[DO NOT PUBLISH]

In the

United States Court of Appeals

For the Eleventh Circuit

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No. 23-10604

Non-Argument Calendar

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AIESHA CALLAHAN,

Plaintiff-Appellant,

versus

EMORY HEALTHCARE, INC.,

Defendant-Appellee.

____

Appeal from the United States District Court
for the Northern District of Georgia
D.C. Docket No. 1:21-cv-01367-WMR

____

Before NEWSOM, ANDERSON, and JULIE CARNES, Circuit Judges.

PER CURIAM:

Plaintiff in this *pro se* action asserts claims under the Americans with Disabilities Act ("ADA") against her former employer Emory Healthcare Inc. ("Emory"). The district court granted summary judgment in favor of Emory. Plaintiff appeals the summary judgment ruling, and she includes in her appeal a challenge to the district court's denial of her motion to file a second amended complaint and an argument that the district court judge should have *sua sponte* recused himself from the case prior to granting summary judgment. After a careful review of the record and the briefing submitted by the parties, we **AFFIRM**.

BACKGROUND

This case arises from Plaintiff's employment with and ultimate termination from Defendant Emory Healthcare Inc.[1] Emory hired Plaintiff in 2013 to work in the emergency department at Emory University Hospital in Midtown, Atlanta. Plaintiff was transferred to fill a patient administrative liaison ("PAL") position at Emory's Wesley Woods, Atlanta location in 2017, pursuant to

[1] We restate the facts as set out in Plaintiff's First Amended Complaint, the operative complaint in this case, and the undisputed facts in the summary judgment record. Where Plaintiff has presented evidence in response to Emory's summary judgment motion that raises a genuine issue of disputed fact, we have resolved the dispute in Plaintiff's favor for purposes of this appeal.

an Employee Accessibility Agreement ("EAA") requested by Plaintiff to accommodate her PTSD. In addition to transferring Plaintiff to a less stressful work setting at Wesley Woods, Plaintiff's EAA provided for flexible breaks to help her manage PTSD-related stress. Plaintiff worked with Emory's Office of Accessibility Services ("OAS") to obtain the accommodations in her EAA.

In 2019, Plaintiff was asked to assume a part-time utilization review position in addition to her regular PAL duties. The request came after Plaintiff voluntarily relinquished her part-time "Wellness Champion" duties, which Plaintiff had been performing in addition to her PAL duties. Plaintiff claims she declined to accept the utilization review position because Emory did not give her a job description for the position. According to Plaintiff, she asked for the job description to ensure that its duties complied with the accommodations required by her EAA. Plaintiff alleges that Emory responded by telling her she was required to accept the position and scheduling her for training with Melody McCaulla, a registered nurse utilization review specialist, on July 23, 2019.

Plaintiff did not attend the July 23 training with Ms. McCaulla because, she says: (1) she still did not have a job description for the utilization review position, (2) Emory scheduled the training without consulting the OAS, and (3) she never accepted the position. Plaintiff refused to attend a rescheduled training with McCaulla on August 6, 2019, for the same reasons—that is, she claims Emory did not give her a job description for the position and she was not sure whether its duties were consistent with her EAA.

Plaintiff was reprimanded on August 7, 2019, and determined to have been insubordinate for her refusal to attend the required training.

Plaintiff reported for a rescheduled training on August 16, 2019, but McCaulla dismissed her after Plaintiff told McCaulla that she had been coerced into attending the training and had not accepted the utilization review position. Plaintiff reported for another rescheduled training on August 28, 2019, but McCaulla again dismissed her after Plaintiff refused to observe McCaulla working with patient files on the computer, claiming that to do so would violate federal HIPAA regulations and Emory policy regarding patient confidentiality. Plaintiff was again reprimanded on September 4, 2019.

Plaintiff reported for a final rescheduled training on September 5, 2019, but McCaulla again dismissed her for the same reasons as before: Plaintiff told McCaulla she had been coerced into attending the training and had not accepted the utilization review position and she refused to observe McCaulla work with patient files on the computer, making the training futile. Plaintiff once again told McCaulla during the September 5 training that she believed watching McCaulla work with patient files in this manner violated federal HIPAA regulations and Emory policy.

Emory terminated Plaintiff for insubordination on September 10, 2019. Plaintiff filed her complaint in this action on April 6, 2021, asserting claims against Emory for discrimination, interference with accommodations, and retaliation in violation of the

ADA, 42 U.S.C. § 12101, *et seq*. Restating her amended allegations for clarity, Plaintiff claims that Emory discriminated against her and interfered with the ADA-mandated accommodations in her EAA when it coerced her into accepting the utilization review position, and that Emory discriminated and retaliated against her in violation of the ADA when it reprimanded her and terminated her employment after she refused to complete the required training for the position.

Emory took Plaintiff's deposition on February 18, 2022. About a week later, and after the close of discovery, Plaintiff moved to file a second amended complaint, purportedly to clarify that she was asserting an ADA discrimination claim and to correct grammatical errors. A magistrate judge denied Plaintiff's motion after a telephonic hearing, explaining that the motion was untimely, and that Plaintiff had failed to show good cause for the delay. Plaintiff subsequently moved for the magistrate judge's recusal, arguing that the judge was biased. The magistrate judge denied the motion, finding no valid basis for recusal.

Plaintiff moved for reconsideration of the magistrate judge's denial of her motion to file a second amended complaint, arguing that the magistrate judge did not adequately explain his ruling. Plaintiff also filed an objection to the magistrate judge's denial of her recusal motion and asked for interlocutory appeal on that issue. The magistrate judge denied Plaintiff's motion for reconsideration, noting that Plaintiff filed her second amended complaint after discovery had concluded and that she failed to show good cause for

the delay. In response, Plaintiff moved to strike her recusal motion and all related filings, stating that the magistrate judge's order addressing her reconsideration motion explained the rationale for the ruling. Based on Plaintiff's response, the magistrate judge entered an order indicating that Plaintiff had withdrawn her objections to the denial of her recusal motion.

Emory subsequently moved for summary judgment as to all of Plaintiff's claims. In support of its motion, Emory argued that Plaintiff failed to exhaust her pretermination claims—that is, her ADA claims based on being required to assume the utilization review specialist duties and being reprimanded for refusing the attend the training for that position—because she received her last right to sue notice from the EEOC as to those claims on September 30, 2019, and she did not file suit until April 6, 2021, well outside the 90-day time limit.[2] Addressing the merits of Plaintiff's pretermination claims, Emory argued Plaintiff's ADA interference and discrimination claims failed because: (1) there was no evidence that Plaintiff was coerced, threatened, or intimidated to assume the utilization review position in violation of her rights under the ADA or that the duties of the position interfered with her ADA rights, and (2) neither the reprimands Plaintiff received nor the requirement that Plaintiff assume the utilization review duties was an adverse employment action. Regarding the pretermination

[2] Plaintiff also received a right to sue notice as to some of these claims on August 22, 2019, but we use the September 30, 2019, date because that is the last possible date applicable to any of Plaintiff's pretermination claims.

retaliation claims, Emory argued that Plaintiff failed to show she engaged in protected activity before she was assigned the utilization review duties or reprimanded for not completing the necessary training for the position.

As to Plaintiff's termination claims, Emory argued that assuming she could establish a *prima facie* case of discrimination or retaliation, Plaintiff failed to show that Emory's reason for terminating her was pretextual. According to Emory, Plaintiff was terminated because she refused to participate in required trainings after she was given multiple chances to complete that task. More specifically, Emory argued that Plaintiff refused to complete the required training five times and that any one of those refusals would have justified termination.

Emory's summary judgment motion was referred to a magistrate judge, who recommended in a report and recommendation ("R&R") that the district court grant the motion. First, the magistrate judge determined that Plaintiff's pretermination claims were time-barred because she filed them over 90 days after she received her right to sue notice from the EEOC as to those claims. Addressing the termination claims on the merits, the magistrate judge determined that even assuming Plaintiff established a *prima facie* case of discrimination and/or retaliation arising from her termination, her ADA claims nevertheless failed because Emory asserted a legitimate, non-discriminatory and non-retaliatory reason for terminating Plaintiff related to her insubordinate refusal to complete a

required training and accept the utilization review duties, and Plaintiff failed to show pretext.

Plaintiff objected to the R&R, arguing, as relevant here, that: (1) her pretermination claims were timely, (2) she demonstrated pretext by showing Emory targeted her when it assigned her new duties, and (3) there was direct evidence of disability discrimination and retaliation. In connection with her objections, Plaintiff filed an amended motion for reconsideration of what she referred to as the magistrate judge's *sua sponte* granting of Emory's motion for summary judgment. In support of the amended motion, Plaintiff argued, among other things, that the magistrate judge granted the summary judgment motion without allowing her to respond and that there was confusion about which claims she intended to assert in her complaint. Plaintiff also argued she should win because Emory abandoned all its defenses.

Consistent with the magistrate judge's recommendation, the district court granted Emory's motion for summary judgment after conducting a *de novo* review of the record. First, the court explained that Plaintiff's first and second EEOC charges addressed all her pretermination ADA claims, including her claims related to being assigned new utilization review duties and being reprimanded for refusing to complete the required training for those duties. Accordingly, the court concluded that Plaintiff had 90 days after she received the second EEOC right to sue notice on September 30, 2019 to file suit, and that she failed to meet that deadline

because she did not file her complaint in this action until April 6, 2021.

As to Plaintiff's termination claims, the district court noted that Plaintiff amended her complaint to clarify those claims once and that the magistrate judge was not required to provide her with a second opportunity to amend her complaint after discovery had concluded, especially given Plaintiff's failure to show good cause for the delay. Addressing the merits of the termination claims, the court concluded that Plaintiff's discrimination and retaliation claims relied on circumstantial rather than direct evidence. And, the court agreed with the magistrate judge that Emory asserted a legitimate reason for terminating Plaintiff, which Plaintiff failed to rebut with evidence of pretext. Finally, the court determined that Plaintiff's reconsideration motion was a premature and unauthorized effort to relitigate the merits of her case. For all these reasons, the court granted Emory's motion for summary judgment and denied Plaintiff's motion for reconsideration.

Plaintiff appeals the district court's summary judgment ruling. In support of her appeal, Plaintiff argues that the district court erred when it denied her second motion to amend the complaint, filed after Plaintiff's deposition and after the close of discovery, as untimely. Plaintiff also argues, for the first time on appeal, that the district court judge erred by not *sua sponte* recusing himself from the case. Finally, Plaintiff contends that the court erred when it concluded that her pretermination claims were untimely and that she failed to present sufficient evidence of pretext to survive

summary judgment on her termination claims. For the reasons set out below, we reject Plaintiff's arguments and affirm the district court.

DISCUSSION

I. Standards of Review

We review the district court's holding that Plaintiff failed to timely file suit as to her pretermination claims *de novo*. *See Stamper v. Duval Cnty. Sch. Bd.*, 863 F.3d 1336, 1339 (11th Cir. 2017) (reviewing *de novo* the district court's order granting summary judgment to the defendant where the plaintiff failed to file her discrimination complaint within 90 days of receiving a notice of right to sue from the EEOC). Likewise, we review the court's summary judgment ruling *de novo*, applying the same standard as the court below and resolving any material disputed issues of fact in Plaintiff's favor. *Smith v. Owens*, 848 F.3d 975, 978 (11th Cir. 2017). Under this standard, summary judgment is warranted if the defendant shows there is no genuine dispute as to any material fact and that it is entitled to judgment as a matter of law. *Id. See also* Fed. R. Civ. P. 56(a). In analyzing that question, we construe the evidence in the light most favorable to the plaintiff and draw all justifiable inferences in her favor. *Smith*, 848 F.3d at 978.

We review the denial of a motion for leave to amend a complaint for abuse of discretion. *Williams v. Bd. of Regents of Univ. Sys. of Ga.*, 477 F.3d 1282, 1291 (11th Cir. 2007). We also generally review the denial of a motion to recuse for abuse of discretion. *Christo v. Padgett*, 223 F.3d 1324, 1333 (11th Cir. 2000). However,

we review issues raised for the first time on appeal only in exceptional circumstances. *See Blue Martini Kendall, LLC v. Miami Dade Cnty.*, 816 F.3d 1343, 1349 (11th Cir. 2016) ("As a general rule, an issue not raised in the district court and raised for the first time in an appeal will not be considered by this [C]ourt." (quotation marks omitted)). Assuming review is available, given Plaintiff's failure to raise the recusal issue below, it is only for plain error. *See Hamm v. Members of Bd. of Regents*, 708 F.2d 647, 651 (11th Cir. 1983). Under plain error review, we will reverse the district court only if we find: (1) there is an error (2) that is plain (3) that affects a litigant's substantial rights and (4) that "not correcting the error would seriously affect the fairness of the judicial proceeding." *Farley v. Nationwide Mut. Ins. Co.*, 197 F.3d 1322, 1329 (11th Cir. 1999).

As a *pro se* litigant, Plaintiff's pleadings "are held to a less stringent standard than pleadings drafted by attorneys and will, therefore, be liberally construed." *Tannenbaum v. United States*, 148 F.3d 1262, 1263 (11th Cir. 1998). However, this leniency does not give a court "license to serve as *de facto* counsel for a party, or to rewrite an otherwise deficient pleading in order to sustain an action." *GJR Invs., Inc. v. Cnty. of Escambia*, 132 F.3d 1359, 1369 (11th Cir. 1998) (citations omitted), *overruled on other grounds by Ashcroft v. Iqbal*, 556 U.S. 662 (2009).

II. Analysis

A. Plaintiff's Recusal Argument

Plaintiff argues, for the first time on appeal, that the district court judge should have recused himself from the case before

ruling on Emory's summary judgment motion.[3] "This Court has repeatedly held that an issue not raised in the district court and raised for the first time in an appeal will not be considered." *Access Now, Inc. v. Sw. Airlines Co.*, 385 F.3d 1324, 1331 (11th Cir. 2004) (quotation marks omitted). "This rule . . . is not jurisdictional and may be waived by this [C]ourt in certain exceptional circumstances." *Blue Martini Kendall, LLC*, 816 F.3d at 1349 (quotation marks omitted). But no such circumstances exist here.

Even if review were available, it would be for plain error. *See Hamm*, 708 F.2d at 651. The district court committed no error when it failed to recuse in this case, much less plain error. The recusal issue raised by Plaintiff is governed by 28 U.S.C. § 455.[4] Under that statute, a judge must "disqualify himself in any proceeding in which his impartiality might reasonably be questioned" or in any circumstance where "he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding." 28 U.S.C. § 455(a), (b)(1). There is no evidence or even plausible argument that the district court judge

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[3] Plaintiff filed a motion when the case was on referral for the magistrate judge to recuse himself, but the magistrate judge denied the motion and Plaintiff apparently does not challenge the denial of that motion in this appeal. Instead, her argument on appeal is focused on the district court judge's purported obligation to *sua sponte* recuse himself from the case. Plaintiff acknowledges in her appellate brief that she did not raise this issue below.

[4] Reassignment of a case to a different judge is also available under 28 U.S.C. § 144, but that statute requires that the party seeking reassignment file a "timely and sufficient" affidavit. Plaintiff did not file such an affidavit here.

here had a personal bias or prejudice, and there is no reason to question his impartiality.

Indeed, the only argument Plaintiff offers in support of recusal is that the district court judge must have been biased against her because he held that her pretermination claims were untimely. Put simply, an unfavorable ruling on a legal issue is not a valid ground for recusal by the judge who made the ruling. *See Liteky v. United States*, 510 U.S. 540, 555 (1994) (explaining that judicial rulings "are proper grounds for appeal, not for recusal"). If it were, recusal would be required in every case. *See In re Moody*, 755 F.3d 891, 895 (11th Cir. 2014) ("[A] judge, having been assigned to a case, should not recuse himself on unsupported, irrational, or highly tenuous speculation." (quotation marks omitted)). Thus, we reject Plaintiff's recusal argument.

B. Plaintiff's Motion to Amend

Plaintiff also argues that the district court erred by denying her motion to amend the complaint a second time to further clarify and correct grammatical errors in her claims. As discussed, the magistrate judge recommended that Plaintiff's second motion to amend be denied because it was filed after the deadline set out in the scheduling order for filing such motions and after the close of discovery, and Plaintiff offered no good reason for the delay. The district court agreed with the magistrate judge that the motion to amend should be denied because it was untimely and Plaintiff provided no good reason—indeed, she provided no reason—for the delay.

"[I]t is not an abuse of discretion for a district court to deny a motion for leave to amend following the close of discovery, past the deadline for amendments and past the deadline for filing dispositive motions." *Lowe's Home Ctrs., Inc. v. Olin Corp.*, 313 F.3d 1307, 1315 (11th Cir. 2002). Federal Rule 15 provides for the liberal grant of leave to amend when justice "so requires" it, but a court is authorized to deny such a motion on the ground of undue delay. *See Maynard v. Bd. of Regents of Univ. of Fla. Dep't of Educ.*, 342 F.3d 1281, 1287 (11th Cir. 2003). The scheduling order in this case set a deadline of October 2, 2021, for amending pleadings and January 3, 2022, for completing discovery. Plaintiff was allowed to amend her complaint on September 30, 2021, before the first deadline expired. But she did not move to amend her complaint a second time until February 23, 2022, nearly five months after the deadline for amending the pleadings and two months after the close of discovery.[5] Further, and as the magistrate judge and the district court emphasized, she provided no good reason for the delay. *See* Fed. R. Civ. P. 16(b)(4) (requiring "good cause" to modify a scheduling order). Under the circumstances, it was not an abuse of discretion for the court to deny the second motion to amend.

C. Plaintiff's ADA Claims

Finally, Plaintiff argues that the district court erred when it granted summary judgment to Emory based on its determination that her pretermination claims were untimely and her termination

[5] The discovery period was extended in December 2021 for the limited purpose of completing Plaintiff's deposition.

claims were not supported by sufficient evidence of pretext to rebut Emory's asserted legitimate reason for terminating Plaintiff. For the reasons discussed below, we reject Plaintiff's arguments.

1. Pretermination Claims

A plaintiff seeking to bring claims under the ADA must file her complaint in the district court within 90 days of receiving a right to sue notice from the EEOC as to the claims asserted in the complaint. 42 U.S.C. §§ 12117(a), 2000e-5(f)(1). *See also Zillyette v. Cap. One Fin. Corp.*, 179 F.3d 1337, 1339 (11th Cir. 1999) (discussing the 90-day deadline for filing suit under §§ 12117(a), 2000e-5(f)(1)). Here, Plaintiff filed her first EEOC charge on August 14, 2019, alleging that Emory discriminated and retaliated against her in violation of the ADA when it assigned her new duties related to the utilization review position. On Plaintiff's request, the EEOC issued a right to sue notice as to her first charge on August 22, 2019. Plaintiff filed her second EEOC charge on September 5, 2019, alleging that Emory discriminated and retaliated against her in violation of the ADA when it reprimanded her for insubordination after she failed to complete the utilization review training. Again on Plaintiff's request, the EEOC issued a notice of right to sue as to her second charge on September 30, 2019.

All of Plaintiff's pretermination ADA claims were encompassed in the first two EEOC charges described above. To assert a timely legal action as to any of those claims, Plaintiff was thus required to file suit within 90 days of September 30, 2019, at the latest.

See 42 U.S.C. §§ 12117(a), 2000e-5(f)(1). Her complaint in this case, filed on April 6, 2021, was more than a year late.

Contrary to Plaintiff's argument, the operative notices of right to sue for her pretermination claims were the notices corresponding to her first and second EEOC charges. The first and second charges described and sought relief under the ADA for all the adverse action and/or ADA interference Plaintiff claims to have suffered prior to her termination, including any such action or interference associated with Emory's requirement that Plaintiff assume the utilization review duties and the reprimands Plaintiff received when she failed to complete the required training for those duties. Plaintiff filed a third EEOC charge after she was terminated and she did not receive a notice of right to sue as to that charge until March 31, 2021, making her complaint filed on April 6, 2021, timely as to her termination claims. But Plaintiff's third charge did not renew her right to file a timely lawsuit as to her previously asserted, expired claims. *Cf. Stamper*, 863 F.3d at 1341–42 (agreeing with the district court that a second notice of right to sue failed to revive the plaintiff's already expired discrimination claims).

Neither did Emory abandon its timeliness defense to her pretermination claims, as Plaintiff suggests. Plaintiff argues that Emory somehow waived the defense by "with[olding] the operative EEOC charge and right to sue notice" from its summary judgment motion and statement of facts. We disagree. Emory asserted the timeliness defense in its summary judgment motion that was referred to the magistrate judge, and reasserted the defense when

the district court considered Plaintiff's objections to the magistrate judge's R&R. Accordingly, there was no waiver. Regarding Emory's "withholding" of the right to sue notice, it is Plaintiff, not Emory, who had the burden of producing the notice and otherwise showing that her complaint satisfied the prerequisites for filing suit under the ADA. *See Maynard v. Pneumatic Prods. Corp.*, 256 F.3d 1259, 1262 (11th Cir. 2001) ("An ADA plaintiff has the burden of proving all conditions precedent to filing suit, including the condition that he timely filed with the EEOC.").

2. Termination Claims

As noted, Plaintiff's ADA claims arising from her termination are timely. Plaintiff filed an EEOC charge challenging the termination of her employment on October 10, 2019, received a notice of right to sue as to this charge on March 31, 2021, and filed the complaint in this case approximately one week later, on April 6, 2021. Nevertheless, we agree with the district court that summary judgment is warranted on these claims.

As a preliminary matter, we note that Plaintiff has abandoned any ADA interference claim related to her termination. Relevant to an interference claim, the ADA makes it unlawful to:

> coerce, intimidate, threaten, or interfere with any individual in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other individual in the exercise or enjoyment of, any right granted or protected by [the ADA].

42 U.S.C. § 12203(b). Plaintiff suggested below that she intended to pursue a claim under this provision. The claim appears to have been focused on alleged interference arising from the requirement that Plaintiff perform the new utilization review duties. Any such claim is barred as untimely, pursuant to the discussion above. But to the extent Plaintiff intended to assert an interference claim based on her termination, she has abandoned that claim on appeal by failing to discuss it in her appellate brief.[6] Accordingly, we do not consider the merits of any issues related to ADA interference.[7] *See Sapuppo v. Allstate Floridian Ins. Co.*, 739 F.3d 678, 681 (11th Cir. 2014) ("We have long held that an appellant abandons a claim when he either makes only passing references to it or raises it in a perfunctory manner without supporting arguments and authority.").

In addition to prohibiting interference with ADA rights, the ADA also prohibits discrimination on the basis of disability in regard to the "terms, conditions, and privileges of employment" and retaliation against an individual for opposing an act or practice

[6] Plaintiff mentions an "interference" theory a few times in passing, but she offers no argument in support of the theory or explanation why summary judgment is not warranted as to the interference claim she initially asserted in this case. Furthermore, Plaintiff's appellate brief repeatedly characterizes her claims as involving discrimination and retaliation in violation of the ADA.

[7] We note that Plaintiff offered no evidence suggesting that the utilization review duties interfered with her EAA accommodations. In fact, undisputed testimony in the record shows that the utilization review duties were clerical in nature, and that they were consistent with Plaintiff's abilities and compliant with her EAA.

made unlawful by the ADA, making a charge under the ADA, or otherwise participating in an investigation under the ADA. *See* 42 U.S.C. §§ 12112(a), 12203(a). Because Plaintiff's ADA discrimination and retaliation claims are based on circumstantial rather than direct evidence, and because Plaintiff presents no "convincing mosaic" theory, we analyze her claims under the *McDonnell Douglas* burden-shifting framework.[8] *See Ring v. Boca Ciega Yacht Club Inc.*, 4 F.4th 1149, 1163 (11th Cir. 2021).

Under the *McDonnell Douglas* framework, the plaintiff has the initial burden of establishing a case of disability discrimination or retaliation by making a *prima facie* showing that she is a qualified individual with a disability who suffered an adverse employment action because of her disability (discrimination, or that she engaged in statutorily protected expression and suffered a causally related adverse action (retaliation). *See Akridge v. Alfa Ins. Co.*, 93 F.4th 1181, 1191 (11th Cir. 2024). Once the plaintiff makes the required *prima facie* showing, "the burden shifts to the defendant to articulate legitimate nondiscriminatory reasons for the adverse action." *Ring*, 4 F.4th at 1163. Assuming the defendant meets that burden, "the plaintiff must produce sufficient evidence for a reasonable factfinder to conclude that *each* of the defendant's proffered

[8] Direct evidence is evidence that "reflects a discriminatory or retaliatory attitude correlating to the discrimination or retaliation complained of by the employee" and that, "if believed, proves the existence of [discrimination or retaliation] without inference or presumption." *Fernandez v. Trees, Inc.*, 961 F.3d 1148, 1156 (11th Cir. 2020) (quotation marks omitted). Contrary to Plaintiff's argument, she presents no such evidence in this case.

nondiscriminatory reasons is pretextual to avoid summary judgment." *Id.* (emphasis in original, quotation marks omitted). A reason is only a "pretext for discrimination" if the plaintiff shows "*both* that the reason was false, *and* that discrimination was the real reason" for the employer's decision. *Id.* (emphasis in original, quotation marks omitted).

We assume, as the district court did, that Plaintiff established a *prima facie* case of ADA discrimination and retaliation. Even so, her claims cannot survive summary judgment because she failed to rebut Emory's asserted legitimate, nondiscriminatory and nonretaliatory reason for terminating her: insubordination related to Plaintiff's repeatedly (five times) refusing to complete a required training for and assume the duties of the utilization review position she was assigned. There is no question this is a reason that "might motivate a reasonable employer" to terminate an employee. *See Brooks v. Cnty. Comm'n of Jefferson Cnty.*, 446 F.3d 1160, 1163 (11th Cir. 2006). As such, Plaintiff was required to meet the reason "head on and rebut it" rather than "quarreling with [its] wisdom." *Id.* This she failed to do.

Indeed, all the evidence in the summary judgment record confirms that Emory terminated Plaintiff for the reason it asserts—insubordination related to her refusal to train for and assume her assigned utilization review duties—rather than for any discriminatory or retaliatory reason. In support of its motion for summary judgment, Emory attached the unrebutted declaration testimony of Ed Lawrence, the director of hospital operations at Wesley

Woods and Plaintiff's manager at the time of her termination in 2019. Among other duties, Lawrence oversaw the recruitment and hiring of personnel at Wesley Woods. Lawrence explained that the utilization review duties Plaintiff was asked to assume in 2019 involved reviewing the services delivered to a patient and determining if those services fell under the patient's health insurance coverage. According to Lawrence, McCaulla was the sole employee working on utilization review in 2019 and she sometimes needed help depending on the number of patients admitted to the hospital. Lawrence determined that Plaintiff, who had just relinquished her Wellness Champion duties, had the most availability in her schedule and thus assigned her to help McCaulla when needed.

Lawrence testified that he advised Plaintiff of his decision and told her the duties she would perform in that role, which primarily included: calling payors, accessing a payor's website to find Medicaid authorizations, and scanning documents into patient files. Lawrence stated, and Plaintiff did not dispute, that the duties related to the utilization review position were clerical duties that involved using a telephone, a fax machine, and a computer, all tasks that were within Plaintiff's capabilities and in compliance with her EAA. The duties did not result in any change to Plaintiff's flexible break schedule and would not expose her to a stressful work setting like the Midtown emergency department.

According to Lawrence, Plaintiff refused to accept the utilization review position, whereupon it was explained to Plaintiff that accepting the position and completing the related training were

mandatory. Lawrence testified, consistent with the allegations in the complaint, that Plaintiff subsequently refused to complete five scheduled trainings with McCaula, three of which refusals occurred after Plaintiff was reprimanded and advised multiple times that the duties and training were mandatory, that the training did not violate HIPAA or Emory regulations as Plaintiff allegedly believed, and that her continued recalcitrance was grounds for further discipline or termination. Lawrence issued a final warning to Plaintiff on September 4, 2019, in which he specifically advised Plaintiff that she would be terminated if she did not complete the utilization review training and perform the assigned tasks. Yet, Plaintiff again refused to complete a rescheduled training on September 5, 2019, resulting in her termination on September 10, 2019.

As set out above in the description of the allegations underlying this action, Plaintiff confirmed in the complaint the timeline for her reprimands and missed and rescheduled trainings. Plaintiff also acknowledged in the complaint that she had been advised numerous times, including in the written reprimands she received prior to her termination, that she needed to complete the utilization review training. And again, Plaintiff does not dispute that Lawrence told her when he gave her the final reprimand on September 5, 2019, that the utilization review training did not involve any HIPAA or Emory policy violations. Nevertheless, Plaintiff again declined to participate in the final training.

It is undisputed that Lawrence viewed Plaintiff's repeated and continued refusal to complete the required training and

assume the utilization review duties as an act of defiance and insubordination that justified her termination. Plaintiff's attempt to establish pretext despite the well-documented record of insubordination preceding her termination essentially amounts to quarreling with Lawrence over whether she should have been tapped to assume the utilization review duties and questioning his method of training her for those duties. For example, Plaintiff suggests in the complaint and in her appellate briefing that she did not believe there was a need for her to work in utilization review, and that she refused to observe McCaulla's work because it would have required her to view confidential patient information in violation of HIPAA regulations and Emory policy. These arguments are insufficient to raise a question of fact as to pretext because the pretext inquiry is focused on the employer's beliefs as to whether an employee's perceived misconduct warranted the challenged adverse employment action, not the employee's beliefs. *See Gogel v. Kia Motors Mfg. of Ga., Inc.*, 967 F.3d 1121, 1148 (11th Cir. 2020) ("The question is whether the employers were dissatisfied with the employee for these or other non-discriminatory reasons, even if mistakenly or unfairly so, or instead merely used those reasons as cover for discriminating against her." (alterations adopted)).

In short, regardless of whether the utilization review assignment was necessary in Plaintiff's opinion, or how the training for the position was facilitated, the evidence conclusively shows, and Plaintiff admits—indeed, she alleges in her complaint—that her manager at Emory repeatedly ordered her to complete a required training and assume the utilization review duties, and she

repeatedly refused to do so despite multiple warnings and reprimands. Given this undisputed evidence, the record does not support a reasonable inference that Emory's insubordination rationale was pretextual, and that Plaintiff was in fact terminated for discriminatory or retaliatory reasons. Accordingly, the district court correctly granted summary judgment to Emory on Plaintiff's ADA discrimination and retaliation claims.

CONCLUSION

For the foregoing reasons, we **AFFIRM** the district court's order granting summary judgment to Emory as to Plaintiff's ADA claims.