NONPRECEDENTIAL DISPOSITION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 February 13, 2025*
Decided February 14, 2025

Before

FRANK H. EASTERBROOK, *Circuit Judge*

AMY J. ST. EVE, *Circuit Judge*

JOHN Z. LEE, *Circuit Judge*

No. 24-2301

LEMUEL WASHINGTON,
Plaintiff-Appellant,

v.

ENTERPRISE LEASING COMPANY OF CHICAGO, LLC,
Defendant-Appellee.

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

No. 21 CV 556

Jeremy C. Daniel,
Judge.

O R D E R

Lemuel Washington, an African-American man with asthma, sued his employer, Enterprise Leasing Company, for racial and disability discrimination in violation of Title VII of the Civil Rights Act, 42 U.S.C. § 2000e-2, the Illinois Human Rights Act,

* 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).

775 ILCS 5/10-102, and the Americans with Disabilities Act, 42 U.S.C. §§ 12101–12213. The district court entered summary judgment for Enterprise, and we affirm.

We recount the facts in the light most favorable to Washington. *Paschall v. Tube Processing Corp.*, 28 F.4th 805, 812 (7th Cir. 2022). Washington began working as a driver for an Enterprise car rental branch in 2014. He was responsible for delivering cars and customers to designated locations, riding along with other drivers to drop off cars, and performing maintenance on cars. During Washington's employment, Enterprise had an "Attendance and Punctuality" policy stating that a medical absence of more than three days must be substantiated by a doctor's note and that repeated absences or tardiness are cause for disciplinary action, including termination.

Shortly after Washington started working at Enterprise, he complained that two coworkers, Carlos Tarafa and Patricia Zamzow, made derogatory race-based comments towards him. Washington reported the incidents, and Enterprise investigated. During the investigation, Washington took an unpaid leave of absence, and Zamzow retired. Enterprise concluded that no unlawful conduct occurred. When Washington returned to work, he and Tarafa were assigned to different tasks and instructed not to interact with each other. In February 2016, Washington filed a charge with the Illinois Department of Human Rights (which was automatically cross-filed with the EEOC) that alleged a hostile work environment and racial discrimination based on Tarafa and Zamzow's conduct and Enterprise's response. Enterprise eventually fired Tarafa in November 2016 for unsatisfactory job performance and violating the instruction not to interact with Washington.

After Tarafa left, Washington's supervisor, Mark Gunnells, began interviewing candidates for a lead driver position. Gunnells and another supervisor interviewed three candidates: Washington, Ecko Broadnax (who is African American), and Neil McCann (who is White). The interviewers scored each candidate's responses to their questions. Washington received a score of 18, Broadnax received a score of 19, and McCann received a score of 26. Enterprise hired McCann, and Gunnells later explained that McCann had more relevant experience (he previously owned a truck fleet and had experience liaising with dealerships and managing employees). In February 2017, Washington filed a charge with the Illinois Department of Human Rights and the EEOC about Enterprise's failure to promote him to the lead driver position.

Soon after McCann's promotion, Washington complained that McCann made sexually charged comments towards him. Enterprise investigated Washington's

complaints, found that both McCann and Washington had acted unprofessionally, and directed Washington to report to Gunnells instead of McCann. In October 2017, Washington filed a charge with the Illinois Department of Human Rights and the EEOC that alleged sexual harassment, retaliation, race discrimination, and disability discrimination based on McCann's conduct. McCann was eventually terminated from Enterprise in 2020 because of unrelated workplace misconduct.

Enterprise granted Washington a ninety-day leave of absence in April 2017 to address personal matters. This used up his protected leave under the Family and Medical Leave Act, 29 U.S.C. §§ 2601–2654. After Washington returned to work in June, he accumulated many unexcused absences and was tardy or left early on multiple occasions. Gunnells gave Washington a written warning that he would be subject to disciplinary action if his attendance did not improve.

In October of the same year, Washington began having trouble breathing outdoors in the cold because of his asthma, and he told Gunnells that he needed to work inside. Washington provided medical documentation, and Enterprise allowed Washington to work indoors for a few days. Once there was no more indoor work available, Enterprise placed Washington on unpaid leave. Washington returned to work later that month, but he soon told Gunnells that he still needed to work inside because of his asthma. Gunnells told Washington that there was no more indoor work and that he should stay at home if his asthma prevented him from working outside. That same day, Washington fainted inside the Enterprise office and suffered a head injury. Washington was absent for the next week but did not provide medical documentation.

About a month later, Washington gave Enterprise a note from his doctor stating that he should not work from November 20 to December 6. Washington did not return on December 6 but instead provided a second note excusing him from work until December 22. He then provided a third note excusing him through January 5, 2018. Washington did not return to work then and did not provide additional medical documentation until January 17, when he submitted a note excusing him through January 26. Gunnells testified that he attempted to give Washington a second written attendance warning, but Washington never returned to work to receive and sign it.

On January 22, Washington received a letter from Enterprise's benefits department stating that he had been placed on medical leave on December 7 and could receive health and welfare benefits for ninety days if he remained a member of "an eligible class." A human resources manager testified that the letter was automatically

generated and that Washington lost eligibility because he had an indefinite return date, could not do his job as a driver, and was unable to return to work.

The same day, another human resources manager called Washington to confirm that he would return to work on January 26. Washington responded that he would return only after his doctor cleared him. The manager then told him that his employment was terminated because his leave request had become indefinite. Between July and December 2017, Washington worked only 536.48 of his 1,000 scheduled hours. After he was fired, Washington filed a charge with the Illinois Department of Human Rights and the EEOC that alleged that Enterprise failed to accommodate his disability, fired him because of his race and disability, and terminated him in retaliation for filing discrimination charges.

Through counsel, Washington sued Enterprise, alleging racial discrimination, sexual harassment, disability discrimination, wrongful termination, failure to promote on the basis of race, and retaliation. The district court dismissed the sexual harassment claim because Washington failed to exhaust his administrative remedies.

Later, both parties moved for summary judgment. Washington did not comply with the local rules because he did not cite evidence disputing Enterprise's Local Rule 56.1(a)(2) statement of material facts. The court thus deemed all of Enterprise's asserted facts admitted. The court denied Washington's summary judgment motion and entered summary judgment for Enterprise on all Washington's claims. For purposes of the race discrimination claim, the court explained that Washington did not meet Enterprise's legitimate expectations and thus could not establish a prima facie case of race-based discrimination, and he did not produce evidence that Enterprise's proffered reasons for promoting McCann were pretextual. The court next ruled that Washington's claim of a racially hostile work environment was time-barred. With respect to the retaliation claim, the court determined that Washington did not present evidence that he was fired for complaining internally or filing discrimination charges. The district court also concluded that Washington's disability claim failed because he did not establish that he was a qualified individual or that Enterprise was required to give him indoor work to accommodate his disability.

On appeal, Washington first asserts that the district court erred when it deemed all of Enterprise's facts admitted because Washington did not comply with Northern District of Illinois Local Rule 56.1(e). We review a district court's decision to enforce a local rule for abuse of discretion. *Igasaki v. Ill. Dep't of Fin. & Pro. Regul.*, 988 F.3d 948,

956–57 (7th Cir. 2021). Washington did not respond to Enterprise's Local Rule 56.1(a)(2) statement of facts with citations to evidentiary material, as the rule requires. His response to each proposed fact was "admit" or "deny," with "deny" occasionally followed by a sentence contradicting the fact statement, but with no citation to the record. The district court did not abuse its discretion because it "may strictly, but reasonably, enforce local rules" when a party does not comply, as was the case here. *Id.* at 957.

As to the decision to grant summary judgment for Enterprise, a decision we review de novo, Washington first challenges the conclusion that his hostile work environment claim was time-barred. *Paschall*, 28 F.4th at 812. Washington needed to file suit within ninety days after receiving a right-to-sue letter from the EEOC. *See King v. Ford Motor Co.*, 872 F.3d 833, 839 (7th Cir. 2017) (discussing 42 U.S.C. § 2000e-5(f)(1)). In February 2016, Washington filed a charge with the Illinois Department of Human Rights and the EEOC that alleged a hostile work environment and racial discrimination based on Tarafa and Zamzow's conduct and Enterprise's response. It was undisputed that the EEOC issued Washington a right-to-sue letter, which was mailed to his address in February 2018. After further proceedings in the state agency, the Illinois Department of Human Rights notified Washington of his need to file suit within 90 days of receipt of its Notice of Substantial Evidence (sent in June 2019). We presume the delivery of a properly sent piece of mail. *Laouini v. CLM Freight Lines, Inc.*, 586 F.3d 473, 476 (7th Cir. 2009). To bring claims based on the allegations in this grievance, therefore, Washington was obligated to file suit by September 2019; he did not sue until January 2021. The hostile work environment claim is therefore time-barred.

Washington counters that his hostile work environment claim is "reasonably related" to two more recent charges he filed with the Illinois Department of Human Rights: one that alleged sexual harassment based on McCann's conduct and one that alleged that Enterprise failed to accommodate his disability and fired him because of his race and disability or in retaliation for filing discrimination charges. Washington can bring only claims that were included in timely charges or that are "like or reasonably related" to allegations in the timely charges. *Chaidez v. Ford Motor Co.*, 937 F.3d 998, 1004–05 (7th Cir. 2019). But, as the district court determined early on, any claim based on the sexual harassment charge is also untimely because Washington did not sue within ninety days of receiving a right to sue notice. He cannot bootstrap his hostile work environment claim onto that charge.

As for the second charge, the hostile work environment claim is not "reasonably related" to its subject matter. The charge and the hostile work environment claim must "at minimum describe the same conduct and implicate the same individuals." *Id.* at 1005 (citation omitted). Here, the charge alleged failure to accommodate his disability, retaliation for filing earlier charges, and wrongful termination based on his race. It does not mention harassment or discriminatory comments by Zamzow and Tarafa or Enterprise's response to these incidents (the conduct underlying the claim of a hostile work environment in this lawsuit). Washington contends that his timely charge and hostile work environment claim collectively represent a "toxic atmosphere" at Enterprise. But he describes the similarities between the charge and claim "at far too high a level of generality." *Cervantes v. Ardagh Grp.*, 914 F.3d 560, 565 (7th Cir. 2019).

Next, arguing that his claim of race discrimination should have survived summary judgment, Washington maintains that he provided evidence that he was treated differently from other employees because of his race. He invokes the *McDonnell Douglas* burden-shifting method of organizing his proof, so he had the initial burden to establish that: (1) he is a member of a protected class; (2) he was meeting his employer's legitimate expectations; (3) he was subjected to an adverse employment action; and (4) a similarly situated employee outside his protected class was treated more favorably by the employer. *David. v. Bd. of Trs. of Cmty. Coll. Dist. No. 508*, 846 F.3d 216, 225 (7th Cir. 2017); *see also McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802 (1973).

It is undisputed that Washington is African American and that he was passed over for promotion to lead driver and later fired, so the first and third elements are satisfied. But the record shows that Washington did not meet Enterprise's "legitimate expectations" because he failed to comply with attendance policies or perform his job requirements. *See Bass v. Joliet Pub. Sch. Dist. No. 86*, 746 F.3d 835, 841 (7th Cir. 2014). By the time Washington's employment was terminated, he had accumulated over two weeks' worth of absences for which he did not provide a doctor's note; further, he was unable to do the work of a driver because he could perform only indoor work. Therefore, he could not establish that he was meeting Enterprise's legitimate expectations. Washington resists this conclusion on the ground that he received a letter approving a leave of absence from December 2017 to March 2018, legitimating his absences. But the letter says no such thing. It explains that Washington was eligible for benefits for 90 days as long as he remained "a member of an eligible class" but it does not refer to the duration of his leave nor purport to approve it.

And even if Washington's leave were approved, a reasonable factfinder could not find that the fourth factor is satisfied as it relates to the adverse action of termination. Washington argues that similarly situated employees, Tarafa and McCann, were treated more favorably because they received progressive discipline before getting fired, whereas he got a single warning about his attendance. But Tarafa and McCann were not similarly situated because they were disciplined for poor job performance and workplace misconduct. *See Skiba v. Ill. Cent. R.R.*, 884 F.3d 708, 723 (7th Cir. 2018). Enterprise established that progressive discipline is used for such misconduct to provide a chance to correct the misbehavior. Washington lacks evidence that other employees with frequent absences and unauthorized leave, like him, received progressive discipline before being fired.

As for the failure to promote, no reasonable jury could find that Washington's race caused Enterprise to select McCann over Washington. Washington needed sufficient evidence from which a reasonable jury could find that the employer promoted someone outside the protected class who was not better qualified for the position. *Riley v. Elkhart Cmty. Schs.*, 829 F.3d 886, 891–92 (7th Cir. 2016). Washington first contends that, because he was temporarily appointed to the lead-driver position after Tarafa left Enterprise, he was more qualified than McCann for the position. But because the district court deemed Enterprise's facts admitted, nothing supports Washington's contention that he was temporarily appointed to the lead driver position. Washington next argues that he was more qualified than McCann because he had seniority at Enterprise and had to train McCann. But the undisputed evidence shows that Enterprise selected McCann because he had more managerial experience than Washington, had previously coordinated with car dealerships, and had received a higher interview score. Washington points to no evidence showing that this rationale was pretextual. *Id.* at 894. And obtaining McCann's full personnel file, as Washington argues he should have been able to, would not have helped him; the pretext question is not whether McCann was really more qualified, but if Enterprise's reason for hiring him was genuine. *See id.*

Regarding the retaliation claim, Washington does not engage with the district court's determination that a reasonable jury could not find, based only on the timing of events, that Enterprise fired him because he complained about discrimination and filed administrative charges. Washington has thus waived any argument for reviving this claim. *Cole v. Comm'r*, 637 F.3d 767, 772–73 (7th Cir. 2011). In any event, Washington had to present evidence that a retaliatory motive was a "but-for cause of the challenged employment action." *Lesiv v. Ill. Cent. R.R.*, 39 F.4th 903, 915 (7th Cir. 2022) (citation

omitted). We agree with the district court that events here were too attenuated to support an inference of suspicious timing and that Washington did not submit any other evidence of a causal link. *Id.* at 920.

Washington also contends that summary judgment was improper on his claim that Enterprise discriminated against him by not accommodating his asthma. Washington had to present evidence that he was a qualified individual with a disability, that Enterprise was aware of his disability, and that Enterprise failed to reasonably accommodate his disability. *Hooper v. Proctor Health Care Inc.*, 804 F.3d 846, 852 (7th Cir. 2015). A qualified individual is someone who, "with or without reasonable accommodation, can perform the essential functions" of their job. *Id.* Washington was not a "qualified individual" under the Act because, as Washington concedes, he could not drive cars outside, and Enterprise considered this an essential job function.

Washington is also mistaken that Enterprise had to accommodate his asthma by allowing him to continue doing paperwork inside. Enterprise was not required to modify Washington's essential job duties to allow him to stay employed. *See Severson v. Heartland Woodcraft, Inc.*, 872 F.3d 476, 482 (7th Cir. 2017). Enterprise was also not required to allow Washington an indefinite leave of absence; an extended leave for multiple months is not a reasonable accommodation under the Act. *Id.* at 481.

AFFIRMED