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

NAFEESAH ROBINSON,

Plaintiff,

v.

FCA US LLC,

Defendant.

CIVIL ACTION FILE

NO. 1:19-CV-4047-CAP-WEJ

FINAL REPORT AND RECOMMENDATION

Plaintiff, Nafeesah Robinson,[1] alleges that her former employer, FCA US LLC ("FCA"), retaliated against her in violation of the Americans With Disabilities Act, 42 U.S.C. § 12101, et seq. ("ADA"). (Compl. [1] Count I.) After a period of discovery, defendant filed a Motion for Summary Judgment [40]. For reasons explained below, the undersigned **RECOMMENDS** that defendant's Motion be **GRANTED**.

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[1] The docket reflects the spelling of plaintiff's first name as "Nafeeshah." That Clerk is **DIRECTED** to correct that typographical error and change her name to "Nafeesah."

I. STATEMENT OF FACTS

In support of its Motion for Summary Judgment, defendant as movant filed a Statement of Undisputed Material Facts ("DSUMF") [40-2]. See N.D. Ga. Civ. R. 56.1(B)(1). As required by Local Rule 56.1(B)(2)(a), plaintiff submitted a response to those proposed facts. (See Pl.'s Resp. to Def.'s Stat. of Mat. Facts [44-1] ("PR-DSUMF").) As allowed by Local Rule Civil 56.1(B)(2)(b), plaintiff filed a statement of additional facts which she contends are material and present a genuine issue for trial. (See Pl.'s Stat. of Add'l Facts ("PSAF") [44-2].) Defendant then filed a Response to PSAF ("DR-PSAF") [45-1]. See N.D. Ga. Civ. R. 56.1(B)(3).

The Court uses the parties' proposed facts and responses as follows. Where one side admits a proposed fact, the Court accepts it as undisputed for purposes of this Motion and cites only the proposed fact. Where one side denies a proposed fact, the Court reviews the record cited and determines whether a fact dispute exists. If the denial is without merit, and the record citation supports the proposed fact, then the Court deems it admitted and includes it herein. The Court excludes any facts that are immaterial.[2] The Court sometimes modifies the parties' proposed

[2] PSAF ¶¶ 9, 10, 15, 16, 17, 25, 28, 29, and 48 are excluded as immaterial.

facts based on the opposing party's response. Finally, the Court considers all proposed facts in light of the standards for summary judgment, set out infra Part II.

A. Plaintiff's Employment with FCA

Plaintiff worked as a Picker at FCA's Atlanta Parts Distribution Center from April 2013 until her termination on August 16, 2018. (DSUMF ¶ 1.) As a Picker for FCA, Ms. Robinson was responsible for retrieving car parts with FCA's Atlanta Parts Distribution Center Warehouse (the "warehouse") that corresponded with shipping orders received by FCA. (PSAF ¶ 1.) Ms. Robinson was a member of the United Autoworkers Union, and her employment was subject to a collective bargaining agreement. (DSUMF ¶ 2.) Ms. Robinson was familiar with, and understood that she was required to follow, the FCA Standards of Conduct during her employment. (Id. ¶ 3.) Violations of the FCA Standards of Conduct were subject to discipline under the collectively bargained progressive discipline process. (Id. ¶ 4.)

B. Plaintiff's Injury and Work Restrictions

On September 12, 2017, Ms. Robinson injured her shoulder while moving car parts in the warehouse. (DSUMF ¶ 5, modified per PR-DSUMF ¶ 5; see PSAF ¶ 2.) The next day, Ms. Robinson returned to work and was given work within her restrictions, known as restricted duty or transitional work. (DSUMF ¶ 6.)

After receiving medical treatment and physical therapy on her shoulder for over a month, Ms. Robinson was referred to a specialist named Rajiv Pandya, M.D. (PSAF ¶ 3.) Dr. Pandya ordered an MRI on Ms. Robinson's shoulder, which revealed a tear in her shoulder muscle. (Id. ¶ 4, modified per DR-PSAF ¶ 4.) Based on the MRI results and Ms. Robinson's reported symptoms, Dr. Pandya recommended restrictions of lifting no more than 10 pounds below the shoulder and no overhead lifting of any kind. (PSAF ¶ 5.)

On or around February 5, 2018, James Kercher, M.D. of Peachtree Orthopedics provided FCA with an updated assessment of Ms. Robinson's shoulder injury. (PSAF ¶ 6, modified per DR-PSAF ¶ 6.) Regarding her restrictions, Dr. Kercher recommended "limitations on overhead lifting of no greater than 10 pounds and 20 pounds at waist level." (PSAF ¶ 7 (quoting Robinson Dep. Ex. 13 [44-3], at 82[3]).)

FCA maintained a record of Ms. Robinson's restrictions over time, as reported by her doctor. (DSUMF ¶ 7.) The Transitional Duty Committee (a.k.a., the Health & Safety Committee), comprised of both union members and FCA management, regularly reviewed Ms. Robinson's restrictions and identified work

[3] This page number refers to the number assigned by CM-ECF.

for her. (Id. ¶ 8.) Except for one month in late 2017, and one day in April 2018, when Ms. Robinson was returned to regular duty based upon changes doctors made to her restrictions, she was on restricted duty from the time of her September 2017 reported shoulder injury until her termination in August 2018. (Id. ¶ 9.)

Ms. Robinson's restricted duty assignments included picking up paper, cleaning up in the warehouse, and wiping down cubby holes in the bins area of the warehouse with a rag and cleaning solution (collectively known as "5-S-ing"). (DSUMF ¶ 10.) On three days total in 2018 (and at no time in 2017), Ms. Robinson was assigned to count the paper tickets that listed parts to be picked. (Id. ¶ 11.) For the vast majority of time on restricted duty, Ms. Robinson was assigned to 5-S. (Id. ¶ 12.)

C. Plaintiff's Discipline

FCA disciplined Ms. Robinson for violations of its Standards of Conduct before her September 2017 shoulder injury and in 2018 when she was not supervised by Michael Allen. (DSUMF ¶ 13.)

On March 28, 2018, Ms. Robinson received a written warning. (PSAF ¶ 8.) The warning cited her for failing to perform her 5-S job in the "BA Room," which

contains bins for small parts, on March 27, 2018. (Id., modified per DR-PSAF ¶ 8.[4])

On April 5, 2018, FCA increased Ms. Robinson's restrictions from 10 to 20 pounds of overhead lifting. (PSAF ¶ 11.) Because of this, Ms. Robinson was assigned to lift parts from a cart into an item called the "cage." (Id. ¶ 12.[5]) On April 6, 2018, Ms. Robinson visited Dr. Pandya, and he submitted an updated restriction of no lifting over 10 pounds and no reaching above the shoulders. (Id. ¶13, modified per DR-PSAF ¶ 13.) Four days later, on April 10, 2018, FCA issued Ms. Robinson a three-day suspension. (PSAF ¶ 14.)

On April 23, 2018, Ms. Robinson was working on restricted duty in the bins and was supervised by Mr. Allen. (DSUMF ¶ 15.) The instructions Mr. Allen gave

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[4] FCA objects to PSAF ¶ 8. It contends that Ms. Robinson was issued a written warning for violations of FCA Standards of Conduct. While the written warning states that Ms. Robinson violated FCA Standards of Conduct Number 5, it specifically states that she was being cited for "not performing her regular transitional duties and not working at all." FCA has failed to refute the proposed fact. However, the Court has modified the proposed fact to reflect that Ms. Robinson's actions took place on March 27, 2018.

[5] FCA argues that Ms. Robinson does not place any work assignment to place parts from a cart into a cage at issue in her Complaint or underlying EEOC Charge. However, the Complaint alleges that Ms. Robinson re-injured herself after lifting an item over 10 pounds after her restriction was increased to 20 pounds. (Compl. [1] ¶¶ 14, 16.)

Ms. Robinson on April 23, 2018 were no different than instructions she had previously received about 5-S-ing in the bins area. (Id. ¶ 16.) Mr. Allen instructed Ms. Robinson to 5-S one assigned aisle and to let him know when she finished the aisle so he could check her work. (Id. ¶ 17.) He also generally instructed her not to attempt to lift or move any items that were outside her work restrictions. (Id. ¶ 18, modified per PR-DSUMF ¶ 18.[6])

However, Ms. Robinson later complained to her union representatives that Mr. Allen was ordering her to complete tasks outside her restrictions. (PSAF ¶ 18, modified per DR-PSAF ¶ 18.) Specifically, that Mr. Allen told Ms. Robinson to remove "tote" bags from bins so they could be cleaned. (PSAF ¶ 19.[7]) The Court

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[6] Plaintiff disputes DSUMF ¶ 18. At her deposition, Ms. Robinson testified that, on April 23, 2018, Mr. Allen later instructed to her to pull a tote down that was outside of the weight restriction of her doctors. (Robinson Dep. [40-4] 275:6-279:9.) Ms. Robinson also testified that after Mr. Allen received permission from Warehouse Operations Manager Ryan Saunders, he disciplined her for her refusal to take down the bin. (Id. at 275:23-276:14.) At his deposition, Mr. Allen testified that he instructed Ms. Robinson not to touch any items that were outside her work restrictions. (Allen Dep. [40-6] 52:10-24.) The Court has modified defendant's proposed fact to reflect Mr. Allen's testimony that he generally instructed Ms. Robinson not to attempt to lift anything outside of her work restrictions.

[7] Defendant disputes PSAF ¶ 19. It claims that Mr. Allen showed Ms. Robinson how to wipe down the bins. However, Ms. Robinson stated that her job assignment on April 23, 2018 was to "wipe down bins, take the -- take totes out of the hole and spray it and wipe it down." (Robinson Dep. [44-3] 259:4-10.) FCA's partial denial is not supported by the record cited.

excludes PSAF ¶ 20.[8] Ms. Robinson told Mr. Allen that removing the tote bags would violate her lifting restriction. (Id. ¶ 21.[9])

This same day, Ms. Robinson placed a call using her cell phone in an area that was designated as not safe for cell phone use. (DSUMF ¶ 19, modified by PR-DSUMF ¶ 19.[10]) Mr. Allen placed Ms. Robinson on notice of discipline after, according to his email writeup, Union Committeeman Cheryl Parker approached

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[8] Defendant objects to PSAF ¶ 20 as immaterial and not supported by the citations. FCA's objection is sustained. In her deposition, Ms. Robinson stated that she was unsure of how much the tote bags weighed. (Robinson Dep. [45-3] 99:11-100:5.) Thus, the actual weight of the tote bags is uncertain.

[9] Defendant objects that PSAF ¶ 21 is hearsay and immaterial. (DR-PSAF ¶ 21.) FCA's objection is overruled. However, the Court includes the proposed fact to show only Ms. Robinson's subjective belief that the tote bags were outside her weight restriction, not for truth of the matter asserted.

[10] Plaintiff disputes this proposed fact. She claims that she called her former supervisor, Maurice Scott, after Mr. Allen asked her to perform tasks outside of her weight restrictions. (PR-DSUMF ¶ 19, citing Robinson Dep. [44-3] 239:15-240:12.) She contends that this call was not in violation of work instruction. However, Ms. Robinson indicated she was aware that the bins and break area were not cell phone safe areas and that she called Mr. Scott from this area. (Robinson Dep. [40-4] 244:22-245:11, 239:20-24.)

him and told him that Ms. Robinson had called her. (DSUMF ¶ 20, modified per PR-DSUMF ¶ 20.[11]) The Court excludes DSUMF ¶ 21.[12]

Later in the evening on April 23, 2018, Mr. Allen found Ms. Robinson in an area of the bins where she was not assigned. (DSUMF ¶ 22.[13]) Mr. Allen checked

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[11] At her deposition, Ms. Robinson testified that she never called Ms. Parker. (Robinson Dep. [40-4] 239:15-19.) However, Mr. Allen indicated in his contemporaneous email writeup that Ms. Parker told him that Ms. Robinson had called her. Moreover, in an email Ms. Robinson sent on April 25, 2018, she indicated that she called Ms. Parker. (Robinson Dep. Ex. 25 [44-3], at 88.) Thus, the Court includes this proposed fact to show what Mr. Allen subjectively believed at the time of the writeup.

[12] Plaintiff disputes DSUMF ¶ 21, asserting that she did not admit that the April 23, 2018 events did not concern her work restrictions. The Court finds that plaintiff's denial is supported by the evidence. In her deposition, Ms. Robinson testified as follows:

> Q: Would you agree with me that – at least that from whatever Mike Allen is describing in his email, from 4:15 all the way up until 5:30 when you finally picked up the cloth and mask and gloves and went to work, that nothing in that email that he wrote had anything to do with your restrictions?
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> A: It didn't have anything to do with my restriction.

(Robinson Dep. [40-4] 249:19-250:1.) This testimony shows that Ms. Robinson agreed that Mr. Allen's email did not concern her work restrictions. Further, Ms. Robinson protested Mr. Allen's instruction to remove "tote" bags from the bins because they violated her lifting restriction. (Id. at 259:4-10, 275:6-279:9.) For these reasons, Ms. Robinson's denial is supported by the record.

[13] Plaintiff disputes DSUMF ¶¶ 22-28 to the extent that FCA contends that these were the reasons Mr. Allen disciplined Ms. Robinson on April 23, 2018.

the aisles that Ms. Robinson claimed to have completed and found that she had not wiped down any shelves. (Id. ¶ 23.) He then reminded her of the instructions to 5-S and wipe down the shelves in each aisle, but Ms. Robinson responded that she was not going to dust. (Id. ¶ 24.) Mr. Allen asked Ms. Robinson if she was not going to follow his instructions; she did not respond. (Id. ¶ 25.) After Mr. Allen asked her to follow him so he could show her what to do, Ms. Robinson said, "Why are you working so hard at this, Mike?" and said, "you can't make me do this." (Id. ¶ 26, modified per PR-DSUMF ¶ 26.[14]) When Mr. Allen instructed Ms. Robinson to keep her voice down, she replied repeatedly, "you can't make me stop talking." (DSUMF ¶ 27.) Mr. Allen then placed Ms. Robinson on notice of discipline. (Id. ¶ 28, modified per PR-DSUMF ¶ 28; see PSAF ¶ 23.)

Rather, Ms. Robinson contends that Mr. Allen only disciplined her after Warehouse Operations Manager Ryan Saunders told him to "write [Robinson] up for not following a direct order since she said the job was out of [her] weight class." (PSAF ¶ 24; Robinson Dep. 275:23-276:14, Ex. 25.) The Court excludes PSAF ¶ 24 because it is argumentative. Moreover, the Court finds that DSUMF ¶¶ 22-28 are supported by the record.

[14] Plaintiff denies that she was disruptive or raised her voice. (Robinson Decl. [44-5] ¶ 10; PSAF ¶ 25.) Whether Ms. Robinson actually was disruptive or raised her voice is immaterial. See Alvarez v. Royal Atl. Devs., Inc., 610 F.3d 1253, 1266 (11th Cir. 2010) (holding that the relevant inquiry is what employer believed and not the reality outside of the decisionmaker's mind).

On April 24, 2018, Ms. Robinson received a 30-day disciplinary layoff for causing a disruption by allegedly raising her voice on April 23, 2018. (DSUMF ¶ 14; PSAF ¶ 22.) During her deposition, Ms. Robinson admitted that Mr. Allen's written account is the reason that he gave her a 30-day suspension. (DSUMF ¶ 29, modified per PR-DSUMF ¶ 29.) Ms. Robinson was cited for violating Standards of Conduct No. 6, failure to follow the instructions of management, and Standards of Conduct No. 7, improper interference with or restriction of operations. (DSUMF ¶ 14) That same day, Ms. Robinson sent an email about being put on notice of discipline to bpoffice@crysler.com, misspelling Chrysler without an "h," resulting in the email not going to anyone at FCA. (Id. ¶ 30.) Ms. Robinson sent another email on May 15, 2018 to the UAW Civil Rights Committee, which is composed solely of union members, but did not send this email to anyone at FCA. (Id. ¶ 31.)

D. Plaintiff's Termination

On August 16, 2018, Mr. Allen assigned Ms. Robinson the job of counting tickets. (PSAF ¶ 26, modified per DR-PSAF ¶ 26.) Ms. Robinson requested a table to count tickets. (DSUMF ¶ 33.) To avoid having the table block a hallway where others walked, the table was placed near closed dock doors. (Id.) After Ms. Robinson complained that the work location was unsafe, the job was shut down and she was then assigned to 5-S in the "LEB" room, a room with bins that is

adjacent to the main bins area. (Id. ¶ 34; PSAF ¶¶ 27, 30-31.) Mr. Allen was aware of a complaint about counting tickets near the dock doors. (PSAF ¶ 44, modified per DR-PSAF ¶ 44.[15]) Although Mr. Allen claims that he did not speak directly with Ms. Robinson, he acknowledges that he received a complaint about working near the dock doors from the union representative and his supervisor. (PSAF ¶ 45.) The Court excludes PSAF ¶ 46.[16]

Mr. Allen went to check on Ms. Robinson in the LEB room and discovered that she was not there. (DSUMF ¶ 35.) Mr. Allen found her in an aisle of the warehouse. (DSUMF ¶ 36, modified per PR-DSUMF ¶ 36.[17]) When Mr. Allen

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[15] FCA objects to PSAF ¶ 44 on the grounds that it is unsupported, immaterial, and in contradiction to Ms. Robinson's deposition testimony. Although Ms. Robinson contends that Mr. Allen became aware of her complaint on August 18, 2021, this is a scrivener's error. Moreover, Mr. Allen testified that he was made aware of a verbal complaint by a union representative and his supervisor. (Allen Dep. [44-4] 41:12-23.) Thus, he was aware, at least indirectly, of Ms. Robinson's complaint on August 16, 2018.

[16] FCA objects to PSAF ¶ 46, arguing that ¶ 11 of Ms. Robinson's Declaration [44-5] contradicts her deposition testimony that she only spoke with union steward John Donald about her concerns with working near the dock doors. Indeed, ¶ 11 does contradicts her testimony (Robinson Dep. [44-3] 296:1-18, 297:7-18) and does not explain the discrepancy. FCA's objection is sustained for reasons stated infra note 25. The Court strikes this paragraph of plaintiff's Declaration.

[17] Plaintiff disputes that she was not on any route to a bathroom. (PR-DSUMF ¶ 36.) At her deposition, Ms. Robinson testified that she was walking to

asked Ms. Robinson where she was going, she replied that she was going to the bathroom to handle "personal business." (DSUMF ¶ 37, modified per PR-DSUMF ¶ 37; PSAF ¶ 32.[18]) FCA employees do not have to ask permission before going to the restroom. (PSAF ¶ 47.) A bathroom was located within the warehouse next to the breakroom and union's office. (Id. ¶ 33, modified per DR-PSAF ¶ 33.) Mr. Allen told Ms. Robinson to return to her work area and warned her that she would be put on notice if she did not comply. (DSUMF ¶ 38.) Ms. Robinson asked Mr. Allen to get her union representative, Mr. Donald. (PSAF ¶ 36, modified per DR-

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the bathroom when Mr. Allen stopped her. (Robinson Dep. [44-3] 317:15-25.) She also stated that the place was she walking toward contained the union hall, breakroom, and bathroom because they were all in one general area. (Id. at 322:5-10.) Mr. Allen only stated that Ms. Robinson was not heading towards any nearby bathroom, and that there are many routes to the bathroom. (Allen Dep. [40-6], at 67:24-68:3.) Based on this testimony and the standard set out infra Part.II, the Court modifies DSUMF ¶ 36.

[18] Plaintiff disputes this fact. (PR-DSUMF ¶ 37.) She appears to contend that she informed Mr. Allen that she needed to change her sanitation pad. (Id., citing Robinson Dep. Ex. 31 [44-3], at 91; PSAF ¶ 32.) As Ms. Robinson admits, it is unclear from her contemporaneous written account of this interaction with Mr. Allen if she told him of her need to change her sanitation pad. Moreover, Ms. Robinson stated at her deposition that she only told Mr. Allen she was "[g]oing to the bathroom to handle some personal business." (Robinson Dep. [44-3] 312:17-20.) Thus, her denial is without merit. The Court excludes this portion of PSAF ¶ 32 because it is not supported by the cited evidence. Further, the Court excludes PSAF ¶¶ 34-35 because they are duplicative of DSUMF ¶ 37.

PSAF ¶ 36.[19]) Ms. Robinson then turned and walked away from Mr. Allen. (DSUMF ¶ 39; PSAF ¶ 37, modified per DR-PSAF ¶ 37.[20]) She walked toward her "PIV," a small buggy used by employees to get around the warehouse, to retrieve her union membership card to present to Mr. Allen if he continued to question her as she attempted to use the bathroom. (PSAF ¶ 38.[21]) After picking up her union card, Ms. Robinson walked back toward the area that contained the union hall, breakroom, and a bathroom. (Id. ¶ 39, modified per Robinson Dep. [40-4] 322:1-14.)

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[19] Ms. Robinson contends that she asked to see Mr. Donald because she feared retaliation for her earlier complaint. (PSAF ¶ 36.) However, as FCA points out, Ms. Robinson stated that she wanted Mr. Donald as a witness to Mr. Allen's questioning of her. (Robinson Dep. 313:1-314:3.) Given this testimony, the Court excludes Ms. Robinson's contention that she requested Mr. Donald due to her fear of retaliation.

[20] Ms. Robinson contends that she turned around and walked away from the bathroom because Mr. Allen was in front of her and encroaching on her personal space. (PSAF ¶ 37.) Whatever Ms. Robinson's motivations were for walking away, they are immaterial. FCA does not dispute that Ms. Robinson walked away from Mr. Allen.

[21] FCA objects that the cited evidence does not support that Ms. Robinson was attempting to use the bathroom. (DR-PSAF ¶ 38.) However, Ms. Robinson indicated that she was attempting to use the bathroom but that she "never got the chance" to use it and that she was intending to go to the bathroom. (Robinson Dep. [40-4] 322:12-14, 323:1-10.)

Ms. Robinson stopped to have a conversation with co-worker Chrystal Igus, who was then working by picking parts in the racks area of the warehouse. (DSUMF ¶ 40.) Mr. Allen asked Ms. Robinson and Ms. Igus what they were doing, but Ms. Robinson did not respond. (Id. ¶ 41.)

Ms. Robinson did not follow Mr. Allen's instructions to return to her work area and instead headed for the union office, intending to go to the bathroom. (DSUMF ¶ 42, modified per PR-DSUMF ¶ 42.) Ms. Robinson did not ask, and Mr. Allen did not give her permission, to go to the union office. (DSUMF ¶ 43.) Mr. Allen warned Ms. Robinson that he would place her on notice of discipline if she did not return to her work area; however, Ms. Robinson kept walking. (Id. ¶ 44.[22]) When she passed the union representatives office on the way to the bathroom, Ms. Robinson encountered Messrs. Donald and Allen in the hallway. (PSAF ¶ 40, modified per DR-PSAF ¶ 40.[23]) Ms. Robinson stopped in the hallway to talk to

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[22] Plaintiff disputes this fact. (PR-DSUMF ¶ 44.) She contends that Mr. Allen did not place her on notice until he met her in the hallway with Mr. Donald. However, as stated, defendant contends that Mr. Allen only warned her she would be placed on notice, not that she was placed on notice.

[23] FCA objects to PSAF ¶ 40, arguing that Ms. Robinson only spoke with Mr. Donald and not Mr. Allen in the hallway. However, PSAF ¶ 40 states that Ms. Robinson encountered Messrs. Allen and Donald in the hallway, not that she spoke with Mr. Allen in the hallway. This is consistent with her testimony. (Robinson Dep. [40-4] 323:11-20.)

Mr. Donald. (DSUMF ¶ 46, modified per PR-DSUMF ¶ 46.[24]) The Court excludes PSAF ¶ 41.[25] After Ms. Robinson finished talking to Mr. Donald, Mr. Allen placed her on notice of discipline. (DSUMF ¶ 47.) Ms. Robinson then left the conversation to use the bathroom, and subsequently returned to work in the BA room. (PSAF ¶ 42.[26])

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[24] Plaintiff denies DSUMF ¶ 45 and disputes DSUMF ¶ 46. DSUMF ¶ 45 asserts that Mr. Allen placed Ms. Robinson on notice of discipline after she ignored his instructions to return to her workspace. Ms. Robinson claims she was not placed on notice of discipline until she finished talking to Mr. Donald. (PR-DSUMF ¶¶ 45, 46.) FCA is inconsistent with its timeline of when Ms. Robinson was placed on notice of discipline. (See DSUMF ¶ 47.) Moreover, Ms. Robinson's denials are supported by the record. For these reasons, the Court excludes DSUMF ¶ 45 and modifies DSUMF ¶ 46.

[25] Ms. Robinson asserts that she informed both Messrs. Allen and Donald that she needed to use the bathroom but was being harassed by Mr. Allen. (Robinson Decl. [44-5] ¶ 7.) This portion of ¶ 7 of Ms. Robinson's Declaration contradicts her prior deposition testimony that she only spoke to Mr. Donald in the hallway. (Robinson Dep. [40-4] 323:11-20.) As such, the Court rejects it as a sham. See Van T. Junkins & Assocs., Inc. v. U.S. Indus., Inc., 736 F.2d 656, 657 (11th Cir. 1984) ("When a party has given clear answers to unambiguous questions which negate the existence of any genuine issue of material fact, that party cannot thereafter create such an issue with an affidavit that merely contradicts, without explanation, previously given clear testimony.").

[26] FCA objects that the evidence cited by Ms. Robinson is in contradiction to her deposition testimony and should be rejected as sham. (DR-PSAF ¶ 42.) It contends that Ms. Robinson testified she did not use the bathroom. However, Ms. Robinson only stated that she did not use the bathroom before her conversation with Mr. Donald in front of Mr. Allen. (Robinson Dep. [40-4] 323:1-6.) She did

According to Mr. Allen, Ms. Robinson's actions did not indicate that she was going to the bathroom. (DSUMF ¶ 48.) Ms. Robinson handwrote a document entitled "Health and Safety Issues" after she talked with Mr. Donald in the hallway and was placed on notice of discipline. (Id. ¶ 49.) Ms. Robinson gave the "Health and Safety Issues" document only to Mr. Donald, and she did not tell anyone else about the document. (Id. ¶ 50.)

Several hours after she encountered Messrs. Donald and Allen in the hallway, Mr. Allen approached Ms. Robinson in the BA room and said she was terminated. (PSAF ¶ 43.) Ultimately, on August 16, 2018, Ms. Robinson was placed on notice of discipline resulting in her termination, for violating Standards of Conduct No. 3, unexcused absence from her assigned worksite, Standards of Conduct No. 4, leaving her assigned worksite without permission, Standards of Conduct No. 5, failure to exert normal effort on the job, and Standards of Conduct No. 6, failure or refusal to follow the instructions of management. (DSUMF ¶ 32.)

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not give any testimony as to whether she went to the bathroom after finishing her conversation with Mr. Donald.

II. STANDARD OF REVIEW

A "court shall grant summary judgment 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." See Fed. R. Civ. P. 56(a). The party moving for summary judgment bears the initial burden of "informing the court of the basis for its motion and of identifying those materials that demonstrate the absence of a genuine issue of material fact." Rice-Lamar v. City of Fort Lauderdale, 232 F.3d 836, 840 (11th Cir. 2000) (citing Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986)). Those materials may include "depositions, documents, electronically stored information, 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)(A). "Only when that burden has been met does the burden shift to the non-moving party to demonstrate that there is indeed a material issue of fact that precludes summary judgment." Clark v. Coats & Clark, Inc., 929 F.2d 604, 608 (11th Cir. 1991).

The non-moving party is then required "to go beyond the pleadings" and present competent evidence "showing that there is a genuine issue for trial." Celotex, 477 U.S. at 324. Generally, "[t]he mere existence of a scintilla of evidence" supporting the non-movant's case is insufficient to defeat a motion for summary

judgment. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 252 (1986). If in response the non-moving party does not sufficiently support an essential element of his case as to which he bears the burden of proof, summary judgment is appropriate. Rice-Lamar, 232 F.3d at 840. "In determining whether genuine issues of material fact exist, [the Court] resolve[s] all ambiguities and draw[s] all justifiable inferences in favor of the non-moving party." Id. (citing Anderson, 477 U.S. at 255).

In deciding a summary judgment motion, the court's function is not to resolve issues of material fact but rather to determine whether there are any such issues to be tried. Anderson, 477 U.S. at 250. The applicable substantive law will identify those facts that are material. Id. at 248. Facts that are disputed, but which do not affect the outcome of the case, are not material and thus will not preclude the entry of summary judgment. Id. Genuine disputes are those in which "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Id. For factual issues to be "genuine," they must have a real basis in the record. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986). When the record as a whole could not lead a rational trier of fact to find for the non-movant, there is no "genuine issue for trial." Id. at 587.

III. DISCUSSION

Under the ADA, "[n]o person shall discriminate against any individual because such individual has opposed any act or practice made unlawful by this chapter or because such individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this chapter." 42 U.S.C. § 12203(a). Where, as here, an employee alleges retaliation under the ADA without direct evidence of the employer's intent, courts apply the burden-shifting framework established in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). See Batson v. Salvation Army, 897 F.3d 1320, 1328-29 (11th Cir. 2018). Under that framework, the plaintiff must first establish a prima facie case. To do so, a plaintiff must show: (1) that she engaged in statutorily protected activity; (2) that she suffered an adverse employment action; and (3) a causal link between the protected activity and the adverse action. Parker v. Econ. Opportunity for Savannah-Chatham Cty. Area, Inc., 587 F. App'x 631, 633 (11th Cir. 2014) (per curiam).

If a prima facie case is established, the burden then shifts to the defendant employer to articulate a legitimate non-retaliatory reason for its actions that negates the inference of retaliation. Stewart v. Happy Herman's Cheshire Bridge, Inc., 117 F.3d 1278, 1287 (11th Cir. 1997). If the employer does so, the burden shifts back

to the employee to demonstrate that the employer's proffered reason was pretextual. Id. Where an employer offers more than one reason for an adverse employment action, the plaintiff must rebut "each of the proffered reasons of the employer." Crawford v. City of Fairburn, Ga., 482 F.3d 1305, 1309 (11th Cir. 2007).

FCA appears to concede that Ms. Robinson can satisfy element (2) of her prima facie case. This is likely because Ms. Robinson has in fact satisfied it. The undisputed facts show that Ms. Robinson was terminated by FCA on August 16, 2018, which is unquestionably an adverse employment action. However, FCA argues that Ms. Robinson cannot satisfy elements (1) or (3).

A. Ms. Robinson's Request for Restricted Duty

"The first element may be met by a request for a reasonable accommodation." Frazier-White v. Gee, 818 F.3d 1249, 1258 (11th Cir. 2016). Temporal proximity between the protected conduct and the adverse action may be used to satisfy element (3). "But mere temporal proximity, without more, must be 'very close.'" Thomas v. Cooper Lighting, Inc., 506 F.3d 1361, 1364 (11th Cir. 2007) (per curiam); see Singleton v. Pub. Health Tr. of Miami-Dade Cty., 725 F. App'x 736, 738 (11th Cir. 2018) (per curiam). "A three to four month disparity between the statutorily protected expression and the adverse employment action is not enough." Thomas, 506 F.3d at 1364.

Ms. Robinson made such a request for reasonable accommodation in September 2017 when she sought restricted duty after a shoulder injury. The undisputed facts also demonstrate that this request was granted. Except for one month in 2017 and one day in 2018 where her doctors cleared her for regular duty, Ms. Robinson was on restricted duty from the time of her shoulder injury until she was terminated in August 2018.

To the extent that plaintiff claims that FCA retaliated against her because of her request for restricted duty, her claim fails. Although Ms. Robinson was disciplined on March 20, 2018 and April 10, 2018 (before Mr. Allen became her supervisor) and on April 23, 2018 and August 16, 2018 (after Mr. Allen became her supervisor) for violating FCA's Standards of Conduct, every instance of discipline occurred more than six months after she requested restricted duty. For these reasons, Ms. Robinson has not raised a triable issue over whether those disciplinary actions were related to her request for an accommodation.

Moreover, Ms. Robinson was terminated at least four months after these March and April 2018 disciplines and close to a year after she requested an accommodation. Ms. Robinson has failed to submit any probative evidence suggesting that her request for accommodated work was related to her termination,

and she has not shown temporal proximity such that causation may be inferred. See Singleton, 725 F. App'x at 738.

Finally, Ms. Robinson failed to respond to FCA's argument that there is no causal connection between her termination and her request for accommodated work in September 2017. (Def's Br. [40-1], at 17-18.) See N.D. Ga. Civ. R. 7.1(B) ("Failure to file a response shall indicate that there is no opposition to the motion."); Kramer v. Gwinnett Cty., 306 F. Supp. 2d 1219, 1221 (N.D. Ga. 2004), aff'd 116 F. App'x 253 (11th Cir. 2004) (table decision). For these reasons, any retaliation claim Ms. Robinson bases on her request for accommodation fails. See Singleton, 725 F. App'x at 738.

B. Ms. Robinson's April and May 2018 Emails

The Eleventh Circuit has held that a plaintiff may satisfy the causal link in a retaliation case by establishing that "the employer was actually aware of the protected expression at the time it took the adverse employment action." Clover v. Total Sys. Servs., Inc., (11th Cir. 1999). "Such awareness may be established either by direct evidence, or by circumstantial evidence, such as proximity in time." Gary v. Hale, 212 F. App'x 952, 957 (11th Cir. 2007) (per curiam) (citations omitted). Temporal proximity alone is insufficient where there is unrebutted evidence that the decisionmaker did not have knowledge that the employee engaged in protected

conduct. Brungart v. BellSouth Telecomm., Inc., 231 F.3d 791, 799 (11th Cir. 2000).

FCA argues that no one within the company, including the decisionmaker, Mr. Allen, was aware of the emails Ms. Robinson sent in April and May 2018 that raised concerns about the discipline she had received. Ms. Robinson does not dispute this fact and does not respond to FCA's argument. Indeed, the undisputed facts show that Ms. Robinson misspelled the email address for her April 2018 email (she sent the email to bpoffice@crysler.com, omitting the "h" in Chrysler), resulting in no one from FCA receiving it, and she sent her May 2018 email to the UAW Civil Rights Committee, which consists solely of union members.

Because Ms. Robinson has failed to show that FCA was aware of this alleged protected conduct, and she failed to respond to FCA's argument on this point, any retaliation claim based on her emails fails. See Clover, 176 F.3d at 1354; Kramer, 306 F. Supp. 2d at 1221.

C. Ms. Robinson's Complaint about Her Work Location on August 16, 2018

Ms. Robinson primarily bases her retaliation claim on her alleged complaint to Mr. Allen on August 16, 2018. FCA argues that this complaint was not protected activity, but rather a complaint about workplace safety that is not protected by the ADA. (Def.'s Br. [40-1] 20-23.) FCA further contends that Ms. Robinson never

communicated her complaint to Mr. Allen. Ms. Robinson responds that she had a reasonable belief that Mr. Allen was harassing her due to her medical condition. (Pl.'s Br. [44] 8-9.)

"'A complaint about an employment practice constitutes protected opposition only if the individual explicitly or implicitly communicates a belief that the practice constitutes unlawful employment discrimination.'" Murphy v. City of Aventura, 383 F. App'x 915, 918 (11th Cir. 2010) (per curiam) (quoting EEOC Compl. Man. (CCH) §§ 8-II-B(2) (2006)). "While the opposed act need not actually be unlawful, a plaintiff must have a subjective good faith belief that the opposed act is unlawful, and that belief must also be objectively reasonable." Parker, 587 F. App'x at 633. "Expressions of dissatisfaction and grievances about working conditions, however, are not protected activity." McBride v. Hosp. of the Univ. of Penn., No. CIV.A. 99-6501, 2001 WL 1132404, at *7 (E.D. Pa. 2001); see Satchel v. Sch. Bd. of Hillsborough Cty., No. 8:05-cv-2239-T-24 TBM, 2007 WL 570020, at *4 (M.D. Fla. 2007) ("[N]one of these writings consist of a request for an accommodation for a disability or of a report of being discriminated or retaliated against due to a disability. As such, these letters do not constitute protected activity under the ADA.").

On August 16, 2018, Ms. Robinson was assigned to count tickets. She asked for a table to count tickets solely for personal ergonomic reasons and her request was granted. (Robinson Dep. [40-4] 328:19-329:3.) The table was placed in an open area near closed dock doors. (Id. at 329:4-7.) Ms. Robinson complained to her union steward (Mr. Donald) that the work location was unsafe.[27] (Id. at 296:1-18, 297:7-18.) Ms. Robinson contends that this complaint constituted protected conduct and that Mr. Allen ultimately terminated her in retaliation for her complaint.

As an initial matter, Mr. Allen was unaware of Ms. Robinson's complaint. (Allen Dep. 41:18-23 ("I did not hear a complaint from [Robinson] about this. Only the – the union rep and my supervisor informed me to change the [work] location.").) As discussed earlier, a decisionmaker must be aware of a plaintiff's protected activity in order to show a causal connection between the protected activity and the adverse employment action. Clover, 176 F.3d at 1354. While, Mr.

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[27] As previously explained supra note 16, the Court struck ¶ 11 of Ms. Robinson's Declaration where she claimed she made a verbal complaint to Mr. Allen. Even if Ms. Robinson did verbally complain to Mr. Allen, and even if her complaint was protected activity, her retaliation claim would still fail because she has not shown that FCA's legitimate non-retaliatory reason for terminating her is pretextual.

Allen was aware of a complaint about the table being in front of the dock doors, Ms. Robinson has failed to show that he knew that the complaint was hers or that she personally communicated it to him. Thus, Ms. Robinson's retaliation claim fails because she has again failed to show that Mr. Allen was aware of her complaint before he allegedly terminated her in retaliation for it.

However, Ms. Robinson's retaliation claim fails for additional reasons. Ms. Robinson's complaint concerned workplace safety and did not protest any activity unlawful under the ADA. In a document titled "Health & Safety Issues" that Ms. Robinson wrote after she had been reassigned to 5-S, she stressed a demand for "a safe place to perform our work" and "better [and] safe working conditions." (Robinson Dep. [40-5] Ex. 32, at 223.[28]) Ms. Robinson also testified that she made her complaint because the workplace was hazardous, and she wanted a safer location. (Robinson Dep. [40-4] 307:17-21.) Thus, Ms. Robinson failed to communicate that this practice constituted unlawful retaliation or discrimination and admits that it solely concerned workplace safety. See Murphy, 383 F. App'x at 918; Satchel, 2007 WL 570020 at *4.

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[28] This page number refers to the number assigned by CM/ECF.

Nonetheless, Ms. Robinson argues that her complaint was subjectively made in good faith and that it was objectively reasonable for her to believe that Mr. Allen was putting her in an unsafe work location in order to dissuade her and others from requesting a medical accommodation. See Stewart v. Jones Util. & Contracting Co., 806 F. App'x 738, 742 (11th Cir. 2020) (per curiam) (finding that a materially adverse action was one that might have a dissuaded a reasonable employee for making or supporting a charge of discrimination). This argument fails.

As previously discussed, Ms. Robinson's complaint focused solely on the safety concerns of herself and others assigned to count tickets near the doors. Even assuming that her complaint was subjectively made in good faith, her belief was not objectively reasonable. The safety of a workspace is not an issue addressed by the ADA. McBride, 2001 WL 1132404 at *7. The fact that Mr. Allen reassigned Ms. Robinson to 5-S, a task within her work restrictions, further belies her argument that Mr. Allen and FCA were acting to deter her from seeking accommodated work assignments.

For the foregoing reasons, Ms. Robinson cannot establish a prima face case of retaliation under the ADA. Accordingly, the undersigned **RECOMMENDS** that summary judgment be **GRANTED** as to plaintiff's retaliation claim. However, in the interest of a thorough Report and Recommendation, the undersigned

examines whether Ms. Robinson can show that FCA's legitimate non-retaliatory reasons for terminating her are pretextual.

D. Even if Ms. Robinson Could Show a Prima Facie Case, She Cannot Show Pretext

Assuming, arguendo, that Ms. Robinson has shown a prima facie case of retaliation under the ADA, the burden shifts to FCA to proffer a legitimate non-retaliatory reason for terminating her. Stewart, 117 F.3d at 1287. This burden is "exceedingly light." Holiefield v. Reno, 115 F.3d 1555, 1564 (11th Cir. 1997) (per curiam). In this case, FCA argues that it followed the collectively bargained progressive discipline policy and terminated Ms. Robinson for numerous violation of work rules. See Gonzalez v. DeKalb Med. Ctr., No. 1:08-CV-03366-CAM-AJB, 2009 WL 10664894, at *8 (N.D. Ga. Dec. 30, 2009) (collecting cases holding that violation of work rules is lawful, non-retaliatory basis for termination).

Having articulated this reason, the burden shifts to Ms. Robinson to show that FCA's reason is pretextual and the actual reason was retaliatory animus. Stewart, 117 F.3d at 1287. Ms. Robinson argues that FCA's disciplinary actions were without merit and in contravention of the collectively bargained progressive discipline policy.

Ms. Robinson first argues that her March 28, 2018 discipline, which consisted of Written Warning and Counseling pursuant to step three of the

discipline policy, was excessive because she had not received any prior discipline in the preceding 12 months. She contends that she should have received the discipline at step one—a verbal warning. (Robinson Dep. Ex. 5 [40-5], at 46.)

However, the collectively bargained progressive disciplinary process did not mandate that each of the six steps be followed in sequence before Ms. Robinson's termination. Rather, it states that "[c]icrumstances will arise which necessitate corrective disciplinary action that may not follow the standard progression guideline." (Robinson Dep. Ex. 5 [40-5], at 46.) Because the discipline progression was permissive and not mandatory, any alleged failure to follow all of the steps does not give rise to an inference of pretext. See Ritchie v. Indus. Steel, Inc., 426 F. App'x 867, 874 (11th Cir. 2011) (per curiam) (where each step of the employer's progressive disciplinary process was not followed in every case, the company's failure to follow every step respecting the plaintiff was not pretext). Regardless, Mr. Allen was not involved in issuing Ms. Robinson's step three discipline on March 28, 2018 or her step four discipline on April 10, 2018. (Robinson Dep. [40-4] 219:21-220:3, 223:19-23; Allen Dep. 15:16-17.) Mr. Allen was responsible for issuing Ms. Robinson's step five and step six disciplines, which culminated in her termination.

Ms. Robinson next argues that her April 24, 2018 discipline was also not merited. She contends that she was disciplined for refusing to obey Mr. Allen's orders that she lift items outside of her work restriction. (Pl.'s Br. 9.) She also disputes that she was yelling and disruptive. (Id.)

Whether Ms. Robinson was actually yelling and disruptive or actually insubordinate is immaterial to whether FCA's reason was pretextual. "The question is whether her employers were dissatisfied with her for these or other non-discriminatory reasons, even if mistakenly or unfairly so," or whether the reasons were cover for discriminating against her. Alvarez, 610 F.3d at 1266; see Elrod v. Sears, Roebuck & Co., 939 F.2d 1466, 1470 (11th Cir. 1991) (holding that the relevant inquiry is whether employer believed employee was guilty of misconduct and if so, whether that was the reason behind termination; that employee did not actually engage in misconduct is irrelevant).

Mr. Allen's contemporaneous written account of the events of April 23, 2018 shows that he observed that Ms. Robinson was not in her assigned work area; did not have her mask, gloves, or cleaning solution; had not wiped down any of the shelves that she told Mr. Allen she had wiped; and did not respond to Mr. Allen asking whether she was going to follow his work instructions. (Allen Decl. [40-7] ¶ 5; id. Ex. C, at 12-13.) Based on Alvarez and Elrod, what Mr. Allen perceived is

the relevant inquiry. See Muhammad v. Audio Visual Servs. Grp., No. 1:08-CV-0693-CAM-SSC, 2009 WL 10666375, at *13 (N.D. Ga. July 30, 2009) (granting summary judgment where plaintiff denied making threats for which he was terminated because "the court's inquiry centers on what [the decisionmaker] perceived."), R.&R. adopted, 2009 WL 10671838 (N.D. Ga. Sept. 17, 2009), aff'd, 380 F. App'x 864 (11th Cir. 2010) (per curiam). For this reason, Ms. Robinson has not shown that her April 23, 2018 discipline was pretextual and that the real reason was FCA's intent to retaliate against her.

The same analysis applies to the events on August 16, 2018, the day Ms. Robinson was terminated. After her job of counting tickets was shut down, Ms. Robinson was assigned to 5-S the LEB room. When Mr. Allen went to check on Ms. Robinson, he discovered she was not in the LEB room. He later found her in an aisle of the warehouse and told her to return to her work area. Mr. Allen also warned her that she would be put on notice of discipline if she did not comply. Ms. Robinson did not comply and instead headed for the union office without Mr. Allen's permission. Mr. Allen eventually placed her on notice of discipline after she again refused to return to her work area.

Ms. Robinson maintains that she did not comply with Mr. Allen's instructions because she was going to the bathroom. At his deposition, Mr. Allen

testified that her actions did not indicate that she was going to the bathroom. (Allen Dep. 72:5-13.) The facts show that the area Ms. Robinson was walking toward contained the union hall, a breakroom, and a bathroom. Whether Ms. Robinson was actually headed to the bathroom is irrelevant. Again, the relevant inquiry is Mr. Allen's perception, regardless of whether it may be unfair or mistaken. Therefore, even if Mr. Allen was mistaken about whether Ms. Robinson was going to the bathroom and not refusing to return to her workspace, his perception is controlling. See Elrod, 939 F.2d at 1470.

In addition, FCA's purported reasons for terminating Ms. Robinson—that she was repeatedly insubordinate, disruptive, and refusing to complete her assignments—are wholly unrelated to its demonstrated honoring of Ms. Robinson's medical restrictions. See Jones v. Aaron's Inc., 748 F. App'x 907, 916 (11th Cir. 2018) (per curiam) (affirming summary judgment where employee was terminated for repeated acts of unprofessionalism and insubordination without any evidence presented by the employee that the reason for her termination was her complaints about failure to adhere to her medical restrictions).

Where, as here, the employer's "proffered reason is one that might motivate a reasonable employer, an employee must meet that reason head on and rebut it, and the employee cannot succeed by simply quarrelling with the wisdom of that

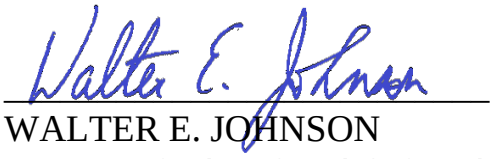
reason." Chapman v. AI Transp., 229 F.3d 1012, 1024 (11th Cir. 2000). Ms. Robinson has failed to do so here. Accordingly, the undersigned **RECOMMENDS** that summary judgment be **GRANTED** as to plaintiff's retaliation claim.

IV. CONCLUSION

For the reasons explained above, the undersigned **RECOMMENDS** that defendant's Motion for Summary Judgment [40] be **GRANTED**.

The Clerk is **DIRECTED** to terminate the reference to the undersigned Magistrate Judge.

SO RECOMMENDED, this 8th day of June, 2021.



WALTER E. JOHNSON
UNITED STATES MAGISTRATE JUDGE