IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

RAUL RODRIGUEZ, JR.,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	NO. CIV-22-0618-HE
	)	
LOUIS DeJOY, Postmaster General,	)	
	)	
Defendant.	)	

ORDER

Plaintiff Rual Rodriguez, Jr. filed this case alleging employment discrimination by his employer, the U.S. Postal Service. Plaintiff was a full-time rural carrier at Sooner Station in Norman. Plaintiff's complaint alleges Title VII discrimination and hostile work environment claims, a Rehabilitation Act disability discrimination claim, and a claim for retaliation under both Title VII and the Rehabilitation Act. Plaintiff contends that he was discriminated against due to his race, gender, national origin, and color. Defendant has filed a motion for summary judgment as to all of plaintiff's claims. For the reasons stated below, the motion will be granted.

Background

The background facts and circumstances are essentially undisputed. Plaintiff was hired by USPS in January, 2003. In 2007 or 2008, he became a full-time rural carrier. Plaintiff contends his treatment by USPS changed in approximately May of 2020, after new management officials were installed at Sooner Station.

Later in 2020, plaintiff contacted the Equal Employment Opportunity Commission to complain of alleged discriminatory practices at Sooner Station. Apparently his EEOC contact resulted in the filing of two complaints. The parties' submissions make no meaningful effort to address the timing of the complaints or their significance relative to each other, but one of the complaints apparently resulted in a settlement in USPS EEO Case No. 4G-730-0028-21 pursuant to which plaintiff would be allowed to voluntarily resign his position rather than being fired. The second, USPS EEO Case No. 4G-730-0004-21, filed after his employment ended, alludes to various other incidents which appear to be, more or less, the basis for plaintiff's claims in this case.

Although it is not clear exactly which of the EEO-reported incidents plaintiff views as a basis for the claims here, it appears the grounds for his claims fall into several basic areas of contention. He claims that his rural route was adjusted at various times, to reduce its size and his compensation or to increase his workload. He challenges efforts to reduce his overtime pay or his eligibility for it. He may object to longer hours he was required to work in December of 2020. He appears to object to defendant's reaction to a physical fight he got into with a route customer in July of 2020, or at least views that fight as the basis for him having a disability that is the basis for his disability discrimination claim. He objects to management's response to various other incidents, including a verbal altercation with a co-worker over routing of political mail and one where he sought leave approval from a supervisor, was told it would be denied, and plaintiff then told the supervisor to "fu** off." In the wake of that incident, plaintiff was suspended and his termination and/or resignation eventually resulted.

Discussion

Summary judgment is appropriate "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." Fed.R.Civ.P. 56(a). "A genuine dispute as to a material fact exists when the evidence, construed in the light most favorable to the non-moving party, is such that a reasonable jury could return a verdict for the non-moving party." Carter v. Pathfinder Energy Servs., Inc., 662 F.3d 1134, 1141 (10th Cir. 2011) (quotations and citation omitted). "Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment." Anderson v. liberty Lobby, Inc.,477 U.S. 242, 248 (1986).

I. Title VII Discrimination

In addressing a defendant's motion for summary judgment as to a Title VII claim where, as here, a plaintiff relies on circumstantial evidence to make out a discrimination claim, the motion is evaluated using the three-step analysis outlined in McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802-04 (1973). Under the burden-shifting approach adopted there, a plaintiff must first make out a basis for a prima facie case of discrimination. If plaintiff does so, the employer must then make a showing of a "legitimate, non-discriminatory reason" for its challenged action. If it does so, the burden then shifts to the plaintiff to come forward with evidence that would support an inference of pretext — that the employer's stated reasons are "mere pretext" for impermissible discrimination. *Id.* at 798. If the plaintiff fails to do so, then judgment should enter for the employer.

A prima facie case in this context generally requires a showing that plaintiff was a member of a protected class, suffered an adverse employment action, and that the adverse employment action arose under circumstance giving rise to an inference of discrimination. In federal sector employment actions, however, the claimed discrimination must have impacted a personnel action. A "personnel action" for federal employment purposes must be free from discrimination on a prohibited basis and is not necessarily the same thing as an adverse employment action in the private sector. *See* Babb v. Wilkie, 140 S.Ct. 1168 (2020).

Here, it is undisputed that plaintiff is a member of a protected class or classes. Further, it appears clear enough that at least some of the actions he challenges would have qualified as personnel actions, particularly if his termination or resignation under fire is not off the table based on the undiscussed settlement agreement. Which leaves the question of whether plaintiff has made a sufficient showing that the adverse personnel action(s) were impacted by wrongful discrimination. As that question largely overlaps the similar question of whether some basis for a pretext finding has been shown,[1] those are evaluated together.

Even drawing all inferences from the evidence in favor of the plaintiff, the court concludes the evidence is insufficient to establish a justiciable question as to whether defendant's actions were based on improper discrimination or whether its explanation for

[1] *Here, defendant focuses almost exclusively on the prima facie case element of the burden-shifting analysis, but its claimed bases for its actions as to plaintiff — his conduct as the grounds for termination and the policy and other grounds for the various other personnel actions, are clear enough and articulate a non-discriminatory basis for those actions.*

them is pretextual. Plaintiff's status as a member of a protected class does not, by itself, support an inference of discrimination and the remaining evidence offered by him falls short of doing so. It is undisputed that adjustments to his route were part of a routine, on-going process of evaluation based on national processes and standards. His evidence does not identify any similarly situated person who was treated differently as to route adjustments and, in at least one situation, the net beneficiary of the route adjustments was a person who was similarly situated, as to protected status, with plaintiff. The evidence does not establish that any other similarly situated person was treated differently as to entitlement to overtime pay or workload during the Christmas holidays. Indeed, plaintiff acknowledged that extra work was expected of everyone during that time period due to the load and that it was an "all hands on deck" situation during that period. There is nothing in the evidence as to the fight with the customer to suggest that plaintiff's race or other protected characteristic had any impact on defendant's reaction to it, even if it be assumed that some sort of personnel action was involved. Further, there is no evidence that telling a supervisor to "fu** off in response to a leave denial was treated differently if made by others of a different race or classification. Plaintiff's suggestion that the F-bomb was occasionally dropped in the workplace by others is not quite the same thing as directing the comment to a supervisor.

In any event, the court concludes plaintiff's evidence is insufficient to support a jury inference that defendant's various actions were motivated by discriminatory motives or that defendant's explanation for its disciplinary and other "personnel actions" as to plaintiff were pretextual.

Defendant's motion will be granted as to the Title VII discrimination claim.

II. Hostile Work Environment

The same conclusion follows as to the hostile work environment claim. "An employer creates a hostile work environment when the workplace is permeated with discriminatory intimidation, ridicule, and insult, that is sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment." Hall v. U.S. Dept. of Labor, 476 F.3d 847, 851 (10th Cir. 2007) (quotations and citation omitted). Here, plaintiff has not responded to defendant's arguments as to this claim and appears to concede it. Regardless, the circumstances suggested by the evidence before the court are insufficient to establish that plaintiff's workplace was permeated with severe or pervasive discriminatory intimidation, ridicule, or insult so as to create an abusive working environment.

III. Rehabilitation Act Discrimination

A prima facie case of discrimination under the Rehabilitation Act includes three elements, "(1) the employee is a handicapped person within the meaning of the Act; (2) she is otherwise qualified for the job; and (3) she was discriminated against because of the handicap." Woodman v. Runyon, 132 F.3d 1330, 1338 (10th Cir. 1997).[2] Plaintiff contends that he is disabled by fight or flight syndrome and due to an injury to his pinky finger. On the present submissions, there is reason to doubt whether plaintiff is

[2] *"The Rehabilitation Act prohibits discriminating against qualified individuals 'solely by reason of his or her disability.'"* Crane v. Utah Dept. of Corrections, *15 F.4th 1296, 1313 (10th Cir. 2021) (quoting 29 U.S.C. § 794(a)).*

handicapped within the meaning of the act, but it is unnecessary to belabor the question as there is no evidence here that would plausibly support an inference that defendant's actions as to plaintiff were on the basis of, or affected by, his claimed disability. It is undisputed that plaintiff's "fight or flight" syndrome was not even diagnosed until after his work for defendant ended. Similarly, it is undisputed that defendant was never on notice of any disability based on the injured finger.[3] There is thus no basis for a conclusion that plaintiff was discriminated against due to his alleged fight or flight syndrome or the injury to his finger. The motion will be granted as to plaintiff's Rehabilitation Act discrimination claim.

IV. Retaliation

To establish a prima facie case of retaliation, plaintiff must show that he was (1) engaged in a protected activity, (2) suffered an adverse personnel action, and (3) a causal connection between the protected activity and the adverse action. Reinhardt v. Albuquerque Pub. Schs. Bd. of Educ., 595 F.3d 1126, 1131 (10th Cir. 2010) (Rehabilitation Act); Bekkem v. Wilkie, 915 F.3d 1258, 1267 (10th Cir. 2019) (Title VII). "To establish a causal connection, a plaintiff must present evidence of circumstances that justify an inference of retaliatory motive." Bekkem, 915 F.3d at 1272 (quotations and citation omitted).

[3] *The evidence indicates the finger was injured in the July 2020 fight with the route customer, that it was examined by a doctor a few months later who thought it was jammed in some fashion and would heal in time, and that it was not diagnosed as a more serious injury — a flexor tendon tear — until after his employment ended. Mere knowledge by co-workers of his continuing finger issues does not, without more, translate into defendant knowing of a "disability."*

Here, there is evidence that plaintiff engaged in protected EEO activity and, at least if the termination action is not off the table by reason of the settlement agreement, that he suffered an adverse personnel action.[4] What is lacking, however, is evidence from which a jury might plausibly draw an inference that any adverse actions against plaintiff were the result of his EEO activity.

The evidence indicates plaintiff contacted the EEOC on or about October 20, 2020.[5] But plaintiff does not provide any details of what that complaint encompassed, nor does he point to any evidence that his supervisors or other persons involved in his December 2020, investigation and his January Notice of Proposed Removal were aware that he had initiated an informal complaint. Further, "a three-month gap between protected activity and an adverse action is too long to support an inference of causation on its own. Bekkem, 915 F.3d at 1271. As a result, plaintiff has failed to "present evidence of circumstances that justify an inference of retaliatory motive" for any of the alleged adverse personnel actions. Defendants are entitled to judgment as to the retaliation claims.

Because no dispute of material fact remains, for the reasons stated, defendant's motion for summary judgment [Doc. #42] is **GRANTED**.

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[4] *There is no parallel evidence that might be the basis for a retaliation claim under the Rehabilitation Act, assuming one exists. There is no showing of any protected activity within the ambit of that Act.*

[5] *Plaintiff's formal EEO Complaint is dated January 30, 2021.*

IT IS SO ORDERED.

Dated this 4th day of January, 2024.

JOE HEATON
UNITED STATES DISTRICT JUDGE