IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

BRIAN KEITH OLLIFF,	:	
	:	
Plaintiff,	:	
	:	CIVIL ACTION FILE
v.	:	NO.: 1:20-CV-00931-AT-JCF
	:	
EMORY UNIVERSITY,	:	
	:	
Defendant.	:	

FINAL REPORT AND RECOMMENDATION

This case is before the Court on Defendant's Motion For Summary Judgment (Doc. 42). For the reasons discussed below, it is **RECOMMENDED** that Defendant's motion be **GRANTED**.

Procedural Background

Brian Keith Olliff ("Plaintiff") was formerly employed by Defendant Emory University ("Emory" or "Defendant"). On December 12, 2019, Plaintiff filed a Complaint against Defendant in the Superior Court of DeKalb County in which he asserted claims pursuant to the Americans with Disabilities Act of 1990, as amended ("ADA") based on Defendant's alleged failure to make reasonable accommodation to his disability.[1] (Doc. 1-1). Plaintiff filed the Complaint *pro se*, but he is now

[1] Plaintiff filed a second complaint against Defendant and others arising from his employment. *See Olliff v. Emory University, et al.*, Civil Action No. 1:21-CV-

represented by counsel. (*See* Doc. 25). Defendant removed the Complaint to this Court on February 28, 2020 (Doc. 1) and answered the Complaint on March 2, 2020 (2). After completion of discovery, Defendant filed a motion for summary judgment (Doc. 42) and supporting brief (Doc. 42-1), statement of undisputed material facts (Doc. 42-2), and exhibits (Docs. 42-3 through 42-10). Plaintiff replied (Doc. 48) with supporting exhibits (Docs. 48-1 through 48-36), statement of additional material facts (Doc. 37), and response to Defendant's statement of facts (Doc. 38). Defendant filed a reply brief (Doc. 51) and responded to Plaintiff's statement of facts (Doc. 50).

With briefing complete, the undersigned now turns to the merits of Defendant's motion.

Discussion

I. Summary Judgment Standard

Summary judgment is proper "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 party asserting that a fact cannot be or is genuinely disputed must support that assertion by[] . . . citing to particular parts of materials in the record, including depositions, documents, electronically stored information,

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00899-AT-JCF. The undersigned will consider the motions pending in that case in a separate Report and Recommendation.

affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials." FED. R. CIV. P. 56(c)(1). The moving party has an initial burden of informing the court of the basis for the motion and showing that there is no genuine issue of material fact. *Celotex Corp v. Catrett*, 477 U.S. 317, 323 (1986); *see also Arnold v. Litton Loan Servicing, LP*, No. 1:08-cv-2623-WSD, 2009 WL 5200292, at *4 (N.D. Ga. Dec. 23, 2009) ("The party seeking summary judgment bears the burden of demonstrating the absence of a genuine dispute as to any material fact.") (citing *Herzog v. Castle Rock Entm't*, 193 F.3d 1241, 1246 (11th Cir. 1999)). If the non-moving party will bear the burden of proving the material issue at trial, then in order to defeat summary judgment, that party must respond by going beyond the pleadings, and by the party's own affidavits, or by the discovery on file, identify facts sufficient to establish the existence of a genuine issue for trial. *See Celotex*, 477 U.S. at 322, 324. "No genuine issue of material fact exists if a party has failed to 'make a showing sufficient to establish the existence of an element . . . on which that party will bear the burden of proof at trial.' " *AFL-CIO v. City of Miami*, 637 F.3d 1178, 1186-87 (11th Cir. 2011) (quoting *Celotex*, 477 U.S. at 322).

Furthermore, "[a] nonmoving party, opposing a motion for summary judgment supported by affidavits[,] cannot meet the burden of coming forth with relevant competent evidence by simply relying on legal conclusions or evidence

which would be inadmissible at trial." *Avirgan v. Hull*, 932 F.2d 1572, 1577 (11th Cir. 1991), *cert. denied*, 506 U.S. 952 (1992); *see also* FED. R. CIV. P. 56(c)(1)(B), (c)(4). The evidence "cannot consist of conclusory allegations or legal conclusions." *Avirgan*, 932 F.2d at 1577. Unsupported self-serving statements by the party opposing summary judgment are insufficient to avoid summary judgment. *See Midwestern Waffles, Inc. v. Waffle House, Inc.*, 734 F.2d 705, 714 (11th Cir. 1984).

For a dispute about a material fact to be "genuine," the evidence must be such that "a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). "If the evidence is merely colorable, or is not significantly probative, summary judgment may be granted." *Id.* at 249-50 (internal citations omitted). It is not the court's function at the summary judgment stage to determine credibility or decide the truth of the matter. *Id.* at 249, 255. Rather, "[t]he evidence of the nonmovant is to be believed, and all justifiable inferences are to be drawn in [the nonmovant's] favor." *Id.* at 255.

I. Facts For Purpose Of Summary Judgment[2]

A. Standards For Determining Summary Judgment Facts

The facts, for summary judgment purposes only, are derived from Defendant's statement of undisputed material facts (Doc. 42-1 ("Def. SMF")); Plaintiff's statement of material facts (Doc. 48-37 ("Pl. SMF")) where material and

[2] Where relevant, additional facts are set out in the Discussion section.

undisputed by Defendant as discussed below; and uncontroverted record evidence. Many of these facts are taken from the depositions of Plaintiff (Doc. 43-1 ("Olliff Dep.")) and exhibits thereto (Docs. 43-2 and 43-3), the Declaration of Tammie Bain ("Bain Decl." (Doc. 42-3)), and the Declaration of Dr. Allison Butler ("Butler Decl." (Doc. 42-4)). The undersigned has reviewed the record, including the parties' summary judgment filings, to determine whether genuine issues of material fact exist to be tried. Yet the court need not "scour the record" to make that determination. *Tomasini v. Mt. Sinai Med. Ctr. Of Fla.*, 315 F. Supp. 2d. 1252, 1260 n.11 (S.D. Fla. 2004) (internal quotation omitted). In ruling on the parties' respective summary judgment motions, the facts are construed in the light most favorable to the non-movant. *See Frederick v. Sprint/United Mgmt. Co.*, 26 F.3d 1305, 1309 (11th Cir. 2001).

B. Deficiencies In Plaintiff's Summary Judgment Response[3]

Defendant contends that Plaintiff's statement of additional facts (Doc. 48-38) does not comply with Local Rule 56.1, NDGa. because Plaintiff did not cite to any evidence in support of each of his statements, and therefore "[t]he Court should not consider any of Plaintiff's proposed facts." (Doc. 50 at 1; *see also* Doc. 51 at 3-4). The undersigned agrees. LR 56.1(B)(2)(b) requires that a summary judgment

[3] In considering these deficiencies the Court is mindful that when Plaintiff brought this action, he was representing himself, but an attorney entered appearance on behalf of Plaintiff (*see* Doc. 25) and filed Plaintiff's summary judgment response.

respondent must provide "[a] statement of additional facts which the respondent contends are material and present a genuine issue for trial. Such separate statement of material facts must meet the requirements set out in LR 56.1(B)(1)." LR 56.1(B)(1) requires that "[e]ach material fact must be numbered separately and supported by a citation to evidence providing such fact." That Rule further provides that "[t]he Court will not consider any fact: (a) not supported by a citation to evidence (including page or paragraph number)." Plaintiff submitted a 119-paragraph "Separate Statement Of Undisputed Material Facts In Support Of His Response In Opposition To Defendant['s] Motion For Summary Judgment," in which he did not cite to any record support for any of his statements despite filing 36 exhibits in support of his motion.[4] (Doc. 48-37; *see also* Docs. 48-1 through 48-36). His statements therefore do not comply with LR 56.1(B)(1) and (2)(b). " 'Failure to comply with local rule 56.1 is not a mere technicality'; instead, the rule provides 'the only permissible way for [the non-movant] to establish a genuine issue of material fact.' " *Cheatham v. DeKalb Cnty.*, 682 Fed. Appx. 881, 884 (11th Cir. 2017) (quoting *Mann v. Taser Int'l, Inc.*, 588 F.3d 1291, 1302 (11th Cir. 2009)); *see*

[4] Plaintiff also made several factual assertions in his brief, many of which are unsupported by citation to record support. (Doc. 48 at 1-16). Because he did not set those statements out in his statement of material facts with record citations to each statement, Plaintiff has not complied with LR 56.1, and the Court will not consider the facts set out in his brief. *See* LR 56.1(B)(1) ("The Court will not consider any fact: . . . (d) set out only in the brief and not in the . . . statement of . . . facts.").

also Reese v. Herbert, 527 F.3d 1253, 1268 (11th Cir. 2008) ("The proper course in applying Local Rule 56.1 at the summary judgment stage is for a district court to disregard or ignore evidence relied on by the respondent—but not cited in its response to the movant's statement of undisputed facts—that yields facts contrary to those listed in the movant's statement."). Thus, the Court may properly disregard all of Plaintiff's statements of additional fact as none of them are supported by citation to any record support. *See, e.g.*, *Cheatham*, 682 Fed. Appx. at 884-85 (finding that the district court did not abuse its discretion in applying LR 56.1 by not considering any fact "identified in Plaintiff's statement of undisputed material facts that was not properly supported with adequate record citations"). The undersigned observes that in spite of Defendant's objections to Plaintiff's statement of material facts, it nevertheless responded to each of Plaintiff's statements (*see* Doc. 50), and where Defendant indicates that the fact is undisputed for purposes of summary judgment, the undersigned has considered that fact, but only if it material to the resolution of Defendant's motion.

Defendant also asserts that each of its own statements of material facts should be deemed admitted because Plaintiff either responded "undisputed" to Defendant's statement, or where he "disputed" or "partially disputed" a fact, he did not support that response with citation to evidentiary support. (*See* Doc. 51 at 4-5). Plaintiff responded "disputed" or "disputed in part" or "partly disputed" in response to Def.

SMF ¶¶ 9, 10, 12-22, 26-30, 32-41, 43, 45-47, 49-59, 61, 62, 64-67, 70-77, 81, 84, 86-91, 93, 94, 96, and 97 without citing to record evidence to support his assertion that he disputed or partially disputed the fact.[5] Plaintiff also provided no response to Def. SMF ¶¶ 25, 95. LR 56.1(B)(2)(a)(2) requires a summary judgment respondent to respond to the movant's statement of undisputed facts and provides that "[t]his Court will deem each of movant's facts as admitted unless the respondent: (i) directly refutes the movants fact with concise responses supported by specific citations to evidence (including page or paragraph number); (ii) states a valid objection to the admissibility of the movant's fact; or (iii) points out that the movant's citation does not support the movant's fact or that the movant's fact is not material or otherwise has failed to comply with the provisions set out in LR 56.1(B)(1)." Because Plaintiff has not complied with LR 56.1(B)(2)(a)(2)(i), the Court deems admitted Def. SMF ¶¶ 9, 10, 12-22, 25-30, 32-41, 43, 45-47, 49-59, 61, 62, 64-67, 70-77, 81, 84, 86-91, and 93-97. The Court has nevertheless reviewed the evidence Defendant cites in support of each statement to confirm that it supports the statement.

C. Facts

[5] Plaintiff responded "Undisputed" to Def. SMF ¶¶ 1-8, 11, 23, 24, 31, 42, 44, 46, 48, 60, 63, 68, 69, 78-80, 82, 83, 85, and 92.

Plaintiff graduated from Savannah Law School in May 2016 with a Juris Doctorate degree. (Pl. SMF ¶ 1). In October 2017, Plaintiff applied for a Senior Associate Sponsored Research Analyst ("SASRA") position in the Industry Contracts Group in Emory's Office of Technology Transfer ("OTT"). (Def. SMF ¶ 1). Tammie Bain, the Assistant Director of Industry Contract within OTT, interviewed Plaintiff in October 2017. (Pl. SMF ¶¶ 6-7; Def. SMF ¶ 2). During the interview, Plaintiff told Bain that he has anxiety and depression. (Def. SMF ¶ 3). After interviewing Plaintiff and other candidates, Bain recommended that Emory hire Plaintiff. (Def. SMF ¶ 4). On February 12, 2018, Emory hired Plaintiff to the SASRA position in the Industry Contracts Group. (Def. SMF ¶ 5).

Bain directly supervised Plaintiff during his employment with Emory. (Def. SMF ¶ 6). Bain's supervisor, and Plaintiff's second-level supervisor, was Cale Lennon, Director of Licensing for OTT. (Def. SMF ¶ 6). The Industry Contracting Group negotiates and processes contracts between Emory and third parties for industry-sponsored research. (Def. SMF ¶ 7). An SASRA like Plaintiff manages complex agreements and contracts pertaining to industry-sponsored research by coordinating with faculty and staff on budget development and financial information; drafting and negotiating agreements, contracts, and subcontracts; and responding to requests for information from sponsors. (Def. SMF ¶ 8; *see also* Doc. 43-2 at 1 (job description)). SASRAs also review the terms of agreements and

contracts, ensuring that the terms are accurate, contain certifications of compliance with applicable laws and regulations, conform to Emory policies, and can be feasibly complied with by Emory. (Def. SMF ¶ 8; Doc. 43-1). The SASRA role requires a high level of productivity and quick turnaround of contracts and projects to facilitate the research that Emory faculty conduct in partnership with commercial partners. (Def. SMF ¶¶ 9, 10). The SASRA must process these contracts quickly but also accurately without material errors to protect Emory's interests. (Def. SMF ¶ 9). Plaintiff concedes that "there were deadlines for certain things that [he was] working on your job," that "one of the things [he] did was work with professors who were doing research and trying to get grants," and that "sometimes that Emory faculty member or maybe the outside partner [Emory] trying to get the grant from, they had a deadline to get a contract done . . . so they could start their research." (Olliff Dep. 45).

When Plaintiff started working at OTT, he took over multiple contracts, amendments, and work orders from a departing SASRA. (Def. SMF ¶ 12). The departing SASRA provided Plaintiff with the most recent emails with the industry partners, and Bain instructed Plaintiff to review those emails to determine the status of each contract. (Def. SMF ¶ 12). Bain also directed Plaintiff to update a database with the information found in those emails from his predecessor, so that other people involved in the grant process could track the status of the contracts. (Def. SMF ¶ 13).

A month into his employment, Plaintiff had not entered those updates. (Def. SMF ¶ 14). During his first month of employment, Plaintiff struggled with understanding the status of agreements, which resulted in him sending confusing emails to outside parties, for example asking parties to review agreements that were partially executed or otherwise ready for signatures. (Def. SMF ¶ 15). As part of the training for an SASRA, either Bain or an experienced member of the Industry Contracts team reviewed all of the new SASRA's work product, but they rarely reviewed emails. (Def. SMF ¶ 16). During Plaintiff's first month of employment, Plaintiff did not always follow instruction or pay attention to detail, so Bain began reviewing all of his deliverables and emails to avoid errors being sent out from OTT. (Def. SMF ¶ 16; Bain Decl. ¶ 15). Plaintiff also did not issue subcontracts in a timely manner, which resulted in a co-worker handling some of his assigned work. (Def. SMF ¶ 17).

To provide Plaintiff an opportunity to learn the role, become familiar with Emory's computer systems, and achieve successes to build on, Bain began assigning him contract amendment and subcontracts, instead of full contracts, and other less complex work. (Def. SMF ¶ 18). Plaintiff, however, repeatedly failed to update OTT's databases for those tasks, which prevented Bain from following the status of his work. (Def. SMF ¶ 19). Bain met with Plaintiff on March 12, 2018 to discuss her concerns and to help him understand the importance of his work, how his mistakes could affect Emory, and learn and improve. (Pl. SMF ¶ 31; Def. SMF ¶ 20). Later

than night Plaintiff contacted Emory's Office of Accessibility Services ("OAS") to request a workplace accommodation for his Attention Deficit Hyperactivity Disorder ("ADHD"), anxiety, and depression. (Def. SMF ¶ 21; Doc. 43-2 at 5-7). OAS is an Emory office dedicated to providing equal access and accommodation to Emory students, faculty, and staff. (Def. SMF ¶ 22). Among other things, OAS coordinates workplace accommodations for employees. (Def. SMF ¶ 23). OAS asked Plaintiff to have his medical provider complete a Medical Inquiry form. (Def. SMF ¶ 24).

Bain issued a Memorandum to Plaintiff on March 30, 2018 outlining her concerns about Plaintiff's performance, as discussed during their March 12, 2018 meeting. (Doc. 43-2 at 2-4). Bain did not learn about Plaintiff's ADHD until April 9, 2018 when Plaintiff told her about it (Def. SMF ¶ 25). On April 16, 2018, Bain rescinded her March 30th memo on after she consulted with Emory human resources personnel "about how to approach performance issues like [Plaintiff's]," and "provided a new memo that better explained the performance standard for [his] position and set out ways I would help him try to meet those standards." (Bain Decl. ¶ 20; Doc. 43-2 at 8). Bain provided Plaintiff with a daily task list to set his priorities for each day, and she continued to meet with him on a regular basis to discuss his assigned tasks and give feedback. (Bain Decl. ¶ 20; Doc. 43-2 at 8-9). Bain did not

learn about Plaintiff's request for a workplace accommodation until May 9, 2018, when OAS contacted her. (Def. SMF ¶ 26).

On May 3, 2018, OAS received the completed Medical Inquiry form from Plaintiff's provider, who stated that Plaintiff's ADHD impaired his ability to focus and concentrate "leading to slower processing times" and that Plaintiff was having trouble "keeping up with tasks required of him" and "slowing his ability to complete tasks in a timely manner. (Doc. 43-2 at 11-12, 14-15). As a reasonable accommodation to assist with the performance of Plaintiff's job duties, his provider wrote, "Additional time to complete tasks and work activities." (*Id*. at 13). On that date, May 3, 2018, Toni Sellers-Pitts of OAS sent Plaintiff an email confirming that OAS had received the Medical Inquiry Form and asked Plaintiff to confirm that he was seeking as an accommodation "Additional time to complete tasks and work activities," and Plaintiff confirmed that that was the accommodation he was requesting. (Pl. SMF ¶ 57; Def. SMF ¶ 32; Doc. 43-2 at 14-15). At that time, Plaintiff was not asking for any accommodation other than additional time to complete his work. (Def. SMF ¶ 33; Doc. 43-2 at 14). On May 9, 2018, OAS informed Bain about Plaintiff's request for additional time, and OAS coordinated with OTT and Emory human resources personnel to determine what accommodation OTT could provide to Plaintiff. (Def. SMF ¶ 34; Doc. 42-8 at 2). On May 29, 2018, representatives from OAS and human resources personnel met with Plaintiff and Bain to discuss the

accommodation request. (Pl. SMF ¶ 58; Def. SMF ¶ 35). During that meeting, Plaintiff requested that OTT: (1) allow him to leave his office door partially closed to reduce distractions; and (2) give him a reduced workload. (Def. SMF ¶ 35). OTT had a policy that employees keep their office door open unless engaged in a private conversation, in a meeting, or on a call. (Def. SMF ¶ 36). Prior to the May 29 meeting, Bain had already given Plaintiff a reduced workload, and according to a June 3, 2018 email and attached spreadsheet, Plaintiff was handling approximately 35% of the workload of any other SASRA. (Def. SMF ¶ 37; Bain Decl. ¶ 29; Doc. 42-3 at 13-15). Bain also asserted in that email that Plaintiff "continues to fail to follow instructions; he seems to pick and choose what he will work on regardless of instruction," and she provided several examples of his performance issues. (Doc. 42-3 at 13). Despite having a reduced workload, Plaintiff continued to make substantive errors, including issuing subcontracts with incorrect budgets, that did not conform to the prime contract, named the wrong parties, and lacked necessary attachments, and sending contracts with confidential terms to non-parties. (Def. SMF ¶ 39; Bain Decl. ¶ 29; Doc. 42-3 at 14).

Plaintiff was not provided a written accommodation agreement to sign at during the May 29, 2018 meeting (Pl. SMF ¶¶ 60-61, 64), but after the May 29 meeting and in order to accommodate Plaintiff's ADHD, Emory allowed him to leave his door partially closed and reduced his workload even more by reassigning

some of his work to his co-workers. (Def. SMF ¶ 40; Butler Decl. ¶ 8; Bain Decl. ¶ 34). As a salaried employee, Plaintiff could work as early or as late as needed to complete his assignments. (Def. SMF ¶ 42). By reducing his workload, Emory gave Plaintiff additional time to complete each of his assigned tasks. (Def. SMF ¶ 43; Bain Decl. ¶ 32).

Plaintiff's performance problems continued after the accommodations were provided after the May 29, 2018 meeting, including not timely processing subcontracts; not incorporating edits by his supervisor into a subcontract; sending confusing external communications; sending subcontracts to the wrong people and thus exposing confidential information; and not following instructions. (Def. SMF ¶ 56; Bain Decl. ¶ 35; Doc. 43-2 at 29-30). Plaintiff's performance and reduced workload placed an additional burden on his co-workers to handle Plaintiff's work. (Def. SMF ¶ 57; Bain Decl. ¶ 36). The increased workload on the other analysts reduced the quality of their work, caused them to work more hours, and caused increased stress on the team. (Def. SMF ¶ 59; Bain Decl. ¶ 36).

From June 11, 2018 until July 16, 2018, Bain was on medical leave, and Bain's supervisor, Cale Lennon, directly supervised Plaintiff. (Pl. SMF ¶ 50; Def. SMF ¶ 60). On July 10, 2018, Lennon sent Plaintiff an email in which Lennon pointed out that Plaintiff had taken 8 business days to turn around completed awards/agreements that were required to be submitted to FGC within two business

days. (Doc. 43-2 at 21-22). Lennon asked Plaintiff to "think about what steps you will take to ensure that the cases received from Jane or that have been managed by you and are fully-executed are submitted to FGC/closed out in ECTS promptly and let me know your plan." (*Id.*). Plaintiff responded and agreed that "this is unacceptable," that "there are simply too many mistakes being made," and he was "putting out a bunch of incomplete and sub-par work." (*Id.* at 21). Plaintiff outlined steps he was taking to improve, including creating a daily checklist and setting a daily reminder to go through the checklist. (*Id.*). Later that day, Lennon sent Plaintiff an email in which he wrote that another employee ("Mekia") would be sending him "Outlook invitations to attend a group training session she is conducting a couple of times a week that focuses on agreement terms and uses the ICG Checklist document as the roadmap," and told Plaintiff to "plan to attend those sessions." (Doc. 43-2 at 23). Lennon also told Plaintiff that beginning that Friday, "Daniella" would "be sending [Plaintiff] a draft study agreement to review and markup and return to her by the end of the day on the following Tuesday," that Daniella will then review it, return her comments to Plaintiff and other coworkers, and lead a group Q&A session the following Friday. (*Id.*) Lennon told Plaintiff that it would be "a weekly exercise" and that Plaintiff should "plan to participate in that training too." (*Id.*). Plaintiff responded that he "look[ed] forward to it." (*Id.*)

After the May 29 meeting, OAS facilitated a formal accommodations agreement to memorialize the provided accommodations. (Def. SMF ¶ 44; Doc. 43-3 at 114). A draft of the agreement stated that OTT would, among other things, permanently assign Plaintiff "the more simple tasks of contract review." (Def. SMF ¶ 44; Doc. 43-3 at 114). Plaintiff proposed a revision to allow him to take on more complex work once he and his supervisors were comfortable with him doing so. (Def. SMF ¶ 45; Olliff Dep. 102-03, 106). Emory revised the accommodations agreement to clarify that, as Plaintiff had requested, he would eventually be assigned the workload and complex tasks expected of an SASRA. (Def. SMF ¶ 46; Olliff Dep. 105-06). On July 23, 2018, Plaintiff and Emory finalized the Employee Accommodations Agreement. (Def. SMF ¶ 47; Doc. 43-2 at 17-18). The Agreement stated that Plaintiff "has been approved for the following temporary workplace accommodations:

> 1. **Mr. Olliff will be assigned the simpler tasks of contract review**; Per information provided by department leadership, Mr. Olliff has been assigned the simplest tasks of contract review as a Sr. Associate Sponsored Research Analyst (Sr. ASRA) since he was hired. As a result of the department's meeting with Mr. Olliff on May 28, 2018, Mr. Olliff's manager reduced his workload even more by removing an additional portion of his assigned contracts. Mr. Olliff will continue to have a reduced workload as a temporary accommodation for 60 days. At the end of the 60 days, if Mr. Olliff's performance is satisfactory, [he] will be assigned additional workload and tasks in accordance with the requirements of the Sr. ASRA position. If during the 60-day period, Mr. Olliff's performance is unsatisfactory, this could

result in disciplinary action up to, and including the termination of employment.

2. **Provide Mr. Olliff specific detailed instructions of his assigned work tasks**; This accommodation can be provided to the extent possible, given the high level of analytical and critical skills that are required to perform the Sr. ASRA. This will be reviewed monthly.
3. **Manager agreed to meet with Mr. Olliff regularly to go over assigned tasks**;
4. **Provide Mr. Olliff with training on evaluation, mark-up and negotiation of research agreements**; Such training will include conducting a weekly review and mark-up of a draft agreement following OTT ICG processes, receiving feedback on the agreement mark-up from an OTT ICG staff member, and participating in a weekly group learning session to address any questions about the ICG staff member's feedback and discuss related contracting/negotiation topics. Progress with developing these skills will be reviewed monthly.
5. **Allow Mr. Olliff to leave door cracked to reduce distractions.**

(Doc. 43-2 at 17-18 (boldface in original)). The agreement further states that if Plaintiff needed new, additional accommodations, it was his responsibility to notify OAS and to provide updated medical documentation. (*Id*. at 18). Plaintiff signed the agreement on July 23, 2018, and Butler signed the agreement on July 24, 2018. (*Id*.). The agreement also indicated that its effective date was May 29, 2018. (*Id*. at 17).

On July 24, 2018, the day after finalizing the agreement, Plaintiff emailed Dr. Butler at OAS and asked if there was "way to submit a request to be transferred to a different position. If not, do you know what my options may be for any other accommodations?" (Doc. 42-9 at 2). He wrote that he had "been really trying to get up to speed with everything," but he "end[ed] up making more mistakes because of

the day-to-day stress of the job—coupled with the fear of losing my job." (*Id*. at 3). Plaintiff did not identify any particular position to which he could transfer. (Def. SMF ¶ 54; Doc. 42-9 at 2). Butler explained in response that if Plaintiff or his supervisor "feel that the accommodations are not effective, we can discuss potential adjustments after a 30-day trial period," and "if it becomes apparent that you cannot be accommodated in your current position, we might explore the possibility of reassignment to a comparable vacant position if one exists." (Doc. 42-9 at 2). Butler also advised Plaintiff that if he had concerns about retaliation, he should consult with the Office of Equity and Inclusion. (*Id*.). On July 26, 2018, Plaintiff wrote to Butler that he was able to get "caught up for the very first time right before I took off to take the bar," but he still "made quite a few mistakes trying to get on top of everything, though" due to "being under so much pressure, coupled with my ADHD." (Def. SMF ¶ 55; Doc. 42-10 at 2).

On July 27, 2018, Plaintiff emailed Dr. Butler at OAS and indicated that he "may have requested the wrong accommodation" because his "issue seems to be more with my anxiety issues than with my ADHD (e.g., my anxiety is the primary cause and trigger for my ADHD)." (Doc. 43-2 at 27). He told Butler that he had an appointment with a therapist and "might need to submit a new accommodations request." (*Id*.). On that same day, Lennon gave Plaintiff a Final Written Warning. (Def. SMF ¶ 63). Lennon informed Plaintiff that he was "not meeting performance

expectations in the areas of Delivering Results, Functional Knowledge, Building Trust and Communication" and set forth in his assigned duties. (Doc. 43-2 at 29). Lennon noted that he and Bain had met with him "on numerous occasions through our weekly meetings" and had addressed their "performance concerns with you and have presented you with examples and expectations," which were "also addressed in [Bain's] memo from April 16, 2018." (*Id.*). Lennon described incidents of performance deficiencies in May, June, and July 2018 as evidence that Plaintiff had "not demonstrated the necessary improvement[.]" (*Id.* at 29-30). Those examples include: not sending out a subcontract in a timely manner; not including revisions in a draft subcontract Lennon had provided; failing to identify a subcontract in response to an inquiry, which "created confusion and angst among our internal customers"; sending a subcontract to the wrong party for execution; sending a subcontract to individuals who "had no involvement with this agreement"; and submitting incomplete records to Lennon for approval and submission; belatedly submitting fully-executed agreements; sending a copy of a prime agreement to a third party "that had not been redacted to remove Emory internal processing information and financial information" even though he had been trained and instructed not do so; failing to change the primary addressee in the email where he sent fully executed agreements even though Lennon had brought this to Plaintiff's attention previously;

and returning a copy of a master agreement that was not the copy of the agreement Lennon had asked Plaintiff to mark-up. (*Id*.). Lennon wrote:

> Your unacceptable job performance has negatively affected our operation and placed a burden on your co-workers. It is necessary that you demonstrate immediate and sustained improvement in all areas of your job performance in which we have documented performance deficiencies. Continued failure to meet the expectations in these areas and/or other areas of your job and/or failure to demonstrate professional behavior may result in further disciplinary action up to, and including, termination.

(*Id*. at 30). Lennon concluded, "Brian, I look forward to your improved performance. Please let me know how I can assist you in achieving these changes." (*Id*.). During his deposition, Plaintiff was "not sure" he took Lennon up on his offer of assistance, and he could not say how he tried to improve his performance and was "not sure" his performance did improve. (Def. SMF ¶ 65; Olliff Dep. 69-70).

After receiving the final warning, Plaintiff sent an email to Dr. Butler:

> Right after sending you my last email, I got written up with a final warning. I will be terminated if I continue making mistakes.
>
> If I can transfer as an accommodation, now would definitely be the time. Please let me know what steps, if any, I can take to transfer to a different position. Thanks again for everything.

(Doc. 43-2 at 27). Butler responded:

> I'm sorry to hear this news. I would recommend reaching out to your provider to determine if there are any other workplace accommodations that could support you. The temporary accommodations were effective in getting you caught up on your workload; however, [are] there any additional recommendations? I can't require a reassignment as an accommodation until there is a plan in place that did not support your

> needs in the workplace. Reassignment as an accommodation is the last resort option. In addition, reassignment at that stage is only considered for any open positions that you may qualify for. At this time, you can check with your HR rep to determine if you can transfer to another available role in the department. You can begin applying for different roles as well. However, the accommodation process cannot be expedited based on the current circumstances. The next step would be reaching out to your provider to determine if there are any other workplace recommendations. It would be important for your provider to have your job description as well as an example of the mistakes that are occurring even with your temporary agreement in place. If your provider has any other recommendations, please forward to me. I can engage in the interaction process with your supervisor to develop a new accommodation plan.

(Doc. 43-2 at 26-27). Plaintiff responded to Dr. Butler:

> I was not given any other recommendations for accommodations when I was written up. The only thing that I took from the meeting earlier was that I cannot make any more mistakes. While I was able to finally get caught up, the stress and anxiety levels remained the same and, ergo, the portion of my accommodation that needed to be addressed was still negatively affected.
>
> With that board, now, I am in position that I will likely be terminated if I make any more mistakes. I had an anxiety attack right after I was written up, so I had to leave for about an hour to get myself together. I asked my HR rep (Maria Mendez) during my write up if I was able to transfer positions with the write up in place, and she said that I was now unable to transfer.
>
> I know that there are less stressful positions that are available for which I am qualified. If I can get my provider to submit the proper documentation, can I receive a transfer to an open position for which I am qualified that doesn't cause me as much anxiety? Again, I genuinely believe that it is my anxiety that is the root of all of my issues.

(*Id*. at 26). Dr. Butler replied:

> First, your provider should be making suggestions or recommendations to address ways to make less mistakes. If there is not an accommodation to support it, I don't have any record of the temporary accommodations not being effective. If there are no further recommendations after implementing what your provider recommended, I will need that in writing from your provider. Reassignment is not a solution to prevent you from any performance[-]based actions. It has to be based on utilizing accommodations that I have a record of not being effective. If there are no strategies to assist, you will may [sic] continue to have the same challenges in another role.
>
> I would reach out to your provider and proactively search for other positions simultaneously. It is important to focus on the pieces that you can control.

(*Id*. at 25). Plaintiff replied in relevant part, "Thanks so much. I understand. I just sat down with Cale [Lennon] and Tammie [Bain]. We had a nice conversation, so I have hope that not all is doomed just yet. Nevertheless, I will still communicate with my provider to see if there are other methods to help me be better about not making as many mistakes." (*Id*.). Before his July emails, Plaintiff had not informed anyone at Emory that he "might need" some other accommodation.[6] (Def. SMF ¶ 70; Olliff Dep. 109, 111; Bain Decl. ¶ 37; Butler Decl. ¶ 11). Plaintiff did not seek his provider's guidance about any additional workplace accommodations that could help him, and he never submitted any additional information to Emory about a

[6] Plaintiff asserts that Emory had such notice because he "told Bain that I suffered from anxiety and depression during my in-person interview," but he did not cite evidence that he told Bain or anyone else that he "might need" an accommodation for his anxiety beyond what Emory provided for his ADHD. (*See* Pl. resp. to Def. SMF ¶ 70).

transfer or any other accommodations for his anxiety or ADHD. (Def. SMF ¶ 75). Plaintiff never submitted any paperwork requesting a transfer as an accommodation, nor did he ever identify to OAS specific positions that were available and for which he believed he was qualified. (Def. SFM ¶ 76).

After the July 27, 2018 Final Written Warning, Plaintiff continued to receive a reduced workload and simpler contract review tasks because his performance did not improve. (Def. SMF ¶ 86; Bain Decl. ¶ 38). Several of Emory's external partners complained to Bain about Plaintiff's misleading and confusing communications. (Def. SMF ¶ 87; Bain Decl. ¶ 39; Doc. 42-3 at 18-20). Plaintiff argued with Bain about revising a contract template and using the wrong template despite her instructions. (Def. SMF ¶ 88; Bain Decl. ¶ 39; Doc. 42-3 at 18). Plaintiff lost track of and did not timely process subcontracts, and he made material errors drafting subcontracts, including not conforming indemnification language, listing the wrong sponsor, not conforming subcontracts to current policy and prime contracts, referencing the wrong prime agreement, and entering the wrong dates. (Def. SMF ¶ 89; Bain Decl. ¶ 39; Doc. 42-3 at 18-20). He also did not regularly or accurately update OTT's databases. (Def. SMF ¶ 90; Bain Decl. ¶ 30).

In August 2018, Plaintiff requested permission to telework one day a week, but Bain denied his request because of his continued performance issues. (Def. SMF ¶ 78; Bain Decl. ¶ 40). Because of those continued issues, on September 6, 2018,

Bain requested to move forward with terminating Plaintiff's employment. (Def. SMF ¶ 91; Bain Decl. ¶ 39; Doc. 42-3 at 17). Bain sent an email on that date to Maria Mendez in Human Resources (*see* Olliff Dep. 66), copied to Cale Lennon, in which she wrote, "I believe we have enough examples of continued problems to proceed with final resolution regarding [Plaintiff's] performance." (Doc. 42-3 at 17). Bain also attached a 3-page list of Plaintiff's performance deficiencies following the July 27, 2018 Written Final Warning through August 30, 2018. (Doc. 42-3 at 18-20).

Plaintiff submitted a Charge of Discrimination with the United States Equal Employment Opportunity Commission ("EEOC") on September 10, 2018. (Def. SMF ¶ 92; Doc. 43-3 at 4). Plaintiff alleged that Defendant discriminated against him because of his disability and retaliated against for participating in a protected activity under the ADA. (Doc. 43-3 at 4).

Emory terminated Plaintiff's employment on October 31, 2018 because of his continued poor performance. (Def. SMF ¶ 93; Bain Decl. ¶ 42).

III. Defendant's Motion

Defendant argues that: (1) Plaintiff's ADA failure to accommodate claim fails because Emory provided every reasonable accommodation Plaintiff requested; (2) Plaintiff's termination claim fails because (a) Defendant terminated him for poor performance, and (b) Plaintiff failed to exhaust administrative remedies regarding his termination; and (3) Plaintiff's other, i.e., non-termination, retaliation claims are

meritless because (a) denial of training and seminars and the final written warning were not adverse actions, and (b) there is no causal connection between his alleged protected activity and the alleged adverse actions. (Doc. 42-1 at 10-21).

A. Abandoned Claims

In response to Defendant's arguments in support of its motion, Plaintiff did not address Defendant's arguments concerning any accommodation Defendant did, or did not, provide other than the alleged failure to give him more time to complete his work; he did not address Defendant's arguments about his termination; and he did not address Defendant's arguments about any other purported retaliation claims. (*See* Doc. 48). In reply, Defendant contends that Plaintiff has abandoned any claims based on his termination, alleged retaliation, or any claim based on a failure to accommodate other than a failure to provide additional time because Plaintiff "does not address any other accommodations, any other disability, his termination from employment, or any other claimed adverse action." (Doc. 51 at 2). The undersigned agrees with Defendant and therefore **RECOMMENDS** that Defendant's summary judgment be **GRANTED** on Plaintiff's ADA claims concerning failure to accommodate with respect to any accommodate other than an alleged failure to provide Plaintiff with more time to complete his work; any ADA claim arising from Plaintiff's termination; and any ADA retaliation claim based on other alleged acts of retaliation.

B. Plaintiff's Failure To Accommodate Claim

1. Relevant ADA Standards

"The ADA prohibits an employer from discriminating against a 'qualified individual on the basis of disability.' " *McCarroll v. Somerby of Mobile, LLC*, 595 Fed. Appx. 897, 899 (11th Cir. 2014) (quoting 42 U.S.C. § 12112(a)). "In the context of a failure-to-accommodate claim, an employer discriminates by 'not making reasonable accommodations to the known physical . . . limitations of an otherwise qualified individual . . . unless [the employer] can demonstrate that the accommodation would impose an undue hardship on the operation of the business.' " *Hill v. Clayton Cty. Sch. Dist.*, 619 Fed. Appx. 916, 920 (11th Cir. 2015) (unpublished decision) (quoting 42 U.S.C. § 12112(b)(5)(A)). "To establish a *prima facie* case of disability discrimination based on a failure-to-accommodate, a plaintiff must demonstrate that: (1) []he is disabled; (2) []he was a 'qualified individual' when []he suffered the adverse employment action; and (3) that []he was discriminated against because of h[is] disability by being denied a reasonable accommodation to allow h[im] to keep working." *Cappetta v. North Fulton Eye Ctr.*, No. 1:15-CV-3412-LMM-JSA, 2017 U.S. Dist. LEXIS 214906, at *69 (N.D. Ga. Feb. 1, 2017), *adopted by* 2017 U.S. Dist. LEXIS 214787 (N.D. Ga. Mar. 7, 2017).

"An accommodation is reasonable and necessary under the ADA 'only if it enables the employee to perform the essential functions of the job.' " *Medearis v.*

CVS Pharm., Inc., 646 Fed. Appx. 891, 895 (11th Cir. 2016) (quoting *Holly v. Clairson Indus., L.L.C.*, 492 F.3d 1247, 1256 (11th Cir. 2007)). "The ADA does not require an employer to eliminate essential functions of the job, however; if an individual is unable to perform them, even with the accommodation, []he cannot meet the definition of qualified." *Id*. (citing *Holly*, 492 F.3d at 1256-57). "The burden is on the plaintiff to identify a reasonable accommodation the employer should have made." *Id.* (citing *Terrell v. USAir*, 132 F.3d 621, 624 (11th Cir. 1998)). Moreover, "the duty to provide a reasonable accommodation is not triggered unless a specific demand for an accommodation has been made[.]" *Gaston v. Bellingrath*, 167 F.3d 1361, 1363 (11th Cir. 1999). "Nonetheless, an employer is not required to give an employee his choice of accommodation." *Medeiris*, 646 Fed. Appx. at 895. "And, although reasonable accommodations may include job restructuring, part-time hours, or reassignment to a vacant position, an employer is not required to create and fund a position as an accommodation, nor must an employer reallocate job duties that would alter the essential function of a job." *Id*. Moreover, "an accommodation is unreasonable under [Eleventh Circuit] precedent unless it would allow the employee to 'perform the essential functions of their jobs presently or in the immediate future.' " *Billups v. Emerald Coast Utils. Auth.*, 714 Fed. Appx. 929, 935 (11th Cir. 2017) (quoting *Wood v. Green*, 323 F. 3d 1309, 1314 (11th Cir. 2003)).

"Essential functions" are "the fundamental job duties of the employment position," but do "not include the marginal functions of the position." 29 C.F.R. § 1630.2(n)(1). The determination of whether a function is "essential" under the ADA is made by "examining a number of factors" on a "case-by-case basis." *Samson v. Fed. Express Corp.*, 746 F.3d 1196, 1201 (11th Cir. 2014). "A job function may be considered essential for any of several reasons, including but not limited to the following: (i) The function may be essential because the reason the position exists is to perform that function; (ii) The function may be essential because of the limited number of employees available among whom the performance of that job function can be distributed; and/or (iii) The function may be highly specialized so that the incumbent in the position is hired for his or her expertise or ability to perform the particular function." 29 C.F.R. § 1630.2(n)(2)(i)-(iii). Additional factors a court should consider include, among others: the employer's judgment as to which functions are essential; written job descriptions; the amount of time spent on the job performing the function; and the consequences of not requiring the employee to perform the function. *See Samson*, 746 F.3d at 1201; 29 C.F.R. § 1630.2(n)(3)(i)-(iv). "Although the employer's judgment is 'entitled to substantial weight in the calculus,' this factor is not conclusive." *Samson*, 746 F.3d at 1201 (quoting *Holly*, 492 F.3d at 1258).

2. Analysis

Defendant does not dispute that Plaintiff has a disability, but it argues that it provided Plaintiff with his requested accommodations, and Plaintiff did not identify any other reasonable accommodation that would have allowed him to perform the essential functions of his job. (Doc. 42-1 at 11-14). Plaintiff argues that Defendant "failed to provide him with a reasonable [accommodation] in a number of ways": (1) Plaintiff (and his doctor) requested "additional time to complete tasks and work activities," but "Emory refused to include this requirement in the Agreement"; (2) his doctor indicated that Plaintiff's impairment was "long-term" and "permanent," but the agreement only approved him for temporary accommodations and placed a 60-day limit on "[t]he very first and most relevant accommodation," i.e., being assigned "the simpler tasks of contract review" and having a reduced workload (*see* Doc. 43-2 at 17; (3) the agreement signed in July 2018 was not retroactive to May 29, 2018, i.e., the date of the accommodations meeting (*see* Pl. SMF ¶ 58; Def. SMF ¶ 35); and (4) Cale Lennon gave Plaintiff a Final Written Warning on July 27, 2018 (Doc. 43-2 at 29), only 3 days after the Agreement was signed by OAS and, according to Plaintiff, one day before the 60-day limit expired.[7] (Doc. 48 at 26). The

[7] Plaintiff makes various representations about statements made by Kristyne Seidenberg, an Investigator with Emory's Office of Equity and Inclusion (*see* Doc. 48 at 20), concerning the written accommodations agreement, and he asserts that those statements are untrue. (*See* Doc. 48 at 25-26; Pl. SMF ¶¶ 61-63). He has not shown that those statements are material to the resolution of Defendant's motion, and Defendant has not relied on Seidenberg's statements to support its motion for summary judgment (*see* Def. resp. to Pl. SMF ¶¶ 61-63).

undersigned finds Plaintiff's contentions to be without merit, and they fail to demonstrate that a triable issue of fact exists on his ADA failure to accommodation claim. Critically, Plaintiff has not identified an accommodation that he was denied which he reasonably needed to perform the essential functions of his job. "An accommodation is reasonable and necessary under the ADA only if it enables the employee to perform the essential functions of the job." *Medearis*, 646 Fed. Appx. at 895 (internal quotation omitted).

As Defendant contends, Emory gave Plaintiff additional time to complete tasks by giving him less complex work and by reducing his workload. During the May 29, 2018 meeting between OAS, human resources personnel, Bain, and Plaintiff, Plaintiff asked that OTT allow him to leave his office door partially open to reduce distractions and to reduce his workload. (Def. SMF ¶ 35). Even prior to the May 29, 2018 meeting, Bain had already begun assigning Plaintiff less complex work and a reduced workload due to his performance deficiencies (Def. SMF ¶¶ 18-19, 37; Bain Decl. ¶ 29; Doc. 42-3 at 13). Emory provided Plaintiff with the accommodations requested at the May meeting and allowed him to leave his door partially closed and reduced his workload even more by reassigning some of his work to co-workers, thereby giving him time to complete each of his assigned tasks. (Def. SMF ¶ 40; Butler Decl. ¶ 8; Bain Decl. ¶ 34). Thus, although the final written agreement concerning Plaintiff's accommodations was not executed until July 2018,

the record shows that Bain had already reduced the complexity of Plaintiff's assignments and reduced his workload, which would have allowed him more time to work on his assignments.

Plaintiff has pointed to no authority that requires an employer to accommodate a disability by reducing the complexity of the assigned work, reducing the workload, *and* giving additional time to perform the reduced amount of less complex work.[8] The undersigned finds that such requested accommodation is not reasonable, particularly where it is undisputed that Plaintiff's position required him to manage and review contracts of all levels of complexity with deadlines for completing that work. (*See, e.g.*, Def. SMF ¶¶ 7-10; Doc. 43-2 at 1; Olliff Dep. 45). To the contrary, "[i]n providing reasonable accommodations under the ADA, employers are not required to change to essential functions of a position or to reassign an employee when no positions are available." *Billups*, 714 Fed. Appx. at 933 n.2; *see also Tetteh v. WAFF TV*, 638 Fed. Appx. 986, 988 (11th Cir. 2016) ("[T]he ADA does not require an employer 'to reallocate job duties in order to change the essential functions of a job.' " (quoting *Earl v. Mervyns, Inc.*, 207 F.3d 1361, 1367 (11th Cir. 2000)); *Smith v. Home Depot U.S.A., Inc.*, No. 1:97-cv-2918, 1999 U.S. Dist. LEXIS

[8] If Plaintiff was asking *only* for additional time to complete the same amount and complexity of work as his fellow SASRAs, such a request would be unreasonable given the deadlines involved in that work. Nor has Plaintiff shown that such an accommodation would have allowed him to complete the essential functions of his job.

22207, at *20 (N.D. Ga. Mar. 3, 1999) ("While Plaintiff contends that lowering his production goal was a reasonable accommodation, a reasonable accommodation does not require an employer to alter or reduce production standards."). To the extent that by requesting additional time to perform his work he was requesting extended deadlines to complete such work, he has not shown that that request was reasonable as the essential functions of his job required him to facilitate the completion of contracts within deadlines. Defendant's accommodation of limiting the complexity of Plaintiff's assignments as well as reducing his workload was reasonable. In addition, even prior to the July 2018 execution of the written accommodation agreement, OTT allowed Plaintiff to keep his door closed as he requested (Def. SMF ¶ 40; Butler Decl. ¶ 8; Bain Decl. ¶ 34), and provided him with additional counseling and training in an effort to help him improve his work performance (*see, e.g.*, Bain Decl. ¶ 20; Doc. 43-2 at 8-9; Doc. 43-2 at 21-23; *see also* Doc. 43-2 at 29 ("Tammie and I have met with you on numerous occasions through our weekly meetings, have addressed our performance concerns with you and have presented you with examples and expectations")).

The fact that Plaintiff continued to make mistakes in spite of Emory's efforts to help him improve his performance and accommodate his disability—as he admitted (*see* Doc. 42-9 at 3; Doc. 43-2 at 21, 25-27)—does not indicate that Emory failed to provide him with reasonable accommodations. *See, e.g.*, *Goldberg v. Fla.*

Int'l Univ., 838 Fed. Appx. 487, 493 (11th Cir. 2020) ("Because he could not meet the medical school's standards even with 100% extra time on examinations, Goldberg has not shown that his requested accommodation was reasonable."). Plaintiff has not pointed to any other reasonable accommodation that would have allowed him to perform the essential functions of his job without making the documented (and undisputed) errors in his work described by Bain and Lennon. (*See* Doc. 43-2 at 8-9, 21-22, 29-30; Doc. 42-3 at 13-14, 17-20). On July 27, 2018—four days after he executed the written accommodations agreement—Plaintiff indicated to OAS that he "might need" a different accommodation due to his anxiety (Doc. 43-2 at 27), and then after he received Lennon's Final Written Warning he requested "a transfer as an accommodation" because "I will be terminated if I continue making mistakes." (*Id*. at 26-27). Dr. Butler advised Plaintiff that he should "reach[] out to [his] provider to determine if there are any other workplace accommodations that could support you," and "[i]t would be important for your provider to have your job description as well as an example of the mistakes that are occurring even with your temporary agreement in place." (Doc. 43-2 at 26). Butler also told Plaintiff, "your provider should be making suggestions or recommendations to address ways to make less mistakes." (*Id*. at 25). With respect to Plaintiff's transfer request, Butler explained that "[r]eassignment as an accommodation is a last resort option" and "is only considered for any open positions that you may qualify for"; "[r]eassignment

is not a solution to prevent you from any performance based actions"; and she advised Plaintiff to "check with [his] HR rep to determine if [he] can transfer to another available role in the department" and "being applying for different roles as well." (*Id*. at 25-26). Plaintiff did not then identify any other accommodation or submit documentation from his provider to support additional accommodations with respect to his ADHD, anxiety, or depression, nor did he identify an available position for which he was qualified to which he could transfer.[9] (Def. ¶¶ 75-76).

Plaintiff cites to Lennon's July 27, 2018 Final Written Warning as evidence that Defendant did not provide him reasonable accommodations, but that warning simply shows that even with the accommodations Defendant gave him—reduced workload, less complex workload, the ability to shut his door to prevent distractions, and additional counseling, feedback, and training—he was unable to perform the essential functions of his job. Even the written accommodations agreement Plaintiff signed indicated that if Plaintiff's performance was unsatisfactory, even with the accommodations, "this could result in disciplinary action up to, and including the termination of employment." (Doc. 43-2 at 17).

[9] In September 2018, Plaintiff requested and received an accommodation to telework when he required infusions for colitis. (Def. SMF ¶¶ 79-85; Doc. 43-3 at 5-7, 25-26; Butler Decl. ¶ 15; Olliff Dep. 119-20). That accommodation request is not at issue.

The fact that the written agreement indicated that the accommodations were temporary (Doc. 43-2 at 17) does not indicate that Emory failed to reasonably accommodate Plaintiff's disability. In the first place, the record shows that an early draft of the agreement contemplated that OTT would permanently assign Plaintiff "the more simple tasks of contract review" (Def. SMF ¶ 44; Doc. 43-3 at 114), but Plaintiff proposed a revision to allow him to take on more complex work once he and his supervisors were comfortable with him doing so (Def. SMF ¶ 45; Olliff Dep. 102-03, 106), thus indicating that Plaintiff was seeking temporary accommodations. Moreover, Plaintiff told OAS that his "request for 'additional time' is primarily needed for when I am learning something new," that due to his "learning curve . . . at first it appears as though I don't quite understand anything about what I'm being taught. Then all of the sudden—everything clicks, I then hit a stride, and I can start producing as well as just about anyone." (Doc. 43-2 at 14). Thus, the written agreement reasonably contemplated giving Plaintiff a period of assistance to learn his role and develop strategies to complete his required job responsibilities without making so many mistakes by reducing the complexity of his tasks, reducing his work load, and giving him extra counseling and training. (*See* Doc. 43-2 at 17-18). Moreover, Plaintiff has not shown that making the requested accommodations permanent would be reasonable. The ADA does not require an employer to "reallocate job duties that would alter the essential function of a job," *Medeiris*, 646

Fed. Appx. at 895, and while Emory was willing to do so on a temporary basis to allow Plaintiff to improve his work performance, "an accommodation is unreasonable under [Eleventh Circuit] precedent unless it would allow the employee to 'perform the essential functions of their jobs presently or in the immediate future.' " *Billups*, 714 Fed. Appx. at 935 (quoting *Wood v. Green*, 323 F. 3d 1309, 1314 (11th Cir. 2003)). Thus, to the extent that Plaintiff requested as a permanent accommodation "additional time" to complete his work—resulting in the permanent reduction of his workload and type of contracts he was assigned—he has not shown that such accommodation is reasonable in the circumstances of this case.[10]

Plaintiff has not created a triable issue of fact on whether Defendant failed to provide a reasonable accommodation for his disability that would have allowed Plaintiff to perform the essential functions of his job. It is therefore **RECOMMENDED** that Defendant's motion for summary judgment on Plaintiff's ADA failure to accommodate claim be **GRANTED**.

Conclusion

For the foregoing reasons, it is **RECOMMENDED** that Defendant's Motion For Summary Judgment (Doc. 42) be **GRANTED**.

[10] Moreover, as Defendant points out, Plaintiff's "accommodations were permanent: Emory never increased the volume or complexity of Olliff's assignments (because his performance never improved). (Bain Decl. ¶ 38)." (Doc. 51 at 10).

The Clerk is directed to terminate the reference of this case to the undersigned Magistrate Judge.

IT IS SO REPORTED AND RECOMMENDED this 28th day of June, 2021.

/s/ J. Clay Fuller
J. Clay Fuller
United States Magistrate Judge