[DO NOT PUBLISH]

In the

United States Court of Appeals

For the Eleventh Circuit

No. 22-13698

Non-Argument Calendar

CHRISTOPHER CHANDLER,

Plaintiff-Appellant,

versus

SHERIFF, WALTON COUNTY,

Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Florida
D.C. Docket No. 3:21-cv-00507-MCR-ZCB

Before WILSON, LUCK, and ANDERSON, Circuit Judges.

PER CURIAM:

Christopher Chandler appeals the district court's order granting summary judgment to Chandler's employer, Michael Adkinson, in his official capacity as the Sheriff of Walton County. First, he claims that Adkinson interfered with his rights under the Family and Medical Leave Act ("FMLA") by ordering a coworker to stop by his house while he was on leave for an injury, as well as by not informing him that he could take additional leave for his mental health, and retaliated against him for taking FMLA leave by punitively reassigning him to an undesirable fire station after he returned from leave, demoting him, and ultimately terminating him. Second, he claims that he suffered discrimination under the Florida Civil Rights Act ("FCRA") due to his disabilities—i.e. depression and post-traumatic stress disorder—in the form of his reassignment, demotion, and termination. Finally, he claims that these same adverse events were retaliation under the FCRA for him reporting his own experiences with disability discrimination, as well as sex discrimination that he witnessed targeting another employee.

We review the grant of summary judgment de novo, applying the same legal standards as the district court. *Alvarez v. Royal Atl. Developers, Inc.*, 610 F.3d 1253, 1263 (11th Cir. 2010). Summary judgment is proper if the evidence shows "that there is no genuine dispute as to any material fact and the movant is entitled to

judgment as a matter of law." Fed. R. Civ. P. 56(a). A factual dispute is genuine "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). "The mere existence of a scintilla of evidence in support of the plaintiff's position will be insufficient; there must be evidence on which the jury could reasonably find for the plaintiff." *Id.* at 252.

We write only for the parties who are already familiar with the facts. Accordingly, we include only such facts as are necessary to understand our opinion.

I. Chandler's FMLA Claims

Under the FMLA, eligible employees are entitled to take up to 12 weeks of "leave during any 12 month period . . . [b]ecause of a serious health condition that makes the employee unable to perform the functions of the position." 29 U.S.C. § 2612(a)(1)(D). "The FMLA prohibits employers from interfering with, restraining, retaliating against, or denying 'the exercise of or the attempt to exercise' any rights guaranteed under the Act." *Matamoros v. Broward Sheriff's Off.*, 2 F.4th 1329, 1337 (11th Cir. 2021) (quoting 29 U.S.C. § 2615(a)). The FMLA creates two types of claims—interference claims and retaliation claims. 29 U.S.C. § 2615(a)(1)-(2); *O'Connor v. PCA Family Health Plan, Inc.*, 200 F.3d 1349, 1352 (11th Cir. 2000).

To establish a *prima facie* FMLA interference claim, a plaintiff must show that he was entitled to a benefit under the FMLA and his employer denied him that benefit. *White v. Beltram Edge Tool Supply, Inc.*, 789 F.3d 1188, 1191 (11th Cir. 2015). "When an

employee requests FMLA leave, or when the employer acquires knowledge that an employee's leave may be for an FMLA-qualifying reason, the employer must notify the employee of the employee's eligibility to take FMLA leave . . . ." 29 C.F.R. § 825.300(b)(1). However, the FMLA requires that the employee "actually seek leave–of some sort–to trigger an employer's obligation to give eligibility and rights-and-responsibilities notice." *Graves v. Brandstar, Inc.*, 67 F.4th 1117, 1122 (11th Cir. 2023).

To establish a *prima facie* FMLA retaliation claim, the employee must show that "(1) she engaged in statutorily protected conduct; (2) she suffered an adverse employment action; and (3) there is a causal connection between the two." *Munoz v. Selig Enterprises, Inc.*, 981 F.3d 1265, 1275 (11th Cir. 2020). An adverse employment action is an action that "might have dissuaded a reasonable worker" from engaging in protected activity. *Burlington Northern & Santa Fe Ry. Co. v. White*, 548 U.S. 53, 68 (2006) (quotation marks omitted). This includes "conduct that alters the employee's compensation, terms, conditions, or privileges of employment, deprives him or her of employment opportunities, or adversely affects his or her status as an employee." *Cotton v. Cracker Barrel Old Country Store, Inc.*, 434 F.3d 1227, 1233 (11th Cir. 2006) (quotation marks omitted).

Generally, close temporal proximity between an employee's protected conduct under the FMLA and an adverse employment action is sufficient circumstantial evidence to create a genuine issue of material fact as to whether the events are causally related.

Hurlbert v. St. Mary's Health Care Sys., Inc., 439 F.3d 1286, 1298 (11th Cir. 2006). However, the proximity must be close, and a gap of three months between the protected activity and the adverse employment action is not proximate enough, in the absence of other evidence, to create a triable issue as to causation. *See Drago v. Jenne*, 453 F.3d 1301, 1308 (11th Cir. 2006) (holding that three months is insufficiently proximate to show a relationship between the plaintiff's complaint under the FMLA and a demotion).

Employers are liable under the FMLA for the actions of supervisory employees. *See, e.g.*, *Drago*, 453 F.3d at 1303-05 (evaluating an employee's claims for FMLA interference and retaliation premised on the actions of supervisory employees despite the defendant-employer's lack of personal knowledge); *Spakes v. Broward Cnty. Sheriff's Off.*, 631 F.3d 1307, 1309 (11th Cir. 2011) (same).

Unlike with claims of FMLA interference, to claim FMLA retaliation the employee must additionally show that the employer's actions were motivated by an impermissible retaliatory or discriminatory animus. *Munoz*, 981 F.3d at 1275. After the employee makes a *prima facie* showing of FMLA retaliation, the burden shifts to the employer to articulate a nondiscriminatory reason for the adverse action. *Id.* The burden then shifts back to the employee to produce evidence that the nondiscriminatory reason is pretextual. *Id.* "To show pretext, an employee must introduce evidence sufficient to permit a reasonable factfinder to conclude that the reasons given by the employer were not the real reasons for the adverse employment decision." *Id.* at 1277 (quotation

marks omitted). The employee may point to "weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions in the employer's proffered legitimate reasons" to demonstrate that they are pretextual. *Id.* (quotation marks omitted).

Here, the district court did not err in granting summary judgment to Adkinson with respect to Chandler's FMLA claims. As it correctly determined, Chandler was not prevented from taking leave, intimidated into cutting his leave short, or prevented from learning of his FMLA rights but was, in fact, promoted. Furthermore, the district court correctly determined that, although Chandler argues that his reassignment, demotion, and termination were retaliatory, the evidence showed that the reassignment was planned prior to his leave and his placement at Station 4 was not objectively adverse; and the demotion and termination were not causally related to his using leave but were precipitated by legitimate reasons that were not pretextual.

A. Chandler's FMLA interference claims

As to Chandler's prima facie claim of FMLA interference, the evidence showed Chandler was not denied leave by his then-supervisors Turner, McMillian, Beaty, and Finley. *See White*, 789 F.3d at 1191. Doctor Contini estimated Chandler would need three months to recover from the injury to his hip and back, and Chandler was granted that full amount, not returning to work until after Contini fully cleared him to fulfill his duties without restriction, at which point he reported to Hatfield, Turner, and Newsome. Chandler was even promoted during his time on leave, rather than

punished, and then reported to Hatfield and Brown. While Chandler accused Blevins of visiting his house during his leave in his complaint, he later clarified in his deposition that Blevins did not visit until after he had already returned from leave and submitted a note describing Blevins visiting in October 2018. Chandler's note was similar to Vause's and Blevins's accounts of Blevins volunteering to visit Chandler "to see if he was okay" after Chandler refused contact following his demotion. Moreover, although Chandler argues that Vause, Hatfield, and McMillian interfered with his FMLA rights by not informing him that he could take leave under the FMLA for his mental health after he expressed his struggles with depression and PTSD, he had not requested leave or another accommodation and therefore did not trigger his employer's affirmative duty to notify him of his rights under the FMLA. *See Graves*, 67 F.4th at 1122. Accordingly, the district court did not err in granting Adkinson summary judgment as to Chandler's FMLA interference claim because it correctly determined that Chandler was not denied leave, pressured to return early, or purposefully made unaware of the possibility that he could take leave for his mental health issues.

B. Chandler's FMLA retaliation claims

As to Chandler's FMLA retaliation claim, he failed to establish a prima facie case with respect to his transfer to Station 4, his demotion, or his termination. As the district court explained, Chandler did not show that his reassignment to Station 4 was adverse, nor that any of these outcomes were causally connected to

his use of leave, and did not show that the reasons offered for each outcome were pretextual. *See Cotton*, 434 F.3d at 1233; *See Burlington*, 548 U.S. at 68; *Munoz*, 981 F.3d at 1275.

First, Chandler cannot show that the initial decision to reassign him was causally related to his FMLA leave because it was scheduled prior to his electing to use leave. *See Munoz*, 981 F.3d at 1275. However, even assuming that Newsome and Hatfield told Chandler he was placed at Station 4 due to his leave and assuming that his eventual placement at Station 4 was causally connected to taking leave because it did not become official until after he returned, Chandler did not show that the placement was adverse. *See Cotton*, 434 F.3d at 1233. While Chandler argues that his reassignment was adverse because it substantially increased his call volume and effectively removed him from firefighting duties, he admitted that his pay and benefits did not change. *See Cotton*, 434 F.3d at 1233. And employee depositions showed that there was no objective consensus among employees that Station 4 was a punitive placement. Howard stated that some people disliked Station 4 because it is busy, and Halderson felt the assignment was punitive. However, Cooper and McElyea expressed that it was routine for all employees to rotate through Station 4 and Carter stated that he enjoyed working there, referring to it as an "enhancement" station to get employees back from leave up to speed. In addition, Chandler himself stated that he "fully accept[ed] the LT position anywhere seen fit," including Station 4, noting "I've been here for years and been assigned to almost every station in the county including 4," supporting McElyea's assertion that even seasoned paramedics

are routinely transferred to Station 4 multiple times in their careers. Thus, as the district court correctly concluded, Chandler failed to carry his burden to show, as an element of the prima facie case, that his assignment to Station 4 was an objectively adverse employment action that would dissuade a "reasonable worker" from using FMLA benefits. *See Burlington*, 548 U.S. at 68; *Munoz*, 981 F.3d at 1275.

Furthermore, Adkinson offered the legitimate, nondiscriminatory explanation that placing Chandler at Station 4 was intended to sharpen his skills after three months on leave, and Chandler did not show this reason was pretext for discrimination. *See Munoz*, 981 F.3d at 1275. While Chandler claims he did not need to sharpen his skills at Station 4 because he was experienced, had sufficient patient contacts, and did not need additional training, it is undisputed that he had recently taken three months off from using his perishable skills as an EMT and, in August 2018, Earley advised him that his patient contact reports contained errors and were insufficiently thorough. As the district court concluded, the evidence, as a whole, showed that Chandler's reassignment was not related to his leave, was not materially adverse, and served the legitimate purpose of restoring his skills after leave and is not sufficient to permit a reasonable factfinder to conclude that the reasons given by the employer were not the real reasons for the adverse employment decision. *See Munoz*, 981 F.3d at 1277.

Second, while Chandler's demotion and termination were clearly adverse employment actions, Chandler did not show a

causal connection between his FMLA leave and these outcomes either. Chandler was demoted, then terminated, by two new supervisors who did not oversee him prior to or during his period of leave. And Chandler was demoted and terminated about six months after his return to work, which is not sufficiently proximate to give rise to a presumption of causality. *See Hurlbert*, 439 F.3d at 1298; *Drago*, 453 F.3d at 1308. Finally, Chandler did not point to any other evidence causally connecting his use of leave to the decision to demote and terminate him.

Accordingly, because Chandler did not show that his reassignment, demotion, or termination were both adverse and causally related to his FMLA leave, this is an independent ground to affirm the district court's grant of summary judgment with respect to Chandler's FMLA retaliation claim.

Moreover, as discussed in more detail below, Adkinson had a legitimate, nondiscriminatory reason for both demoting Chandler and terminating him. With respect to the demotion, Chandler had been insubordinate to his supervisor and had failed to show up for an August 2018 overtime shift. With respect to the termination, after his demotion, Chandler refused to return to work. These legitimate reasons—which Chandler did not show were pretextual—constitute separate and independent grounds to affirm the district court's summary judgment with respect to Chandler's FMLA retaliation claims.

II. Chandler's FCRA Discrimination Claims

The FCRA forbids employers from "discriminat[ing] against any individual . . . because of such individual's . . . handicap." Fla. Stat. § 760.10(1)(a). "Florida courts construe the Florida Civil Rights Act in conformity with the federal Americans with Disabilities Act [("ADA")]." *Ring v. Boca Ciega Yacht Club Inc.*, 4 F.4th 1149, 1155 (11th Cir. 2021) (quotation marks and brackets omitted); *see also Cordoba v. Dillard's, Inc.*, 419 F.3d 1169, 1175 (11th Cir. 2005) (holding that the plaintiff's claim of discrimination due to her heart condition under Fla. Stat. § 760.10(a) was analogous to a claim under 42 U.S.C. § 12112(a)). This includes situations where the language is similar but not identical. *Ring*, 4 F.4th at 1156. Chandler argues that he is disabled due to his depression and post-traumatic stress disorder ("PTSD"), that his employer had notice thereof, and that he was discriminated against in the form of his reassignment to Station 4 and his demotion and termination.

It is unclear when a county agency, as an employer, may be held vicariously liable under Title II of the ADA for the discriminatory actions of one employee against another in the absence of that employer's actual knowledge. *See, e.g.*, *Silberman v. Miami Dade Transit*, 927 F.3d 1123, 1134 n.6 (11th Cir. 2019) ("[T]he availability of respondeat superior for Title II . . . remains an open question."). However, we recently held, in the context of a claim for compensatory damages, that the plaintiff must establish that the employer had "actual knowledge" of discrimination and failed to respond adequately. *See Ingram v. Kubik*, 30 F.4th 1241, 1257-58 (11th Cir.), *cert. dismissed*, 142 S. Ct. 2855 (2022).

Under the antidiscrimination provision in the Americans with Disabilities Act ("ADA"), an employer may not "discriminate against a qualified individual on the basis of disability in regard to . . . the . . . discharge of employees . . . and other terms, conditions, and privileges of employment." 42 U.S.C. § 12112(a). To establish a *prima facie* case of ADA discrimination, the plaintiff must show that he (1) has a disability, (2) is otherwise qualified to perform the job, and (3) was discriminated against on the basis of his disability. *Cleveland v. Home Shopping Network, Inc.*, 369 F.3d 1189, 1193 (11th Cir. 2004). The plaintiff may show that the employer treated similarly situated individuals outside his protected class more favorably. *Lewis v. City of Union City*, 918 F.3d 1213, 1220-21 (11th Cir. 2019) (*en banc*) (*Lewis I*). The plaintiff may set forth a comparator that is outside the protected class but "similarly situated in all material respects," including factors such as similar conduct, similar office policies or guidelines, the same supervisor, and similar work and disciplinary history, to demonstrate differential treatment. *Id.* at 1226-29, 1231. The plaintiff may also rely on evidence of a "pattern or practice" of treating people within the protected class differently if it is so widespread that "discrimination is the company's standard operating procedure." *E.E.O.C. v. Joe's Stone Crab, Inc.*, 220 F.3d 1263, 1274 (11th Cir. 2000) (quotation marks omitted).

We generally analyze ADA discrimination claims under the *McDonnell Douglas*[1] burden shifting framework. *Cleveland*, 369 F.3d

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[1] *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973).

at 1193. Once a plaintiff meets his *prima facie* burden under the ADA, the defendant must present a legitimate, nondiscriminatory reason for its actions. *Id.* The employee must then demonstrate that the reason given was a pretext for discrimination. *Id.* To show pretext in an employment discrimination claim, including under the ADA, a plaintiff must show both that an employer's reasons are false "*and* that discrimination was the real reason." *Ring*, 4 F.4th at 1163 (quotation marks omitted). Specifically, the employee must produce evidence sufficient to permit a reasonable factfinder to conclude that the employer's reason was not the real reason for the adverse employment action, which can include implausible or incoherent details that cast doubt on the employer's account. *Furcron v. Mail Centers Plus, LLC*, 843 F.3d 1295, 1313 (11th Cir. 2016).

"Provided that the proffered reason is one that might motivate a reasonable employer, an employee must meet that reason head on and rebut it, and the employee cannot succeed by simply quarreling with the wisdom of that reason." *Chapman v. AI Transp.*, 229 F.3d 1012, 1030 (11th Cir. 2000). The plaintiff cannot merely make conclusory allegations and assertions but must present concrete evidence in the form of specific facts showing that the employer's reason for the materially adverse action was merely pretextual. *Bryant v. Jones*, 575 F.3d 1281, 1308 (11th Cir. 2009). The inquiry into pretext centers on the employer's beliefs, not the employee's beliefs or "reality as it exists outside of the decision maker's head." *Alvarez*, 610 F.3d at 1266. Accordingly, when assessing whether an employer has properly imposed an adverse action on an employee based on that employee's conduct, the

question is not whether the employee actually engaged in the conduct, but instead whether the employer in good faith believed that the employee had done so. *Gogel v. Kia Motors Mfg. of Ga., Inc.*, 967 F.3d 1121, 1148 (11th Cir. 2020) (*en banc*). "A plaintiff's failure to rebut even one nondiscriminatory reason is sufficient to warrant summary judgment." *Ring*, 4 F.4th at 1163 (quotation marks and brackets omitted).

The *McDonnell Douglas* burden-shifting framework is not the sole method for a plaintiff to survive summary judgment in an employment discrimination claim. *Smith v. Lockheed-Martin Corp.*, 644 F.3d 1321, 1328 (11th Cir. 2011). Accordingly, a plaintiff survives summary judgment if the plaintiff presents circumstantial evidence that creates a triable issue concerning the employer's discriminatory intent by introducing evidence sufficient to show, when viewed in the light most favorable to the plaintiff, a "convincing mosaic" of circumstantial evidence that would allow a jury to infer intentional discrimination by the decisionmaker. *Id*. A plaintiff may establish a "convincing mosaic" by pointing to evidence that demonstrates, among other things, (1) suspicious timing, ambiguous statements, or other information from which discriminatory intent may be inferred, (2) superior treatment of similarly situated workers, and (3) pretext. *Jenkins v. Nell*, 26 F.4th 1243, 1250 (11th Cir. 2022).

An employer's failure to reasonably accommodate a disabled individual is itself discrimination. *Holly v. Clairson Indus., LLC*, 492 F.3d 1247, 1262 (11th Cir. 2007). Nevertheless, an employer's

duty to provide a reasonable accommodation is not triggered unless a specific demand for an accommodation has been made. *Id.* To "trigger an employer's accommodation duties, a disabled employee need only identify a statutory disability and explain generally how a particular accommodation would assist [him]." *Owens v. Governor's Off. of Student Achievement*, 52 F.4th 1327, 1336 (11th Cir. 2022). The employee has the burden of identifying an accommodation and demonstrating that it is reasonable. *Frazier-White v. Gee*, 818 F.3d 1249, 1255 (11th Cir. 2016). "An 'accommodation' is 'reasonable'—and, therefore, required under the ADA—only if it enables the employee to perform the essential functions of the job." *LaChance v. Duffy's Draft House, Inc.*, 146 F.3d 832, 835 (11th Cir. 1998); *see also* 29 C.F.R. § 1630.2(o)(1)(ii) (defining a reasonable accommodation partly as an action that "enable[s] an individual with a disability who is qualified to perform the essential functions of that position"). An employee is not necessarily entitled to the accommodation of his choice, but rather is entitled only to a reasonable accommodation. *Stewart v. Happy Herman's Cheshire Bridge, Inc.*, 117 F.3d 1278, 1286 (11th Cir. 1997).

Generally, "the mere failure to raise an issue in an initial brief on direct appeal should be treated as a forfeiture of the issue." *United States v. Campbell*, 26 F.4th 860, 873 (11th Cir. 2022). We have affirmed, in the context of an employment discrimination suit, "the importance of giving the nonmovant a meaningful opportunity to respond" to all arguments at the summary judgment stage. *Burns v. Gadsden State Cmty. Coll.*, 908 F.2d 1512, 1516-17 (11th Cir. 1990).

As initial matters,[2] first, Chandler forfeited any argument based on his statement in his second affidavit that he merely requested to reschedule his meetings with Hatfield and Vause following his demotion due to being "emotionally devastated" because he did not present this evidence in his response to Adkinson's motion, but submitted it only in conjunction with his sur-reply to which Adkinson had no "meaningful opportunity to respond." *See Campbell*, 26 F.4th at 873; *Burns*, 908 F.2d at 1516-17. Second, to the extent that Chandler stated in the same affidavit that he requested reevaluation of his demotion as an accommodation of his disability, this is not a reasonable accommodation request in any event because it is not an intervention designed to help Chandler fulfill the requirements of his position but effectively a request to nullify a disciplinary procedure that already took into account his mental health conditions. *See LaChance*, 146 F.3d at 852; *Stewart*, 117 F.3d at 1286.

Here, the district court did not err in determining that Adkinson was entitled to summary judgment with regard to Chandler's FCRA claim of disability discrimination. At this stage of the litigation, neither party disputes that Chandler was disabled, nor

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[2] As noted above, we held in *Ingram* that an ADA plaintiff claiming compensatory damages must establish that the employer had "actual knowledge" of the discrimination and failed to respond adequately. Although Chandler admitted a failure to show that Adkinson himself was informed of the discrimination against him, we do not address or rely on this theory because Chandler also sought equitable relief and because Adkinson prevails in this appeal on other grounds.

that he was capable of performing the job of lieutenant. However, the district court did not err in determining that Chandler did not show that his reassignment, demotion, or termination were causally related to his disabilities, rather than the legitimate reasons given for the employer's actions *Cleveland*, 369 F.3d at 1193. The district court also correctly concluded that Chandler did not show that the legitimate reasons for his transfer, demotion, and termination were pretextual because he did not demonstrate both that these reasons were false and that the true reason was discriminatory animus. *See Ring*, 4 F.4th at 1163.

Chandler did not show that his assignment to Station 4 was discriminatory. *See Cleveland*, 369 F.3d at 1193. Although Chandler argues that his supervisors were on notice as to his disabilities as early as his 2018 conversation with Turner, Chandler and Turner's general discussion of Chandler's depression and PTSD—with no specific mention that Chandler considered these common conditions disabling and no request by Chandler for accommodations or medical paperwork corroborating his claims[3]—did not put Turner on notice as to Chandler's disabled status prior to the decision to transfer him to Station 4. Similarly, Chandler's general statement

[3] Indeed, Chandler's conversation with Turner was very general, with Chandler merely telling Turner that he had suffered from depression and PTSD for several years (i.e. years during which Chandler had worked there and functioned sufficiently well that he was promoted to lieutenant in June 2018 while he was on leave due to an off duty injury to his hip and back). In the conversation with Turner, Chandler did not claim to be disabled and made no request for accommodation.

to Turner when requesting access to the Employee Assistance Program ("EAP") that he was experiencing stress did not put Turner on notice that Chandler was legally disabled during the period that he was requesting reassignment to a different station. *See Owens*, 52 F.4th at 1334-35 (stating that an ADA employee must "put her employer on notice of the disability for which she seeks an accommodation and provide enough information to allow an employer to understand how the accommodation would address the limitations her disability presents . . . In most cases, to identify a disability, an employee must provide at least some information about how a physical or mental condition limits her functioning."); *Cordoba*, 419 F.3d at 1175 (discussing previous holding that an employer can be liable under ADA only if it had knowledge of the disability, and constructive knowledge is insufficient); *Gaston v. Bellingrath Gardens & Home, Inc.*, 167 F.3d 1361, 1363 (11th Cir. 1999) ("the duty to provide a reasonable accommodation is not triggered unless a specific demand for an accommodation has been made"). Thus, and in light of the legitimate reasons for the transfer, Chandler cannot show that either his transfer to Station 4 or the decision to keep him there after he expressed generally that he was depressed were motivated by discrimination on the basis of a disability. *Cleveland*, 369 F.3d at 1193. Furthermore, because Chandler did not claim a statutory disability in his conversation with Turner, he did not trigger a duty to accommodate his disabilities through reassignment to a different station. *See Owens*, 52 F.4th at 1336. Therefore, the district court properly determined that Chandler did not show that his

supervisors were on notice as to his disabilities or discriminating against him on that account.

Nor did Chandler establish a prima facie case of disability discrimination regarding his demotion because, as the district court reasoned, the demotion was neither an adverse outcome nor motivated by discriminatory animus. Chandler stated that he informed Major Clark of his depression and PTSD prior to his demotion when he requested a predetermination hearing, arguing that Clark was aware that he considered himself disabled and expected certain rights during the disciplinary process as a result of this status. Even assuming *arguendo* that Chandler's statements were sufficiently specific to put Clark on notice as to Chandler's disabilities, Clark's recommendation of a demotion was more lenient to Chandler than the initial notice of proposed discipline, which announced the intent to dismiss him, and therefore suggests that Clark treated Chandler more favorably in recognition of his depression and PTSD. *See Burlington Northern*, 548 U.S. at 68. Furthermore, Adkinson proffered two legitimate, nondiscriminatory reasons for Chandler's demotion—first, the insubordination stemming from the September 21, 2018, dispute with Chief Newsome in which Chandler lost his temper and used profanity; and second, his failure to report for his overtime shift on August 27, 2018—and Chandler did not show that either of these reasons was pretextual. *See Cleveland*, 369 F.3d at 1193.

In an effort to show that the allegation of insubordination was pretextual, Chandler attempted to prove that his supervisors

did not typically sanction profanity in the workplace except when used by disabled employees. He presented evidence that employees cussed, even to supervisors, routinely without discipline and stated that Newsome laughed at the time of their confrontation and did not plan on reporting Chandler until instructed to do so weeks later by McMillian and Beaty, which Chandler argues suggests that Chandler's supervisors were searching for a reason to terminate him after he expressed that he was disabled. *See Furcron*, 843 F.3d at 1313. He presented Thomas as another employee who was known to be disabled and was terminated for using profanity with a supervisor. Chandler submitted statements from Thomas that Chandler was "set up" to provoke "an outburst to where they could catch him" and the same thing happened to Thomas as a result of his disability, which could imply a practice of setting up disabled employees for termination. *See Joe's Stone Crab*, 220 F.3d at 1274. Chandler set forth as a comparator an employee who was not disabled, Gill, and was not disciplined for telling a supervisor that a mandatory overtime shift was "bullshit." But the context of Gill's comment was not that of a dispute with his superior, as was Chandler's. And he presented Hooper and Earley as two non-disabled employees who were not disciplined, although they engaged in substantially different conduct and have little relevance. *See Lewis*, 918 F.3d at 1226-29, 1231.

Chandler also attempted to show that the second reason for his demotion—failure to report for his August overtime shift—was a pretext for discriminatory treatment. He tried to rebut the allegation head on by stating that he did not fail to report for his shift

but was merely late. *See Chapman*, 229 F.3d at 1030. However, he did not set forth a similarly-situated comparator who was not disabled, late to a shift, and not disciplined or otherwise provide evidence that discrimination was the true reason for this mark against him. *See Lewis*, 918 F.3d at 1220-21, 1226-29, 1231. Moreover, in the proceedings with Major Clark, he took full ownership of his failure to show up for the August shift. Furthermore, Chandler would need to dispute the legitimacy of demoting him for both offenses in order to resist summary judgment, which he failed to do. *See Ring*, 4 F.4th at 1163.

Chandler's failure to create a genuine issue of fact with respect to the legitimacy of the reasons for his demotion is clear from Chandler's own admissions to Major Clark during the predetermination proceeding, over which Major Clark presided. The October 3, 2018, Notice of Proposed Termination proposed to terminate Chandler for two reasons: the September 21, 2018, incident with Chief Newsome which the Notice asserted constituted insubordination, and Chandler's failure to report for duty on August 27, 2018. In response to the Notice, Chandler admitted to Major Clark that he had "allowed his temper to get the best of him" in the September 21 incident, and admitted that he knew he was scheduled for work on August 27, and admitted that his offenses were serious. Chandler wrote to Major Clark, inter alia, as follows:

> This is no excuse for my actions . . . I did not show up to work as stated in the document and advised Chief Turner that I knew, as the statement reads. This was a very bad judgement call on my behalf and one I

> deeply regret and I will take full responsibility for it. I did report to work afterwards and was sent home by Lieutenant Maestre, as he realized I was not able to carry out my duties that day. He felt that I was not in a good place mentally to serve the citizens of Walton County. I like to keep my personal life private and separate from work, but the evening prior to my shift I had a very large argument with my wife which went into the evening hours. Immediately realizing what I had done by not showing up to work, I took it upon myself to enroll in the EAP which is provided as a benefit to employees. I have done this as an effort to better myself personally and professionally.

Doc. 13-5 at 2.

Thus, the conduct of Chandler is too dissimilar to that of any of his purported comparators. It is clear that there were legitimate, nondiscriminatory reasons for Chandler's demotion; Chandler failed to show that those reasons were a pretext for discrimination on the basis of Chandler's disabilities; there is no genuine issue of fact in that regard.

Finally, the district court correctly determined that Chandler did not present sufficient evidence to raise an inference of discriminatory intent as to his termination. Chandler admitted that, after his demotion, he repeatedly refused to return to work in a demoted role or meet with Vause and McMillian, which Adkinson cited as a reason for his termination.

Here again, Chandler did not show that this reason was pretextual because he conceded that he said he "wasn't coming, that

[he] wouldn't be returning to work, demoted, or what have you" in conversations with Vause and McMillian after being notified of his demotion. *See Ring*, 4 F.4th at 1163. He added that he also told Vause and McMillian that he "felt like the demotion was wrong" and stemmed in part from "just having disabilities in general." Vause, meanwhile, stated that Chandler announced, "I'm not coming back to work as anything less than what I am." While these accounts differ in tone, the record was clear that Chandler told Vause that he would not return to work after his demotion, which is a legitimate, nondiscriminatory reason for his termination. *See Cleveland*, 369 F.3d at 1193. Therefore, because Chandler did not show that the reason proffered for his termination is false, he did not meet his burden of showing it was pretext for discriminatory animus. *See Ring*, 4 F.4th at 1163.

Because Chandler did not raise sufficient circumstantial evidence to infer discriminatory intent in his reassignment, demotion, or termination, he also did not establish a "convincing mosaic" of disability discrimination sufficient to survive summary judgment. *See Smith*, 644 F.3d at 1328. He cannot show pretext under the burden-shifting framework as discussed above. *See Cleveland*, 369 F.3d at 1193; *Ring*, 4 F.4th at 1163. Moreover, the demotion is not an adverse event because it represented a comparatively favorable outcome and both the demotion and the termination were supported by legitimate nondiscriminatory reasons. *See Burlington Northern*, 548 U.S. at 68; *Higdon*, 393 F.3d at 1220; *Cleveland*, 369 F.3d at 1193; *Jenkins*, 26 F.4th at 1250. While the department may have a "hostile" or "Alpha-driven" culture, the evidence on the

record did not establish that Chandler was specifically targeted for differential treatment based on his membership in a protected class. *See* 42 U.S.C. § 12112(a); *Cleveland*, 369 F.3d at 1193. Accordingly, Chandler did not show that his reassignment, demotion, or promotion were causally related to his disabilities or motivated by discriminatory animus and we affirm the district court's order as to this issue.

III. Chandler's FCRA Retaliation Claims

The FCRA prohibits employers from discriminating against any person because that person has opposed any practice which is an unlawful employment practice under the law. Fla. Stat. § 760.10(7). As provided above, the FCRA is interpreted in conformity with the ADA. *Ring*, 4 F.4th at 1155. The ADA's anti-retaliation provision, which corresponds to the FCRA antiretaliation provision, provides that no person shall discriminate against any individual because such individual has opposed any act or practice made unlawful by the ADA or because such individual made a charge under the ADA. 42 U.S.C. § 12203(a); *Stewart*, 117 F.3d at 1287.

In evaluating claims of ADA retaliation based on circumstantial evidence, courts may use the *McDonnell Douglas* burden-shifting framework. *Stewart*, 117 F.3d at 1287. To establish a *prima facie* case of retaliation, the plaintiff may show that (1) he engaged in a statutorily protected expression, (2) he suffered a materially adverse action, and (3) there was a causal link between the adverse action and his protected expression. *Id*. The protected expression

may be informal and need not use words like "harassment" or "discrimination" or any legal terminology but must show that the individual is expressing opposition or resistance to unlawful workplace discrimination based on membership in a protected class. *See EEOC Enforcement Guidance on Retaliation and Related Issues*, No. 915.004, § (II)(A)(2)(a) (August 25, 2016); *see also Furcron*, 843 F.3d at 1311 (noting, in the context of a sex discrimination claim, that "Title VII's protections are not limited to individuals who file formal complaints, but extend to those who voice informal complaints as well"). One way to infer that the adverse action is related to protected expression rather than other factors is to set forth "me too" evidence that others who engaged in similar expression also suffered retaliation to show intent to discriminate and retaliate. *See Goldsmith v. Bagby Elevator, Inc.*, 513 F.3d 1261, 1285-87 (11th Cir. 2008) (admitting "me too" evidence that four African-American employees who complained of racial discrimination were terminated as probative of the employer's discriminatory and retaliatory intent).

To prove a causal connection for a retaliation claim, a plaintiff need only demonstrate "that the protected activity and the adverse action were not wholly unrelated." *Shotz v. City of Plantation, Fla.*, 344 F.3d 1161, 1180 n.30 (11th Cir. 2003) (quotation marks and emphasis omitted). This element is to be construed broadly. *Pennington v. City of Huntsville*, 261 F.3d 1262, 1266 (11th Cir. 2001). The plaintiff must generally establish that the employer was actually aware of the protected expression at the time it took the adverse employment action. *Raney v. Vinson Guard Serv., Inc.*, 120

F.3d 1192, 1197 (11th Cir. 1997). One way the plaintiff can establish that the adverse action and protected activity were not "wholly unrelated" is by showing a close temporal proximity between the employer's discovery of the protected activity and the adverse action. *Higdon v. Jackson*, 393 F.3d 1211, 1220 (11th Cir. 2004). We have stated that temporal proximity must be "very close," *id.* (quotation marks omitted), and that a three-to-four-month delay is too long, *Thomas v. Cooper Lighting, Inc.*, 506 F.3d 1361, 1364 (11th Cir. 2007), while a one-month gap may satisfy the test, *Donnellon v. Fruehauf Corp.*, 794 F.2d 598, 601 (11th Cir. 1986).

Yet, if the alleged retaliatory conduct occurred before the employee engaged in protected activity, the two events cannot be causally connected. *See Cotton*, 434 F.3d at 1233 (explaining that there was no causal link between the alleged retaliatory conduct and the plaintiff's complaint of harassment where the decision to decrease the plaintiff's work hours had been made and conveyed to the plaintiff when she was hired); *Drago*, 453 F.3d at 1308 (explaining that there was no causal link because the employer contemplated demoting the plaintiff months before he complained that the employer was interfering with his rights under the FMLA).

Here, again, the district court did not err in concluding that summary judgment was appropriate as to Chandler's claim of retaliation under the FCRA because it correctly determined that Chandler did not show that his reassignment, demotion, or termination were causally related to any protected expression

concerning discrimination against himself and Cook. *See Stewart*, 117 F.3d at 1287.

As to Chandler's reassignment, he did not show that the decision to slate him for transfer to Station 4 was retaliation for his disabilities or his reporting of Cook's discrimination. *See Raney*, 120 F.3d at 1197. His general conversation with Turner about his mental health in 2018 and prior complaint about "bullying and harassment" targeting an "overweight female" did not convey a good faith belief that his employers were engaging in an unlawful practice and, therefore, were not protected expression. *See id.* In addition, although Chandler stated that he requested a different assignment and complained expressly that he felt his placement at Station 4 was in retaliation for using his FMLA leave, these statements were also insufficient to convey a belief that he was being targeted for illegal discrimination based on his membership in a protected class of disabled employees, rather than his FMLA leave, and therefore was not protected expression under the FCRA. *See* EEOC Enforcement Guidance on Retaliation and Related Issues; *Furcron*, 843 F.3d at 1311.

As to Chandler's demotion, Chandler argues that he informed Clark that he felt he was the victim of disability discrimination, a protected expression, and was immediately demoted, suggesting a causal connection between his protected expression and the demotion. *See Shotz*, 344 F.3d at 1180 n.3; *Pennington*, 261 F.3d at 1266; *Higdon*, 393 F.3d at 1197. However, the demotion does not qualify as an adverse employment action in this context because

Clark secured the demotion for Chandler as a lesser form of discipline to the dismissal Chandler was initially facing prior to giving notice to Clark of his depression, ostensibly in sympathy with Chandler's struggles. *See Burlington Northern*, 548 U.S. at 68. Furthermore, even if the demotion were considered an adverse employment action, Chandler did not show it was causally related to his protected expression because, as discussed above, Adkinson's reasons for demoting Chandler were legitimate and nondiscriminatory and Chandler did not show that they are pretextual. *See supra*.

Finally, turning to Chandler's termination, Chandler argues that he engaged in protected expression when informing Vause and McMillian that he considered his demotion to be a form of disability discrimination. While termination is an adverse employment action, he did not show that his termination was related to his protected expression. *See Stewart*, 117 F.3d at 1287. Chandler submitted Halderson and Dickey as "me too" evidence that employees that complained of discrimination were terminated, but Halderson and Dickey complained of a different form of discrimination and worked under a different supervisor, limiting the probative value of evidence of their termination in inferring intent to discriminate based on disability on the part of Chandler's supervisors. *See Goldsmith*, 513 F.3d at 1285-87. More significantly, as discussed above, Adkinson presented legitimate, nondiscriminatory reasons for terminating Chandler—his failure to return to work on top of the original reasons in the Notice of discipline which resulted in his demotion—and he has not shown that these reasons were pretextual.

For the foregoing reasons, the judgment of the district court is

AFFIRMED.