

NONPRECEDENTIAL DISPOSITION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 September 11, 2024*

Decided September 19, 2024

Before

DIANE S. SYKES, *Chief Judge*

MICHAEL B. BRENNAN, *Circuit Judge*

CANDACE JACKSON-AKIWUMI, *Circuit Judge*

No. 24-1043

DEREK BLOCKHUS,
Plaintiff-Appellant,

v.

UNITED AIRLINES, INC.,
Defendant-Appellee.

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

No. 22 C 3867

Robert W. Gettleman,
Judge.

ORDER

Derek Blockhus was fired from his position as a flight attendant for United Airlines after a coworker and former romantic partner accused him of sending threatening text messages and voicemails in violation of United's workplace guidelines. Blockhus sued United for violations of the Family and Medical Leave Act (FMLA),

* 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).

29 U.S.C. §§ 2601–2654, the Americans with Disabilities Act (ADA), 42 U.S.C. §§ 12101–12213, and the Age Discrimination in Employment Act (ADEA), 29 U.S.C. §§ 621–34, alleging that United interfered with his right to take medical leave and discharged him because of his disability and age. The district judge entered summary judgment for United. Because there is no evidence from which a reasonable jury could conclude that Blockhus was fired because of his disability or age or for exercising his rights under the FMLA, we affirm.

We construe all facts in the light most favorable to Blockhus, the nonmoving party. *See Mahran v. Advoc. Christ Med. Ctr.*, 12 F.4th 708, 712 (7th Cir. 2021). Blockhus began working at United in 1997. In 2019, he started a relationship with another United flight attendant, Katherine Lense. The relationship ended sometime in late 2020, and they stopped speaking in January 2021. That month, Blockhus heard rumors that Lense had told other coworkers he had tried to break into her apartment, and that he was having an affair with Mindy Richards, another flight attendant.

In response to the rumors, Blockhus left Lense a voicemail on January 24, asking to speak with her. On January 25, not having heard from Lense, Blockhus left another voicemail, this time asking to speak with her because he did not want United’s human resources to get involved. He stated that the situation would get “ugly” if she did not call him back and explained that he did not want her “to come back to work under investigation.”

After receiving the voicemails on January 25, Lense went to United’s manager for harassment and discrimination investigations. Lense sent the manager the voicemails, as well as screenshots of text messages Blockhus had sent her in October 2020, in which he told her, “You do realize, your dad and all his friends are going to get nudes of you? Because you treated me like sh**. You better call me because I’m sick of this bullsh**.” As a result, United opened an investigation to determine whether Blockhus had violated workplace guidelines.

Around this same time, Blockhus contacted human resources about the rumors Lense had allegedly started about him. He stated that he would coordinate with Richards to file a complaint against Lense. Richards filed a complaint against Lense on January 29, but she later withdrew it at Blockhus’s direction.

On February 4, Blockhus learned that United had opened an investigation into the text messages he sent to Lense. He also received a letter from a performance supervisor informing him that his attendance was required at a February 8

investigatory meeting. Shortly thereafter, he called another performance supervisor and left a message about the investigation, stating that he could “explain this whole thing, [his] text message[s]” and confirming that he had “threatened to go to HR” about the rumors Lense allegedly started. The next day, he also emailed human resources, explaining that Lense had “dug up information from ... months ago” and that he had “no recollection of writing or sending [the texts],” but he could “see how [the texts] could have been construed” unfavorably. Blockhus also left a note on Lense’s car, asking to speak with her.

On February 8, before the scheduled investigatory meeting, Blockhus sent a statement to his union (Association of Flight Attendants) and United management. He wrote that he “did say ugly regretful things” and “used a poor[] choice of word[s]” in the text messages he sent to Lense. A few hours later, he sent an email retracting his statement. Blockhus also met with union officials, who noted that he seemed very anxious. They connected Blockhus to the Employee Assistance Program, and he told program staff that he suffered from alcoholism and wanted to check into a rehabilitation program. United agreed to postpone the investigatory meeting if Blockhus filed paperwork requesting FMLA leave to attend rehabilitation. He complied, requesting FMLA leave from February 8, 2021, through April 5, 2021. He then checked into a rehabilitation facility on February 10. United granted him FMLA leave on February 16, including retroactive leave dating back to February 8.

On February 12, before Blockhus’s FMLA leave had been approved and while he was in the rehabilitation facility, a performance supervisor contacted him and asked him to provide documentation substantiating his medical inability to attend the February 8 investigatory meeting. The supervisor also asked if Blockhus could attend a rescheduled investigatory meeting on February 15. Once investigators learned of Blockhus’s approved leave, however, they did not hold an investigatory meeting.

On February 22, after reviewing the documentary evidence, the person leading the investigation into Blockhus’s behavior toward Lense prepared a statement of findings, concluding that Blockhus sent threatening text messages and voicemails to Lense relating to her job at United, admitted that he had threatened Lense, and tried to contact Lense after United opened its investigation. On February 26, United fired Blockhus for violating portions of the United Working Together Guidelines regarding responsibility, dignity, and respect, and prohibiting harassment and discrimination. He was 52 years old at the time. Lense, who was in her thirties and held a more junior position, remained at United.

The Association of Flight Attendants filed a grievance over Blockhus's termination, but Blockhus abandoned it during arbitration. That same month, Blockhus also filed a charge of discrimination with the Equal Employment Opportunity Commission (EEOC), alleging that United discriminated against him because of his disability and age. The EEOC issued a right-to-sue letter.

One month later, Blockhus filed a complaint in federal court alleging that United violated the ADA, the ADEA, and the FMLA by discharging him because of his disability (alcohol dependency disorder caused by anxiety) and age and for interfering with his leave. United moved for summary judgment, and the district judge granted the motion.

As to the age and disability discrimination claims, the district judge concluded Blockhus presented no evidence that "would permit a reasonable factfinder to conclude that [his age or disability] ... caused the discharge." *Ortiz v. Werner Enters., Inc.*, 834 F.3d 760, 765 (7th Cir. 2016). Proceeding under the burden-shifting framework of *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973), the district judge found that Blockhus had failed to meet his burden of establishing a prima facie case of discrimination. Specifically, the undisputed evidence showed that he was not meeting United's legitimate expectations because he violated the terms of United's guidelines related to harassment and discrimination in the workplace, and he had not identified any similarly situated employee who had been treated more favorably. Further, even if he had established a prima facie case of discrimination, Blockhus presented no evidence from which a jury could conclude that United's reason for terminating him was pretext for age or disability discrimination. Finally, the court concluded that the FMLA interference claim failed because United provided evidence that Blockhus would have been fired for workplace violations regardless of his leave status.¹

Blockhus appeals. We review the grant of summary judgment de novo. *See Mahran*, 12 F.4th at 712.

Blockhus first argues that the judge erred by concluding that he failed to make a prima facie showing of age and disability discrimination, and that the judge ignored his

¹ The district court also concluded that United was entitled to summary judgment on a claim that it retaliated against Blockhus for taking FMLA leave. Because Blockhus does not develop any argument about that claim on appeal, we do not discuss it further.

evidence of pretext. The *McDonnell Douglas* framework requires Blockhus to establish that he is a member of a protected class, he met his employer's legitimate job expectations, he was subjected to an adverse employment action, and similarly situated employees outside of his class were treated more favorably. *See McDonnell Douglas*, 411 U.S. at 802–03; *David v. Bd. of Trs. of Cmty. Coll. Dist. No. 508*, 846 F.3d 216, 225 (7th Cir. 2017).² If he makes this showing, the burden shifts to United to “articulate a legitimate, nondiscriminatory reason for the adverse employment action, at which point the burden shifts back to [Blockhus] to submit evidence that [United's] explanation is pretextual.” *David*, 846 F.3d at 225.

Blockhus first argues that he presented evidence that he met United's legitimate expectations because he had received only two prior performance warnings (the last one in 2014) during his 24 years of employment. But past employee actions are not relevant in determining whether, at the time Blockhus was fired, he was meeting reasonable expectations. *See Igasaki v. Ill. Dep't of Fin. & Pro. Regul.*, 988 F.3d 948, 959 (7th Cir. 2021). Moreover, United never argued that Blockhus's performance as a flight attendant suffered; rather, it asserted that, when he was discharged, he failed to meet expectations by violating workplace guidelines against harassment.

Blockhus next argues that his evidence showed that he was treated less favorably than similarly situated individuals outside his protected class. Specifically, he asserts that Lense is an adequate comparator, and she retained her job as a younger, more junior flight attendant even though she allegedly violated the same workplace guidelines. In this context, Blockhus was required to show that Lense was similar enough to him “to eliminate confounding variables, such as differing roles, performance histories, or decision-making personnel.” *Abrego v. Wilkie*, 907 F.3d 1004, 1013 (7th Cir. 2018) (quoting *Filar v. Bd. of Educ. of City of Chi.*, 526 F.3d 1054, 1061 (7th Cir. 2008)). He says he provided evidence in the district court of threatening and inappropriate texts Lense sent to him, video footage of Lense slashing the tires of his vehicle, and a two-year court order of protection he obtained against Lense. But he did

² We note that the “holistic approach” is also a method of proving discrimination, *see, e.g., Ortiz*, 834 F.3d at 765–66. Under that approach, the judge would assess whether, viewing the record as a whole, a reasonable jury could conclude that Blockhus was discharged because of his age or disability. *See McDaniel v. Progress Rail Locomotive, Inc.*, 940 F.3d 360, 369 (7th Cir. 2019). But Blockhus did not rely on this theory in the district court, nor does he press it on appeal. Thus, we analyze his claims only under the *McDonnell Douglas* framework.

not show that United had this evidence during its investigation. Moreover, Lense denied these allegations, unlike Blockhus, who admitted to human resources and United management that he sent Lense threatening text messages and voicemails. And, regardless, Blockhus provided no information about Lense's role and performance at United that would enable a reasonable factfinder to conclude that Blockhus was treated differently based on his age or disability.

Even if Blockhus had made a prima facie showing, we agree with the district judge that he presented no evidence from which a jury could conclude that United's stated reason for his termination was pretextual. Blockhus contends that United must be lying about why it fired him because it failed to authenticate Lense's evidence and discharged him anyway. But an employer's honest belief that there was a non-discriminatory reason for termination overcomes any assertion of pretext. *See Brooks v. Avancez*, 39 F.4th 424, 436 (7th Cir. 2022). Here, there is no evidence that United's stated reason for terminating Blockhus was a "phony excuse." *See Chaib v. Geo Grp., Inc.*, 819 F.3d 337, 343 (7th Cir. 2016) (citation omitted). The record shows that, while United investigated the incident, Blockhus admitted to sending threatening messages to Lense. Thus, United honestly believed that Blockhus violated workplace guidelines.

As to Blockhus's claim that United interfered with his right to take leave under the FMLA, summary judgment was also proper. To prevail on an interference claim under 29 U.S.C. § 2615(a)(1), Blockhus must show that United denied him FMLA benefits to which he was entitled. *See Guzman v. Brown Cnty.*, 884 F.3d 633, 638 (7th Cir. 2018). Blockhus insists that United fired him to stop him from being reinstated to his position after he completed his medical leave. But "an employee is not entitled to return to [his] former position if [h]e would have been fired regardless of whether [h]e took the leave." *Goelzer v. Sheboygan Cnty.*, 604 F.3d 987, 993 (7th Cir. 2010). No reasonable juror could conclude that United did not reinstate Blockhus because he exercised his right to take FMLA leave. Before Blockhus requested leave under the FMLA, United had opened an investigation into his threatening behavior toward Lense. The result of that investigation, not Blockhus's FMLA leave, led to his termination.

AFFIRMED