

NOT FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 25-13672
Non-Argument Calendar

ERIC WILLINGHAM,

Plaintiff-Appellant,

versus

JEFFREY LYASH,

CEO, Tennessee Valley Authority,

Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Alabama
D.C. Docket No. 5:23-cv-00922-LCB

Before GRANT, LUCK, and WILSON, Circuit Judges.

PER CURIAM:

Eric Willingham sued his former employer, the Tennessee Valley Authority, for discriminating against him based on his disability and race, failing to accommodate his disability, creating a hostile work environment, and retaliating against him for reporting the discrimination. The district court granted summary judgment for the Authority. After careful review, we affirm.

FACTUAL BACKGROUND

The Authority hired Willingham, a black man, as a nuclear maintenance technician in 2010. Three years later, he served as a witness in a coworker's Equal Employment Opportunity case, and he filed his own complaint because he was passed over for a higher-level "[l]evel 4" machinist job for which he was qualified.

In 2015, Willingham was suspended for three days for failing to follow instructions to keep his area sprayed down and wear a face shield, which caused him to be contaminated. In 2017, he was suspended for five days for using incorrect tools, insubordination, and leaving work early. He received a "last chance letter" warning that "[a]ny future incidents w[ould] lead to disciplinary action up to and including termination."

Things went downhill from there. Over the next year and a half, supervisors repeatedly "coached" Willingham for not being "ready and available" for work and for sleeping on the job in violation of company policy. The final sleeping incident occurred in July 2019. Asked by his supervisor whether there was any reason for the sleeping he should know about, Willingham said "no," he "should have went [to] bed earlier," and it was "all [his] fault."

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Willingham was then put on leave pending a decision on his employment.

Pointing to the repeated violations while on a last chance letter, the Authority decided to fire Willingham. Its board approved the decision on August 12 and sent Willingham the news on September 16. The September 16 notice of termination said that Willingham's termination would be "effective October 17" to account for a thirty-day period mandated by his union. Ten days later, on September 26, Willingham emailed his supervisor a September 17 sleep study diagnosing him with "[m]oderate obstructive sleep apnea." The email said "[h]ere are the results."

Willingham then went to an Equal Employment Opportunity counselor and filed a complaint alleging "[r]ace ([b]lack)" discrimination. He amended his complaint to add a retaliation claim, alleging that the Authority delayed his unemployment benefits because of his complaint. The Equal Employment Opportunity Commission dismissed his race discrimination and retaliation claims, adopting the administrative law judge's finding of no intentional discrimination.

PROCEDURAL HISTORY

This lawsuit followed. Willingham asserted claims for disability discrimination, failure to accommodate his disability, race discrimination, creating a hostile work environment, and retaliation. The parties cross-moved for summary judgment.

The district court sided with the Authority. Willingham did not exhaust his disability and failure-to-accommodate claims, the

district court explained, because his Equal Employment Opportunity complaint and amendment contained no “charge” about disability. His race-discrimination claim failed because he did not establish a *prima facie* case or a “convincing mosaic of circumstantial evidence that would allow the jury to infer intentional discrimination.” The conduct behind his hostile-work-environment claim was not “sufficiently pervasive or severe.” And no causal connection linked his protected activities—participation in Equal Employment Opportunity cases—to the claimed retaliation—his termination and a delay in his unemployment paperwork. After the district court entered judgment for the Authority, Willingham appealed.

STANDARD OF REVIEW

“We review *de novo* the district court’s grant of summary judgment.” *Shaw v. City of Selma*, 884 F.3d 1093, 1098 (11th Cir. 2018). “Summary judgment is appropriate only if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” *Id.* (citation omitted). “[W]e review the evidence in the light most favorable to the . . . non-moving party, and draw all justifiable inferences in [his] favor.” *Id.* at 1097 n.1.

DISCUSSION

Willingham challenges the district court’s ruling on each claim. We address them in the same order the parties discuss them on appeal.

Disability-Discrimination and Failure-to-Accommodate Claims

Willingham first argues the district court erred in granting summary judgment for the Authority on his disability-discrimination and failure-to-accommodate claims. “The [Rehabilitation] Act prohibits federal agencies from discriminating in employment against otherwise qualified individuals with a disability.” *Mullins v. Crowell*, 228 F.3d 1305, 1313 (11th Cir. 2000). Rehabilitation Act plaintiffs receive Title VII’s “remedies, procedures, and rights,” 29 U.S.C. § 794a(a)(1), but also must comply with its exhaustion requirement: “private actions against federal government employers under the Act . . . must satisfy the requirement of exhaustion of administrative remedies in the manner prescribed by section 794a(a)(1) and thus by Title VII.” *Doe v. Garrett*, 903 F.2d 1455, 1461 (11th Cir. 1990) (citation modified).¹

Exhaustion turns on “whether the plaintiff’s complaint is like or related to, or grew out of, the allegations contained in the [Commission’s] charge.” *Jimenez v. U.S. Att’y Gen.*, 146 F.4th 972, 990 (11th Cir. 2025) (citation modified). Judicial claims that “amplify, clarify, or more clearly focus the allegations in the [Equal Employment Opportunity] complaint” are permitted. *Id.* (citation modified); see *Mulhall v. Advance Sec., Inc.*, 19 F.3d 586, 589 n.8 (11th

¹ Exhaustion applies to Rehabilitation Act claims brought under “[29 U.S.C.] section 791 or 794.” *Id.* Section 791 covers every agency in the executive branch, and section 794 covers any program or activity conducted by any executive agency. See 29 U.S.C. §§ 791(b), 794(a). Both implicate the Authority, “a federally owned corporation that acts as an agency or instrumentality of the United States.” See *Springer v. Bryant*, 897 F.2d 1085, 1089 (11th Cir. 1990).

Cir.1994) (“A plaintiff’s judicial complaint is limited by the scope of the [Commission’s] investigation which can reasonably be expected to grow out of the charge of discrimination.”). “But we have repeatedly cautioned that allegations of new acts of discrimination are inappropriate.” *Jimenez*, 146 F.4th at 990 (citation modified).

Willingham’s disability-discrimination and failure-to-accommodate claims were new acts of discrimination. His Equal Employment Opportunity complaint and amendment said nothing about disability discrimination or a failure to accommodate. The administrative investigation tracked what he alleged: race discrimination and retaliation. His disability-discrimination and failure-to-accommodate claims were not like, related to, or expected to grow from those allegations. *See id.*

Willingham responds that he told his Equal Employment Opportunity counselor that he had sleep apnea, which created a factual dispute on exhaustion. There is evidence that he did. But the problem for Willingham is that, even though he may have talked to his counselor about his sleep apnea, he never amended his Equal Employment Opportunity complaint to include the disability-related claims. Without amendment, his complaint was adjudicated through the administrative process only on his race-discrimination and retaliation claims. His disability-discrimination and failure-to-accommodate claims were not exhausted, as required by Title VII and the Rehabilitation Act.

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Race-Discrimination Claim

Willingham next contends that the district court should not have granted summary judgment for the Authority on his race-discrimination claim. He offers three pieces of “circumstantial evidence that would allow a jury to infer intentional discrimination by the decisionmaker.” *Tynes v. Fla. Dep’t of Juv. Just.*, 88 F.4th 939, 946 (11th Cir. 2023).

First, he points to three white coworkers—Sean Powers, Gary Borden, and Joseph McCafferty—who he says also slept on the job. But a relevant comparator should be “similarly situated,” in that he committed the same misconduct, shared the same “employment or disciplinary history,” and had “the same supervisor.” *Lewis v. City of Union City*, 918 F.3d 1213, 1224, 1227–28 (11th Cir. 2019) (en banc). Here, Powers, Borden, and McCafferty were not similarly situated to Willingham. Powers and McCafferty had different supervisors. Borden had a different employment history. And the three did not have the same disciplinary history.

Second, Willingham cites the dossier his supervisor kept on him “separate and apart from [his] official personnel file.” But it’s unclear how this was evidence of race discrimination. There’s no indication that the supervisor kept the dossier because of Willingham’s race, how the dossier impacted his termination, what was in the dossier, and whether the supervisor kept separate files on white coworkers.

And third, Willingham relies on the statement of a former coworker who told him “to watch his back” because people were

“out to get” him. But the former coworker acknowledged that she didn’t know if the people were out to get Willingham because of his race. “A reason is not pretext for discrimination unless it is shown *both* that the reason was false, *and* that discrimination was the real reason.” *Brooks v. Cnty. Comm’n of Jefferson Cnty.*, 446 F.3d 1160, 1163 (11th Cir. 2006) (quotation omitted). There was no evidence that race was the real reason for his termination.

Because Willingham has not provided any “evidence for a reasonable jury to conclude that illegal discrimination occurred,” the district court did not err in granting summary judgment for the Authority on his race-discrimination claim. See *McCreight v. AuburnBank*, 117 F.4th 1322, 1326 (11th Cir. 2024).

Hostile-Work-Environment Claim

Willingham also challenges the summary judgment for the Authority on his hostile-work-environment claim. A racially hostile work environment under Title VII requires a showing that: (1) the plaintiff is a member of a protected class; (2) he was subjected to “unwelcome” harassment; (3) the harassment was “based on his race”; (4) it “was severe or pervasive enough to alter the terms and conditions of his employment”; and (5) “the employer is responsible for the environment.” *Melton v. I-10 Truck Ctr. Inc.*, 166 F.4th 905, 918 (11th Cir. 2026) (citation modified) (applying the Title VII standard for a hostile work environment to a section 1981 claim).

Severity or pervasiveness alone will do. *Id.* The element is both subjective and objective. *Mendoza v. Borden, Inc.*, 195 F.3d

1238, 1246 (11th Cir. 1999) (en banc). The employee must “subjectively perceive” the harassment as severe or pervasive enough to change the terms or conditions of employment, and that perception must be objectively reasonable. *Id.* (quoting *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 21 (1993)). On the objective side, we weigh: “(1) the frequency of the conduct; (2) the severity of the conduct; (3) whether the conduct is physically threatening or humiliating, or a mere offensive utterance; and (4) whether the conduct unreasonably interferes with the employee’s job performance.” *Id.* We examine “conduct in context, not as isolated acts,” and judge it “under the totality of the circumstances.” *Id.*

The summary judgment evidence, while unacceptable, showed sporadic episodes, across roughly eight years, that mostly were not directed at Willingham or did not occur in his presence. His supervisor told him he “took a good man’s job” and he called Willingham and a white coworker “boys.” Another supervisor explained how his son had been disciplined at school for bringing a Confederate flag, which the supervisor “felt like what his son did wasn’t wrong.” Willingham was asked to run “gofer” errands retrieving parts. Two coworkers told him to “watch [his] back” because people were “looking for a way to get rid of” him. He overheard coworkers use the n-word. And the Authority emailed employees about a crane operator who found a noose in his cabin.

Most of these incidents were not based on race. Others were isolated. But isolated incidents—even unacceptable ones—spread over nearly a decade are not severe or pervasive. *See, e.g., Adams v.*

Austal, U.S.A., L.L.C., 754 F.3d 1240, 1254 (11th Cir. 2014) (hearing occasional utterances of racial slurs, seeing the regular image of Confederate flags and racially charged imagery and graffiti in the workplace, and hearing about a noose at work over the course of “two years” was insufficiently severe or pervasive). No reasonable jury could find this conduct “sufficiently severe or pervasive to alter the terms or conditions of [Willingham’s] employment and create a hostile or abusive working environment.” *See Mendoza*, 195 F.3d at 1246.

Retaliation claims

Willingham finally challenges the district court’s ruling on his retaliation claims. Title VII’s participation clause bars retaliation against an employee who has “made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under” the statute, *see* 42 U.S.C. § 2000e-3(a), and covers retaliatory acts occurring with or after the filing of a formal charge with the Commission, *see E.E.O.C. v. Total Sys. Servs., Inc.*, 221 F.3d 1171, 1174 (11th Cir. 2000).

“Title VII retaliation claims require proof that the desire to retaliate was the but-for cause of the challenged employment action.” *Univ. of Tex. Sw. Med. Ctr. v. Nassar*, 570 U.S. 338, 352 (2013). Causation means the “relevant decisionmaker was ‘aware of the protected conduct, and that the protected activity and the adverse actions were not wholly unrelated.’” *Kidd v. Mando Am. Corp.*, 731 F.3d 1196, 1211 (11th Cir. 2013) (quoting *Shannon v. Bellsouth Telecomms., Inc.*, 292 F.3d 712, 716 (11th Cir. 2002)).

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Willingham alleges two adverse employment actions: his termination, following his participation in the two earlier Equal Employment Opportunity cases; and “delayed [] confirmation of [his] employment to the unemployment agency” after his current complaint. The lack of a causal connection is fatal for both.

As to his termination, Willingham offered no evidence that the supervisors involved in his discipline or firing knew of his earlier complaints. He speculates that one supervisor knew because “[p]eople talk.” But “[s]peculation does not create a *genuine* issue of fact; instead, it creates a false issue, the demolition of which is a primary goal of summary judgment.” *Cordoba v. Dillard’s, Inc.*, 419 F.3d 1169, 1181 (11th Cir. 2005) (quotation omitted).

As to the unemployment benefits, the summary judgment evidence showed that the employee who administered Willingham’s unemployment claim was unaware of his Equal Employment Opportunity complaint from December 2019, until June 2020 when she helped investigate and remedy the delay.

CONCLUSION

Given Willingham’s failure to exhaust his disability claims, and the lack of evidence that the Authority harbored any racially discriminatory or retaliatory intent, we conclude that the district court properly granted summary judgment for the Authority on all claims.

AFFIRMED.