

NONPRECEDENTIAL DISPOSITION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 August 28, 2024*

Decided September 16, 2024

Before

MICHAEL Y. SCUDDER, *Circuit Judge*

THOMAS L. KIRSCH II, *Circuit Judge*

JOSHUA P. KOLAR, *Circuit Judge*

No. 23-2981

DE'CARLOS FREEMAN,
Plaintiff-Appellant,

v.

EATON CORPORATION, et al.,
Defendants-Appellees.

Appeal from the United States District
Court for the Northern District of
Indiana, South Bend Division.

No. 3:23cv292 DRL-MGG

Damon R. Leichty,
Judge.

ORDER

De'Carlos Freeman sued his former employer, Eaton Corporation, alleging that it violated Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2, and the Americans with Disabilities Act, 42 U.S.C. § 12112, by discriminating against him on the basis of his

* 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).

race and disability. The district court granted Eaton's motion to dismiss the amended complaint for failure to state a claim. Because the complaint sufficiently alleges race discrimination under Title VII, we partially vacate the judgment and remand for further proceedings.

We recite the facts according to Freeman's amended complaint, which we accept as true for purposes of a motion to dismiss. *See Alamo v. Bliss*, 864 F.3d 541, 548–49 (7th Cir. 2017). From at least 2019 until sometime in 2023, Freeman, who is Black, was employed at Eaton Corporation as a forger. In February 2019, he turned in a "skill block" (a prerequisite for promotion) to the master trainer, Tom Litwicki, for approval. Litwicki responded that Freeman "had to get along with people," and started telling others that Freeman was hard to work with. Later that month, Litwicki and his son-in-law both started fires on the factory floor and blamed them on Freeman, who was then told by a supervisor, Andrew Klein, that he needed more training. Freeman was demoted to work on the "trimmer" with the new hires, and Litwicki and other forgers began joking to each other about Freeman's skill level.

Freeman turned in the same skill block six months later, this time to a different supervisor, Tim Hughes, who did not promptly approve it (and there is a question whether he lost some of the paperwork). Freeman reported to the plant manager and the human resources representative, Donna Cheek-Puls, that his promotion was being held up. Hughes began saying that he was holding Freeman's skill block (as well as additional blocks he turned in) because Freeman "did not know how to work the computer." The necessity of computer usage in the forger position is unclear, but according to Freeman, no one used computers, and they were not functional while he was training. Freeman found someone else to approve his skill blocks, but Cheek-Puls insisted that he receive approval from Hughes.

Freeman's relationship with Hughes deteriorated from there. Hughes began criticizing Freeman's work, accusing him of workplace accidents, short-changing his checks, and stating that he needed more training. Once, Freeman complained to Hughes about having to work for over four hours straight without a break, and Hughes stated, "Quit b****ing, de'Carlos." Another time, Hughes marked Freeman as absent for several days although he had never missed work, and Freeman was called in for questioning on attendance issues. Freeman reported these incidents—as well as his perception of discrimination, retaliation, and harassment—to both Cheek-Puls and a representative from the company's ethics help line; Cheek-Puls disregarded his statements, and the

representative told him that Hughes would be replaced soon. Yet the replacement, Dustin Harlan, soon began publicly criticizing Freeman too.

Other interactions with his co-workers and managers made Freeman believe he was experiencing racial discrimination. On one occasion, another forger swore at Freeman and said something that he perceived as a threat. Freeman reported the incident, but he, not the other forger, was sent home, and the other party was not disciplined. On another occasion, Freeman asked to switch shifts, but his request was rejected, although other forgers switched shifts without a problem. And on a third occasion, he and Harlan began arguing about a task at work, and Harlan swore at him. Freeman swore back, but only Freeman was suspended for being argumentative. (He also attributed the suspension to retaliation because he had filed a charge of racial discrimination with the South Bend Human Rights Commission a few months earlier.)

Freeman filed a charge with the EEOC in January 2023, asserting that he had faced discrimination and harassment because of his race and an unspecified disability. He explained that he was suspended for being argumentative, which is untrue and stemmed from co-workers and supervisors spreading lies about him. He further stated that other co-workers were argumentative and had not been disciplined. He also noted that he had required an accommodation since earlier that month, and although management had respected his restrictions, he believed that they should have assigned him to a light-duty job, too. After the EEOC issued a right to sue letter, he filed a complaint in the district court against Eaton and numerous individuals. The complaint alleged discrimination, harassment, and retaliation on the basis of race and disability.

The defendants moved to dismiss Freeman's complaint. They argued that Freeman's allegations failed to state a claim, that Title VII does not impose liability on individuals, and that Freeman had not exhausted his administrative remedies with his EEOC charge because the charge was too general. Freeman filed an amended complaint in lieu of a response; this complaint removed the individuals as defendants and added details, including that other forgers were getting promoted when his own promotion had been stalled and that he had been performing his work satisfactorily at Eaton. (He also added state-law claims of defamation and breach of contract.) Eaton then filed a second motion to dismiss largely along the lines of its first motion.

The district court granted Eaton's second motion to dismiss, concluding that Freeman's allegations did not state a plausible claim under Title VII or the ADA. First, it reasoned that Freeman did not tie an adverse action to either his race or disability (to

state a discrimination claim), or a protected activity (for a retaliation claim). Second, it explained that the coarse and abusive language that he described was too infrequent for a claim of racial harassment. Finally, it noted that Freeman had “confessed” that he was argumentative (perhaps referring to the allegation that he and Harlan cursed at each other). It dismissed Freeman’s federal claims with prejudice and his state claims without prejudice.

On appeal, Freeman first argues that the district court erred in concluding that his allegations of race discrimination failed to state a claim.¹ To survive a motion to dismiss, a complaint must allege “enough facts to state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). To state a claim of employment discrimination, Freeman must advance plausible allegations that he experienced discrimination because of his race. See *Kaminski v. Elite Staffing, Inc.*, 23 F.4th 774, 776 (7th Cir. 2022) (citing *Graham v. Bd. of Educ.*, 8 F.4th 625, 627 (7th Cir. 2021)). In reviewing a dismissal under Rule 12(b)(6), we accept all factual allegations as true and draw all permissible inferences in favor of the plaintiff. *Alamo*, 864 F.3d at 548–49. And because a written instrument that is an exhibit to a complaint “is a part of the pleading for all purposes,” FED. R. CIV. P. 10(c), we also consider the allegations in the EEOC charge appended to the amended complaint.

Here, Freeman alleged enough facts to allow a plausible inference that he suffered an adverse action because of his race. *Kaminski*, 23 F.4th at 777. Under the causation standard for race discrimination claims against private employers under Title VII, race need only be a “motivating factor.” See *Bostock v. Clayton Cnty.*, 590 U.S. 644, 657, 659 (2020) (“It doesn’t matter if other factors . . . contributed to the decision.”); *Comcast Corp. v. Nat’l Ass’n of Afr. Am.-Owned Media*, 589 U.S. 327, 337 (2020). The complaint says enough to pass that threshold here. First, Freeman alleged that he was suspended for argumentative behavior while other workers who engaged in similar conduct were not suspended. A suspension can constitute an adverse action. *Burlington N. & Santa Fe Ry. Co. v. White*, 548 U.S. 53, 72–73 (2006). And though it is not necessary to identify a similarly situated employee in the complaint, *Kaminski*, 23 F.4th at 777,

¹ We acknowledge Freeman’s assertion that did not receive, and therefore did not get the chance to oppose, the second motion to dismiss. But the district court’s analysis was based on the contents of the amended complaint. And because our analysis likewise focuses on the four corners of the complaint, which we take a fresh look at on appeal, and because Freeman develops his arguments against dismissal in his appellate brief, he is not prejudiced by the alleged mishap in the district court.

these facts can raise an inference of discrimination, *see Carlson v. CSX Transp., Inc.*, 758 F.3d 819, 827 (7th Cir. 2014). Second, Freeman alleged he was not promoted because of his race: He stated that he was qualified for a promotion, that supervisors blocked his promotion by holding onto his skill blocks (once for an apparently dubious reason related to computer skills), and that other employees were permitted to advance on schedule. *See Ford v. Marion Cnty. Sheriff's Off.*, 942 F.3d 839, 858 (7th Cir. 2019) (explaining elements of failure to promote claim under Title VII).

We therefore conclude that Freeman stated a claim for racial discrimination based on his suspension and withheld promotion. In drawing this conclusion, we are mindful of the relatively low bar for pleading discrimination. As we've often repeated, a plaintiff does not need to plead a prima facie case of employment discrimination. *Kaminski*, 23 F.4th at 777 (citing *Tamayo v. Blagojevich*, 526 F.3d 1074, 1084 (7th Cir. 2008) (interpreting *Twombly*, 550 U.S. at 555–56, 560–63)); *see also Luevano v. Wal-Mart Stores, Inc.*, 722 F.3d 1014, 1028 (7th Cir. 2013) (same). "It is enough for a plaintiff to assert that [he] was treated worse because of protected characteristics." *Graham*, 8 F.4th at 627 (citing *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506 (2002)). Further, all inferences must be drawn in the plaintiff's favor at the pleadings stage, *Alamo*, 864 F.3d at 548–49, and here, Freeman denies being any more argumentative than his co-workers.

The amended complaint contains no other plausible claims, however. To plead retaliation under Title VII, Freeman needed to allege that he engaged in a statutorily protected activity and, as a result, experienced an adverse employment action. *See Carlson*, 758 F.3d at 828. With respect to retaliation, there must be "but-for" causation, meaning that "the unlawful retaliation would not have occurred in the absence of the alleged wrongful action or actions of the employer." *Univ. of Tex. Sw. Med. Ctr. v. Nassar*, 570 U.S. 338, 360 (2013). Here, Freeman alleges that he was suspended because he filed a human rights charge several months earlier, but this "bare-bones" allegation does not plausibly connect the charge to the suspension months later. *See Carlson*, 758 F.3d at 828. The complaint says nothing about who suspended him or any basis for inferring that the decisionmaker knew about the charge, let alone acted in response to it. Further, Freeman's allegations of a hostile work environment did not plausibly tie workplace harassment to his race because the pattern of harassment he complained of did not relate to his race. *See Huri v. Off. of the Chief Judge of the Cir. Ct. of Cook Cnty.*, 804 F.3d 826, 834 (7th Cir. 2015).

Finally, Freeman did not allege facts allowing a plausible inference of discrimination on the basis of a disability. In his EEOC complaint, Freeman stated that

management respected his doctor's statement informing them of his restrictions and need for an accommodation; still, he believed he should be placed on light duty. But an employer need not "provide an employee the accommodation he requests or prefers," nor create a new position, so long as it provides some reasonable accommodation. *Li v. Fresenius Kabi USA, LLC*, 110 F.4th 988, 996 (7th Cir. 2024) (quoting *Malabarba v. Chicago Trib. Co.*, 149 F.3d 690, 700 (7th Cir. 1998)); *Conners v. Wilkie*, 984 F.3d 1255, 1262 (7th Cir. 2021).

In sum, we vacate the judgment as to the claims of racial discrimination protected by Title VII and otherwise affirm the judgment. And because the district court relinquished supplemental jurisdiction over the state-law claims, we note that our reinstatement of the Title VII claims revives jurisdiction over related state-law claims, if any. *See Brunson v. Murray*, 843 F.3d 698, 715 (7th Cir. 2016).

AFFIRMED in part, VACATED in part, and REMANDED