who took unscheduled breaks due to gastrointestinal issues was not reprimanded, but plaintiff did not support this assertion with any admissible evidence. This record is simply insufficient to create an inference that plaintiff's employment was terminated because of their disabilities. The trial court therefore properly granted summary judgment on this claim.

C. Retaliation Claims

¶ 38. Finally, plaintiff claims that they were terminated in retaliation for complaining to management about racial and disability discrimination. To avoid summary judgment on these claims, plaintiff first had to present a *prima facie* case of retaliatory discrimination by showing "that (1) [they were] engaged in a protected activity, (2) [their] employer was aware of that activity, (3) [they] suffered adverse employment decisions, and (4) there was a causal connection between the protected activity and the adverse employment decision." Murray, 164 Vt. at 210, 667 A.2d at 299.

¶ 39. Here, as with plaintiff's other claims, defendant concedes that the first three elements are satisfied. We therefore consider whether there was a causal connection between the protected activity and the adverse decision. Plaintiff appears to argue that the first retaliatory adverse employment decision was the verbal warning Cortwright issued on June 22, 2018. However, the first documented instance of plaintiff complaining of disability discrimination was in plaintiff's response to Cortwright's email about the verbal warning. This was followed by plaintiff's complaint to Lisa Armstrong that they were being criticized for sitting rather than standing. As discussed above, plaintiff's first complaint to management of racial discrimination occurred in August 2018, when they appealed the 2018 performance evaluation. See infra, ¶¶ 7 n.3, 9. This was also after the verbal warning. Although plaintiff asserts that they complained to

Cortwright that Mitchell was racist earlier in June 2018, there is no admissible evidence to support this assertion. The verbal warning therefore cannot be viewed as retaliatory, since it occurred before plaintiff engaged in any protected activity.

¶ 40. Plaintiff also appears to claim that they were terminated in retaliation for their complaints to HR that they were the subject of racial and disability discrimination. Plaintiff made these complaints to HR officer Gallagher in February 2019, less than two months before plaintiff's employment was terminated. We agree that the relatively close proximity between the complaints and plaintiff's discharge was sufficient to meet the fourth element of a prima facie case. See Quinn v. Green Tree Credit Corp., 159 F.3d 759, 769 (2d Cir. 1998), abrogated in part on other grounds by Nat'l R.R. Passenger Corp. v. Morgan, 536 U.S. 101 (2002) (holding that employee met causal-connection element of prima facie case by showing that her discharge came less than two months after she filed complaint with management and ten days after she filed complaint with human resources department).

¶ 41. In response, defendant offered legitimate, nondiscriminatory reasons for terminating plaintiff's employment—the performance issues discussed above—thereby rebutting the presumption of retaliatory discrimination. This placed the burden on plaintiff to come forth with evidence that the proffered reasons were a pretext for retaliation. See Robertson, 2004 VT 15, ¶ 42.

¶ 42. Plaintiff appears to rely solely on the closeness in time between the complaint and termination to support their retaliation claim. “The temporal proximity of events may give rise to an inference of retaliation for the purposes of establishing a prima facie case of retaliation . . . , but without more, such temporal proximity is insufficient to satisfy appellant’s burden to bring forward some evidence of pretext.” El Sayed v. Hilton Hotels Corp., 627 F.3d 931, 933 (2d Cir. 2010); see Adams v. Green Mountain R.R. Co., 2004 VT 75, ¶ 9, 177 Vt. 521, 862 A.2d 233 (mem.) (“There must be some evidence other than chronology that gives the factfinder reason to believe that the

timing is an indication of improper motive.”). By the time plaintiff complained to HR, Cortwright had already given plaintiff a verbal warning, the letter of understanding, and the final written warning. This chronology is consistent with defendant’s stated reasons for firing plaintiff. Further, plaintiff admitted the conduct that ultimately formed the basis for the termination decision—the missed biopsy and plaintiff’s failure to attend work on April 1, 2019. Because plaintiff failed to demonstrate any other facts from which a jury could reasonably infer pretext, the trial court correctly granted summary judgment on plaintiff’s retaliation claims as well.

Affirmed.

FOR THE COURT:

Associate Justice

APPENDIX D

The Vermont Superior Court Decision to Grant Summary Judgment to the Defendant

VERMONT SUPERIOR COURT
Chittenden Unit
175 Main Street, PO Box 187
Burlington VT 05402
802-863-3467
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CIVIL DIVISION
Case No. 945-10-19 Cncv

Stephanie Hammond vs. University of Vermont Medical Center

ENTRY REGARDING MOTION

Title: Motion for Summary Judgment; Memorandum in Opposition; Reply (Motion: 8)
Filer: University of Vermont Medical Center, Inc.
Filed Date: February 28, 2022; April 14, 2022; May 09, 2022

This is a dispute between plaintiff and her former employer. Plaintiff Stephanie Hammond alleges illegal discrimination under the Vermont Fair Employment Practices Act based upon her race and disability, and retaliation for making complaints about such discrimination. Defendant University of Vermont Medical Center (the Hospital) moves for summary judgment.

Undisputed Facts

The following facts are undisputed.¹ Hammond was employed by the Hospital in its Histology Laboratory. The lab processes patient tissue samples and specimens. She worked in the lab in different positions from 2003 to 2019. Her last position was Senior Histotechnologist. Over the years her performance reviews were generally good but contained some criticisms regarding her communication, lack of respect for a supervisor, resisting guidance and suggestions, lack of maturity, pushback when asked to do tasks, and attitude. She admitted in 2009 that her attitude "could be a bit better"

¹ The court may reference additional facts from the record in the discussion below.

and that she had “had trouble” with coworkers. She and a coworker, Ms. Mitchell, did not get along. Mitchell micromanaged everyone in the lab.²

A new supervisor, Valerie Cortright, took over in 2017. She and Hammond had previously been friends and socialized together. Cortwright supervised several employees. In June of 2018 she gave Hammond a verbal warning, then a “Letter of Understanding” in November, which she described as a second step in a “corrective action process,” and a “Final Written Warning” in February of 2019. Hammond appealed the latter unsuccessfully. In April of 2019, Hammond was terminated.

The subsequently-stated basis for the June 2018 verbal warning included the need to accept and complete tasks, maintain professionalism and respect, inform colleagues if she had to leave her work area or was unable to complete a task, accept responsibility for her conduct, and work on fostering productive relationships with colleagues. The Letter of Understanding cited ongoing issues with Hammond leaving her work area for extended periods without informing colleagues, not communicating in a professional manner, and disrupting workflow by questioning tasks assigned to her. It also stated that she frequently denied her errors, and that she did not understand the risk those errors posed to patient care. The Final Written Warning noted the ongoing nature of many of the same issues. The ruling on her appeal by Ms. Cortright’s superior on April 2, 2019, stated that the concerns were “representative of a pattern of issues” with Hammond.

² Although Defendant disputes the admissibility of this fact, another coworker described Mitchell as “a tyrant.” Kerr Depo. ¶ 13.

The termination notice issued on April 3 noted continuing concerns with Hammond's performance, and gave as an example a "missed specimen on 3/23/19" when Hammond failed to see an urgent bone marrow biopsy and missed a blinking light alerting her to a voicemail about that same biopsy. The notice also cited her failure to appear for work on April 1. Hammond does not deny missing the biopsy and missing the warning light, saying she did not see the light because of a pile of folders that she did not put away. She admits missing work on April 1, but says showing up that day was optional.

Hammond is African-American. She was not the only person of color employed in the lab. She testified at deposition that she recalls no one ever making offensive comments about her race. Her supervisor, Ms. Cortwright, says she was never told of any such comments by others.³

Hammond also suffers from Crohn's Disease. During her employment, Hammond made numerous requests for leave or accommodation because of her Crohn's Disease and multiple other medical conditions—plantar fasciitis, a hysterectomy, and a shoulder injury. She received approval for many such accommodations over many years, such as sitting rather than standing, changing her break time, and limiting what she had to lift. She was also given many weeks of Family and Medical Leave.

On August 24, 2018, several months after the verbal warning, Hammond appealed her performance evaluation and stated among other things: "I can't help but feel discriminated against for reasons beyond my control, i.e.: Crohns, plantar fasciitis,

³ Hammond speculates that Cortright must have known of such comments, but offers no evidence to support that. She offers evidence of only one potentially racist comment by a coworker in all the years she worked at the Hospital, as discussed below.

shoulder injury, post-op, and lastly my race? I can't help but think race has something to do with it . . ." In January of 2019 she reported to HR that Mitchell used to like her and treat her well, but that had changed over time. On March 2, 2019, Hammond wrote that Mitchell "dislikes me and has for years" and that she felt "discriminated against due to assumption that I was old supervisor's favorite . . ." and said she wanted the "bullying and retaliation to stop." There was no mention of race or disability in that document. Later in March, Hammond talked to a counselor about issues at work and said she had issues with a coworker and did not know why. She made no mention of race.

After her termination, Hammond applied for several jobs for which she was not qualified, such as dental hygienist, truck driver and teacher. She declined offers to interview for several other jobs, such as delivery driver, online tutor, and substitute teacher. She has not applied for any histology jobs in Vermont, or any other UVM Health Network positions. As of her deposition in March of 2021, she had not applied for any jobs for over a year. At her deposition she explained that she had not sought positions at other medical facilities because she did not think she should have to relocate to Barre or Morrisville for a position.

Disputed Facts

Hammond has presented additional facts that she alleges are material, as well as numerous exhibits. Statement of Disputed Material Facts.⁴ She alleges that many of her "communication" issues at work related to problems with co-worker Ms. Mitchell; that Mitchell engaged in a "near-constant campaign of criticisms, micromanagement, and

⁴ Plaintiff has made the court's work harder by using numbers for her exhibits just as Defendant did. Please, in future have one side use numbers and the other letters. It is a nightmare to have multiple exhibits with the same numbers.

condescending and belittling behavior toward Plaintiff that she did not release on anyone else" (¶ 97), that other coworkers confirm this, and that other coworkers disliked Hammond because she had been the former supervisor's favorite. She adds that she was not granted a needed accommodation to take medication on a set schedule, was criticized by Cortwright for taking unscheduled bathroom breaks she needed due to her illness, and told HR that 50% of the mistakes she was criticized for in the Letter of Understanding were not her fault. Further, she says that the Letter falsely stated that she and Cortwright had met ten times to discuss the issues, because some of those conversations were not pre-scheduled meetings. She also says that a co-worker who also took unscheduled breaks was not reprimanded as she was. She also alleges that she suffered worse gastrointestinal issues from her Crohn's disease because of the stress at work, that some coworkers agreed she was treated harshly and unfairly, that one employee heard another employee call Hammond an "urban princess" on one occasion (which the person hearing it "assumed" was a reference to Hammond's color), and that Hammond was the only African-American in the lab in 2018 and 2019.⁵ Hammond also alleges that the man calling her an urban princess had a confederate flag on his car, but the only evidence as to the confederate flag is Hammond's testimony that the coworker in question was the "type of person" to have such a flag, not that he actually had one. Hammond Dep. at 112. Two coworkers were concerned about how Hammond was singled out by Mitchell, but neither reported to management, or testified at deposition, that her treatment was based on either her race or disability. Although Hammond

⁵ However, she admits that there were other employees of color in the department. Neither party has offered a breakdown of the other employees' races or dates of employment.

describes them as observing she was treated differently from “her white peers,”—Opposition at 22—the evidence does not back that up. They made no mention of race.

With regard to her claims of retaliation, Hammond argues that she complained to Cortwright, before the latter had become supervisor, that Ms. Mitchell was racist. The evidence instead is that she asked Cortright if she thought Mitchell was racist, to which Cortright responded that she didn’t know. Hammond alleges that the disciplinary actions began only after she raised the issue of Mitchell possibly being racist, but the evidence is that she first raised the issue in her August 2018 appeal from a performance review—*after* the verbal warning in June. She alleges that she raised the issue with Cortright just before the verbal warning, but cites to no evidence of that. St. Disp. Facts ¶ 128. Instead, the detailed document she cites refers to her complaining about Mitchell, but contains no suggestion that she alleged it was racially motivated. Ptf. Ex. 28. She raised the question of whether co-worker Mitchell was racist in February of 2019⁶ with HR, but made no allegation that her supervisor’s disciplinary actions were based on race or disability. Ptf. Ex. 5.

In a June 22, 2018, email to Cortright, Hammond asked why she was being made uncomfortable for having to use the bathroom so much when that was due to her Crohn’s disease. Ptf. Ex. 30. She also sent an August 16, 2018 email to Lisa Raino, which referred to her being criticized for her need to sit rather than stand. Ptf. Ex. 34. A February 27, 2019 email to Cortright and Lisa Armstrong mentioned the medical restrictions that required Hammond to do some things differently from other employees. Ptf. Ex. 37.

⁶ She also alleges she made a complaint in March of 2019, but the document she cites, although dated in March, is clearly referring to her February complaint. See Ptf. Exs. 5 and 28.

With regard to the issue of mitigation of damages, Hammond alleges that she has participated in the State's Vocational Rehabilitation program since her termination, and that the program exempts her from the usual requirement of job searches to maintain unemployment benefits. She says she was unable to apply for some remote jobs because of a loss of her internet due to finances, and that she has applied for jobs in various fields throughout 2021.

Discussion

There are three legal issues raised by the motion: (1) whether Plaintiff can establish one of the necessary elements of a prima facie case of discrimination for any of her claims, (2) whether even if she could, she could establish that the Hospital's explanations were a pretext, and (3) whether she has so failed to mitigate her damages that she can recover nothing.

The Claim of Discriminatory Termination Based Upon Race

On the first issue, the Hospital argues that Hammond cannot establish an inference of racial discrimination. "In general, to establish a prima facie case of employment discrimination, the plaintiff must demonstrate that: (1) she was a member of a protected group; (2) she was qualified for the position; (3) she suffered an adverse employment action; and (4) *the circumstances surrounding this adverse employment action permit an inference of discrimination.*" Robertson v. Mylan Laboratories, Inc., 2004 VT 15, ¶ 24, 176 Vt. 356 (emphasis added). The Hospital argues that Hammond

has no evidence as to the fourth element: that her termination was because of her race or disability.⁷

Hammond responds that by proving the first three elements of a *prima facie* case, she has automatically met the fourth element. Opposition at 1. That is incorrect. There are four elements, not three. Hammond cites two cases generally for her argument—Gallipo v. City of Rutland, 2005 VT 83, and McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802 (1973)—but without citations to any specific pages of the first and without quotations from either. The court finds nothing in those cases supporting her argument that there are only three elements to a *prima facie* case. To the contrary, it is only after the fourth element is satisfied that “a presumption of discrimination arises.” Robertson, 2004 VT 15, ¶ 26.

Hammond points to no concrete “circumstances surrounding this adverse employment action [that] permit an inference of discrimination” based upon her race. Id. ¶ 25. The only reference to race is her suspicions that race may have played a part—suspicions so uncertain that she herself put a question mark after one mention of race—and the report that one coworker heard another call her an “urban princess.”⁸ No evidence has been proffered that the term is one commonly used as a racist slur, and the court has no basis for taking judicial notice of that as it might with a more commonly

⁷ “[A]n adverse employment action is a materially adverse change in the terms and conditions of employment.” Kelly v. Univ. of Vermont Med. Ctr., 2022 VT 26, ¶ 18. Here, the termination is the adverse action at issue.

⁸ Hammond’s response to the Hospital’s statement of facts also asserts with zero citation that Cortwright made a race-based comment about her. Def’s Reply to Ptf’s Statement of Disputed Facts, ¶ 58. The court does not consider this, as there is absolutely no evidence to support it.

used term. In any case, one stray comment by a coworker does not establish that the termination by the employer was race-based.⁹ Robertson, 2004 VT 15, ¶¶ 20-21.

However, a plaintiff may establish an inference of discrimination by showing “that similarly situated employees of a different race were treated more favorably.” Norville v. Staten Island Univ. Hosp., 196 F.3d 89, 95 (2d Cir. 1999). “In order to make such a showing, the plaintiff must compare herself to employees who are similarly situated in all material respects.” Id. (quotation omitted). Hammond has presented evidence that she was treated differently than other employees by her coworker Mitchell, and states that she was the only African-American in the lab (though not the only person of color) during the relevant period. Again, however, the fact that a coworker treated her differently is not a basis for finding that the employer acted in a discriminatory manner. The issue is whether the supervisor, Cortright, treated Hammond differently than others about whom similar complaints were made. Hammond asserts that Cortright treated her differently than Caucasian employees by constantly watching her, soliciting information from others about her daily, restricting her break time in ways that were not applied to other employees, and giving her longer assignments to a set location than others were given. Hammond Dep. at 98-99. This evidence is sufficient to create an inference of racial discrimination and thus establishes a *prima facie* case.

However, the Hospital next argues that Hammond cannot show that the Hospital’s explanation for its actions is a pretext for discrimination. The Hospital has

⁹ Hammond suggests in her statement of facts that the supervisor must have known of the use of that term and permitted it, but offers no evidence of that. She also refers to it as “apparently a commonplace nickname” for her, but the evidence supports only one instance of its use.

articulated a legitimate basis for her termination: the work issues for which she received progressive discipline for almost a year prior to her termination. This shifts the burden back to Hammond. The inference discussed above is not enough: it is rebutted by the legitimate explanation proffered by the Hospital. Gauthier v. Keurig Green Mountain, Inc., 2015 VT 108, ¶ 20, 200 Vt. 125. The burden of proving there was intentional discrimination rests with Hammond. Id.

Hammond points to what she describes as an inadequate investigation when she questioned whether race was playing a part in her bad performance ratings. That may be evidence of less-than-ideal policies as to investigations, but it is not evidence of discrimination. Hammond also argues that coworker Mitchell did not like her and treated her poorly compared to others, and that management relied too much on Mitchell's reports of problems with Hammond. Coworkers can dislike and mistreat each other, and the record here is crystal clear that Hammond and Mitchell's relationship was strained and stressful (apparently for both of them), but that does not suggest either that the dislike, or the reliance by management on Mitchell's reports, was race-based. There is just nothing beyond speculation to support Hammond's claim that her termination was the result of racial discrimination. Summary judgment will be granted on this claim.

The Claim of Disability Discrimination

Vermont law bars discrimination in employment based upon disability. 21 V.S.A. § 495(a)(1). Plaintiff makes out a prima facie case if she shows that she "is a qualified handicapped individual, [s]he was discharged from h[er] job, and the discharge occurred under circumstances giving rise to an inference of discrimination." Kennedy v.

Dep't of Pub. Safety, 168 Vt. 601 (1998). The Hospital does not dispute the first two elements, but argues that there is insufficient evidence to support an inference of discrimination.

The evidence is that Hammond had been given accommodations for her Crohn's Disease for many years, such as letting her sit rather than stand and take breaks at different times. The same was true of a shoulder injury, a hysterectomy, and plantar fasciitis. Hammond responds that she "does not generally challenge defendant's accommodations for the disabilities." Opposition at 25. What she argues is that she was subjected to "consistent and steady bullying. . ." Id. She offers a long list of Mitchell's allegedly bullying behaviors, but does not tie them to her disabilities.

The only potential evidence of disability discrimination is that (1) Hammond was criticized by supervisor Cortright for taking bathroom breaks that she needed because of her medical conditions, (2) she was given a negative comment in an evaluation for sitting rather than standing, when she had been given permission to do so, and (3) another coworker had gastrointestinal issues and was not formally reprimanded for taking unscheduled bathroom breaks. The evaluation was amended when Hammond pointed out that she had been approved to sit. The only cited support for the issue of a coworker being treated differently is an unauthenticated text message from an unidentified person, which is thus inadmissible. Stmt. Disputed Facts ¶ 128; Ptf. Ex. 51. That leaves the claim that Hammond was criticized for her unscheduled bathroom breaks. The Hospital responds that Hammond was criticized not for taking the breaks, but for not telling her coworkers what step of the process the work was at when she did so. The document cited by Plaintiff does, in fact, reflect that the issue was

the failure to communicate with coworkers about the breaks, rather than taking the breaks. Ptf. Ex. 31 (“For example, this week a Kidney came in and you left for break without leaving a note about what step it was in.”).

The question as to whether a *prima facie* case is shown is whether there is evidence sufficient to infer that the adverse employment action—here, the termination—was the result of discrimination based upon disability. Plaintiff points to the same general evidence as in her race claim about being treated differently by her coworker Mitchell, but offers insufficient evidence to tie that to discrimination as opposed to a personality conflict, and insufficient evidence to tie her termination to disability discrimination. Summary judgment will be granted on this claim.

The Retaliation Claims

To make out a *prima facie* case of retaliation, a plaintiff must prove “that (1) [s]he was engaged in a protected activity, (2) h[er] employer was aware of that activity, (3) [s]he suffered [an] adverse employment decision, and (4) there was a causal connection between the protected activity and the adverse employment decision.” Gauthier, 2015 VT 108, ¶ 16 (quotation omitted).

Hammond says that she repeatedly complained of racial and disability discrimination. Her first mention to management¹⁰ of her race being potentially at issue was in the August 2018 appeal of her evaluation. The word “race” was followed by a question mark, and essentially speculation that race might be a cause. Hospital Ex. 23. She offered no evidence of that possibility. Nonetheless, the claim was investigated, and no basis to find the issue was racial was found. She also argues that she complained of

¹⁰ Hammond had asked Cortwright before she was a supervisor, when they were merely friends, whether Cortwright thought Mitchell was racist. Such a conversation between friends is not “protected activity.”

racial discrimination in early June, before the verbal warning, but the evidence does not bear that out. Instead, it shows a continuation of her general complaints that co-worker Mitchell was treating her badly. Her later complaint referencing race was made in February of 2019, after the next two steps in the disciplinary process.

With regard to claims that her medical conditions were being used against her, Hammond raised the issue in the August 2018 appeal of her performance evaluation. However, she points to nothing after that reflecting any express complaints she made regarding disability discrimination. Her June 22, 2018 email to Cortright could potentially be considered such a complaint, as she asks why she is being made uncomfortable for having to use the bathroom so much when that is due to her Crohn's disease. Ptf. Ex. 30. The same is true of her August 16, 2018 email to Lisa Raino, which refers to her being criticized for her need to sit rather than stand, Ptf. Ex. 34, and her February 27, 2019 email to Cortright and Lisa Armstrong in which she mentioned the restrictions that required her to do some things differently from other employees. Ptf. Ex. 37.

Hammond does not clearly describe what she believes to be evidence of a prima facie case of retaliation. The court concludes, however, that the timing of the April termination does create a prima facie case because it occurred within a short time after her February 2019 complaint to management in which she again raised the specter of possible racial discrimination, and the February 27 email that mentioned issues with her medical restrictions. *See Robertson*, 2004 VT 15, ¶ 47 (citing case holding that a period of less than six months can create a prima facie case).

The Hospital, however, has shown a legitimate nondiscriminatory reason for the termination: the work deficiencies that are referenced at each step of the disciplinary process. Hammond must, therefore, overcome that with evidence of pretext. “There must be some evidence other than chronology that gives the factfinder reason to believe that the timing is an indication of improper motive.” Adams v. Green Mountain R. Co., 2004 VT 75, ¶ 9, 177 Vt. 521 (discussing retaliatory discharge in violation of public policy). None of the facts to which Hammond points are evidence that the disciplinary actions and termination were actually retaliatory. Again, while there is plenty of evidence that Hammond was treated poorly by Ms. Mitchell, it is the termination that is the adverse employment action here, not the behavior of others in the workplace.

Hammond argues that many of the reports of mistakes or behavioral issues described in the various disciplinary actions are not accurate, but she does not offer any evidence that Cortwright did not honestly believe them to be true. “[T]o show pretext, a plaintiff must establish that the defendant’s proffered legitimate, nondiscriminatory reason is a lie.” Gauthier, 2015 VT 108, ¶ 21. There is just nothing to support such a suggestion here. “[A]n employer need only honestly believe in its proffered legitimate, nondiscriminatory reason for the challenged adverse employment action in order to prevail on a motion for summary judgment at the pretext stage.” Id., ¶ 29.¹¹ Hammond has not presented evidence sufficient to show pretext here. Summary judgment will be granted on this claim.

¹¹ Hammond argues that the “honest belief” doctrine should be rejected because of criticism of it in other jurisdictions, but this court must follow Vermont’s high court.

Mitigation of Damages

Finally, the Hospital argues that Hammond cannot recover anything because she has failed to mitigate her damages. The evidence is that she has made some attempts to seek employment, although she admits she applied for no jobs at all for at least a year. She argues that because the Vocational Rehabilitation program she is in does not require her to keep applying for jobs, she did not have to do so. The court's jury instruction on this issue includes the following: "If you find that Plaintiff failed to take reasonable steps to minimize any damages she suffered, you must reduce your award of damages by the amount you find she could have avoided." The jury would certainly be entitled to consider the lack of attempts to seek employment regardless of what Vocational Rehabilitation required. Nonetheless, the issue would be how much any damages were reduced, and that is a question for a jury to ponder. Summary judgment on this issue is not appropriate.

Order

The motion for summary judgment is granted.

Electronically signed on June 28, 2022 pursuant to V.R.E.F. 9(d).



Helen M. Toor
Superior Court Judge

APPENDIX E

The State of Vermont Department of Labor Decision Allowing Unemployment Benefits

STATE OF VERMONT
DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE HEARINGS
PO Box 488 / 5 Green Mountain Drive
Montpelier, Vermont 05601-0488
Telephone 802 828 4368

FINDINGS AND DECISION
OF THE ADMINISTRATIVE LAW JUDGE

Docket No. 05-19-039-06

In re Claim of:

ID No. 8166
Steph Hammond
71 Sunset Dr
Burlington, VT 05408

Employer involved:

080-1424
University of VT Medical Center
111 Colchester AV-227SM2
Burlington, VT 05401

Det: May 8, 2019 App: May 14, 2019 Hrg: June 5, 2019

Decision Date: JUN 07 2019

Before: Mark Horowitz, Chief Administrative Law Judge

Participants: Steph Hammond, claimant

Issues: 21 VSA § 1344 Discharge from Employment;
Deductible Income

The claimant appealed a claims adjudicator's determination which found she was discharged by her last employing unit for misconduct connected with her work. Accordingly, she was disqualified for benefits for the weeks ending April 6, 2019 through June 8, 2019, and her maximum benefit was capped at 23 times her weekly benefit amount. The determination also found she received gross wages and vacation pay at or shortly after separation, and because the gross wages and vacation pay were greater than

her weekly benefit amount, she was disqualified for benefits for the weeks ending April 6 2019 through May 25, 2019, the period immediately following her separation from employment, to which the gross wages and vacation pay was allocated.

Findings of Fact:

As a preliminary matter, the claimant is not appealing the determination on the receipt of vacation pay, only the separation.

The claimant, Steph Hammond, was employed for just under seventeen years as the Senior Histologist at the University of Vermont Medical Center. Ms. Hammond was paid \$35.28 per hour and her last day of work was April 3, 2019. The nature of Ms. Hammond's separation was a discharge.

Sometime in 2017, Ms. Hammond's former supervisor left and a new individual, Valerie Cortright, took over. Ms. Cortright and Ms. Hammond had a less than harmonious working relationship. Prior to the appearance of Ms. Cortright, in her then thirteen years employment, claimant had no reprimands, warnings, or any other type of adverse personnel action.

On November 20, 2018, Ms. Cortright presented a document entitled "Letter of Understanding" to the claimant. The letter contained the employers perceived concerns about Ms. Hammond's interactions with coworkers, following procedure, and patterns of error.

Ms. Hammond's original schedule was Tuesday through Saturday. On Tuesday through Friday the claimant worked from 4am to 12:30pm, and on Saturday's from 3am until 11, or whenever a job was finished. At some point Ms. Cortright took away the claimants Saturday hours.

Ms. Cortright presented Ms. Hammond with a document entitled "Final Written Warning" on February 19, 2019.

Ms. Hammond disagreed with the final written warning and complained about the

document and her working relationship with Ms. Cortright to Ms. Cortright's immediate supervisor, Tim St. John. Ms. Hammond told Mr. St. John that she was contemplating hiring an attorney.

During the weekend of March 30, there was some confusion about whether Ms. Hammond would be working Saturday. Part of the problem was that Ms. Cortright sent an email to Ms. Hammond after Ms. Hammond had left the building.

As stated above, the claimant normally did not work on Monday's. Ms. Hammond was puzzled about why Ms. Cortright considered her a no call no show. In any case Ms. Cortright left a note for the claimant to meet and during the day on April 3 Ms. Cortright presented Ms. Hammond with her termination letter. The primary reason for the termination was the employers belief that the claimant was a "no call no show" and that the claimant had somehow missed a sample that had been left in the lab. That event apparently took place on or about March 16 and the employer did not provide any rationale as to why the subject was not raised until April 3.

Conclusion:

Section 1344 of Title 21, Vermont Statutes Annotated provides in relevant part as follows:

(a) An individual shall be disqualified for benefits:

(1) For not more than 15 weeks nor less than 6 weeks immediately following the filing of a claim for benefits . . . if the commissioner finds that:

(A) He or she has been discharged by his or her last employing unit for misconduct connected with his or her work[.]

Section 1340 of Title 21, Vermont Statutes Annotated provides in relevant part as follows:

(b) An individual who is discharged by his or her last employing unit for misconduct connected with his or her work under subdivision 1344 (a)(1)(A) of this title is limited to a maximum amount during the benefit year which is the lesser of the maximum amount determined under subsection (a) of this section or 23 times his or her weekly benefit amount, provided that the individual has not already received more than 23 weeks in his or her benefit year.

Section 1344 of Title 21, Vermont Statutes Annotated provides in relevant part as follows:

(a) An individual shall be disqualified for benefits:

* * * *

(5) For any week with respect to which he or she is receiving or has received remuneration in the form of:

* * * *

(B) Vacation pay or holiday pay.

Vacation pay due at time of separation in accordance with a work agreement (whether a formal contract or established custom) shall be allocated to the period immediately following separation, or if due subsequent to separation, it shall be allocated to the week in which due or the next following week, and that number of weeks immediately following as required to equal the total of the weeks of pay due.

As the claimant has stipulated to the receipt of vacation pay that portion of the adjudicator's determination must be sustained.

Insofar as the separation, under Vermont's unemployment statute in cases of discharge the burden of proof is squarely on the employer. The employer must demonstrate that a claimants actions were in substantial disregard of the employers interests, either willful or culpably negligent. The measure of proof in these hearings is

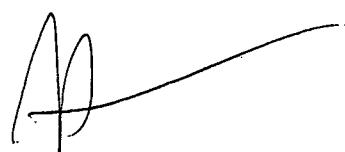
the civil standard of preponderance of the evidence.

While the employer has raised a number of concerns, all the written documentation is short on specifics as to what the actuality of the concerns were. Allegations such as "failure to communicate with coworkers", are simply too broad and amorphous a category to fit the statutory definition of work-related misconduct.

In sum, while the employer may have had sound management, administrative, or other reasons for terminating the claimant, Vermont's Supreme Court has consistently ruled that the fact that some behavior may merit discharge does not necessarily mean that the same actions require disqualification from the receipt of benefits. As the employer has not met their evidentiary burden, disqualification cannot be imposed based on the separation.

Decision:

The determination of the claims adjudicator dated May 8, 2019 is modified. Claimant remains disqualified for benefits for the weeks ending April 6, 2019 through the week ending May 25, 2019 based upon the receipt of vacation pay. Claims thereafter are allowed provided the claimant meets all other eligibility requirements.



MARK HOROWITZ
Chief Administrative Law Judge

APPEAL RIGHTS

The decision of the administrative law judge will become final unless, within 30 calendar days of the decision date, a written request for review by the Employment Security Board is filed. The appeal may be submitted:

1. **by US mail** at Appeals, Vermont Department of Labor, PO Box 488 Montpelier, VT 05601-0488
2. **by e-mail** at labor.appeals@vermont.gov
3. **by fax** at 802-828-4289 or
4. **in person** at the administrative offices of the Vermont Department of Labor, 5 Green Mountain Drive, Montpelier.

The postmark date of a mailed appeal will be considered the filing date, the e-mail date will be treated as the filing date of an e-mailed appeal, and the fax date of a faxed appeal will be treated as the filing date. An appeal filed in person will be date stamped by the person receiving the appeal and the date stamp will be deemed the filing date. A copy of the notice of appeal will be mailed to the other parties of interest. Upon appeal, the Employment Security Board will review the evidence taken before the administrative law judge and his or her findings and conclusions. **Claimants who are filing an appeal to the Board should continue to file weekly benefit claims in the usual manner while the appeal is under consideration.**

APPENDIX F

Evidence in Support of Claims that Should Have Been Submitted and other Documentation in
Support of the Statement of the Case

APPENDIX F

Evidence in Support of Claims that Should Have Been Submitted and other Documentation in Support of the Statement of the Case

1. Email dated 6/7/18 from myself to Ms. Cortright making another complaint due to the leads having already begun making complaints about me just 2 days after I made the initial race based complaint to Ms. Cortright. Ms. Cortright informed them of our personal conversation since I hadn't spoken to Ms. Mitchell until 6/8/19. Presented during oral argument at the Vermont Supreme Court of Appeals.
2. Email dated 3/14/19 from Ms. Cortright falsely telling Ms. Gallagher that there were ongoing concerns warranting my termination, which ended the investigation. Not only that but it clearly states that Ms. Gallagher reviewed my personnel file which I was never allowed. Presented during oral argument at the Vermont Supreme Court of Appeals.
3. Email from myself to Ms. Cortright on 3/28/19 proving that I had taken care of all the red hots (urgent) specimens that are not communicated via telephone messages. After I loaded the specimens from Copley I had to retrieve the cooler to put the empty specimen containers in it. The cooler was near the folders and I did not see a bone marrow assuming it could have been behind the folders. Ms. Cortright knew how much of a disruption it would be for me by removing me from Saturdays.
4. Email from Ms. Cortright to myself on 3/29/19 telling me she would code 4/1/19 as scheduled hours off since I was only allowed to work a half day 3/30/19 which I did. Ms. Cortright stated there had been some changes since 3/15/19 so I was only allowed to

work a half day. This is why I never admitted to being a no call/no show which the record states I had which is wrong. My name needs to be cleared of all the inconsistencies within the decisions made by both Courts. During this time Ms. Cortright had been falsely telling human resources that there were ongoing concerns which warranted my termination yet she told me there were some changes taking place without a mention of any issues warranting termination. She was setting up my termination by playing both sides. Ms. Cortright lied to me when I questioned why Mr. Tembruell was allowed an entire shift change for personal reasons but I was denied the ability to come in early on days I had health related appointments. She tried making it seem as if her actions weren't discriminatory or retaliatory when they were. A text from Mr. Barker-Rowe proves that Mr. Tembruell specifically told the both of us it was so he could pick up his son from school since his wife was unable to any longer.

5. Email from Ms. Cortright to Ms. Armstrong 4/1/19 claiming I didn't show up for work when she was already aware that I wasn't planning on doing so. She conveniently sent Ms. Armstrong the very last email I sent her that weekend, although I sent her several emails as stated but I never received a response. Not to mention that if that email was the only one I had sent it was still prior to 4 AM.
6. Emails proving that both Ms. Mitchell and Ms. Cortright watched my every move while waiting for me to make a mistake. Ms. Mitchell had a "Steph-docs" file where she would compile anything she wanted and report it to Ms. Cortright.
7. This list of every criticism from my evaluations for over 10 years was given to Mr. St. John and Tania Horton to read over prior to making the decision to terminate my employment. I was unaware of this until discovery. Having extracted criticisms from my

evaluations I knew that Ms. Carpenter was not responsible for making a majority of the comments listed although her initials had been attached to them in this document, Ms. Mitchell was. Criticisms that included words such as communication, resistance, pushback, IHC, special stains, bookwork, frozen tissue, cutting muscles, making solutions, frequent absences from bench, constructive feedback/criticism, refusal, maturity, respect, guidance, stubborn, and attitude all pertained to Ms. Mitchell. Ms. Carpenter didn't observe the techs because her office wasn't in the lab so she relied on a majority of the input in our evaluations from both Ms. Quigley and Ms. Mitchell. This is another reason why such criticisms were not in my 2017 evaluation because I hadn't worked with Ms. Mitchell. The arrows indicate criticisms pertaining to Ms. Mitchell and some of them are found under 'feedback from Charge Tech and Technical Specialist' although in the document Ms. Carpenters initials are followed by these comments. I couldn't make copies of every evaluation which included my rebuttal to Ms. Mitchells criticisms each year, so I included proof from a couple. I was not a perfect tech, I did make mistakes, and I had both good and bad days.

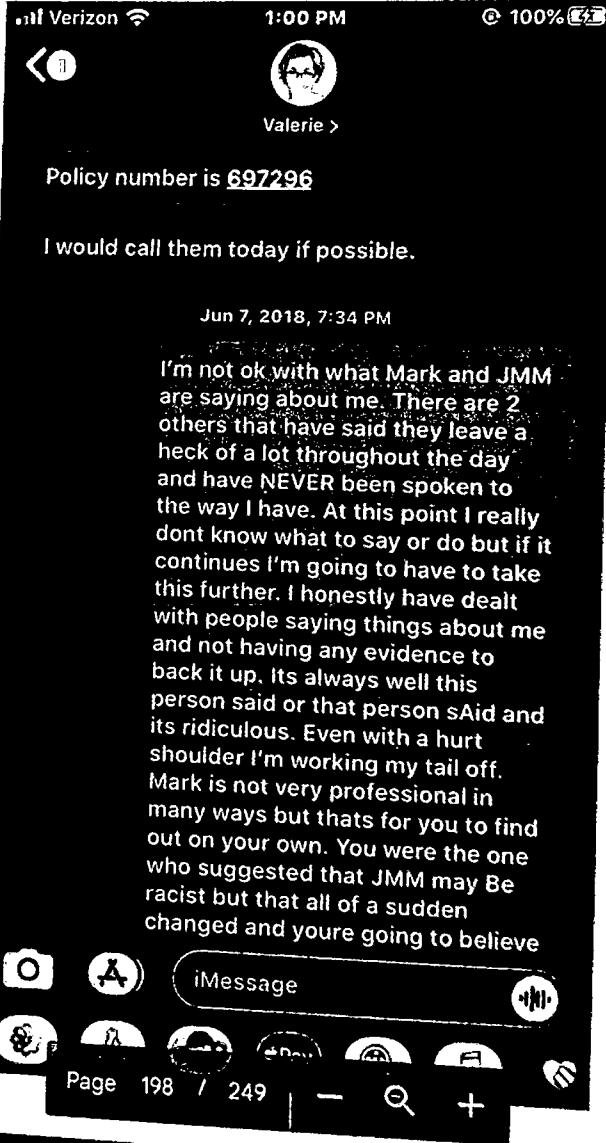
8. Mr. St. John contributed to my evaluations after having signed off on them. He was well aware of my work ethic, including both strengths and weaknesses.
9. A list concocted of allegations made by Ms. Cortright that I hadn't seen until discovery. I believe this was put in my personnel file making it seem as if the disciplinary action had been warranted. A majority of the allegations are false and would be backed with write-ups (incident reports). Ms. Cortright had told me that making a list would not have been of any value and when I asked several times over the course of 10 months for such I

was never given this. This list includes dates after the verbal warning was issued 6/22/18, without mention of a majority of these allegations in the disciplinary action issued. For example, on 7/12/18 Ms. Cortright claimed we met for a verbal counseling/performance discussion yet, in the list of allegations it says she emailed me regarding IHC (Ms. Mitchell's bench). We did meet on 7/27/18 but it was when I was falsely accused of not following protocol and illegally punished, which isn't a performance discussion. As discussed in my arguments to the lower courts, I never had verbal counseling sessions with Ms. Cortright, not even when Ms. Armstrong suggested we do so. We couldn't have verbal counseling sessions for false allegations. Regardless, human resources could have better looked into this rather than trusting that these were valid. After 7/27/18 when Ms. Cortright went out of her way to change an entire procedure to make it seem as if I wasn't following it as well as not allowing me to see my personnel file, I simply do not trust her. Having seen my personnel file in the past, when Ms. Carpenter allowed me to view it, I knew much of what it included and lists like this were not part of it but there were a few write-ups (incident reports) for making mistakes that were used as a tool to track trends. I was informed for making mistakes when mounting slides since I was incredibly fast at microtomy, but this was corrected after working with both Ms. Carpenter and Ms. Quigley. The amount of performance and behavioral concerns over 16 years doesn't compare to the 4 months of those listed. Mind you she was supervisor for over a year without such concerns until I made my complaint the first day I began working with Ms. Mitchell on 6/5/18.

10. Emails between myself and Watts Law Firm regarding not having submitted the text message from 6/7/18 as evidence for summary judgment. Receiving two different

answers for the same question is extremely worrisome especially when I was told I had a good case because of it.

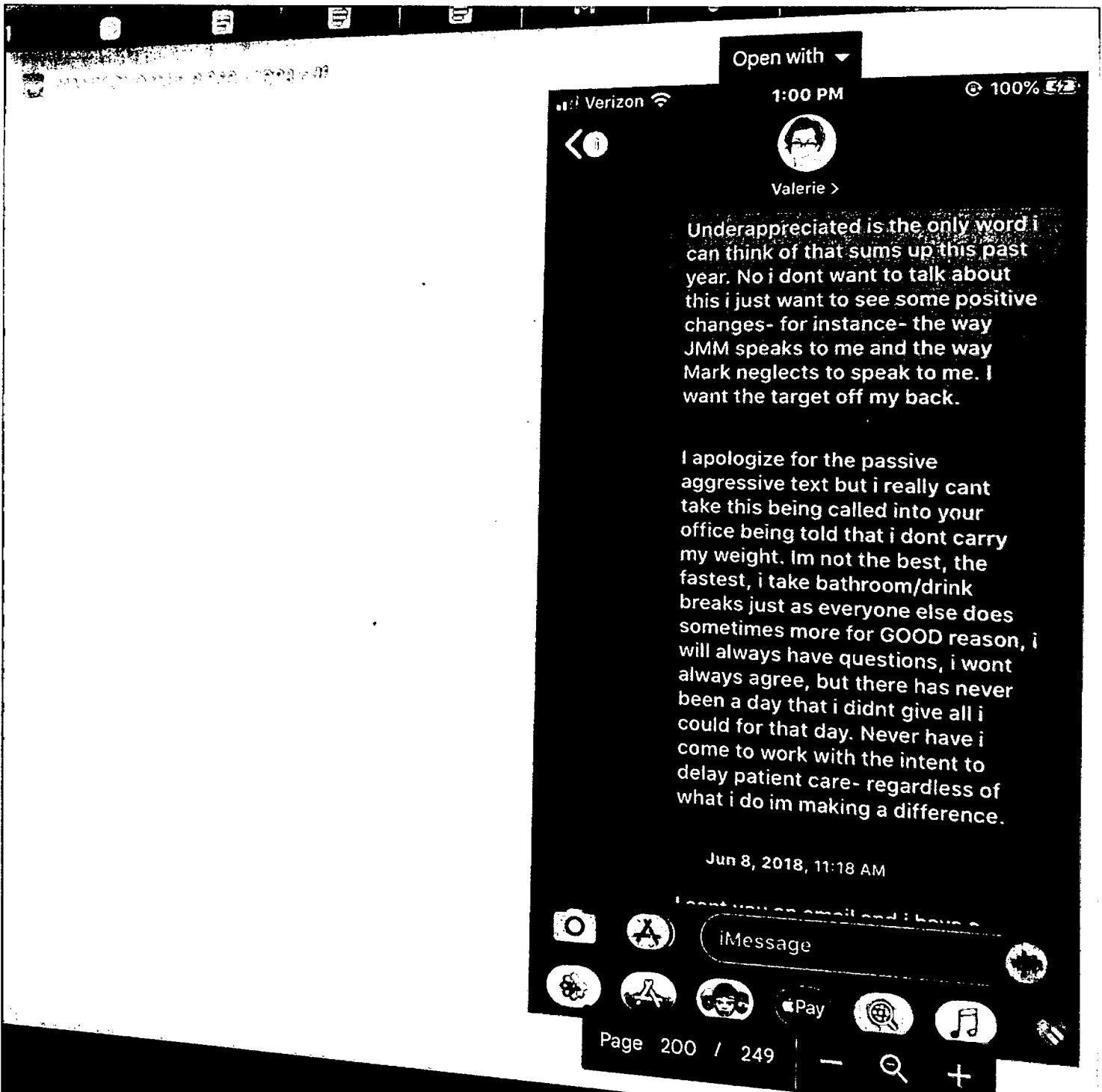
11. Petition of Misconduct from 2/1/21 in regard to Norman Watts. This was during his time of service which he never informed me of.



Verizon 1:00 PM 100% 
Valerie >

changed and you're going to believe things that she is saying when you know they aren't true. I have my podcast in my ear and mind my own business- I do what I'm supposed to do and that's it. Why if I ask a question am I giving push back? I'm almost 40 years old and I would think that the days of JMM having it out for me would be over- esp since you know what I'm talking about. If you want to take me off the 4AM shift be my guest- at this point I honestly don't care and that's the truth. I'm incredibly sick of being told the 4AM shift is under constant observation. I'm NOT doing anything wrong- I will continue to set up my microtome the way I am supposed to and I will continue to do my duties as part of my shift. I have 2 witnesses that you obviously have not spoken to to see where the truth lies. Enough is enough Val and you need to do something about it- pointing the finger at me isn't going to fly anymore. I work too hard to be made out as if I'm not.
Underappreciated is the only word I

Page 199 / 249





Hammond...-983.pdf



From: Cortright, Valerie <Valerie.Cortright@uvmhealth.org>
Sent: Thursday, March 14, 2019 8:03 AM
To: Gallagher, Colleen
Cc: Armstrong, Lisa
Subject: RE: Information Request
Attachments: Histo-Evaluation Ratings Defined.doc; Final Written Warning - [REDACTED].doc

- [REDACTED] I do have documentation of meetings with these employees regarding performance or behavior issues. [REDACTED] were both terminated, I have attached some documentation from [REDACTED], just so you can see an example.
- Attached are the histo Evaluation ratings. This is posted in the microtomy area, as well as available on the share drive.
- Steph was under a verbal warning for her performance at the time of evaluations. I had met with her on several occasions to discuss her performance and had seen no improvement, understanding or willingness to improve.
 - o [REDACTED] had shown willingness to improve and had engaged in a conversation with me that reflected his willingness. His compliance with safety glasses was corrected after speaking to him.

Let me know if there is anything else. I am planning to have an investigatory meeting with Steph to consider moving forward to a termination due to ongoing concerns. I understand that you guys feel it is important to finish this investigation first. Please let me know if I understand that properly.

Thank you!
Val

Valerie Cortright, BA, QIHC, HTL^{CM}
Supervisor – Histopathology & Surgical Pathology
Pathology & Laboratory Medicine
University of Vermont Medical Center
EP2-101
802-847-5116

University of Vermont
MEDICAL CENTER

From: Gallagher, Colleen <Colleen.Gallagher@uvmhealth.org>
Sent: Thursday, March 14, 2019 7:44 AM
To: Cortright, Valerie <Valerie.Cortright@uvmhealth.org>
Cc: Armstrong, Lisa <Lisa.Armstrong@uvmhealth.org>
Subject: Information Request

Hi Val,
Thank you for providing me with Stephanie's file. I need a bit more time with it if it is ok with you. Also, would you be able to provide me with the below information?

- Names of other employees who have received coaching or corrective action since you became Supervisor. I don't need all of the detail of the corrective action but a brief description of what it was for would be helpful.

PDF Hammond...1238.pdf



I will take some additional time to review the rest of your concerns in this email. I will also give additional thought to what you are asking for in regards to continuing to work Saturdays. I do recognize that this is important to you and do not take this decision lightly.

Thank you,
Val

Valerie Cortright, BA, QIHC, HTL^{CM}
Supervisor – Histopathology & Surgical Pathology
Pathology & Laboratory Medicine
University of Vermont Medical Center
EP2-101
802-847-5116

University of Vermont
MEDICAL CENTER

From: Hammond, Stephanie <Stephanie.Hammond@uvmhealth.org>
Sent: Thursday, March 28, 2019 4:30 PM
To: Cortright, Valerie <Valerie.Cortright@uvmhealth.org>
Subject: RE: Saturdays

Val,
I can't work Mondays, as that is a day that I have prior engagements. I can't just cancel the things that I have scheduled, or not stay committed to things that I normally do on Mondays. Having to work Mondays creates yet another day where I need to use CTO and FMLA for appointments which I also would rather not do.

Being taken off Saturdays for these reasons you have given me is not fair. I sent you an email Saturday morning telling that I was not feeling well at all. I did the best I could given that I needed to get Red Hot's out and embed. I check the messages every Saturday, load the bone marrows, and so much more. You telling me that I do nothing but make mistakes is not fair. I make mistakes but so would anyone else, it's just that I am held to a different standard. By not loading the brain due to them not being in the brain bucket, does not mean that I am incapable of working Saturdays. Like I said the bone marrow must have been behind the pile of folders that was also on the shelf, which too blocked the phone. I would have seen it, no doubt, when singling slides or even when I grabbed the Copley cooler that was also next to the pile of folders. I know exactly who the first person in on Monday was. I know for a fact that they too didn't see the bone marrow or the message only had they moved the folders. I probably should have moved the folders and I take accountability for not having done so. I have never had a problem with this in the past and you know that I take care of all of these tasks, as there has never been an instance when the phones went unchecked. You can't miss the blinking red light if you tried except for when there is a stack of folders piled high right in front of the phone. I beat myself up about not taking care of the folders as I normally would, and for picking up the portable phone when the switchboard called.

If you are concerned about coverage for weekends once I am off, then why not have whomever doesn't feel 100% about working, come in for a few hours so I can train them. When I was off for my hysterectomy there was no issue with coverage and performing Saturday duties. Nobody had ever come in with my to train prior.

Val, I stated that I am able to work and do just about anything as I have been, given my accommodations. Me doing other things like cleaning and sorting blocks was something I could do which would give me a break from embedding only because I wanted to make it known that I am doing work when not embedding. If I was to say, I am able to get a 2 minute break from embedding by using the bathroom or getting a drink you would then tell me that working Saturdays was contingent upon me being able to use the bathroom or get a drink. Then every time I wasn't scanning anything into

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personal obligations that I tend to on my day off, although it's really not a day off. Why complicate things and make everything that much more stressful, and chaotic for me? It would have been easiest to have all the techs that signed up for Saturdays go back to their regular schedules. Instead you want to change mine around and this doesn't do anything for me, or you for that matter. You want me to use CTO for Monday, and I can't do this. I don't know what I am going to do. I don't want to come in Monday as it is my day off. Not only am I frustrated but Jen is as well. She is wondering why I am coming in if she is and since I'm not on leave, why am I not working Saturdays per usual. Could you please explain the GI biopsy issue with me again? Why am I the only one hearing about this? Other techs have said that there is no difference between cutting them on Monday verse any other day of the week. You had mentioned that the sections are worse off on Mondays because of being exposed to warm temps for long periods of time.

I also spoke to Mark today about the missed phone message. I asked him what it said, as I was under the impression that it was a STAT bone marrow and me not getting it processed had a major negative impact on the patient. Regardless of what happened I felt stupid for doing it and continue to beat myself up over it.

Also, why can't I come in at my regular Saturday time tomorrow? Don't we want the GI's to be embedded as fast as possible so they are exposed to less heat? Processors come off at anywhere from 3AM on. What exactly am I supposed to do tomorrow since there will be two of us? Instead of using CTO why can't I work 3-11? Especially since Jen will be there and since all I can do is embed? I can't afford to not work. Treat this as you would if you were doing this to anyone else. I know Mark now has an adjusted shift to accommodate his outside personal needs, so why am I different? I can't even come in an hour early once a week, but he gets a whole new shift change, rather than have to use his CTO up. Like, I said, I hear all of your concerns I just don't agree with them. Not sure what kind of compromise you were talking about because Mondays just don't work for me and it's been this way for years....

Steph

From: Cortright, Valerie <Valerie.Cortright@uvmhealth.org>
Sent: Friday, March 29, 2019 12:51 PM
To: Hammond, Stephanie <Stephanie.Hammond@uvmhealth.org>
Subject: RE: Saturdays

You can take CTO for this Monday if you cannot work 4-8am. I was hoping that this would be an acceptable compromise as it would free you to be at your appointments later in the day. Please let me know as soon as possible if you would like me to use CTO.

I had informed you in advance to plan on working Monday and that I would be keeping the Saturdays as scheduled. In addition, there is an urgent need to address the quality issues with the embedding that is being performed on Saturday. We will have an opportunity to evaluate on Monday whether or not these issues are present with the changes in the sequence and timing on Saturday.

I will take some additional time to review the rest of your concerns in this email. I will also give additional thought to what you are asking for in regards to continuing to work Saturdays. I do recognize that this is important to you and do not take this decision lightly.

Thank you,
Val

Valerie Cortright, BA, QIHC, HTL^{CM}
Supervisor – Histopathology & Surgical Pathology
Pathology & Laboratory Medicine

Done

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You have the right to treat me the way you feel, and view me the same way. Just don't ever feel that you need to lie to me about anything or lie about me to anyone. I have not once lied about you. Where would that get me especially since I have no reason to lie about anything. At some point all of this has to stop because I can only take so much.

Step 3

From: Cortright, Valerie <Valerie.Cortright@uvmhealth.org>
Sent: Friday, March 29, 2019 3:51 PM
To: Hammond, Stephanie <Stephanie.Hammond@uvmhealth.org>
Subject: RE: Saturdays

Processors have been set for Sam tomorrow.

Marks schedule has not been changed for personal reasons, it has been adjusted temporarily for lab related reasons. He has a different job title, so there are tasks specific to him that I have asked him to take care of. I have spoken with Jen multiple times regarding this weekend and she has assured me she is fine. You have a significant amount of CTO, plenty to cover your anticipated leave with full pay and you would still have a healthy balance when you return.

I did not tell you it was your choice to come in with the other Saturday person. I said we could explore it, and there have been changes since the 15th. I will code Monday as Scheduled-CTO if you chose to go that route, so you do not need to be concerned about that adding to your unscheduled CTO rate.

Thanks,
Val

Valerie Cortright, BA, QIHC, HTLTM
Supervisor – Histopathology & Surgical Pathology
Pathology & Laboratory Medicine
University of Vermont Medical Center
EP2-101
802-847-5116

**University of Vermont
MEDICAL CENTER**

From: Hammond, Stephanie <Stephanie.Hammond@uvmlhealth.org>
Sent: Friday, March 29, 2019 2:23 PM

< 2



Eric >

At least you were able to get up and go when it happened to you,,,

Mar 30, 2019 at 2:27 AM

Hey just wanted to say have ab awesome vacation! You deserve it and i mean that. You work so hard everyday without a peep even though i can see that you are exhausted and ready for a break. Hope the flights are without any issues and that the weather is amazing! Take lots of pics! Gonna miss my 4AM buddy!

Oh, what did mark say his new hours were and why? I know it had something to do with his family and stuff right? Just curious to see if you remembered.

Mar 30, 2019 at 3:41 AM

Yes I will have a blast! Of course I will take lots of pics! I will miss you too!

It was something about having to pick his son up from school cause his wife is working extra hours now.



Eric >

This past weekend i went through 2 years of emails and notes. It was when i spoke to val in june of 2018 regarding jeannettes treatment towards me, that shit got bad for me. jeannette retaliated and just weeks later i was given a verbal warning! Thats when it got ugly!

Not fair that HR doesnt see this but it is what it is. What Jeannette wants she will get and she wants me fired and this is exacly what is going to happen.

I'm sorry, it's a tough situation to go through

At least you were able to get up and go when it happened to you.,

Mar 30, 2019 at 2:27 AM

Hey just wanted to say have ab awesome vacation! You deserve it and i mean that. You work so hard everyday without a peep even though i can see that you are exhausted and

[Done](#)[drive.google.com](#)

AA



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**From:** Cortright, Valerie <Valerie.Cortright@uvmhealth.org>**Date:** April 1, 2019 at 7:42:46 AM EDT**To:** Armstrong, Lisa <Lisa.Armstrong@uvmhealth.org>**Subject:** FW: Monday

She did not show up. She sent this email at almost 10pm last night. I was very clear that she needed to tell me if she wasn't coming in, and I certainly did not mean 6 hours before the shift starts. There is also a pediatric specimen that she did not follow the proper protocol on. This is not the first time this has happened.

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University of Vermont
MEDICAL CENTER

From: Hammond, Stephanie <Stephanie.Hammond@uvmhealth.org>**Sent:** Sunday, March 31, 2019 9:47 PM**To:** Cortright, Valerie <Valerie.Cortright@uvmhealth.org>**Subject:** Monday

Jenn and I had plenty to do and I was only allowed to work 4 hours while she could have put in a full day? This means that anywhere from 8 to 12 hours of work were put in without either of us taking more than a few short 2 second breaks to get sips of our drinks or to use the restroom. Had anyone else cut the RED HOT Hirschsprungs cases, it would have taken them just as long or even longer to do so because all 3 blocks needed to be soaked in between each level. I'm sure that my sections are not flawless even after having done this, as they were large pieces of tissue that were extremely dry.

I never got a response from you so I don't know what I am going to do. If I am not to work tomorrow I trust it will be scheduled CTO taken since I was able to work Saturday but was told I couldn't even though it's my scheduled work day? My mom is going to attend my nephews conference alone even though it was scheduled specifically on Monday since it was the only day I could go right before PT. I am getting my taxes prepared tomorrow, and have "class" as well. This is all too much and is now making my time away from work stressful on what is supposed to be my day off. Luckily Deena is able to drop off and pick up Ava from school.

Steph



Open with ▾ UVMMC002947

From: Mitchell, Jeannette M. <Jeannette.Mitchell@uvmhealth.org>
Sent: Friday, March 08, 2019 5:20 AM EST
To: Cortright, Valerie <Valerie.Cortright@uvmhealth.org>
Subject: RE: Notes
Attachment(s): "Stoph.docx"
Here you go! I have a running document

From: Cortright, Valerie <Valerie.Cortright@uvmhealth.org>
Sent: Thursday, March 07, 2019 1:02 PM
To: Mitchell, Jeannette M. <Jeannette.Mitchell@uvmhealth.org>
Subject: Notes

Hey,
Can you send me your notes from the last couple of days...

Valerie Cortright, BA, QIHC, HTL^{CM}
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Page 124 / 133 - ⌂ +

UVMMC002940

From: Mitchell, Jeannette M. <Jeannette.Mitchell@uvmhealth.org>
Sent: Friday, February 15, 2019 9:03 AM EST
To: Cortright, Valerie <Valerie.Cortright@uvmhealth.org>
Subject: RE: Document!
Attachment(s): "Stoph.docx"

Way ahead this time. I have been documenting this week....

From: Cortright, Valerie <Valerie.Cortright@uvmhealth.org>
Sent: Friday, February 15, 2019 8:54 AM
To: Mitchell, Jeannette M. <Jeannette.Mitchell@uvmhealth.org>
Subject: Document

I know I know, you don't want to hear this, but can you please document what occurred this morning?!

Valerie Cortright, BA, QIHC, HTL^{CM}
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Armstrong, Lisa

From: St. John, Timothy L.
Sent: Thursday, March 28, 2019 3:43 PM
To: Armstrong, Lisa; Cortright, Valerie
Cc: Hong, Tania C.
Subject: Feedback from Stephs evals before Val
Attachments: SH Evaluation Summary.docx

This is the document I mentioned to all of you today. I think this proves that the issues Val is dealing with are longstanding.

Thanks,
Tim

Tim St. John CT(ASCP)
Manager, Anatomic Pathology
University of Vermont Medical Center
111 Colchester Avenue
EP2-31 (mailstop 233MP1)
Burlington, VT 05401
email: timstjohn@uvmhealth.org
phone: (802) 847-5336
fax: (802) 847-3632

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Steph Hammond Content from Performance Reviews Before Val Cortright Became Supervisor

JAC Performance Evaluation 05/26/2006

- "She needs to learn to respect those with more experience and respond in a positive manner to their guidance."
- "Stephanie should adhere to the 30 minute break time policy which includes "travel" time and bathroom breaks."
- "She does need to use the microtome in a way that does not cause the counter to vibrate. She should slow a little as this "bouncing" of the microtome affects other techs work areas (and nerves)."
- "She should not take offence to any incident report that may come out of a mistake she has made."
- "She has to be careful about "kidding" others when she makes false statements and leads them to believe they are true. She also should communicate her absences from the lab (and minimize, tends to leave lab very often)."
- "Although Steph has never refused a request I have made to her I have been told by several coworkers that she has refused to do something that has been asked of her. Tasks that were necessary, reasonable, and would help coworkers when they were busy doing other histology tasks. She must be more cooperative and work well with others."
- "Steph needs to recognize the goal of any guidance given her by those of more experience is to ensure safety, quality of care, and productivity and try not to be overly sensitive when she receives input."
- "I would like to see more encouragement and positivity since focusing on the negative things I do doesn't really do anything for me. There is such a thing as learning from my mistakes, but I would feel better about them if I was also critiqued on the good things that I do." SH

SH Self Evaluation 06/05/2007

- "To be honest, I don't feel supported, at least by most."
- "All I see myself as when I am at work is a "trouble maker who can't be taken seriously."
- "Just seems like whatever I do there isn't any good in it."
- "I want to say that what people say and how they treat me does not bother me but with some of my work as proof, it shows"

JAC Performance Evaluation 05/10/2007

"She still has a tendency to operate the microtome in a way that could be harmful to her and the machine. She needs to slow down a little for her sake and the sake of others." EQ

sections are too high or time spent cleaning around sections for quality appearance. Steph's use of the microtome should be according to manufacturers guidelines. At times Steph continues to use the microtome manually at a very high rate of speed. Not only can this cause chatter it has been reported as annoying by those close by because the bench vibrates and causes waterbaths to ripple and the QA scope to go in and out of focus. Begin immediately." JAC

- "Demonstrate ability and professional maturity to accept constructive criticism and guidance without taking offense or being disrespectful to those offering advice. Begin immediately." JAC
- "Any guidance is meant to benefit timely diagnosis of patient specimens and shouldn't be internalized as being negative towards Steph." JAC
- "Jude will look into coursework which may help Steph with reducing her frustration level with co-workers and aspects of her position as Sr. Histotechnologist." JAC

JAC Performance Evaluation 07/12/2013

- "Steph refused to stagger the IHC runs, there was a high volume. Jeannette tried to explain it was better to stagger them and it was more LEAN. Steph still wanted them all to come off at the same time. This is "batching" which is not a LEAN process."
- "Steph did not put time off in Kronos, we need this info. Steph is now making the effort to put her time off in Kronos as soon as she is approved for time off and should be checking and approving her time card each pay period."
- "Steph had an encounter with Security on her parking in the garage one stormy morning. In instances such as these, we hope Steph will accept responsibility and calmly discuss with Security officers. Her email to Charlie Zea only aggravated the situation."
- "As a Senior Histotechnologist we hope Steph will more readily accept suggestions to enhance the LEAN process by not batching IHC."

JAC Performance Evaluation 07/01/2014

Solid Review, no issues or areas of improvement provided.

JAC Performance Evaluation 07/12/2015

- "I may not have the best attitude but I put forth great effort into every task that I complete." SH
- "I feel that I could become a bit less stubborn when being asked to do something although I may feel that others are just as capable of doing the job." SH
- "Steph must lower this error rate by taking more time at microtomy, IHC labelling, and singling/doubling." JAC

→ "Notes from three (peer) reviewers can be summarized as Steph being "stubborn" when asked to do something or to do something a certain way and she needs to act more mature and promote team work. I agree." JAC

→ "Informed that Steph "refuses" to do job shadows/tours – this is an expectation of a Sr. Histotechnologist." JAC

→ Steph resisted teaching/training Prati and Gopal on the H&E stain maintenance when asked by Charge Histotechnologist." JAC

→ "When on the IHC bench, I would like Steph to follow the example of the other senior techs: volunteering to cut IF, muscles or assist in cutting surgicals." JAC

→ "Steph was done the prep work in IHC and wanted to write control slides at 7am. The machines were not coming off until 8:45. I asked her to cut the IF instead, she did not want to. She suggested that the techs in special stains do this. Special stains were very busy this particular day. Steph did end up cutting the IF but she continued to give me a hard time. After cutting the IF, Steph continued to give me a hard time for at least 5 minutes....She would not stop until I said yes you are right! Then she said, that's all I wanted." JAC

→ "One area that could use some improvement is Steph tends to leave the lab for periods of time that seem a little too long." JAC

→ "Feedback from recently trained histotechs: Does not recommend Steph for training. "Some people are born trainers, some aren't. Steph's more of an independent worker." JAC

→ "Review and approve timecard in a more consistent manner. Begin immediately." JAC

→ "As an area for growth for Steph as a Sr. Histotechnician we look for her to be more open to suggestions from Charges and Technical Specialist as their only motive when they approach Steph is timely and quality patient care. In her role as Senior Histotechnologist Steph is needed to tech/train others and do job shadows for guests. Her rating of excellent will be sustained if this happens in the coming year (should begin immediately). She must accept direction without hesitation or negative pushback." JAC

JAC Performance Evaluation 07/12/2016

→ "Feedback from other techs working with Steph, regularly include a theme of communication issues and frequent absences from the bench, this is especially common in Special Stains." JAC

→ "Steph to consistently review and approve timecard for 2015-2016, this was not done consistently, but there was some improvement. Put time off requests in Kronos as they are approved.

→ "Give a strong effort to promote a harmonious and cohesive team – no pushback when asked to do tasks or stick to lunch/break schedule by Charge Techs/Tech Specialist. Begin immediately." JAC

→ "Steph has matured a little this past year and has reduced her avoidance of certain tasks, still room for improvement." JAC

→ "Review timecard and approve on a regular basis. Begin now." JAC

→ "There have been a couple of bumps in the road this past year with interactions between the R&D Tech and Steph. Hopefully these misunderstandings have diminished in number and intensity." JAC

JAC Performance Evaluation 05/21/2008

"We look to Steph to reduce her error rate at microtomy and reduce the number of slides which show less than optimal quality due to rapid microtomy. We encourage Steph to begin using the auto microtomes as they are meant to be used, not manually. It is also much more ergonomically sound to use the auto-microtomes in automatic mode." JAC

→ "Steph still occasionally has problems with her communication with other staff but she is working on resolving these issues." JAC

→ "As Steph matures and looks to expand her leadership and teambuilding skills we look to Steph to be open to two way dialogue and to be accepting of constructive criticism." JAC

JAC Performance Evaluation 05/28/2009

"An area for QA improvement is at microtomy as Steph had an unusually high number of mismounts this past year resulting in a verbal warning to reduce her error rate and maintain a zero error rate at microtomy for 30 days. Steph achieved this and hopefully she continues to take the time to check the block in the microtome against the slide held for mounting the section on the waterbath. This is crucial to quality patient care and greatly appreciated." JAC

→ "She must realize that not all staff react well in situations but she can control how she reacts to them. I believe Steph is becoming more understanding and accepting of the diversity of personalities in the lab and working with people in a positive fashion." JAC

"We ask Steph to consistently review specimen block number/letter and slides number/letter at microtomy to reduce her error rate and enhance quality patient care." JAC

SH 6 Month Self Evaluation 02/22/2010

→ "Nothing truly went well for me this past year. The harder I work and the more energy and effort I put into my work, the worse off I am."

→ "I could have met my goals and expectations hadn't I been so stressed and motivated to do so. Regardless of any certification I hold, I feel I'll never make it anywhere in Histology."

JAC Performance Evaluation 05/28/2010

"The only request I have of Steph with regard to her testing is perhaps to slow down a little. Her high speed may contribute to issues with H&E's and slowing down her speed cutting will also help preserve our auto-microtomes longer. I realize she wants to be highly productive (which she is) but we prefer to

have her take a little extra time with H&E's to enhance quality. Steph should adhere to established protocols and follow direction given to her by the Charge and/or R&D histotechnologist without becoming defensive as their guidance is only meant to enhance quality." JAC

"We ask Steph not text while working, as this is inappropriate and unprofessional. Personal communication can be done on break." JAC

→ "Steph needs to show more respect towards one or two who supervise her on the bench and accept their guidance as it is based on experience in delivering quality testing with the best TAT." JAC

JAC Performance Evaluation 05/31/2011

"Because Steph wants to be so productive she tends to overwork the microtome and this could loosen the settings/mechanisms. Steph is trying to use the microtome in auto mode more often which will help. There also is an increase in debris around sections that require extra cleaning at triage which decreases TAT. We ask Steph to slow down a little and save wear and tear on the microtome and the necessity to do additional cleaning at H&Es (especially after sections are dried onto slides)." JAC

"Produce cleaner slides, begin immediately." JAC

Performance Evaluation/Self Review 06/14/2012

"In the past I have been told that I mount my sections too high on respective slides. I have tried correcting the problem by slowing down a bit, although I do have the occasional slip up..." SH

→ "My attitude is definitely not as positive as I would like it. I blame this on many factors that are all work related." SH

"I know that the politics etc. that go on in the Histology lab are so bad that I often do question working here. I feel as if I meet every expectation and yet where does that get me? I work so hard each and everyday but there is always something that I didn't do or could have done better. I don't want or even expect a pat on the back, but it is tough sometimes knowing that the main focus of my work based on the errors that I make." SH

→ "On regular work days when there is less one on one interaction with my coworkers etc. I feel it is extremely hard to communicate in an effective manner." SH

→ "I admit that I am stubborn at times but when I don't agree with things that go on in the lab I feel I should be able to voice my opinion." SH

→ "I give respect to those who give it. When I'm lied about, gossiped about, etc., that makes me lose respect for someone. I work too hard and don't have time to deal with any "drama"" SH

"Improve slide quality (cleaner sections, lower sections). Work to produce slides which require little or no cleanup and mounted at proper height. Steph can decrease her speed (time per block) a little so quality isn't compromised. She would still be very high inline with the lab productivity standard. Her speed at microtomy (time per block) is offset by others having to manually coverup her slides because

Self Assessment Questions

Skill and Expertise Please provide examples and describe how you have applied your skills and expertise over the past year. Think specifically about how these skills and expertise have served others and/or contributed to the whole. Examples may include: • How you apply your skills in your job • Specific content knowledge acquired this past year (what have you learned?) • A new or continued professional certification • Process Improvements • Quality Initiatives

- I feel as if the pace I keep while performing tasks such as embedding, microtomy, special stains etc. should be example enough for those around me. I don't expect others to keep the same pace but they should be pretty close to it so that work is evenly dispersed.

- In the past I have been told that I mount my sections too high on respective slides. I have since tried correcting the problem by slowing down a bit, although I do have the occasional slip-up...

Service to Others Please provide examples and describe how you have met or exceeded the needs of others (patients, patients' family members, internal and/or external customers) over the past year. Examples may include: • Responding to others with an appropriate degree of urgency • Putting the patient first • Demonstrating compassion • Demonstrating a positive attitude • Professional appearance and demeanor • Meeting the expectations set forth by your department • Collaborating with other departments/units to ensure a positive customer experience

- I feel as if, again, I complete my work in a timely fashion. I do take into consideration urgency, that the patient is the priority, and the fact that the earlier I get my work done the faster the T.A.T.. I don't space out my work depending on how much time I have. If it's there I get it done as fast as possible.

- My attitude is definitely not as positive as I would like it. I blame this on many factors that are all work related. I have never brought outside issues to the work place which would be unprofessional. I wish I could display a more positive attitude but it's as if the air in the lab is congested with gossip/rumors. Example- Another tech cut corners making eosin and it didn't turn out correctly, it was too bright. I helped her by remaking it and yet my actions were seen as wrong by the R&D technologist. Instead of just telling the tech she should probably never do what she did again, it was made into this huge confusing fabrication. It's instances like these that make me question why I have my HTL if I'm constantly going to be made out to be someone of inexperience.

- I know that the politics etc.. that go on in the Histology lab are so bad that I often do question working here. I feel as if I meet every expectation and yet where does that get me? I work so hard each and everyday but there is always something that I didn't do or could have done better. I don't want or even expect a pat on the back, but it is tough sometimes knowing that the main focus of my work based on the errors that I make.

Culture of ONE Please provide examples that describe the ways in which you interact with your team members and other Fletcher Allen departments. If possible, emphasize ways that you've personally extended beyond departmental boundaries to work with others. Examples may include: • Listening • Finding ways to bring people together (teamwork, removing barriers, etc.) • Communicating clearly and professionally • Demonstrating a positive attitude • Being reliable • Having a positive influence over other team members and/or the workplace environment • Treating one another with respect, care, and compassion

- I feel that I am extremely reliable for many reasons. Working Saturdays independently has helped me to learn how to be as productive as I can. I make proper judgement calls by staying late so as to lighten up the workload Monday mornings. I do this by cutting some of the tissue I have embedded. The assistants on-call rely on me, as do the residents on-call and this is due to being able to interact/communicate on more of a one-on-one fashion.

- On regular work days when there is less of the one-on-one interaction with my co-workers etc. I feel it is extremely hard to communicate in an effective manner. Personally, I'd rather do something myself than ask another to do it. In the past I have asked other techs for assistance and I get ignored or told they could help out later. This is why I take it upon myself to do things, keeping in mind the LEAN initiative.

- I have my HTL but I am still placing together what it means in it's entirety, on more of a personal level. Since I don't work the afternoon shift I'm told that I can't enforce any of the benefits although I have asked several times to be put on a later shift. It's discouraging that I am never a person of reference.

- I admit that I am stubborn at times but when I don't agree with things that go on in the lab I feel I should be able to voice my opinion. For example, embedding at 5AM: myself, Steve, Mark and Jenn rotate as of now. Eileen no longer assists, but when she did it freed up another tech. The 6AM tech doesn't relieve any of us from embedding? The night tech never embeds either.. As a matter of fact the 6AM tech is only responsible for microtomy. This effects all of us especially since Histology consists of a lot more than just microtomy.

Goals and Development Plans

Individual Goals:

Employee Goals:

Again, I plan on taking my QIHC exam sometime time this year if I am eligible. I have a lot of studying to do since IHC is the one area where I feel the least comfortable.

Leader Comments:

Steph continues on an excellent performance level. Here are some examples from this past year:

8/3/13 Saturday- Received major kudos from Hot Seat Julie Gardner on the liver slides and CD163 which potentially saved a life. Extremely rare diagnosis and Monday might have been too late to get results

11/9/13 Steph worked several hours over on a Saturday to do sp sins on 2 stat kidneys !!

12/22/13 Steph came in on a Sunday when Scott could not due to the ice storm. She took care of the biopsies and nons w/o any hesitation plus re-set the machines for Monday.

6/14/14 Steph received the following GEM for her herculean efforts on Saturday 6/14/14 after a FAHC systems shut-down the Friday before:

Dear Steph:
Thank-you for your outstanding TEAM effort this past Saturday. You did a great job in helping the SP team in checking specimens to go out onto benches, the OR run, and was a resource for their questions.

You then helped Histology in many, many ways- especially doing 2 microwave runs! You worked tirelessly over

16 hours enhancing patient care.

We greatly appreciate your dedication to our team.

Many thanks!

Jude
Thank you Steph!! WOW- definitely going above and beyond!!

Pam Gibson

Steph has EXCELLENT attendance and punctuality. She is extremely reliable and my "go to" tech for any additional hours or tasks.

Steph has more than exceeded her CE requirement at 22.25 units as of 6/16/14. Her studying for her QIHC will add even more credits. Well done !

360 Peer Review Summary:

3.7 out of 5

High score areas

*completes tasks correctly, accurately, follows protocols
*completes assigned tasks within timely manner
*works well without supervision

Areas for growth:

*respectful and shows enthusiasm in daily work
*engaged and willing to work within team environment

Productivity Averages via Scan History Report:

Microt/blk: 1.2' per blk Emb/blk: 0.56' per blk.

These are phenomenal rates of high productivity. Steph excels at productivity without sacrificing slide quality - kudos !!

Input from Charge Techs and Technical Specialist:
Steph is a hard worker and produces high quality slides. Steph's working on Saturdays has been a big help for us on Monday morning. Monday mornings would be a nightmare if we didn't have her on Saturdays. Steph always ask if there are control slides to make out. Steph does an excellent job in the morning setting up immunoperoxidases and special stains. She is not hesitant to ask me questions if she cannot figure it out. Works hard at cutting and embedding - very focused and timely. Often resists suggestions to help others when she is on special stains or IHC.

Individual Development Plans:

Employee Development Plans:

To become successful I believe I need to continue down the road I'm going down as I feel I am finally headed

Print Date: 07/01/2014

Page 4 of 6

UVM MC.00708

Goals and Development Plans

Individual Goals:

Employee Goals:

I am planning to become more of a professional in all aspects of the field. I've got a thirst for knowledge and am willing to learn when presented properly.

Leader Comments:

Embedding/Microtomy Productivity:
Steph has EXCELLENT productivity levels at embedding (0.6) and microtomy (1.0) with the group average being 0.7 for embedding and 1.3 for microtomy.

CU: 0.7%- very good! Lab Standard is 2% or less.

Error Rate: 8 since 10/1/2014 to 5/22/15.
3 were IHC related (wrong Ab label, singling did not catch wrong name, wrong Ab label applied to slide); 3 involved barcoded slides (2 mismounts, 1 where level of one block was put with 2 levels of another block); 1 was shared by 4 others (BM cassette with wrong year/name- Steph cut); 1 was a Level II (slide reached pathologist) that was a mismount Steph did not catch at singling.

Tech group average for errors is 2.2 annually.
Steph must lower this error rate by taking more time to focus at microtomy, IHC labeling, and singling/doubling.

CE: Steph has exceeded her CE requirement as of 5/22/15! Thank-you ~

Peer Review:
3.7 out of 5

Opportunities for Growth:

Openly receives constructive criticism/guidance
Shares knowledge and ideas for improvement with colleagues and at staff meetings
Is approachable and willing to help others & offers real time constructive guidance
"Notes from three reviewers can be summarized as Steph being "stubborn" when asked to do something or do something a certain way and she needs to act more mature and promote teamwork." I agree.

Strong Points:

Can handle multiple tasks and high pressure situations
Works in a productive and quality manner without supervision, shows initiative
Completes tasks correctly, with accuracy (follows protocols)
Note from JAC- Steph is THE most productive tech when it comes to embedding and microtomy.

9/16/14
Steph announced she passed her QIHC exam! Kudos Steph !!

11/24/14
Steph created a slide rack log to enter H&E rack number and time out of oven. Huge improvement over paper towel messy entries - great idea Steph !

1/10/15
Steph stayed late on Saturday to help get a stat kidney bx out with Derek coming in also.
6/13/15
Steph was called in by resident for a Stat PCP on Saturday evening. She very willingly came in and did the testing. Received an "Our Common Values" Recognition !

Issues that had to be addressed:

11/20/14
Wanting to mount controls instead of IF. Discussion about priorities ensued and Steph agreed cutting the IF was something she would do.

1/26/15
Informed Steph "refuses" to do job shadows/tours- this is an expectation of Sr. Histotechnologist.
Update- I asked Steph to do a job shadow tour for two students in February and although she was reticent to do so, she received several compliments on how well she did.

4/21/15
Steph resisted teaching/training Gopal and Prati on the H&E stainer maintenance when asked by Charge Histotechnologist.

Feedback from Charge Techs and Technical Specialist:
Steph's working on Saturdays has been a big help for us on Monday morning and it is appreciated by the techs. Monday mornings would be incredibly difficult if we didn't have Steph working on Saturdays. This works out

Goals and Development Plans

well as Steph enjoys working by herself. As a senior histotechnologist, I would like to see Steph share in tours as well as assisting more in training. When on the IHC bench, I would like Steph to follow the example of the other senior techs: volunteering to cut IF, muscles or assist in cutting surgicals. There is often sufficient downtime on IHC bench to allow for this type of work. ** See below

I would like to see Steph start using all three machines - this has been proven to be LEAN and all other techs have adapted this routine. Pathologists prefer to get slides by 10:10:30 so they can look at them before their noon meeting, this allows them to be ready if they need to bring them to consensus. When we batch slides onto one or two machines, this is often not possible. See below **

**11/5/14, Steph was done the prep work in IHC and wanted to write control slides at 7am. Machines were not coming off until 8:45. I asked her to cut the IF instead, she did not want to. She suggested that the techs on SS do this. SS bench was extremely busy this particular day. Steph did end up cutting the IF but she continued to give me a hard time

After cutting the IF Steph continued to give me a hard time for at least 5 minutes.

- Including that no one else cut them for her the previous week. (IHC was very busy previous week so this was not possible. Afternoon crew did cut some IF's)
- That I was making her feel like she didn't do enough work
- She mentioned that she can't talk to me, and that I don't see the whole picture.
- I reminded her that other Sr. techs finish the AM setup and either go cut or cut frozen. (Mark and Steve specifically).
- She would not stop until I said yes your right! Then she said - that's all I wanted!

**
Date Machine # of slides Time
Machine BB 1 1 hour 23 minutes
9/9/2014 Machine AA 10 2 hour 2 minutes
9/10/2014 Machine C 4 1 1 hour 30 minutes
9/11/2014 Machine CC 18 2 hours 27 minutes

The chart above shows that the smaller the load the more efficient the IHC stainer is and TAT is enhanced. The chart above shows that the smaller the load the more efficient the IHC stainer is and TAT is enhanced. Any run over 12 slides adds quite a bit of time to completion. On the busiest of days, Steph is a huge asset on cutting and embedding. She is fast and focused. While Steph is excellent at routine histology work, she doesn't like tasks outside of routine work. Example: will not cut special protocol research (5/26 Zvara Rsch) or controls, make solutions or send out kits, cover triage, pick up an extra biopsy run, give tours or help out on specials or IHC when assigned to H&E's that day. Being willing to help out the team is an integral part of being successful. Steph is a strong individual player. Feedback from other techs is generally focused around this characteristic.

**12/16: SH on SS wouldn't train Charlie on bookwork or do a muscle. JMM helped train him on BW, I froze muscle. Asked SH to wear goggles in back room, she threw them on counter. Stephanie does very well at embedding and microtomy, she definitely keeps things moving along. Steph is a definite asset to the histo team, she gels along very well with everyone. One area that could use some improvement is Steph tends to leave the lab for periods of time that seem a little too long.

Feedback from recently trained Histologists:
Steph was willing to share her tricks/methods that work for her." Steph did have patience and approachability. Fell comfortable asking questions and she did provide real time constructive feedback. Does not recommend Steph for training. "Some people are born trainers, some aren't, Steph's more of an independent worker."

Individual Development Plans:

Employee Development Plans:

need help from fellow co-workers to try to consider myself as more of the "team" rather than as an individual. Requires effort on both sides.

Leader Comments:

Goals for 2015-2016

Meet CE requirement by 7/31/16
Would like to see Steph, as a Sr. Histotechnologist, do a presentation in the coming year. Do this by May 1, 2016

Review and approve timecard in a more consistent manner. Begin immediately. Jude to monitor.
Strong effort to promote a harmonious and cohesive team - no pushback when asked to do tasks or stick to lunch/break schedule by Charge Techs/Technical Specialist. Begin immediately. Jude to monitor and solicit feedback,

Input from Charge Techs and Technical Specialist:

Steph does a great job on routine histology. Her work on weekends is very much appreciated. Steph is very willing to do any task I ask of her.

Her productivity at embedding and microtomy is outstanding. Steph is a great asset to the histo team. Steph does a great job on the weekends. The embedding, cutting and staining she does is extremely helpful on Monday. Mondays would be a nightmare without all the work that is done on Saturday. Steph has been helping Sarah studying for her exam.

Having a list of things to do in IHC has helped Steph work independently which what appears she looks to do.

6/19& 6/20 Steph did a great job getting the IHC and special stains completed for a red hot. Excellent job coming in on day off to embed a processor that was complete. Excellent!

Steph's embedding and cutting times are excellent. An IHC list was created to aid Steph and other techs in completing all tasks while on this bench. This has proven a helpful aide for Steph. Steph puts in a lot of overtime and is always willing to come in on weekends.

Feedback from other techs working with Steph, regularly include a theme of communication issues and frequent absences from the bench, this is especially common in Special Stains.

Individual Development Plans:

Employee Development Plans:

feel as if my manager definitely sees my potential and shows that she is extremely grateful for it. With this being said, I also feel that co-workers see this as me purposely trying to win "brownie points" from my manager. I'm known as the teachers pet which isn't a big deal but sometimes it does weigh heavy on me. I'm only doing my job, and trying to do it well.

Leader Comments:

Goal completion:

Steph presented info from her attendance at the NSH Symposium and the Region I meeting.

Print Date: 11/08/2019

Page 4 of 6

UVM MC.00721



PERFORMANCE EVALUATION

Employee Name: Stephanie E Hammond

Employee ID Number: 0000014392

Job Title: Histotechnologist

Job Code: C225

Department Name: M-Lab-Histology

Department ID: 1213

Employee Rcd #: 0

Reviewer Name: Judith Ann Carpenter

Evaluation Type: Annual

Evaluation Year: FY10

OVERALL PERFORMANCE RATING

EXCELLENT

Summary of Employee's overall performance since last review:

Steph is an excellent Histotechnologist and is ready to become a Sr. Histotechnologist once she attains her HTL certification. She has the knowledge and troubleshooting skills necessary to be a Sr. HTL and a resource to other techs. Steph has been an immeasurable help this past year with the extra hours she put in, excellent attendance and punctuality, and her help in training the new Histotechnologists. We greatly appreciate Steph's extra effort above and beyond and feel she is an EXCELLENT asset to our lab! Many thanks Steph!! JAC

Steph is an extremely valuable resource in Histology. Technically she produces excellent quality work. During our periods of short staffing, which have included most of the current review period, Steph has really been a workhorse. She has put in many extra hours completing work that would not have been done otherwise. I want her to know that I greatly appreciate this. Tim St. John

This evaluation was reviewed with the employee on //

NOTICE TO EMPLOYEES

You may request a Performance Conference Review to investigate and resolve any disagreements that might arise over your performance rating. Please complete a Performance Review Conference Request Form available from your Human Resource Specialist. Submit the request to Human Resources no later than ten (10) calendar days after the performance review is received.

Print Date: 06/04/2010

UVM MC.00679



In alliance with
The University of Vermont

PERFORMANCE EVALUATION

Employee Name: Stephanie E Hammond
Job Title: Histotechnologist
Department Name: M-Lab-Histology
Employee Rec #: 0

Employee ID Number: 0000014392
Job Code: C225
Department ID: 1213

Reviewer Name: Judith Ann Carpenter
Evaluation Year: FY11
Evaluation Type: Annual

OVERALL PERFORMANCE RATING EXCELLENT

Summary of Employee's overall performance since last review:

Steph has become an invaluable member of the Histo/SP team. She has developed excellent skills and is very reliable in her punctuality and attendance. In her new role as Sr. Histotechnologist we will look to Steph to help train new staff and be a resource for current and new staff. Many thanks Steph for all your hard work and extra hours this past year promoting quality patient care!

Jude
Steph is an extremely important member of our department. Day in and day out she is here ready to contribute. I appreciate her initiative to shift her scheduled hours to include Saturdays. It seems that this move was a win for Steph and the department. Thank you for all of your efforts during the past 12 months!
Tim

Employee's Comments:

What went well this year:
Passed HTL and became Sr. Histotechnologist
Schedule change, I now work Saturdays with Mondays off as part of my regular work week
Less distractions with coworkers. I haven't let what others say or think about me get in the way of my work.
When this did happen I brought it to the attention of my supervisor.
What could have gone better:
Would like to have more freedom
I dislike feeling as if something isn't going to get done unless I do it. I am frustrated with the low productivity of other staff.

This evaluation was reviewed with the employee on //

NOTICE TO EMPLOYEES

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Print Date: 05/31/2011

UVM MC.00688



PERFORMANCE REVIEW

Employee Name: Stephanie Hammond

Employee ID Number: 0000014392

Job Title: Histotechnologist Sr

Job Code: C226

Department Name: M-Lab-Histology

Department ID: 1213

Employee Rcd #: 0

Reviewer Name: Judith Ann Carpenter

Evaluation Type: Annual

Evaluation Year: FY12

OVERALL PERFORMANCE RATING

EXCELLENT

Summary of Employee's overall performance since last review:

Steph is one of the most highly productive members of our team and works the most independently of the day shift Histologists. We greatly appreciate her strong contribution on all fronts. As a young Sr. Histotechnologist maturing into this new role we hope Steph can come to accept the limitations of others who inherently cannot work as strongly as she. She is the high bar of productivity that others cannot seem to be motivated to reach. We must also look to Steph to maybe reduce her micrometry speed as slides are of a higher quality. We definitely want high productivity but quality is of more importance.

I hear loud and clear Steph's frustrations and will respond accordingly. Steph must also remember any guidance/suggestions are not directed towards her personally but are to support the goal of quality and timely patient care.

How people are rotated (through various benches (embedding for example) have the goal of improving others productivity and allow the Charge Technologist the time to devote to her duties.

We cannot thank Steph enough for her absolutely stellar attendance and punctuality. NEVER late and 0.0% unscheduled absence!

Major kudos and our many thanks to you Steph !!

Jude

I appreciate Steph's efforts to provide feedback through her self-assessment. She really is a very valuable member of our team. Thank-you for all your contributions during the past year.

Tim

Leader has met with the employee to discuss performance and has confirmed that the employee has reviewed their current job description on 06/13/2012.

NOTICE TO EMPLOYEES

You may request a Performance Conference Review to investigate and resolve any disagreements that might arise over your performance rating. Please complete a Performance Review Conference Request Form available from your Human Resource Specialist. Submit the request to Human Resources no later than ten (10) calendar days after the performance review is received.

Print Date: 06/14/2012

Page 5 of 5

UVM MC.00693



PERFORMANCE REVIEW

Employee Name: Stephanie Hammond

Employee ID Number: 0000014392

Job Title: Histotechnologist Sr

Job Code: C226

Department Name: M-Lab-Histology

Department ID: 1213

Employee Rcd #: 0

Reviewer Name: Judith Ann Carpenter

Evaluation Year: FY13(10/01/12- 09/30/13)

Evaluation Type: Annual

OVERALL PERFORMANCE RATING

EXCELLENT

Summary of Employee's overall performance since last review:

Steph is a very highly valued member of our team. She is excellent in her technical expertise and ability to multi-task. As a Sr. Histotechnologist she is a role model for more junior Histologists. She is highly productive at microtomy which others see and hopefully try to imitate without sacrificing quality. She has done extremely well in adjusting to the many changes of barcoding and specimen tracking. She has done so without complaint and this reflects well on her professional behavior. As a Sr. Histotechnologist we hope Steph will more readily accept suggestions to enhance the LEAN process by not batching IHC.

Special recognition goes to Steph for being nominated for the Medical Technologist of the Year award by residents. Steph has been extremely helpful to them after hours and weekends and they greatly appreciate her support!

Steph has contributed a great deal of hard work and effort this past year during many times of short staffing.

This is greatly appreciated!

Thank-you Steph!

Jude

I appreciate how difficult the past year has been in histology, and how open to change Steph has been. Not only did we introduce 2D barcoding and real time slide labeling, but also specimen tracking. It has been a very challenging transition. Thank you for maintaining an open mind, for providing helpful suggestions, and for being supportive of your co-workers during this time. I think Steph has had her best year since I have been her manager. This is appropriately reflected in her "excellent" employee rating. Thank you for all of your extra efforts you have made during the review period!

Tim

Leader has met with the employee to discuss performance and has confirmed that the employee has reviewed their current job description on //

NOTICE TO EMPLOYEES

You may request a Performance Conference Review to investigate and resolve any disagreements that might arise over your performance rating. Please complete a Performance Review Conference Request Form available from your Human Resource Specialist. Submit the request to Human Resources no later than ten (10) calendar days after the performance review is received.

Print Date: 07/23/2013

Page 6 of 6

UVM MC.00704

PERFORMANCE REVIEW

Employee Name: Stephanie Hammond

Employee ID Number: 0000014392

Job Title: Histotechnologist Sr

Job Code: C226

Department Name: M-Lab-Histology

Department ID: 1213

Employee Rcd #: 0

Reviewer Name: Judith Ann Carpenter

Evaluation Year: FY15(10/01/14- 09/30/15)

Evaluation Type: Annual

OVERALL PERFORMANCE RATING

EXCELLENT

Summary of Employee's overall performance since last review:

Steph is a highly valued and extremely productive Histotechnologist. She is one of our most treasured assets. Major kudos on passing your QIHC in September! Stephanie Hammond, BS, HTL, QIHC (ASCP).... you've done very well Steph !!

We benefit greatly with Steph working Saturdays as it takes a huge amount of workload off the Monday morning rush. When Steph is working Saturdays I have confidence patient specimens are in caring experienced hands. The lab never looks neater and more organized than when I arrive first thing Monday after Steph has worked the weekend !

As an area for growth for Steph as a Sr. Histotechnologist we look for her to be more open to suggestions from Charges and Technical Specialist as their only motive when they approach Steph is timely and quality patient care. In her role as Senior Histotechnologist Steph is needed to teach/train others and do job shadows for guests. Her rating of excellent will be sustained if this happens in the coming year (should begin immediately). Jude will monitor Steph's interactions with Charge Techs and Technical Specialist and her response to their requests of her. She must begin to accept direction without hesitation or negative pushback. This will help us meet our goals of timely patient care, strong & cohesive teamwork, and a positive to visitors/job shadows.

Thank-you Steph for the outstanding amount of work you did this past year !!
Jude

I appreciate the thoughtful input Steph contributed to her self-evaluation. It reads very much like other areas of the overall evaluation, in that everyone is on the same page regarding strengths and areas for growth. I can really relate to Steph's comments regarding youth sports since I have coached innumerable teams over the years. I think she nails it on the head when she states that talent and contributions to a youth team are not equal and coaches know this. The coach must still expect that each player will answer the call when asked to run a play that will benefit the whole team. The workplace is really not very different. Our team is much stronger with Steph contributing her skills to any area of need.

I want to congratulate Steph for attaining her QIHC certification, all of that studying paid off! I also want to thank Steph for all of her hard work of weekends and week days. Our residents appreciate her expertise and have made this known on many occasions.
Tim

Leader has met with the employee to discuss performance and has confirmed that the employee has reviewed their current job description on 06/17/2015.

NOTICE TO EMPLOYEES

You may request a Performance Conference Review to investigate and resolve any disagreements that might arise over your performance rating. Please complete a Performance Review Conference Request Form available from your Human Resource Specialist. Submit the request to Human Resources no later than ten (10) calendar days

Examples of Performance/Errors that could impact patient care and safety 6/26/ to present:

- 6/26 Did not cut/start frozen stains, did not make slides, or kidney kits.
- 6/28 Shared concerns regarding the quality of Copley slides (GI)
- 6/28 Mislabeled ribbons
- 7/3 Did not pick up 10:30 run (was also on triage)
- 7/3 Failure to write note on tissue that was chunked out
- 7/5 Asked to set up Lab Vision instrument, did not put any antibodies on. Did not respond when asked about this.
- 7/11 Did not cut H.pylori in am. Was asked to cut by Tech Specialist
- 7/11 Confusion surrounding 11am IHC run. Transferred task to another tech during break then back to SH. Confusion around running alk phos/AEC cases
- 7/11 Did not reply to JMM when asked about H.pylori that was not cut. 5:20am
- 7/12 Cervix biopsy missing – bubble in block, entire block of tissue missing.
- 8/1 Missing from embedding when PT module went off. Charge tech found her talking to tech in IHC. SH reported they were discussing "procedures", tech reported they were discussing coverage and afternoon shift not doing work.
- 9/18 High level of floaters on SH slides.
- 9/20 Stained cytology slides with incorrect stain. Sent BW person to ask JMM about this situation, that person went to pathologist instead of SH.
- 9/24 Sunday Tech reports multiple things not being done on Saturday 9/23.
- 9/25 Asked to cut a Red Hot by Charge Tech at 5am, block not scanned until 5:28.
- 10/3 Cut frozen muscle at 20 microns.
- 10/3 Went into IHC looking for muscle block, did not communicate this to them. Reprinted block rendering all current slides invalid.
- 10/16 Not wearing goggles in Special Stains.
- 10/23 Floater found in block embedded by SH
- 10/24 Prostate slide quality issues brought to her attention.
- 11/3 Processor set incorrectly – note and email had been left. Came off Sunday
- 11/6 Breast master sheet indicated "no B19" – no further escalation of this. This block was found under embedding station.
- 11/21 Arrived 15 min late with no communication to Charge Tech regarding why. Did email me later in day to explain.
- 11/24 IHC slide placed in incorrect rack
- 11/29 Doing administrative tasks at 6:20am while two morning people out – delaying pt. care
- 12/8 No note on case embedding on Saturday – 2 pieces in block, block indicated 3.

Communications/Behavior:

- Timecard Approval
- MediaLab sign off
- Performance Evaluation
- 7/12 Sent email to SH asking about 7/11 issue regarding breaks/transferring IHC am, she placed copy of this email into Mayra's drawer.
- 7/11 Did not reply to JMM when asked about H.pylori that was not cut 5:20am
- 7/26 SH confronted me in an un-professional manner that the "verbal warning has got to go".
- 7/27 SH responded in an un-professional manner when told she was not following IHC mounting policy.
- 7/31 Did not report to Staff Meeting, returned at 10:45 and she was changing run down. Had told me earlier in the day there was a low workload, but did not let me or Charge know she would not attend meeting.
- 8/1 Found in IHC Asked to return to Embedding – took 19 minutes: 4:57-5:16
- 8/1 Asked to go from embedding to Special Stain bench at 6:45. At 7:40 Tech reported Special Stains still not running down
- 8/3 Requested not to work with Jeannette.
- 8/7 Unprofessional discussion with JMM about the 7/27 IHC interaction
- 8/8 Unprofessional discussion with JMM for 31 minutes about procedures that were "switched"
 - o Asked about comfort level on IHC in morning without JMM, SH agreed she was fine.
- 8/8 Gave SH eval, said she could not meet with me until she reviewed eval and met with HR. Moved meeting from 8/10 to 8/16.
- 8/9 SH reported back that she was not comfortable working in IHC in the morning without JMM.
- 8/16 Eval meeting. SH had not reviewed eval even though we delayed meeting for this purpose and it was past deadline.
- 9/18 Assigned to SS bench, asked to be over there at 7, did not arrive until 7:20.
- 9/26 SH reported she could not cover Triage due to pain in her foot. Charge Tech asked her to find someone to cover – "Why can't you?"
- 10/2 Did not communicate with SS partner. Went to break at 9:45, went to meeting, back to break at 11:00. Apparent communication... SH "I have 5 minutes, what do you want me to do?" RR said "just go to break".
- 10/3 Went into IHC looking for muscle block, did not communicate this to them. Reprinted block rendering all current slides invalid.
- 10/4 Unprofessional discussion with SH. Hands on hips – "What did I ever do to you? Why are you targeting me?"
- 10/10 9:00 came in my office, snapped off gloves, "We need to talk about something".
- 10/16 Did not respond to JMM when asked about using Q-tips vs wooden sticks.
- 10/16 Gave Steph from 10-11 to do eval appeal and then 11:50-12:30.

UVM MC.00776

- 10/19 unprofessional confrontation with JMM – JMM asked to schedule something, SH kept probing. This was at 3:20am when she was supposed to be doing the tasks agreed to.
- 10/30 SH did not reply when addressed by JMM in Staff Meeting
 - Approached by JMM after meeting and did not immediately reply. Finished doing task, went and spoke to JK, back to triage, slowly to back room. Appeared uninterested and appeared to walk away from JMM when she was still talking to her.
- 11/1 Asked SH to come see me in my office after she was done embedding two blocks... after 14 minutes, went back in. She had continued embedding.
- 11/2 SH asked to go to triage at 9:02, did not report until almost 9:40. (First scan 9:59).

erformance:

- 6/26 Frustration from SS partner, did not cut/start frozen stains, did not make slides, or kidney kits.
- 6/28 Quality of Copley slides (GI)
- 6/28 Mislabeled ribbons
- 7/3 Did not pick up 10:30 run (was also on triage)
 - Pushback to Charge Tech when questioned – why would she be scheduled for both things
- 7/3 Failure to write note on tissue that was chunked out
 - Pushback to Charge Tech when questioned – did not remember that happening
- 7/5 Asked to set up Lab Vision instrument, did not put any antibodies on. Did not respond when asked about this.
- 7/11 Did not cut H.pylori in am. Was asked to cut by Tech Specialist
- 7/11 Confusion surrounding 11am IHC run. Transferred task to another tech during break then back to SH. Confusion around running alk phos/AEC cases
- 7/12 Cervix biopsy missing – bubble in block; entire block of tissue missing.
- 8/1 Missing from embedding when PT module went off. Charge tech found her talking to tech in IHC. SH reported they were discussing "procedures", tech reported they were discussing coverage and afternoon shift not doing work.
- 8/29 SS tech reported difficulty with Steph and communication
- 9/14 Discussed productivity of IHC in am. On this date, first block not cut until 4:25. Time was spent cleaning microtome area.
- 9/18 High level of floaters on SH slides.
- 9/20 Stained cytology slides with incorrect stain. Sent BW person to ask JMM about this situation, that person went to pathologist instead of SH.
- 9/24 Sunday Tech reports multiple things not being done on Saturday 9/23.
- 9/25 Asked to cut a Red Hot by Charge Tech at Sam, block not scanned until 5:28.

UVM-MC.00777

- 9/27 Complaint about SH not reporting to bench. Embedding to Microtomy took 30 minutes. SH left room from 7:02-7:22. Asked to report to Triage 9:39, cleaned for approx. 20 minutes, then went to break. In Triage at 10:30.
- 10/3 Cut frozen muscle at 20 microns. When questioned suggested that someone changed the cryostat setting.
- 10/11 Approved to come in at 3:00 am to do specific list of things. These were not done.
- 10/16 Not wearing googles in Special Stains.
 - When confronted argued that she did not know she was supposed to be wearing them in Special stains. I pointed to the bottle in front of her that said "Wear Safety Goggles".
- 10/23 Floater found in block embedded by SH
- 10/24 Prostate slide quality issues brought to her attention.
- 11/3 Processor set incorrectly – note and email had been left. Came off Sunday
- 11/6 Breast master sheet indicated "no B19" – no further escalation of this. This block was found under embedding station.

Verbal Counseling/Performance Discussions

- 7/12
- 7/13
- 7/26
- 7/27
- 8/1
- 8/16
- 8/20
- 9/18
- 9/27
- 10/2
- 10/4
- 10/10
- 10/18
- 11/1

UVM MC.00778



Norman Watts Apr 17, 2019



...

to me, Margaux ▾

Steph - I will have some time on Monday to prepare your complaint if we have all your documents, the signed engagement letter and advance. I think you have a good case. Look forward to hearing from you.
NW

Norman E. Watts, Esq.

Watts Law Firm PC

Civil Litigation

19 Central Street/PO Box 270

Woodstock VT 05091-0270

802-457-1020



Norman Watts Apr 18, 2019

to me ▾



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OK - we'll watch for the package. Eager to move ahead b/c I believe in you and want to tar those bigots.

Thank you.

...



me Apr 19, 2019

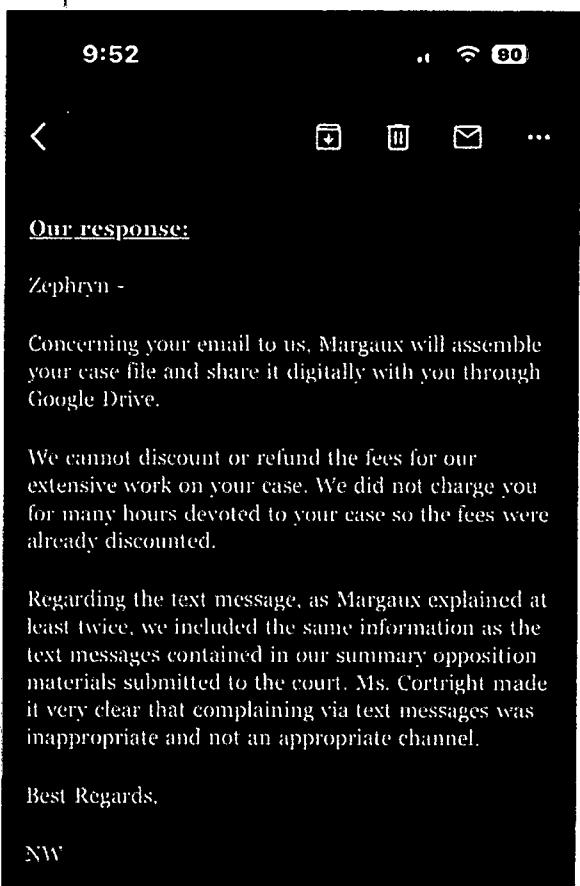
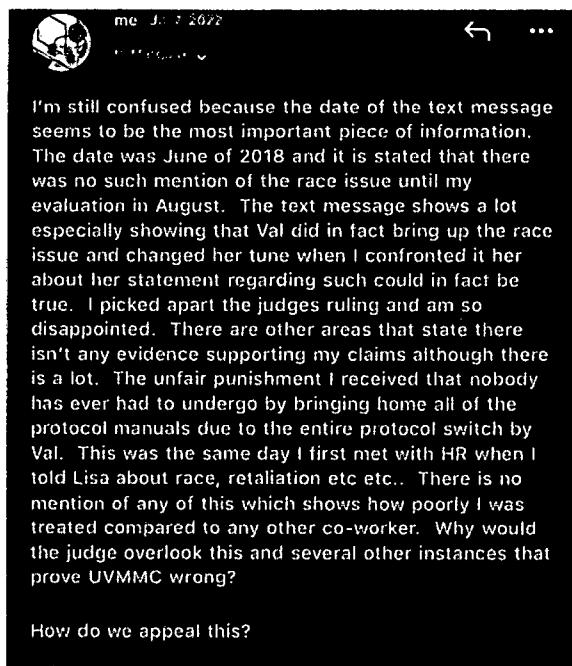
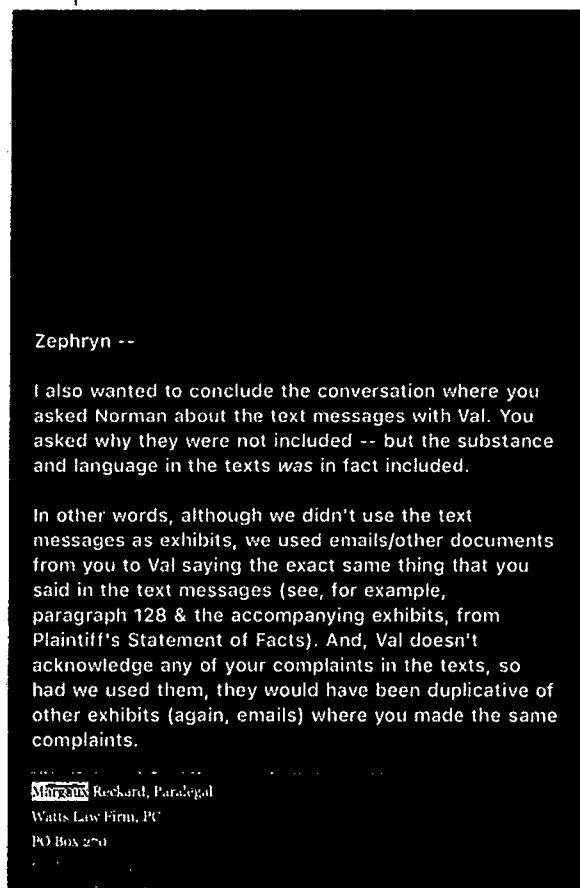
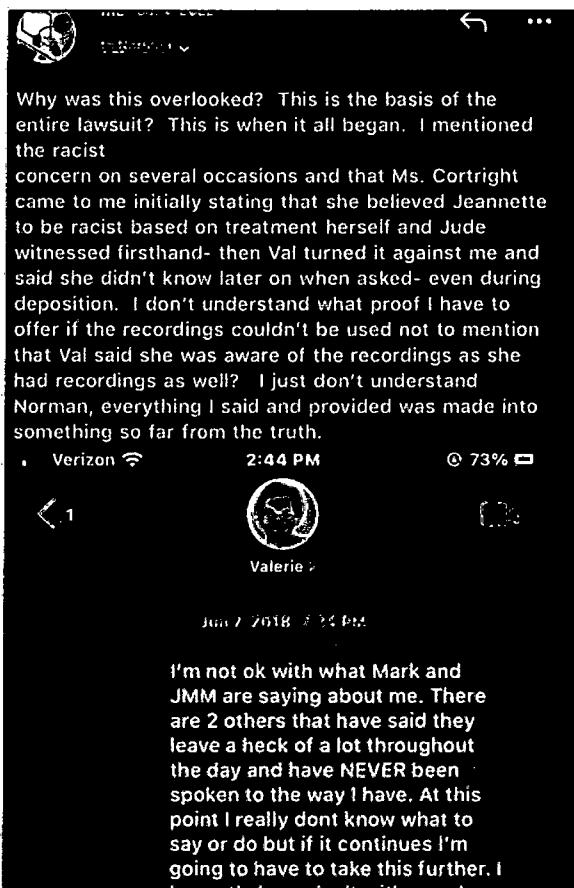
to Norman ▾



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ABSOLUTELY AGREE WITH YOU 100%.

...



STATE OF VERMONT
PROFESSIONAL RESPONSIBILITY PROGRAM

In re: Norman Watts
PRB File Nos. 2019-102 and 2020-011

PETITION OF MISCONDUCT

Pursuant to the finding of probable cause dated February 1, 2021, Specially Assigned Disciplinary Counsel formally charges Norman Watts, Esq. ("Mr. Watts" or "Respondent"), pursuant to A.O. 9, Rule 11(D)(1)(b), with the following violations of the Vermont Rules of Professional Conduct.

NOTICE TO RESPONDENT: This is a formal Petition of Misconduct. Pursuant to A.O. 9, Rule 11(D)(3), you are required to file an Answer within 20 days after service of the petition to the Professional Responsibility Program, 109 State St., Montpelier, VT 05609, with a copy to Special Disciplinary Counsel. Failure to file a timely answer may result in the facts and charges being deemed admitted.

Count I

On October 15, 2018, Norman Watts, a licensed Vermont attorney who represented G.A. in a matter before the Rutland Civil Division, received a motion for judgment on the pleadings for one count of G.A.'s three-count complaint. In violation of Vermont Rules of Professional Conduct 1.2 and 1.4, Norman Watts did not communicate to G.A. the significance of the motion or that he would not respond to the motion on G.A.'s behalf, thereby allowing one count of the G.A.'s complaint to be dismissed without G.A.'s knowledge or consent.