[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 18-11006
Non-Argument Calendar

D.C. Docket No. 3:15-cv-01221-HLA-JBT

MICHAEL DUCKWORTH,

Plaintiff-Appellant,

versus

PILGRIM'S PRIDE CORPORATION,

Defendant-Appellee.

Appeal from the United States District Court
for the Middle District of Florida

(April 9, 2019)

Before WILLIAM PRYOR, JORDAN, and GRANT, Circuit Judges.

PER CURIAM:

Michael Duckworth appeals from the district court's grant of summary judgment in favor of defendant Pilgrim's Pride Corporation, his former employer, on his claim for disability discrimination under the Florida Civil Rights Act ("FCRA"), Fla. Stat. § 760.10. Mr. Duckworth argues that the district court erred because PPC's proffered reason for his termination—repeated unexcused absences which were violative of company policy and proved disruptive to production—was pretext for discrimination.

For the following reasons, we affirm.

I

The district court found the following facts to be undisputed.

Mr. Duckworth began working as a debone supervisor for PPC in Live Oak, Florida, on April 1, 2013. He had previously worked in the same position at a PPC plant in Louisiana for four years. In this position, Mr. Duckworth worked from 5:30 a.m. until 3:00 p.m. Monday through Friday, supervising two production lines totaling roughly 70 employees. His responsibilities included being on the production floor to make the necessary preparations for the production line to start, performing daily safety checks, and ensuring that the machines were functioning properly.

At the Live Oak plant, Mr. Duckworth's immediate supervisor was Johnny Gay. Mr. Duckworth would contact Mr. Gay or Michael Massey, Gay's supervisor, on days when he planned to be absent. Documents related to medical leave were sent to Princess Williams, PPC's HR benefits coordinator. Ms. Williams reported to Abel Acen, PPC's human resources manager. Sheryl Robinson, Mr. Duckworth's fiancé and a PPC employee, would occasionally submit Mr. Duckworth's medical absence documents to Ms. Williams.

In late October of 2013, Mr. Duckworth was admitted to and then discharged from two separate hospitals for issues relating to chest pains and numbness on his left side. PPC approved Mr. Duckworth to take a medical leave of absence from October 22 through November 6, 2013. When he returned on November 6, Mr. Duckworth reported symptoms of a stroke and was taken to the emergency room and later admitted to Shands Hospital at the University of Florida in Gainesville.

PPC approved Mr. Duckworth for a medical leave of absence from November 7 through November 18, 2013. Mr. Duckworth was admitted to the hospital on November 14 and scheduled for surgery for "cervical stenosis"—a condition involving the compression of spinal discs in the neck.

Mr. Duckworth underwent surgery on November 16 at the Tallahassee Neurological Clinic under the care of Dr. Christopher Rumana. The surgery was

successful and Mr. Duckworth was discharged the next day with instructions that he was to do only light activity and to complete a routine postoperative follow-up in two weeks. Dr. Adolfo Dulay, Mr. Duckworth's primary care doctor, wrote him a note excusing him from work from November 18 to December 9, 2013.

At the follow-up on December 5, Dr. Rumana gave Mr. Duckworth a note stating that he would be "able to return to light work duty" on December 23, 2013. This meant that he could participate in activities which did not require him to lift more than 20 pounds or involve significant physical activity or pushing and pulling. Mr. Duckworth testified that he did not have any physical limitations resulting from the surgery, and he returned to work as scheduled on December 23. Mr. Duckworth, however, did not go to work from January 6 to January 10 or 13 and did not provide notice or documentation for those absences.

On January 6, 2014, Mr. Duckworth emailed another employee, who was not his direct supervisor, two hours after Mr. Duckworth's shift had started. Mr. Duckworth told the employee that he would not be at work. The next day he emailed two employees, neither of whom was his direct supervisor, over six hours after his shift had ended to say that he would not be back until Monday, January 13. Mr. Duckworth re-sent that same email to the same recipients the following morning at approximately 2:00 a.m. This pattern continued for the next several days, with Mr. Duckworth calling after his shift had begun to inform someone at

PPC that he would not be working that day. These absences caused several of Mr. Duckworth's supervisors to complain. This, in turn, prompted Mr. Acen to meet with Ms. Williams to review the absences. Mr. Acen and Ms. Williams determined that there was no documentation that properly justified the absences.

Mr. Duckworth returned to work on January 14, 2014, but he left the next day before his shift had ended and then failed to show up the next day. On January 17, 2014, Mr. Duckworth sent an email to Mr. Gay and Ms. Williams, approximately one hour after his shift had started, stating that he would not be at work and that Sheryl Robinson would submit his doctor's note. This note, from Dr. Dulay, stated that Mr. Duckworth was to be "excuse[d] due to illness" and indicated that he would return to work on January 20, 2014.

On January 20, Mr. Duckworth emailed Mr. Gay and Ms. Williams to let them know that he would be out until January 22. He again emailed them, together with Christopher Kennedy, another production supervisor, on January 21 saying that he would be in the next day. On January 21, PPC received another doctor's note from Dr. Dulay, which explained that Mr. Duckworth would be able to return to "full duty" on January 22.

When Mr. Duckworth returned on January 22, he was instructed to meet with Mr. Acen in HR. Mr. Acen told Mr. Duckworth that his employment would be reviewed and then sent him home. The next day, Mr. Acen sent Mr. Duckworth

a letter notifying him that PPC had terminated his employment effective immediately for "excessive absenteeism."

In November of 2014, Mr. Duckworth filed a charge of discrimination with the Florida Commission on Human Relations, alleging—as relevant here—disability discrimination.

II

We review a district court's grant of summary judgment de novo, viewing the facts and drawing all reasonable inferences in favor of the nonmoving party. *See Young v. City of Palm Bay*, 358 F.3d 859, 860 (11th Cir. 2004). Summary judgment is proper only where no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. *See id.*

The FCRA makes it unlawful for employers to terminate employees because of their disabilities. *See* Fla. Stat. § 760.10(1)(a). Disability discrimination claims under the FCRA are analyzed under the same framework used for the federal Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12101. *See Frazier-White v. Gee*, 818 F.3d 1249, 1255 (11th Cir. 2016). An employer who fires a qualified employee with a disability violates the ADA if the employer would not have fired the employee but for his disability. *See McNely v. Ocala Star-Banner Corp.*, 99 F.3d 1068, 1077 (11th Cir. 1996) ("The ADA imposes a 'but-for' liability standard.").

We analyze disparate-treatment claims based on circumstantial evidence under the ADA using the burden shifting framework set forth in *McDonnell Douglas v. Green*, 411 U.S. 792, 802–03 (1973). *See Center v. Sec'y, Dep't of Homeland Sec., Customs & Border Prot. Agency*, 895 F.3d 1295, 1303 (11th Cir. 2018). Under that framework, to establish a prima facie case of discrimination a plaintiff must show that (1) he is disabled, (2) he is a qualified individual, and (3) he was subjected to unlawful discrimination because of his disability. *See id.* If a plaintiff establishes a prima facie case of discrimination, the employer bears an "exceedingly light" burden of articulating a legitimate, non-discriminatory reason for the employee's termination. *See Perryman v. Johnson Prods. Co.*, 698 F.2d 1138, 1142 (11th Cir. 1983).

The employer "need not persuade the court that it was actually motivated by the proffered reasons." *Wilson v. B/E Aerospace, Inc.*, 376 F.3d 1079, 1087 (11th Cir. 2004) (quoting *Tex. Dep't of Cmty. Affairs v. Burdine*, 450 U.S. 248, 254-55 (1981)). The reason must be "one that might motivate a reasonable employer." *See Chapman v. AI Transp.*, 229 F.3d 1012, 1030–31 (11th Cir. 2000). The employer, therefore, only needs to "produce admissible evidence which would allow the trier of fact rationally to conclude that the employment decision had not been motivated by discriminatory animus." *Tex. Dep't of Cmty. Affairs*, 450 U.S. at 257.

If the employer articulates a legitimate, non-discriminatory reason, the burden shifts back to the plaintiff to show (or in the summary judgment context, present sufficient evidence to create an issue of fact) that the employer's reason is discriminatory or pretextual. *See Perryman*, 698 F.2d at 1142. To establish pretext, the plaintiff must show that (1) the reason offered was false and (2) that discrimination was the real reason for the employer's actions. *See Isenbergh v. Knight-Ridder Newspaper Sales, Inc.*, 97 F.3d 436, 440–41 (11th Cir. 1996). *See also St. Mary's Honor Ctr. v. Hicks*, 509 U.S. 502, 515 (1993). A plaintiff must meet the employer's given "reason head on and rebut it, and . . . cannot succeed by simply quarreling with the wisdom of that reason." *Chapman*, 229 F.3d at 1030. We have "repeatedly and emphatically held" that employers may fire an employee for "a good reason, a bad reason, a reason based on erroneous facts, or for no reason at all, as long as its action is not for a discriminatory reason." *Flowers v. Troup Cty. Sch. Dist.*, 803 F.3d 1327, 1338 (11th Cir. 2015). "The inquiry into pretext centers upon the employer's beliefs and not the employee's own perceptions of his performance." *Holifield v. Reno*, 115 F.3d 1555, 1565 (11th Cir. 1997).

We assume without deciding, as did the district court, that Mr. Duckworth established a prima facie case of disability discrimination. *See Scott v. Suncoast Beverage Sales, Ltd.*, 295 F.3d 1223, 1228 (11th Cir. 2002) (assuming for the

purposes of pretext analysis that plaintiff had made out a prima facie case of discrimination).

PPC's proffered reason for terminating Mr. Duckworth was his excessive, unexcused absenteeism (for six or seven days) in January of 2014. Supervisors at PPC were expected to call in absences at least two hours before the start of their shifts. Supervisors who failed to do so were at risk of being terminated immediately without any form of progressive discipline. Indeed, the PPC employee handbook is replete with information about what employees are asked to do in case they are absent. Mr. Duckworth went through the standard employee policy trainings and signed an acknowledgment form indicating that he received and understood the policies.

The district court observed that Mr. Duckworth's absences placed a great deal of strain on PPC. Supervisors complained, and had to quickly alter productions lines and reorder what was already a chaotic process. On this record, we agree that PPC adequately articulated a legitimate, non-discriminatory reason for firing Mr. Duckworth. *See, e.g.*, *Crawford v. W. Elec. Co., Inc.*, 745 F.2d 1373, 1382 (11th Cir. 1984) (noting that absence issues and spotty performance reviews from supervisors were legitimate, non-discriminatory reasons for terminations and sufficient to rebut employee's prima facie case of discrimination).

To rebut this reason, Mr. Duckworth must present sufficient evidence to create a genuine issue of material fact about the veracity of PPC's proffered non-discriminatory reason. *See Schoenfeld v. Babbitt*, 168 F.3d 1257, 1269 (11th Cir. 1999). Mr. Duckworth must submit enough evidence to permit a jury to find that the reason PPC provided is false, and that the real reason for his firing was discrimination. *See St. Mary's Honor Ctr.*, 509 U.S. at 515. He could do this by showing that the proffered reason had "weaknesses, implausibilities, inconsistencies, incoherencies or contradictions . . . [such] that a reasonable factfinder could find [it] unworthy of credence." *Silvera v. Orange Cty. Sch. Bd.*, 244 F.3d 1253, 1258 (11th Cir. 2001) (quoting *Combs v. Plantation Patterns*, 106 F.3d 1519, 1538 (11th Cir. 1997)). *See also Rioux v. City of Atlanta*, 520 F.3d 1269, 1278 (11th Cir. 2008). This standard requires that Mr. Duckworth meet PPC's proffered reason head on, rather than challenging the business judgment of the company. *See Chapman*, 229 F.3d at 1030.

Mr. Duckworth contends that the reason given by PPC was pretextual because he did not receive prior warnings about his absences, and he asserts that the timeline creates an issue of fact as to whether the reason was pretextual. He also argues that the disparate treatment of other PPC employees proves pretext.

These arguments are unavailing. PPC was not required legally, or under its own policies, to progressively discipline Mr. Duckworth. He acknowledged the

absence policy at the outset of his employment and had notice that unexcused absences could result in termination. Mr. Duckworth did not have one unexcused absence, but six or seven.

For several months Mr. Duckworth timely submitted doctors' notes to excuse his absences prior to early January of 2014, in compliance with PPC's policy. And he was told by PPC's nurse, Heather Horton, to be sure to "do whatever [he] need[ed] to do with HR" to "square [him] away" because she did not want him to be "penalized unnecessarily." D.E. 39-2 at 678 (email sent January 13, 2014). Mr. Duckworth nevertheless failed to produce documentation to justify his absences.

The timeline also does not create an issue of fact. Mr. Duckworth underwent a surgery for severe compression of discs in his neck. The surgery was successful and he was cleared to start working again by December 23, 2013. But in early January of 2014, he failed to come into work for a number of days and failed to provide doctors' notes. There is no evidence that the January absences were due to Mr. Duckworth's surgery or related issues, much less evidence sufficient to create an issue of fact with respect to pretext.

Contrary to Mr. Duckworth's arguments, his comparator analysis provides no support for his pretext argument. Mr. Duckworth alleges for the first time on appeal that PPC allowed individuals who had conditions requiring finite, limited

leave, like pregnancy, to take their leave without penalty, but fired individuals who required indefinite or uncertain periods of absence. Specifically, he points to Mr. Gallon[1], Ms. Jones, Ms. Jonas, and Ms. Phillips—the latter three of whom were on maternity leave. Mr. Duckworth asserts that he and another PPC employee, Mr. Kennedy, needed to take leave for indefinite periods of time and were dismissed at the first moment they failed to produce documentation for their ongoing absences. Contrary to Mr. Duckworth's assertions, this does not show that PPC systematically discriminated against individuals needing indefinite medical leave. It shows instead that with respect to Ms. Jones, Ms. Jonas, Ms. Phillips, and Mr. Kennedy, PPC acted according to whether individuals were able to provide documentation or medical excuses for their absences. Those who did were retained, and those who did not were let go.

None of Mr. Duckworth's arguments address whether PPC honestly believed that he was violating the attendance policy or whether this reason was just a cover-up for his firing. Mr. Duckworth offers nothing to seriously contest the honesty of PPC's proffered reason. Accordingly, we find Mr. Duckworth has failed to create a triable issue of fact. *See Rojas v. Florida*, 285 F.3d 1339, 1342

[1] In his brief, Mr. Duckworth asserts that the "record before the District Court clearly showed that Mr. Gallon, Ms. Jones, Ms. Phillips, and Ms. Jonas took extended medical leave for a predetermined period of time and condition that would resolve by that time (the latter three for maternity leave) and were not terminated." From the record, however, it is not immediately apparent to us why Mr. Gallon's was on leave. "Neither the district court nor this court has an obligation to parse a . . . record to search out facts or evidence not brought to the court's attention." *Atlanta Gas Light Co. v. UGI Utils., Inc.*, 463 F.3d 1201, 1208 n. 11 (11th Cir.2006).

(11th Cir. 2002) (explaining that the court is only concerned with whether the employer was motivated by discriminatory animus, not whether the decision was fair or wise).

III

Viewing all facts and reasonable inferences in the light most favorable to Mr. Duckworth, we conclude that he has failed to create an issue of fact as to whether PPC's decision to fire him was discriminatory. We therefore affirm the district court's order granting summary judgment to PPC.

It is unclear whether Mr. Duckworth is attempting to raise or resurrect a failure to accommodate claim. In his initial brief, Mr. Duckworth cited one case with language relevant to a reasonable accommodation claim, but then failed to apply it or mention it further. The district court noted that Mr. Duckworth appeared to conflate the disparate treatment claim with a failure to accommodate claim, but that his complaint did not track a failure to accommodate claim. And Mr. Duckworth has failed to adequately challenge the district court's conclusion. Because he failed to properly raise it, Mr. Duckworth has abandoned this issue and we do not need to address it. *See Sapuppo v. Allstate Floridian Ins. Co.*, 739 F.3d 678, 680 (11th Cir. 2014).

AFFIRMED.