[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 18-12243
Non-Argument Calendar

D.C. Docket No. 3:16-cv-01453-HES-PDB

DONZALO SOLOMON,

Plaintiff-Appellant,

versus

JACKSONVILLE AVIATION AUTHORITY,
MARK T. STEVENS,
Director of Aviation Security,
STEVEN GROSSMAN,
CEO,
LARRY H. MONTS,
Police Lieutenant,

Defendants-Appellees,

LARRY H. MONTS, JR.,

Defendant.

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

(January 4, 2019)

Before MARTIN, ROSENBAUM, and NEWSOM, Circuit Judges.

PER CURIAM:

Donzalo Solomon, proceeding *pro se*, appeals the district court's grant of summary judgment in favor of Solomon's former employer, the Jacksonville Aviation Authority ("Authority"), in this civil action alleging employment discrimination and retaliation under Title VII, 42 U.S.C. §§ 2000e-2(a)(1), 3(a).[1] After careful review, we affirm the grant of summary judgment.

Solomon, an African-American man, began working as an Airport Security Officer ("ASO") for the Authority at the Jacksonville International Airport in 2011. In 2014, he was accepted to attend a police academy. He took classes at the academy while continuing to work as an ASO. He graduated from the police academy in July 2015 and obtained Florida law-enforcement certification in August 2015.

[1] Solomon also named several individuals as defendants, but individuals cannot be held liable under Title VII. *Mason v. Stallings*, 82 F.3d 1007, 1009 (11th Cir. 1996). Solomon has also abandoned any challenge to the district court's dismissal of these claims with prejudice by failing to address that ruling on appeal. *See Sapuppo v. Allstate Floridian Ins. Co.*, 739 F.3d 678, 680 (11th Cir. 2014) (issues not raised on appeal are abandoned).

In May 2015, the Authority posted a Police Officer position. The posting listed the minimum requirements for the position to include four years of law-enforcement experience and Florida law-enforcement certification. The deadline for applications was June 7, 2015. On that date, Solomon submitted his application for the position. At that time, Solomon had not graduated from the police academy or obtained law-enforcement certification.

Solomon was not selected for the Police Officer position. Before he received formal notice of that fact, Lieutenant Larry Monts spoke with him and told him not to "worry about this position" because he didn't have law-enforcement certification and there were other, more qualified candidates. Monts suggested that Solomon apply for the next open position once he had his certification. The applicant who received the job, a white male, had current law-enforcement certification and several years of law-enforcement experience.

In January 2016, Solomon filed a charge of discrimination with the Equal Employment Opportunity Commission ("EEOC"), complaining of race discrimination and retaliation related to the Authority's failure to promote him to the Police Officer position. He resigned from the Authority in late October 2016 after accepting a job with the Jacksonville Sheriff's Office.

In January 2017, Solomon filed this action, *pro se*, against the Authority. He claimed that he was improperly excluded from consideration for the Police Officer

position because of his race. And he alleged that he was retaliated against in the following ways for filing the EEOC charge: (a) he was subjected to arbitrary scheduling changes; (b) in September 2016, he was asked to take a polygraph "with regard to an inquiry made regarding a work related question"; (c) he suffered harassment after being accused of writing an anonymous letter; and (d) in October 2015, Authority employees subjected his wife and daughter to a violation of their Fourth Amendment rights at the Jacksonville Airport.

The Authority filed a motion for summary judgment, and the district court granted that motion. The court concluded that the race-discrimination claim failed because Solomon was not qualified for the Police Officer position at the time he applied and because he had not shown that the person hired for the position was less qualified. The court also concluded that the retaliation claim failed for several reasons: (a) the isolated schedule changes identified by Solomon—the only retaliatory act cited in his deposition—did not amount to an actionable "adverse action"; (b) the supervisor in charge of Solomon's schedule was not aware of the EEOC charge until after Solomon resigned; and (c) the Authority's legitimate reasons for changing his schedule stood unrebutted. Solomon now appeals.

We review a district court's grant of summary judgment *de novo*, considering the evidence and drawing all reasonable inferences in favor of the non-moving party. *Crawford v. Carroll*, 529 F.3d 961, 964 (11th Cir. 2008). "Summary judgment is

appropriate if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." *Id.*; *see* Fed. R. Civ. P. 56(a).

Title VII makes it unlawful for an employer to "fail or refuse to hire . . . any individual . . . because of such individual's race." 42 U.S.C. § 2000e-2(a)(1). Title VII also makes it unlawful for an employer to retaliate against an employee because he has "made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing" under Title VII. 42 U.S.C. § 2000e-3(a).

Claims of discrimination and retaliation may be established through direct or circumstantial evidence. *See Gogel v. Kia Motors Mfg. of Ga., Inc.*, 904 F.3d 1226, 1233, 1239 (11th Cir. 2018). When a claim is based on circumstantial evidence, as it is here, we typically apply a burden-shifting framework derived from *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973). *Id.* Under this framework, the plaintiff first must establish a *prima facie* case of discrimination or retaliation. *Id.*

To establish a *prima facie* case of discrimination based on a failure to promote, the plaintiff may show that (1) he belonged to a protected class; (2) he was qualified for and applied for the position; (3) he was rejected; and (4) the position was filled by someone outside of the protected class. *Vessels v. Atlanta Indep. Sch. Sys.*, 408 F.3d 763, 768 (11th Cir. 2005). To establish a *prima facie* case of retaliation, the

plaintiff must show that (1) he engaged in statutorily protected activity; (2) he suffered an adverse action; and (3) the adverse action was causally related to the protected activity. *Jefferson v. Sewon Am., Inc.*, 891 F.3d 911, 924 (11th Cir. 2018). For retaliation claims, an adverse action is one that "might have dissuaded a reasonable worker from making or supporting a charge of discrimination." *Chapter 7 Trustee v. Gate Gourmet, Inc.*, 683 F.3d 1249, 1259 (11th Cir. 2012).

Once the plaintiff establishes his *prima facie* case, the burden shifts to the defendant to articulate and produce evidence of a legitimate, non-discriminatory or non-retaliatory reason for its action. *Alvarez v. Royal Atlantic Developers, Inc.*, 610 F.3d 1253, 1264 (11th Cir. 2010); *Crawford*, 529 F.3d 961. If the defendant does so, the burden shifts back to the plaintiff, who may show "pretext"—that the employer's proffered reason is not what actually motivated its conduct and that the action was instead motivated by discriminatory or retaliatory intent. *Id*.

Here, the district court did not err in granting summary judgment on Solomon's discrimination claim. We assume that Solomon was qualified for the Police Officer position at the time he applied and that he therefore established a *prima facie* case of discrimination.[2] Nevertheless, summary judgment was still

[2] The district court found that the Police Officer position required law-enforcement certification, which Solomon did not have at the time he applied. Citing internal policies, Solomon contends that certification was not necessary for internal candidates, provided they met certain other requirements, which he says he met. We assume that Solomon is correct in this regard and that the lack of certification did not disqualify him from consideration.

appropriate because Solomon has not provided evidence of pretext that the Authority's legitimate, non-discriminatory reason for not hiring him—that the selected applicant met and exceeded all of the objective criteria for the Police Officer position, including prior law-enforcement experience and law-enforcement certification.

It is not enough for Solomon to simply show that he was also qualified for the position. In evaluating discrimination claims under Title VII, "it is not our role to second-guess the wisdom of an employer's business decisions—indeed the wisdom of them is irrelevant—as long as those decisions were not made with a discriminatory motive." *Alvarez*, 610 F.3d at 1266. "A plaintiff must show that the disparities between the successful applicant's and [his] own qualifications were of such weight and significance that no reasonable person, in the exercise of impartial judgment, could have chosen the candidate selected over the plaintiff." *Brooks v. Cty. Comm'n of Jefferson Cty., Ala.*, 446 F.3d 1160, 1163 (11th Cir. 2006).

Solomon has not met that high burden. He does not claim to have been the most qualified applicant for the position, and he offers no evidence to contradict the Authority's evidence that the selected candidate's qualifications met and exceeded the posted criteria for the position—that is, that the selected candidate had prior law-enforcement experience and current law-enforcement certification. Accordingly, even assuming Solomon was qualified for the position, he has not shown that "no

reasonable employer, in the exercise of impartial judgment, could have chosen the candidate selected over him." *See id.*

Solomon's other attempts to show pretext are unavailing. His speculation that he was rejected before the selected candidate even applied is contradicted by record evidence showing that the selected candidate applied before he did. He also contends that the Authority deviated from its normal procedures by not considering him to be qualified for the position under its internal policies, despite his lack of law-enforcement certification. But by his own admission, he was told after submitting his application that there were "more qualified applicants" for the position, which is consistent with the Authority's legitimate, non-discriminatory reason for hiring the selected candidate. Solomon has not met "that reason head on and rebut[ted] it," and he cannot succeed in showing pretext "by simply quarreling with the wisdom of that reason." *Chapman v. AI Trans.*, 229 F.3d 1012, 1030 (11th Cir. 2000). Accordingly, on this record, no reasonable jury could conclude that Solomon's failure to be promoted was motivated by racial discrimination.[3]

[3] Solomon also references another Police Officer position which, he says, a different white male received in January 2016 without the position being posted. But this is a "new act[] of discrimination" which, before it could be raised in federal court as a distinct claim, required Solomon to file an additional charge of discrimination with the EEOC in order to exhaust his administrative remedies. *Gregory v. Ga. Dep't of Human Res.*, 355 F.3d 1277, 1279–80 (11th Cir. 2004). Insofar as Solomon cites this later hiring decision more broadly as evidence of the Authority's discriminatory hiring practices, we find that the evidence of this decision is too sparse to support an inference of discrimination.

The district court also properly granted summary judgment on Solomon's retaliation claim. This is so for several reasons. First, we agree with the court that the isolated schedule changes identified by Solomon[4]—the only retaliatory act cited in his deposition testimony—did not rise to the level of an adverse action because they would not have dissuaded a reasonable person from filing a discrimination complaint. *See Gate Gourmet*, 683 F.3d at 1259.

Second, there appears to be no causal link between the schedule changes and Solomon's EEOC charge. To establish a causal link, "the plaintiff must generally show that the decision maker was aware of the protected conduct at the time of the adverse employment action." *Brungart v. BellSouth Telecomms., Inc.*, 231 F.3d 791, 799 (11th Cir. 2000). The person whom Solomon said was responsible for his schedule, Walter McLanahan, testified that he was not aware of Solomon's EEOC charge until after Solomon resigned from the Authority. Because Solomon does not identify any evidence to contradict McLanahan's testimony that he was not aware of the EEOC charge during the time of the alleged retaliation, he has not "create[d] a genuine issue of fact as to causal connection." *Id.*

Third, Solomon did not show that the Authority's reasons for the schedule changes—including to accommodate unexpected employee absences, trainings, or

[4] The record showed seven such changes in the space of ten months. Each change altered the start time of Solomon's shift by between one and four hours. During those shifts, no change was made to Solomon's duties, his compensation, or any other material aspect of his job.

unforeseen emergencies—were false and that the real reason was retaliation. Solomon largely ignores this part of the court's ruling, and we see no error in the court's analysis.

Finally, the other alleged retaliatory actions do not warrant reversal of summary judgment. To begin with, Solomon did not offer deposition or affidavit testimony about these other alleged retaliatory acts, and the documentary evidence he offered lacked necessary supporting details. So Solomon did not create a genuine issue of material fact, based on record evidence, about these matters. *See Crawford*, 529 F.3d at 964.

Nor do these additional allegations show actionable retaliation. There is no apparent connection between the EEOC charge in January 2016 and the polygraph Solomon was required to take in September 2016, and we cannot infer a causal connection based on the timing alone. *See Higdon v. Jackson*, 393 F.3d 1211, 1221 (11th Cir. 2004) (more than three months between the protected activity and the adverse action is too remote to infer a causal connection). With regard to his allegation that he was accused of writing an anonymous letter, he does not identify when these events occurred or what became of the accusation. Solomon also alleges that his wife and daughter were harassed by Authority employees in October 2015, but as a matter of logic, this alleged harassment could not have been in retaliation for the later-filed January 2016 EEOC charge. Finally, Solomon appears to contend

that he was retaliated against for filing internal complaints of discrimination in 2013 and 2014, but the alleged acts of retaliation are too far removed from these complaints to establish a causal connection. *See id.*

Accordingly, for the reasons stated, we affirm the grant of summary judgment against Solomon on his claims of employment discrimination and retaliation.

AFFIRMED.