

Writer's direct phone

Writer's e-mail

October 24, 2017

VIA ELECTRONIC SUBMISSION

Investigator
Equal Employment Opportunity Commission

**Re: Daniel L. Scholten v. MetLife,
EEOC Charge No. 433-2017-02048**

Dear Ms. [REDACTED]:

As you know, we represent MetLife Group, Inc. ("MetLife" or "the Company") in connection with the above-referenced Charge of Discrimination filed by Charging Party Daniel L. Scholten. This correspondence serves as MetLife's position statement in response to Mr. Scholten's Charge of Discrimination.¹

¹ This position statement is submitted to assist the EEOC in investigating the above-referenced Charge so that the Charge may be resolved as expeditiously as possible. Accordingly, pursuant to Federal Rule of Evidence 408 and similar state evidentiary rules, none of the statements in this position statement are admissible as evidence. This position statement and attached documents are confidential and, to the extent permissible by law, should be kept confidential from individuals or entities outside the EEOC absent the Company's prior written consent for disclosure. Inclusion of information in this position statement does not constitute a waiver of any objection or privilege the Company may have in response to future discovery or information requests, or to the introduction of evidence in this or any subsequent proceeding; nor does it constitute a waiver of any objection as to timeliness of the Charge or any other legal argument the Company may assert in the future. Furthermore, this position statement, although believed to be true and correct in all respects, does not constitute an affidavit or admission, and is not intended to be used as evidence in any court or other proceeding. The Company retains its right to present new, revised, or additional facts or arguments based upon subsequently acquired information, to present different or additional arguments on its behalf, or to respond to any new issues or evidence that may arise.

SUMMARY

Mr. Scholten, a former Production Management Consultant, alleges the Company terminated his employment in retaliation for his previous EEOC charge (Charge No. 433-2017-00734, hereinafter “First Charge”). MetLife denies it retaliated against Mr. Scholten in any way. From the time the Company learned of Mr. Scholten’s medical condition, through the parties’ cooperative resolution of his First Charge, and until his termination for unprofessional conduct, MetLife continuously worked with Mr. Scholten to identify reasonable accommodations that would allow him to continue in his position.

However, notwithstanding those efforts, Mr. Scholten persisted in a pattern of unprofessional behavior, repeatedly sending inappropriate communications to his co-workers. Although MetLife counseled Mr. Scholten to cease such communications, his behavior continued. After several employees complained to the Company about Mr. Scholten’s conduct, MetLife was compelled to terminate his employment. Mr. Scholten’s pattern of misconduct is a legitimate and non-retaliatory basis for MetLife’s decision. Because Mr. Scholten cannot establish that the Company’s explanation is pretextual, MetLife requests that the Commission dismiss Mr. Scholten’s current Charge in its entirety.

FACTUAL BACKGROUND

I. MetLife’s Business and Commitment to Equal Employment Opportunity and a Harassment-Free Workplace

MetLife is one of the largest global providers of insurance, employee benefits, and asset management. In the United States, MetLife provides a variety of insurance, employee benefits and financial services products.

MetLife is committed to equal employment opportunity. MetLife’s Equal Opportunity and Anti-Harassment Policy prohibits discrimination on the basis of disability and makes clear that qualified employees with disabilities will be provided reasonable accommodations. *See* Exhibit A (MetLife’s Equal Opportunity and Anti-Harassment Policy). The Company’s policy also prohibits retaliation against any individual for bringing a complaint of discrimination or harassment. *Id.* Any violation of MetLife’s Equal Opportunity and Anti-Harassment Policy results in appropriate corrective action, up to and including termination. *Id.*

II. Mr. Scholten’s Employment and Job Duties

Mr. Scholten began working for MetLife at its [REDACTED] facility in June 2015 as a Production Management Consultant. In this position, Mr. Scholten provided technical support for applications developed by the Company for use by its customers. Among other functions, Mr. Scholten identified and resolved technical glitches discovered during the applications’ operations, and communicated with the teams who initially developed the applications for customer use. *See* Exhibit B (Job Description). From the time of his hiring until the spring of 2017, Mr. Scholten’s supervisor was Production Management Director [REDACTED]. Due to a major department-wide

reorganization, Mr. Scholten began reporting to a new supervisor, Production Management Manager [REDACTED], in April 2017.

III. Mr. Scholten's Medical Condition and Accommodations

Throughout 2016, Mr. Scholten demonstrated a pattern of inappropriate conduct at work, primarily characterized by sending his co-workers unprofessional communications, often berating or insulting them whenever Mr. Scholten felt he had been treated unfairly. Furthermore, due to Mr. Scholten's excessive focus on such slights and his ensuing communications, Mr. Scholten repeatedly neglected his day-to-day work and deadlines. Although Ms. [REDACTED] repeatedly counseled Mr. Scholten that his tone, language, and overall handling of these perceived slights were inappropriate, such communications from Mr. Scholten continued.

In November 2016, Mr. Scholten was diagnosed with Autism Spectrum Disorder or "ASD." Concluding that his condition was likely related to the communication problems for which he had been counseled, Mr. Scholten requested accommodations that he believed would allow him to perform the essential functions of his position. Specifically, he asked to be provided with clear expectations from his supervisor and other managers, help prioritizing tasks, written communications, and flexibility to attend medical appointments. MetLife's written approval of Mr. Scholten's requested accommodations also noted that Mr. Scholten was encouraged to keep his written communications succinct and to review them in draft form prior to sending. He was also reminded he was expected to meet his performance expectations. *See Exhibit C (Accommodations dated 12/9/16).*

In late December 2016, after he continued to miss deadlines and also continued to use unprofessional language in his communications, Mr. Scholten submitted additional information from his health care provider and requested that the accommodations be adjusted. MetLife reviewed the new information but concluded that the existing accommodations already encompassed all of the information provided. On January 5, 2017, Mr. Scholten filed his First Charge, alleging that, although the Company had granted him accommodations for his disability, such accommodations were unacceptable.

Soon after he filed his First Charge, Mr. Scholten requested and was granted Family Medical Leave. He returned to work on February 15, 2017 and met with Ms. [REDACTED] and then Senior Employee Relations Consultant [REDACTED] to discuss his accommodations and work performance going forward. Ms. [REDACTED] asked Mr. Scholten if he wanted to modify his accommodations, and he declined to do so. However, Ms. [REDACTED] invited Mr. Scholten to contact her if he wished to revisit his accommodations in the future.

Unfortunately, following his return to work, Mr. Scholten's performance problems persisted. In response to renewed counseling for his behavior, Mr. Scholten requested revised accommodations. MetLife granted the amended accommodations. *See Exhibit D (Accommodations dated 2/27/17).*

On April 24, 2017, MetLife and Mr. Scholten successfully mediated Mr. Scholten's First Charge by agreeing to work together again to modify his accommodations, with focus given to the Department reorganization and Mr. Scholten's move to Mr. ██████'s team. The new accommodations added regular meetings between Mr. Scholten and his new manager, Mr. Scholten's ability to use video in lieu of written communications with co-workers, and the opportunity for Mr. Scholten to work remotely when necessary for medical appointments. *See* Exhibit E (Accommodations dated 5/10/7). However, the latest accommodations continued to make clear that MetLife still expected Mr. Scholten to take steps to ensure his written communications were appropriate and still required him to meet performance and conduct expectations. *Id.*

III. Mr. Scholten's Pattern of Unprofessional Conduct and His Termination

In the meantime, even as the Company was modifying Mr. Scholten's requested accommodations to address his concerns, his unprofessional communications, and the resulting complaints from his co-workers, persisted. For example, on April 26, 2017, Mr. Scholten contacted Ms. ██████, asserting he wanted to file a complaint against Director of Production Management ██████ because Mr. ██████, a senior leader in the Department, had allegedly tried to "hijack" Mr. Scholten's meeting. Mr. Scholten included with his complaint an excerpt from an instant message exchange in which he admittedly told Mr. ██████, "Don't you ever, ever piss on one of my meetings again." Mr. Scholten then also sent a follow-up e-mail to Mr. ██████ further berating him for his alleged conduct.² *See* Exhibit F (E-mails from D. Scholten dated 4/26/17). Mr. ██████ complained to Ms. ██████ as well as to Human Resources.

The next day, Ms. ██████ met with Mr. Scholten to discuss this latest incident and additional concerns that had been voiced by his co-workers. Mr. Scholten's e-mail to Ms. ██████ in response to the counseling only continued his pattern of hostile and unprofessional communications. *See* Exhibit G (E-mail from D. Scholten dated 4/28/17).

On May 17, 2017, Mr. Scholten sent an e-mail to an unknown number of recipients which he titled, "Humiliation is Not A Performance Enhancer (ASD Lesson #1). *See* Exhibit H (E-mail from D. Scholten dated 5/17/17). In his message, Mr. Scholten announced his dissatisfaction with the Company's handling of his medical condition. He then provided examples of how ASD manifests, identifying other individuals with autism, including Adam Lanza, whom Mr. Scholten identified as the person responsible for the massacre of elementary school students at Sandy Hook Elementary School. Although Mr. Scholten declared in his e-mail that he is not like Adam Lanza, he stated that, when he is provoked, he has "a personal arsenal of highly-automated (knee-jerk) defense mechanisms." *Id.* He also described his mind having "been trapped in a whirling neurological firestorm of autistic obsession" due to a recent dispute with a Company director, presumably Mr. ██████. *Id.* The Company later determined that Mr. Scholten sent the message to Mr. ██████ and 62 other MetLife employees.

² The Company investigated Mr. Scholten's complaint, including interviewing other participants on the call, and concluded that, while Mr. Scholten's leadership of the call was disorganized, Mr. ██████'s statements and conduct were reasonable and professional.

Immediately after Mr. Scholten sent the message, employees began contacting Human Resources and Mr. Scholten's supervisors to express their concern over his e-mail. Employees noted that Mr. Scholten's message was not only inappropriate but potentially threatening, with employees stating they now worried about their safety when working at the [REDACTED] facility.

The next day Mr. Scholten sent another message, this time titled "Autistic Alienation and Inclusion Failure (ASD Lesson #2). *See* Exhibit I (E-mail from D. Scholten dated 5/18/17). In this e-mail, Mr. Scholten emphasized his feelings of disconnection and alienation, saying he has "little to no idea what's going on, at least not in any useful detail, and because I don't know what's going on, I don't know how to contribute or to make myself useful." *Id.* Although Mr. Scholten acknowledged that the Company was trying to help him find reasonable accommodation, he stated that he felt disconnected from his assigned job, and more connected to "this new role I've created and assigned to myself -- Autism Awareness Coach..." *Id.* Following the May 18th e-mail, the Company received further complaints from employees that Mr. Scholten's e-mails made them feel uncomfortable or unsafe, with at least one employee forwarding the message directly to the Company's Corporate Security office.

Later that day, Mr. [REDACTED] met with Mr. Scholten and informed him that, not only were his e-mails inappropriate, they had upset some of the co-workers who received them. Mr. [REDACTED] instructed Mr. Scholten to stop sending such messages and also instructed him to work from home pending another internal discussion about his conduct.

In spite of Mr. [REDACTED] instructions, Mr. Scholten sent yet another e-mail on May 19, 2017, this time titled "Inappropriate or Symptomatic (ASD Lesson #3)." *See* Exhibit J (E-mail from D. Scholten dated 5/19/17). This message was purportedly addressed to Mr. Scholten's health care provider, but he continued to blind-copy dozens of co-workers. Mr. Scholten complained about the counseling he had received regarding his prior two e-mails, and although he admitted that he had been asked to stop sending such communications, he claimed his messages "were absolutely required" because of what he characterized as "the company's obvious (and seemingly committed) ignorance with respect to ASD." *Id.* A fourth mass e-mail titled "An Autistic Person's Guide to Personal Ethics" followed later the same day. *See* Exhibit K (Second E-mail from D. Scholten dated 5/19/17).

Due to their tone and content, Mr. Scholten's communications violated MetLife's policies, including but not limited to the Company's Code of Conduct and its E-mail and Other Communication policy. Among other things, these policies require employees to treat each other with respect and expressly prohibit e-mails that are harassing, threatening, and intimidating. *See* Exhibit L (Policy on Using E-mail and Other Electronic Communications and Excerpts from Code of Conduct). Moreover, Mr. Scholten admittedly defied Mr. [REDACTED] directive to stop sending such messages. In light of these actions, as well as the now continuous complaints from Mr. Scholten's co-workers, his organization management, in consultation with Human Resources, concluded Mr. Scholten's employment could no longer continue. On May 19, 2017, Mr. [REDACTED] and Senior Employee Relations Consultant [REDACTED] contacted Mr. Scholten by telephone and advised him that his employment had been terminated.

ARGUMENT

Mr. Scholten cannot demonstrate he was subjected to retaliation, and his Charge should be dismissed. As an initial matter, Mr. Scholten cannot establish a *prima facie* case of retaliation because he cannot reasonably demonstrate that the adverse action was caused by his protected activity. Mr. Scholten's pattern of inappropriate conduct, and the subsequent counseling from his supervisor, started before he filed his First Charge. For this reason alone, Mr. Scholten cannot show the Company's ultimate decision was caused by his filing a charge rather than his continuous unprofessional conduct, and his Charge should be dismissed.

Moreover, even if he could state a *prima facie* case, Mr. Scholten's refusal to stop sending these non-work-related, inappropriate, and unsettling communications serves as a legitimate, non-retaliatory reason for the Company's decision to terminate his employment. That Mr. Scholten maintains his communications are caused by his ASD do not change that result.³ The law in the Fourth Circuit is well-settled that "where there is misconduct or egregious behavior, even if caused by a qualifying disability or handicap, the ADA does not bar termination or other proceedings." *Threatt v. County of Mecklenburg*, No. 3-97 CV42-P, 1998 U.S. Dist. LEXIS 24459 (W.D.N.C. April 4, 1998). (1998) (holding employer permitted to terminate employee after employee was counseled about misconduct but continued behavior).

Mr. Scholten cannot reasonably show that the Company's explanation is merely pretext. In other words, he cannot offer any facts suggesting that, rather than trying to respond to his pattern of unprofessional conduct (and its impact on numerous other employees), MetLife instead wanted to punish Mr. Scholten for exercising his legal rights. To the contrary, MetLife's continuous efforts to comply with the ADA and help Mr. Scholten succeed with the Company cannot reasonably be disputed. Because he cannot show MetLife's decision was pretext for retaliation, Mr. Scholten's Charge should be dismissed.

³ Although Mr. Scholten alleges retaliation and not disability discrimination in his present Charge, had he raised a disability discrimination claim, the result would be the same. MetLife is not obligated under the ADA to tolerate unprofessional conduct from Mr. Scholten, even if the conduct is related to his disability. Indeed, if Mr. Scholten is unable to perform his job without engaging in abusive conduct towards his co-workers, he is unable to perform the essential functions of his job. *See Higgins v. Md. Dept. of Agric.*, No. L-11-0081, 2012 U.S. Dist. LEXIS 25303 at *20-21 (D. Md. Feb. 28, 2012) (finding employee's inability to perform job functions "in a respectful and appropriate way," justified his termination, even if his behavior was related to his disability). Notably, neither Mr. Scholten nor his medical provider ever identified any additional accommodation that MetLife could have provided that would have enabled Mr. Scholten to conform his own behavior to an acceptable standard of conduct. To the contrary, Mr. Scholten's own written communications expressly state that he cannot conform his behavior to acceptable levels. However, the law is clear: "employers are not required to tolerate abusive behavior by a disabled individual, even if the behavior is related to the disability." *See id.* at *21.

CONCLUSION

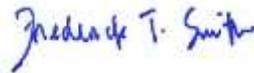
As demonstrated above, Mr. Scholten's retaliation claim is wholly without merit. Accordingly, MetLife respectfully requests that the Commission dismiss his Charge of Discrimination in its entirety.

Please note that, in this position statement, MetLife has sought to comprehensively address the allegations contained in the Charge. However, to the extent MetLife did not specifically respond to any particular allegation in the Charge, MetLife hereby expressly denies such allegations.

Please contact me if you have any questions, require additional information, or if Mr. Scholten raises any new allegations or presents additional evidence to which MetLife has not had the opportunity to respond.

Very truly yours,

SEYFARTH SHAW LLP



Frederick T. Smith

EBB

Enclosures