

NOT FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 25-12435
Non-Argument Calendar

WILLIAM GARY,

Plaintiff-Appellant,

versus

GEORGIA DEPARTMENT OF DEFENSE,

Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Georgia
D.C. Docket No. 1:23-cv-03008-MHC

Before GRANT, ABUDU, and ANDERSON, Circuit Judges.

PER CURIAM:

William Gary reported his supervisor Rhonda Hines for sexual harassment after she repeatedly made crude sexual remarks. She was fired (Gary was not the only one who had objected to her

comments), but Gary says her replacement retaliated against him for reporting the conduct. He left the job, and, a couple years later, sued for sexual harassment and retaliation under Title VII and Georgia law. The district court granted summary judgment to the defendants, and Gary appealed. We affirm.

I.

Gary worked as a full-time employee for the Georgia Department of Defense for nearly five and a half years. He had a complicated relationship with Hines, who supervised him for the first four years. During an earlier investigation into Hines's behavior, Gary said she was "a great leader" who took "time to help" him and made him better at his job. He now says that she was "always yelling and being very disrespectful toward others." He also raises serious claims about sexual remarks and comments that she made in the office. Distressed by her actions, Gary took some leave and filed a complaint. Several months later, the Georgia Department of Defense fired Hines, and Gary returned to work.

But Gary says his troubles were not over. He claims that he did not receive a promotional opportunity that had been sent while he was on leave. He also complains that his new supervisor, Dania Aponte, met with him "every other day," met with other employees separately, and "spent more time focused" on Gary's department—oversight that Gary describes as retaliatory micromanagement. And when he rated his own performance "exceptional," Aponte shifted it down to "Successful Performer,"

25-12435

Opinion of the Court

3

more of an average rating (but also Gary's highest in four years). Eventually, Gary got a third boss, Russell Isabelle, and "things did get better." Nevertheless, two months later, he put in his two weeks' notice, stating in his resignation letter that he appreciated the opportunity to work at the Department. About a month after that, Gary started at Long Island University.

Nearly two more years went by, and Gary sued the Department, advancing a variety of employment discrimination claims. The district court granted summary judgment to the defendant. On appeal, Gary asks us to reverse the court's rulings on his harassment claim, his retaliation claim, and his constructive discharge claim.

II.

We review de novo the district court's grant of summary judgment. See *McCreight v. AuburnBank*, 117 F.4th 1322, 1329 (11th Cir. 2024). A movant is entitled to summary judgment if he can show that there is "no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." *Id.* (quoting Fed. R. Civ. P. 56(a)). "A genuine issue of material fact exists when the evidence is such that a reasonable jury could return a verdict for the non-moving party." *Id.* (quotation omitted).

III.

We first consider Gary's retaliation claim before turning to his harassment and constructive discharge claims.

A.

Gary says that his second supervisor, Aponte, retaliated against him because he reported the inappropriate conduct of his previous supervisor, Hines. He claims that Aponte micromanaged him, scrutinized his work, and downgraded his performance evaluation. That, he says, led to diminished pay. He also says he was denied access to promotional opportunities.

To establish a retaliation claim, “a plaintiff must show that a reasonable employee would have found the challenged action materially adverse.” *Burlington N. & Santa Fe Ry. Co. v. White*, 548 U.S. 53, 68 (2006). “A material adverse employment action is one that might have dissuaded a reasonable worker from making or supporting a charge of discrimination.” *Johnson v. Miami-Dade Cnty.*, 948 F.3d 1318, 1326 (11th Cir. 2020) (quotation omitted). Things like “petty slights, minor annoyances, and simple lack of good manners” will not suffice. *Terrell v. Sec’y, Dep’t of Veterans Affs.*, 98 F.4th 1343, 1356 (11th Cir. 2024) (quotation omitted). Negative evaluations alone are not material adverse employment actions. *See Johnson*, 948 F.3d at 1326.

While the Department maintains that pay increases were not tied to the performance evaluations for 2020–2021, Gary claims that Hines told him otherwise. But Hines was terminated before the completion of the 2020–2021 evaluations and thus could not have conveyed firsthand knowledge of the 2020–2021 policy. Gary’s claim therefore cannot create a material dispute of fact as to whether the evaluations impacted his pay.

25-12435

Opinion of the Court

5

As for the meetings and supervision of his work, these are normal parts of a job, not the sort of things that would dissuade a reasonable person from making a charge of discrimination. *See id.* Even if the supervision had led to negative performance evaluations, that alone would not have been enough. *See id.* And while Gary may have found the meetings and supervision annoying, he provides no evidence that would bring them to the level of a material adverse employment action. *See Terrell*, 98 F.4th at 1356.

Gary also says that he did not receive an email that contained a promotional opportunity. In his briefing below, however, Gary admitted he was sent the email—he just says it was sent while he was on leave so he wouldn't see it. But Gary used his email while he was on leave. Because he received the promotional opportunity email and had access to his email while on leave, he was not denied an opportunity at the promotion and thus suffered no adverse action.

B.

Next, we consider his harassment claim. The magistrate judge found that Gary's harassment claim was untimely, and Gary did not object to that finding before the district court. Gary fails to raise the timeliness issue in his initial brief and so has abandoned it. *Sapuppo v. Allstate Floridian Ins. Co.*, 739 F.3d 678, 680 (11th Cir. 2014). We therefore need not consider the merits. *See Samara v. Taylor*, 38 F.4th 141, 152 (11th Cir. 2022).

C.

Finally, we turn to Gary’s constructive discharge claim. He claims that the remarks, retaliation, performance downgrade, scrutiny, and lack of promotions made his work environment so hostile that he had to resign.

A “constructive discharge is tantamount to an actual discharge.” *Davis v. Legal Servs. Ala., Inc.*, 19 F.4th 1261, 1267 (11th Cir. 2021). The threshold for constructive discharge is “quite high”—to succeed, “a plaintiff must demonstrate that working conditions were so intolerable that a reasonable person in his position would have been compelled to resign.” *See Hipp v. Liberty Nat’l Life Ins. Co.*, 252 F.3d 1208, 1231 (11th Cir. 2001) (alteration adopted and quotation omitted); *Walton v. Johnson & Johnson Servs., Inc.*, 347 F.3d 1272, 1282 (11th Cir. 2003).

Gary does not meet this standard. In fact, he makes his constructive discharge claim without citation to the record and in a short, conclusory fashion. Litigants must “cite parts of the record on which” they rely, or they waive their arguments. *See Nat’l All. for the Mentally Ill, St. Johns Inc. v. Bd. of Cnty. Comm’rs*, 376 F.3d 1292, 1295–96 (11th Cir. 2004) (quotation omitted).

Though Gary has waived his argument, we note that an independent review of the record shows that it does not survive. The alleged conduct must continue until close to when the employee leaves. *See Hipp*, 252 F.3d at 1236. We have found, for example, that an eleven-day stretch was too long. *Steele v. Offshore Shipbuilding, Inc.*, 867 F.2d 1311, 1313–17 (11th Cir. 1989).

25-12435

Opinion of the Court

7

Here, Gary claims no further negative conduct against him after his third supervisor arrived. And it was not until two months after he had the new supervisor that Gary put in his two weeks' notice. The two-month delay between the problems Gary alleges and his eventual departure, plus his decision to stay two weeks after that, suggests that his conditions "were not so intolerable as to leave him with no choice but to resign." *Hipp*, 252 F.3d at 1236; *see also Steele*, 867 F.2d at 1313–17.

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We **AFFIRM** the judgment of the district court.