NONPRECEDENTIAL DISPOSITION
To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Submitted May 5, 2022*
Decided January 11, 2023

Before

DAVID F. HAMILTON, *Circuit Judge*

AMY J. ST. EVE, *Circuit Judge*

THOMAS L. KIRSCH II, *Circuit Judge*

No. 20-1750

JACQUELINE A. WATKINS,
Plaintiff-Appellant,

v.

CITY OF CHICAGO,
Defendant-Appellee.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

No. 1:17-cv-02028

Edmond E. Chang,
Judge.

O R D E R

Chicago police officer Jacqueline Watkins was accused of ignoring a call to report to the scene of a burglary, which led to a one-day suspension after a years-long investigation. The suspension was eventually reversed. Watkins has sued the City of

* We have agreed to decide the case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

Chicago under Title VII of the Civil Rights Act of 1964 for discrimination based on her race and sex and for retaliation based on her complaints that her supervisor reported her because she is Black and a woman. See 42 U.S.C. §§ 2000e-2 & 3. The district court entered summary judgment for the City, concluding that Watkins had not offered evidence that would allow a reasonable jury to find discriminatory or retaliatory motives on the part of the relevant decision-makers. We affirm.

We present the factual record at summary judgment in the light most favorable to Watkins, the non-moving party. *Eaton v. J.H. Findorff & Son, Inc.*, 1 F.4th 508, 511 (7th Cir. 2021). One night in September 2008, the police department's radio dispatcher reported a "priority one" burglary and assigned a unit—not Watkins and her partner—to respond. All available units are required to respond to priority-one calls. Watkins and her partner had reported to dispatch ten minutes earlier that their previous call was "clear," meaning finished. Their shift was ending, and they were driving away from the site of the burglary; they did not immediately answer dispatch or make a U-turn. When Sergeant Francis Higgins passed their car, he ordered them (by unit number) to the scene. They hesitated in responding by radio but turned around immediately and arrived as little as ninety seconds after the sergeant.

That night, without discussing the situation with Watkins and her partner, Higgins filed an interdepartmental complaint against them for driving "AWAY from an all-call assignment." (The departmental jargon for such a report is "complaint register" or "CR," but we use "complaint" for simplicity.) When Watkins received notice of this complaint, which charged "inattention to duty," she wrote to the assistant superintendent of police that she and her partner (also a Black woman) responded properly to the burglary call, that Higgins falsely accused her, and that Higgins discriminated against her and her partner because of their race and sex. The investigation into these accusations was folded into the one opened by Higgins' complaint, and because of its subject, it had to be conducted outside the precinct by the Internal Affairs Division.

The complaints took six years to resolve. Sergeant Jamie Kane conducted the initial investigation and did not make a recommendation for almost two years, by which time Higgins had retired. After reviewing the dispatch recordings and interviewing witnesses, Kane recommended suspending Watkins for two days and her partner (the driver) for one day for "failure to properly respond" to the burglary call. Kane did not find cause to pursue Watkins' complaint of discrimination. Watkins attests that during her interview, Kane had told her that her allegations against Higgins

defamed his reputation. (This remark is not in the transcript, but because we are reviewing a grant of summary judgment, we assume that Kane said it off the record.)

At the next stage, a committee of senior officers (two deputy chiefs and a chief) rejected the recommendation to suspend Watkins. They cited a lack of objective evidence of her delayed arrival at the burglary once summoned. Chief of Internal Affairs Juan Rivera, the next reviewer, disagreed; he concluded that the officers failed to respond immediately over the radio to the priority-one call. Rivera recommended a one-day suspension for Watkins for being "inattentive to duty." Garry McCarthy, the police superintendent at that time, received the file next. He approved Watkins' suspension and imposed the same on her partner (whom Rivera had recommended reprimanding).

Watkins filed a complaint through her union about the suspension, which she alleged was discriminatory. An arbitrator ultimately found that there was no clear evidence that Watkins had broken any rule in how she responded to the burglary. Her suspension was reversed and she received backpay for that day. Her record now reflects that a complaint was filed but "not sustained." Still, the complaint was on her record for years. Watkins believes that it damaged her chances of promotion, but she has not provided evidence about any promotion decision.

Watkins also filed a charge with the Illinois Department of Human Rights (the local counterpart to the federal Equal Employment Opportunity Commission). In the end, the agency made no findings and issued a right-to-sue notice. That brings us to this lawsuit against the City of Chicago under Title VII.

Watkins alleged that Higgins' complaint and her suspension by the City were discriminatory acts based on her race and sex and that the suspension was retaliation for her complaints about Higgins. (Watkins does not try to revive other claims that were dismissed on the pleadings.) The City moved for summary judgment. In granting the motion, the district court explained that Watkins did not offer evidence that would support a finding that the City acted with discriminatory or retaliatory motives.[1]

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[1] The City also presented the (non-jurisdictional) affirmative defense that Watkins did not properly exhaust her administrative remedies because her charge with the Illinois Department of Human Rights was untimely. See *Delgado v. Merit Sys. Protec. Bd.*, 880 F.3d 913, 925 (7th Cir. 2018), citing *Zipes v. Trans World Airlines, Inc.*, 455 U.S.

On appeal, Watkins challenges these conclusions, and we review the decision de novo. *Eaton*, 1 F.4th at 511. Watkins first presses her claim that Higgins filed the complaint, and that Superintendent McCarthy ultimately suspended her, because of her race and sex. For a discrimination claim to survive summary judgment, a plaintiff must offer evidence that would permit a reasonable jury to conclude that the plaintiff's race or sex caused an adverse employment action. *Purtue v. Wisconsin Dep't of Corrections*, 963 F.3d 598, 601 (7th Cir. 2020). The plaintiff can use the burden-shifting framework of *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973), or simply show that the totality of her evidence could convince a reasonable jury that illegal discrimination occurred. *Purtue*, 963 F.3d at 602. Watkins argues that she prevails under any approach.

To show that racial animus motivated Higgins' complaint, Watkins submitted evidence that Higgins had a history of making racist comments, affording preferential treatment to white and male officers, and regarding Black women as lazy. We accept her account of the facts at summary judgment. In reviewing this grant of summary judgment, we need not try to determine, at least as a matter of law, whether the evidence amounts to so-called "stray remarks" or permits reasonable inferences of race- and/or sex-based animus. Remarks reflecting a supervisor's unlawful animus may be evidence of his or her attitudes generally and in ways that may have affected the challenged decision. See *Joll v. Valparaiso Community Schools*, 953 F.3d 923, 935 (7th Cir. 2020) (reversing summary judgment for employer); cf. *Blasdel v. Northwestern University*, 687 F.3d 813, 820 (7th Cir. 2012) ("same actor" inference permits but does not require inference that attitudes of person who hired plaintiff, for example, would not have changed by the time the same person fired plaintiff).

For purposes of this appeal, we will assume that Higgins filed the complaint with discriminatory intent. This part of Watkins' claim still comes up short because filing the complaint was not an adverse employment action. Adverse actions that can sustain an employment-discrimination claim under Title VII are limited to those that "affect employment or alter the conditions of the workplace." *Burlington Northern & Santa Fe Railway Co. v. White*, 548 U.S. 53, 62 (2006). The complaint alone did not affect Watkins's pay, benefits, or working conditions. She suspects that it diminished her promotion prospects, but without some additional evidence of a link between the open complaint and a decision not to promote her, the required "material consequences" are

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385 (1982). Watkins argued for equitable tolling because an agency lawyer told her she could not file her charge until the internal investigation ended. The district court did not decide the issue of tolling, and the City does not argue about exhaustion on appeal.

lacking. See *Porter v. City of Chicago*, 700 F.3d 944, 955 (7th Cir. 2012) (explaining that reprimands and progressive discipline do not qualify as adverse actions).

The suspension itself, however, cost Watkins a day's pay and qualifies as an adverse employment action. The City is responsible for the suspension because the superintendent—the final decision-maker—imposed it. See *Brooks v. Avancez,* 39 F.4th 424, 439 (7th Cir. 2022). Still, more is required before the City can be held liable. Watkins' primary evidence of a discriminatory suspension is Higgins' history of racist and sexist remarks. But Higgins was not the decision-maker. The City can be liable for the conduct of a biased employee only if that person's bias proximately caused the adverse employment action. *Staub v. Proctor Hospital*, 562 U.S. 411, 420 (2011). If the adverse action resulted from an untainted investigation and rests on grounds independent of the biased complaint, the City will not be liable. *Id*. at 421; *Woods v. City of Berwyn*, 803 F.3d 865, 870 (7th Cir. 2015).

Because Higgins did no more than initiate an independent investigation, and Watkins does not show that he influenced the outcome, the evidence about him is insufficient to raise a jury question about whether discrimination caused her suspension. See *Staub*, 562 U.S. at 421. Several layers of review by different officials, senior to Higgins and outside his district, occurred before the suspension was imposed, and Watkins does not show they all relied on Higgins' report. See *Brooks*, 39 F.4th at 440; *Woods,* 803 F.3d at 871. Indeed, evidence from other sources was collected at the first stage, and three senior Department officials later recommended *against* Kane's recommendation to suspend Watkins. The investigation was not an exercise in rubber-stamping. Further, Rivera's recommendation to suspend Watkins related to the failure to use the radio in response to the priority one call. That decision was based on audio recordings and Rivera's interpretation of policy in addition to the accounts of Higgins and other witnesses. The Superintendent then agreed with Rivera about Watkins (though not about her partner). Accordingly, this is not a case like *Vega v. Chicago Park District*, in which we said that a jury could conclude that the investigation was "too superficial" to insulate the City from liability for a complaint based on a supervisor's animus. 954 F.3d 996, 1007 (7th Cir. 2020); see also *Woods*, 803 F.3d at 871 (affirming summary judgment for employer where independent investigation broke chain of causation relied upon by plaintiff). The evidence here shows an investigation that similarly broke any chain of causation between Higgins' (presumed) bias and plaintiff's suspension.

Watkins also sought to prove that her suspension was discriminatory with statistical evidence that "neglect of duty" complaints are sustained against Black women officers more often than against white men. The problem with this evidence is that Watkins asserts a claim of discriminatory treatment against her as an individual—not a pattern-or-practice claim. See *Matthews v. Waukesha County*, 759 F.3d 821, 829 (7th Cir. 2014).[2] Proving disparate treatment requires plaintiff-specific evidence of discriminatory intent. *Id.*; see *Ricci v. DeStefano*, 557 U.S. 557, 577 (2009). Of course, that evidence may be circumstantial, and it may include "evidence, statistical or otherwise, that similarly situated employees outside of the protected group systematically receive better treatment." *Downing v. Abbott Labs.*, 48 F.4th 793, 804 (7th Cir. 2022). But Watkins' evidence falls short of raising a genuine dispute of material fact.

Statistical (like individual) comparators need not be identical to the plaintiff in every way, but they must be similar in material ways. *Purtue*, 963 F.3d at 603. Watkins' evidence, however, spans decades, which at a minimum implicates different decision-makers. And the nature of the underlying conduct, such as whether "priority one" situations were involved, is unclear. This makes it "impossible to determine" whether the statistical comparators are like Watkins in the respects that matter most. See *id*. Further, even if there were probative value in this collection of district-wide statistics, it cannot carry the day alone. *Matthews*, 759 F.3d at 829 (explaining that "evidence of a pattern or practice can only be collateral to evidence of specific discrimination against the plaintiff herself"). Watkins has no other evidence—excluding her account of Higgins' conduct, which we have already discussed—of the decision-makers' discriminatory motives, for which the City could be responsible.

Watkins's final claim is that she was suspended as retaliation for submitting her internal complaint against Higgins and filing charges with her union and the Illinois Department of Human Rights. As relevant here, Watkins needed evidence sufficient to

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[2] Originally, Watkins also asserted a claim under 42 U.S.C. § 1983, which can provide a remedy for a constitutional violation caused by a municipality's policy, practice, or custom. See *Monell v. Department of Social Services*, 436 U.S. 658, 690 (1978). On appeal, Watkins does not challenge the dismissal of this claim, but regardless, we generally treat employment-related constitutional claims the same as those under Title VII. *Dunlevy v. Langfelder*, 52 F.4th 349, 353 (7th Cir. 2022). Watkins also has no claim of disparate impact. She is not challenging the lopsided effects of a neutral employment practice. See *Ricci v. DeStefano,* 557 U.S. 557, 578 (2009), citing 42 U.S.C. § 2000e–2(k)(1)(A)(i).

raise a genuine issue of material fact about whether retaliatory intent was a but-for cause of her suspension. *University of Texas Southwestern Medical Center v. Nassar*, 570 U.S. 338, 352 (2013). In other words, Watkins must show she would not have been suspended if she had not accused Higgins of discrimination in various protected contexts.

She falls short of doing so. She primarily cites her evidence that Sergeant Kane, who first investigated the dueling complaints, told her that she was defaming Higgins' reputation by accusing him of racism and sexism. But Kane's report went on to five reviewers, and only the final two supported the suspension.[3] Even if we assume that Kane intended for Watkins to incur discipline because she accused Higgins, there is no evidence that Rivera or McCarthy had the same motive, nor that Kane influenced their decisions. See *Vesey v. Envoy Air, Inc.*, 999 F.3d 456, 462 (7th Cir. 2021).

Watkins also asserts that the six years it took to investigate the complaint against her shows retaliatory motive. "Suspicious" timing can be evidence of retaliation when the adverse action follows closely on the heels of the plaintiff's protected action. See *Igasaki v. Illinois Dep't of Financial and Professional Regulation*, 988 F.3d 948, 959 (7th Cir. 2021). Watkins does not explain how the *slow* decision-making here shows retaliatory motive. We agree that this investigation was hardly the prompt action that can signify an employer's reasonable response to a discrimination charge. See *Milligan v. Bd. of Trustees of Southern Illinois University*, 686 F.3d 378, 385 (7th Cir. 2012). And being under a cloud obviously caused strain on Watkins. But she has no evidence that the department slow-walked the investigation to punish her and not, for example, because of bureaucratic delay or, as Watkins suspects, to wait out Higgins' retirement (a fishy but non-retaliatory motive). More importantly, she did not show that the length of the investigation caused harm that would prevent a reasonable worker from reporting discrimination, and so it was not a materially adverse action for purposes of a retaliation claim. *Burlington Northern*, 548 U.S. at 68; see *Poullard v. McDonald*, 829 F.3d 844, 857 (7th Cir. 2016) (explaining that "threats of future discipline can cause stress or worry" but are not themselves materially adverse).

A final point: in her appellate brief, Watkins maintains that the Chicago Police Department perpetrates systemic racism and sexism against Black women. We

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[3] In the district court, Watkins did not submit evidence that Rivera was biased against Black people, and we cannot consider the new evidence she submits on appeal. *Carmody v. Bd. of Trustees of Univ. of Ill.*, 893 F.3d 397, 402 (7th Cir. 2018).

emphasize that we neither accept nor reject these assertions about the institution. Our decision resolves only the individual claims that Watkins pursued in the district court and argues on appeal. For the reasons we have explained, she did not raise a genuine dispute of material fact about whether her one-day suspension was discriminatory or retaliatory.

AFFIRMED.