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

NICOLE OWENS, Plaintiff, v. STATE OF GEORGIA, GOVERNOR'S OFFICE OF STUDENT ACHIEVEMENT; Defendant.	CIVIL ACTION FILE NO. 1:19-cv-05683-MHC-LTW

MAGISTRATE JUDGE'S FINAL REPORT AND RECOMMENDATION

This case is before the Court on a Motion for Summary Judgment ([Doc. 45]) filed by Defendant State of Georgia, Governor's Office of Student Achievement ("GOSA"). For the reasons provided below, the undersigned **RECOMMENDS** that the Motion be **GRANTED**.

FACTUAL BACKGROUND

The factual background is from the parties' statements of material facts to the extent such facts are undisputed. When a fact is disputed and both parties have cited to evidence in the record, the Court has reviewed the evidence and has viewed all

evidence and made all factual inferences in the light most favorable to Plaintiff. See Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986).

Plaintiff began working for GOSA in June 2016. [Doc. 53 ¶1].[1] During the relevant timeframe, Plaintiff reported to Rosaline Tio ([id. ¶10]), and Dr. Cayanna Good was the Executive Director of GOSA ([id. ¶9). Plaintiff was permitted to telework one day a week, which was typical for employees in positions like Plaintiff's. [Id. ¶¶8, 10]. The entire GOSA office worked remotely after the I-85 bridge collapse, with Plaintiff testifying that the remote work lasted "more than a month." [Id. ¶11]; [Doc. 39 at 25:25–26:18]. However, Dr. Good did not favor full-time teleworking because she felt it was more challenging for supervisors to properly manage and support their direct reports, so no positions were 100% remote while she was the Executive Director. [Doc. 49-2 ¶5].

In early 2018, Plaintiff informed GOSA that she was pregnant and would need to take time off. [Doc. 53 ¶12]. In March 2018, Plaintiff submitted a Family and Medical Leave Act ("FMLA") leave request form and a medical certification form,

[1] Defendant's response to Plaintiff's Statement of Additional Facts is just over 40 pages long. [Doc. 53]. The Scheduling Order states that Defendant's "response to [Plaintiff's] statement of additional material facts shall not exceed thirty (30) double-spaced pages." [Doc. 12 at 7] (emphasis in original). The undersigned will consider Defendant's response, but defense counsel is warned that future violations of the Court's Scheduling Order may result in sanctions.

which stated Plaintiff had a high-risk pregnancy and that her health conditions would last through July 2018. [Id. ¶¶13, 15]. GOSA provided Plaintiff with an FMLA approval notice, which stated Plaintiff had to "present a medical release to return to work" and that the release "must contain any restrictions and the duration of the same." [Id. ¶16].

Plaintiff gave birth via cesarean section on July 18, 2018. [Id. ¶18]. On August 3, 2018, Tio notified Plaintiff that she had exhausted her paid leave and was being placed on leave without pay. [Doc. 49-2 ¶11]. That day, Plaintiff provided GOSA with a doctor's note saying, "She is doing well and may return to working via tele-work from her home." [Doc. 39-8 at 2, 4]. Dr. Good believed Plaintiff was doing well and did not know of any medical condition that would prevent her from working in the office. [Doc. 49-2 ¶14];[2] see also [Doc. 43 at 23:16–24]. Dr. Good testified that

[2] Plaintiff asserts this fact is "Disputed" with no explanation. [Doc. 49-2 ¶14]. To deny a fact, a party "is required to explain the reason for the denial." [Doc. 12 at 6–7]. Absent such an explanation, the Court is unable to determine why a party is disputing a fact. The Court cannot cull through the five depositions and seven exhibits Plaintiff cites to craft an explanation. Even if the Court tried to do so, nothing Plaintiff cites appears to dispute Defendant's fact. The note from Plaintiff's doctor says Plaintiff was "doing well," does not mention any medical complications arising from childbirth and does not indicate that Plaintiff was prevented from working in the office. [Doc. 39-8 at 2, 4]. Nor does any of the testimony support the notion that Dr. Good believed Plaintiff suffered a medical condition that prevented her from working in the office. See [Doc. 49-2 ¶14].

she decided to let Plaintiff telework because it "just didn't seem to be fair to ask her to find a way to come back" to the office since "most childcare facilities don't accept infants younger than six weeks." See [Doc. 43 at 23:16–24:16]; see also [id. at 22:11–17].

On September 11, 2018, Plaintiff told her supervisor she would need to continue teleworking based on complications from the cesarean section. [Doc. 53 ¶25]. The next day, Plaintiff provided a doctor's note saying Plaintiff "may return to work November 5, 2018" and that she "may continue to telework at home until then." [Id. ¶26]. Prior to this interaction, Dr. Good did not know Plaintiff would be teleworking until November 5, 2018. [Doc. 49-2 ¶18]. Dr. Good testified that she thought the September 2018 doctor's note was unclear because it said Plaintiff "may" telework, not that she "must," and it did not contain "enough information [for GOSA] to make the determination" on what Plaintiff needed as an accommodation. [Doc. 43 at 27:19–28:21]. Dr. Good had operational concerns about extending Plaintiff's teleworking arrangement and requested that Human Resources Director Felicia Lowe send Plaintiff a Request for Reasonable Accommodation form (the "RA form"), to be returned with documentation from Plaintiff's doctor to support her request. [Doc. 49-2 ¶¶23–24]; see also [Doc. 42-19] (email from Dr. Good stating Plaintiff's supervisor "indicated that the current teleworking arrangement led to some concerns with [Plaintiff's] work

productivity and responsiveness").

On September 14, 2018, Lowe told Plaintiff she would need to submit additional documentation to show her telework request was medically necessary, and Plaintiff informed Lowe that her physician was "out of the office until 9/24/2018" but that a nurse reached out to the physician "asking her to update the letter she provided [Plaintiff] to support that the accommodation is for medical reasons." [Doc. 49-2 ¶¶25–26]; see also [Doc. 39-11 at 1]. On September 20, 2018, Lowe sent Plaintiff the RA form, which includes an "Employee Release" authorizing Plaintiff's medical provider to give Defendant the requested medical information. [Doc. 49-2 ¶28]; [Doc. 39-11 at 10].

On September 28, 2018, Lowe followed up with Plaintiff to ask whether she had received the paperwork from her doctor, and several days later Plaintiff replied that she had not. [Doc. 49-2 ¶30]; see also [Doc. 42-12]. Plaintiff and Lowe then had a phone call during which Lowe told Plaintiff "if she did not submit the RA form by October 2nd, and failed to return to the office by October 3rd, then business decisions would need to be made." [Doc. 49-2 ¶¶30–31]. On October 2nd, Plaintiff sent Lowe an email stating she "called to inquire about [the form] with [her] physician's office numerous times" but that she was "unable to expedite any paperwork and [was] also unable to return to work at the physical office on 10/3/2018." [Doc. 42-13]. Dr. Good

decided to give Plaintiff an additional week to turn in the RA form and instructed Lowe to extend the deadline. [Doc. 49-2 ¶36].

On October 4, 2018, Lowe emailed Plaintiff "an official and final request for sufficient medical documentation regarding [her] reasonable accommodation request," stating that Plaintiff needed to "return the completed reasonable accommodation documentation by Wednesday October 10, 2018" and that a failure to do so or "return to the worksite on Thursday, October 11, 2018, may result in termination." [Doc. 39-16 at 3]. On October 9, 2018, Plaintiff emailed her supervisor and Lowe saying she was "in the process of trying to get [her] reasonable accommodation form completed" and that she would "follow up with [them] both tomorrow." [Doc. 42-18]. The next day, Plaintiff's supervisor memorialized her interactions with Plaintiff in an email that concluded, "As of 6:00pm on October 10, I have not received any further communication from [Plaintiff] regarding her paperwork or if she plans to be in the office tomorrow." [Doc. 40-22 at 2]. The next day, Plaintiff sent Lowe an email saying she "was unable to obtain [her] signed paperwork from [her healthcare provider]" and that she would "still be unable to return to work in the office." [Doc. 39-19].

Once it was clear Plaintiff had not reported to the office or submitted the required medical documentation by the deadline, Dr. Good decided to terminate Plaintiff. [Doc. 49-2 ¶42]. In deciding to terminate Plaintiff, Dr. Good felt the situation was

similar to two other GOSA employees who were terminated for failing to timely submit reasonable accommodation paperwork and failing to return to work. [Id. ¶48].[3]

LEGAL STANDARD

Summary judgment is appropriate when "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). The movant can discharge this burden by merely "'showing'—that is, pointing out to the district court—that there is an absence of evidence to support the nonmoving party's case." Celotex Corp. v. Catrett, 477 U.S. 317, 323–25 (1986). After the movant has carried her burden, the non-moving party is then required to "go beyond the pleadings" and present competent evidence designating specific facts showing a genuine disputed issue for trial. Id. at 324.

While the court is to view all evidence and factual inferences in a light most favorable to the non-moving party, Nat'l Parks Conservation Ass'n v. Norton, 324 F.3d 1229, 1236 (11th Cir. 2003), "the mere existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly supported motion for

[3] Plaintiff purports to dispute this fact because the other employees had not "returned full-time to work." [Doc. 49-2 ¶48]; see also [Doc. 53 ¶¶59–60]. Plaintiff's dispute is not relevant because Dr. Good did not assert that those employees had returned to full-time work; she said the employees "fail[ed] to return to work." [Doc. 49-2 ¶48].

summary judgment; the requirement is that there be no *genuine* issue of *material* fact." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247–48 (1986) (emphasis in original). A fact is material when it is identified as such by the controlling substantive law. Id. at 248.

Moreover, the non-movant "must do more than simply show that there is some metaphysical doubt as to the material facts . . . . Where the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is no 'genuine issue for trial.'" Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586-87 (1986) (citations omitted). An issue is not genuine if it is unsupported by evidence, or if it is created by evidence that is "merely colorable" or is "not significantly probative." Anderson, 477 U.S. at 249-50. To the extent one party's version of events "is blatantly contradicted by the record," the "court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment." Scott v. Harris, 550 U.S. 372, 379–81 (2007).

LEGAL ANALYSIS

Plaintiff brings claims under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 791 *et seq*. (the "Rehabilitation Act") for discrimination and retaliation, and a claim for "gender/pregnancy discrimination" under Title VII of the Civil Rights Act of 1964 ("Title VII"), particularly 42 U.S.C. § 2000e(k). [Doc. 1 ¶¶38–85]. The Court

discusses each claim in turn.

I. Rehabilitation Act Discrimination Claim

To establish a prima facie case of discrimination under the Rehabilitation Act, Plaintiff must show that she: (1) has a disability; (2) is otherwise qualified for the position; and (3) was subjected to unlawful discrimination as the result of her disability. Sutton v. Lader, 185 F.3d 1203, 1207 (11th Cir. 1999). Defendant does not dispute that Plaintiff is a qualified individual with a disability, and thus the issue is whether she was discriminated against. [Doc. 45-1 at 6]. For purposes of the Rehabilitation Act, discrimination includes "not making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability." 42 U.S.C. § 12112(b)(5)(A).[4]

"Of course, there are limits to the accommodations an employer must provide. The key is 'reasonability,' meaning an employer is not required to accommodate an employee in *any* manner that the employee desires—or even provide that employee's preferred accommodation." D'Onofrio v. Costco Wholesale Corp., 964 F.3d 1014, 1022 (11th Cir. 2020) (emphasis in original), *cert. denied*, 141 S. Ct. 1435, 209 L. Ed.

[4] The Rehabilitation Act incorporates "the standards applied under title I of the Americans with Disabilities Act of 1990." 29 U.S.C. § 794(d); see also Ellis v. England, 432 F.3d 1321, 1326 (11th Cir. 2005) (noting that "cases involving the ADA are precedent for those involving the Rehabilitation Act").

2d 155 (2021). When an employee requests an accommodation, the employer may need to engage in an interactive process to ascertain what accommodation is appropriate considering "the precise limitations resulting from the disability." 29 C.F.R. § 1630.2(o)(3). An employer is not liable for a failure to accommodate if it engages in such an interactive process and "the employee is responsible for [a] breakdown of the interactive process." D'Onofrio, 964 F.3d at 1022; see also Stewart v. Happy Herman's Cheshire Bridge, Inc., 117 F.3d 1278, 1287 (11th Cir. 1997).

Plaintiff argues she submitted at least two requests for accommodation—her August 3 doctor's note and her September 11 doctor's note. See [Doc. 49 at 5–6]. It appears neither note was sufficient to trigger Defendant's "accommodation obligations" because they provide no explanation "how [Plaintiff's requested] accommodation was linked to [any] disability." See Palmer v. McDonald, 824 F. App'x 967, 980 (11th Cir. 2020). The first note contains an open-ended suggestion that Plaintiff "may return to working via tele-work from her home," but it does not connect this with any disability or limitations. See [Doc. 39-8 at 2]. The note mentions that Plaintiff "delivered a baby by cesarean" but does not indicate that there were any complications from the delivery that may have continued to limit Plaintiff. [Id.]. Instead, the note says Plaintiff was "doing well" and there is no medical evidence in the record suggesting that Plaintiff's condition worsened after August 3. See [id.]. The

second note is even more vague. In its entirety, the note says: "Nicole L. Owens was seen in our office on 9/11/18[.] She may return to work on November 5, 2018. She may continue to telework at home until then." [Doc. 39-10 at 4]. The note does not say what limitations Plaintiff may have had and does not connect those limitations to any disability. [Id.]. Contrary to Plaintiff's argument, the notes were not "more than enough medical documentation to support her need for accommodation." See [Doc. 49 at 13].

Even assuming the notes and Plaintiff's communications were sufficient to trigger Defendant's duties under the Rehabilitation Act, Defendant was entitled to engage Plaintiff in an interactive process because the notes were "not sufficient to determine *why* [s]he needed those accommodations." See Palmer, 824 F. App'x at 980 (emphasis in original). The fact that Plaintiff alleged that she needed the accommodation "based on complications from her July 18, 2018 cesarean section and delivery" does not, standing alone, show the accommodation was reasonable, *i.e.* necessary for Plaintiff to perform the essential functions of her job. See [Doc. 49 at 10]. Defendant was entitled to request documentation to determine "the precise limitations resulting from [Plaintiff's alleged] disability." 29 C.F.R. § 1630.2(o)(3).

Defendant did just that by requesting additional documentation on September 14, 2018. [Doc. 39 at 144:25–145:16]. That day, Plaintiff spoke with her

healthcare provided and got a nurse to write the physician "asking her to update the [September 11 note] to support that the accommodation is for medical reasons." [Doc. 39-11 at 1]. Plaintiff initially said she could not get additional documentation because her doctor was "out of the office until 9/24/2018." [Doc. 39-11 at 1]. But Plaintiff's doctor did not provide additional documentation after September 24 either. On October 2, 2018, Plaintiff stated that "the process to get paperwork signed by the office typically takes time" and that she had "called to inquire about this with [her] physician's office numerous times" but could not "expedite internal processes out of [her] control." [Doc. 39-14].

Defendant responded by giving Plaintiff additional time in which to submit the required paperwork. [Doc. 39-16 at 3]. With the new deadline approaching, Plaintiff stated she was "in the process of trying to get [her] reasonable accommodation form completed" and that she would "follow up" on October 10, 2018. [Doc. 42-18]. But Plaintiff did not follow up on October 10. [Doc. 40-22 at 2]. Instead, on October 11, 2018, Plaintiff sent an email saying she "was unable to obtain [her] signed paperwork" with no further explanation. [Doc. 39-19]. There is no evidence in the record indicating that Plaintiff *ever* received any additional documentation stating that she needed to telework due to limitations arising from a disability.

Plaintiff contends that she "told GOSA that she would sign a release for them to speak with her doctor directly, but GOSA made no efforts to take her up on that offer." [Doc. 49 at 11–12]. This argument is unpersuasive for three reasons. First, Plaintiff cites no authority suggesting that she could pass off her duty to engage in the interactive process by requiring Defendant to acquire the additional documentation. See [id.]. Second, Plaintiff already had an Employee Release authorizing her health care provider to provide information to Defendant. [Doc. 39-11 at 10]. There is no evidence Plaintiff filled out that release and provided it to Defendant. [Doc. 39 at 205:7–15]. And third, the release (or lack thereof) was not the problem. The issue was that "the process to get paperwork signed by [Plaintiff's doctor] typically takes time." [Doc. 39-14]. Plaintiff points to no evidence that a release would have solved the problem. Instead, the breakdown in the interactive process occurred because Plaintiff never told Defendant when she expected to receive the paperwork back and did not request an extension.

During her deposition, Plaintiff asserted that her healthcare provider's "Records and Release department" has "a queue, a window of 20 days to get paperwork in and out of their system." [Doc. 39 at 165:2–8]. But this pertains only to the RA form submitted through the Records and Release department. Plaintiff was apparently able to get notes from her doctor much quicker. Plaintiff provided GOSA with a doctor's

note clearing her to return to work on the very day Tio notified Plaintiff that she had exhausted her paid leave. [Doc. 49-2 ¶11]; [Doc. 39-8 at 2, 4]. On September 11, 2018, Plaintiff told her supervisor she would need to continue teleworking, and the next day she provided a doctor's note regarding the same. [Doc. 53 ¶¶25–26]. Plaintiff does not explain why she did not get a more detailed note from her doctor, other than her statement that she chose to call "over the phone to avoid going [to the doctor's office] outside of [her] existing appointment schedule." See [Doc. 39-11 at 1].

Even if Plaintiff thought the only documentation that she could provide was a completed RA form, Plaintiff should have gotten the RA form back by Defendant's October 10 deadline if she had submitted it the day she received it. See [Doc. 39 at 164:20–165:1]. Plaintiff submitted the RA form the following week, but she should still have gotten the paperwork on or around October 14. See [id. at 163:8–12]. Plaintiff knew Defendant planned to terminate her if she did not submit additional documentation by October 10 or return to work the following day. [Doc. 39-16 at 3]. But Plaintiff never requested an extension of the October 10 deadline and never told Defendant she expected to receive the RA form on or around October 14. See [Doc. 39-14]; [Doc. 39-19]; [Doc. 42-18].

In other words, Plaintiff knew her healthcare provider had "a window of 20 days to get paperwork in and out of their system," and she knew to expect her paperwork on

or around October 14. [Doc. 39 at 165:2–8]; [Doc. 39 at 163:8–12]. But there is no evidence that Plaintiff told Defendant either of those pieces of information. Instead, Plaintiff left Defendant in the dark regarding when, if ever, it could expect to receive the missing documentation. When a breakdown is caused by missing information, "the party withholding the information may be found to have obstructed the [interactive] process." Palmer, 824 F. App'x at 980 (quoting Jackson v. City of Chi., 414 F.3d 806, 813 (7th Cir. 2005)) (alteration in original). As such, Plaintiff was the cause of the breakdown in the interactive process.

Defendant initially gave Plaintiff approximately two weeks to return the documentation. When Plaintiff failed to do so, Defendant apparently credited her explanation that "the process to get paperwork signed by [Plaintiff's doctor] typically takes time." [Doc. 39-14]. Defendant gave Plaintiff another week but warned her that she could be terminated if she refused to return to the office or provide adequate documentation. [Doc. 39-16 at 3]. In the face of possible termination, Plaintiff simply said she "was unable to obtain [her] signed paperwork" with no further explanation, no date by which she expected to receive the paperwork, and no request for a further extension. [Doc. 39-19].

Plaintiff insists Defendant should have just accepted a note that says she "may continue to telework" without any explanation of what limitations, if any, Plaintiff

had. [Doc. 39-10 at 4]. In Plaintiff's opinion, that note was "more than enough medical documentation to support her need for accommodation." See [Doc. 49 at 13]. It was not. Defendant was entitled to request medical documentation to determine "the precise limitations resulting from [Plaintiff's alleged] disability." 29 C.F.R. § 1630.2(o)(3). Three weeks after Plaintiff was given a RA form for her doctor to complete and nearly four weeks after Plaintiff's doctor was informed Plaintiff needed additional documentation, Plaintiff simply said she "was unable to obtain" anything to show she needed a reasonable accommodation. See [Doc. 39-19].

If Plaintiff had submitted a more detailed doctor's note that explained what functional limitations she had and Defendant had rejected such documentation, Defendant would be the one liable for the breakdown in the interactive process. See Hollingsworth v. O'Reilly Auto. Stores, Inc., No. 4:13-CV-01623-KOB, 2015 WL 412894, at *12 (N.D. Ala. Jan. 30, 2015) (noting a lack of "precedent establishing that a plaintiff must comply with an employer's formal procedures"). But Plaintiff did not want to go to her doctor's office "outside of [her] existing appointment schedule," so she apparently only tried calling about the RA paperwork. See [Doc. 39-11 at 1]. Plaintiff knew this would not work because she could not "expedite internal processes out of [her] control." [Doc. 39-14 at 1]. Plaintiff also knew to expect the RA paperwork on or around October 14. [Doc. 39 at 163:8–12]. And Plaintiff knew that

Defendant had already demonstrated a willingness to offer her additional time. See [Doc. 39-16 at 3]. If Plaintiff had requested an extension and Defendant had refused, the result in this case be different. But Plaintiff did not, and she did not provide Defendant any information as to when, if ever, it could expect to receive additional documentation. Plaintiff caused the breakdown in the interactive process, and thus her failure to accommodate claim fails as a matter of law. See D'Onofrio, 964 F.3d at 1022; Stewart, 117 F.3d at 1287.[5]

II. Rehabilitation Act Retaliation Claim

In the absence of direct evidence, Plaintiff's retaliation claim is analyzed under the framework outlined by the Supreme Court in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). See Ring, v. Boca Ciega Yacht Club Inc., No. 20-11571, 2021 WL 2908145, at *10 (11th Cir. July 12, 2021). Plaintiff first has the burden of establishing a prima facie case of retaliation. See McDonnell Douglas, 411 U.S. at

[5] Plaintiff also argues Defendant "misled" her into believing her "FMLA leave had expired when it had not" and that it "hid this information from [her]." [Doc. 49 at 14]. Plaintiff's own testimony tells a different story. Plaintiff testified that she was told she had to "either return to work *or take unpaid leave*." [Doc. 39 at 64:3–8] (emphasis added). Plaintiff did not want to take unpaid FMLA leave because she "could not have afforded to not receive any income at that time." [Id. at 110:4–13]. Contrary to the suggestion of Plaintiff's counsel, Defendant did not cause a breakdown in the interactive process by failing to "recommend[ ]" an accommodation Plaintiff did not want. See [Doc. 49 at 14].

802; Texas Dep't of Cmty. Affairs v. Burdine, 450 U.S. 248, 253 (1981). If Plaintiff meets her burden, Defendant must articulate a legitimate, nondiscriminatory reason for the termination. McDonnell Douglas, 411 U.S. at 802; Burdine, 450 U.S. at 254; Chapman v. AI Transp., 229 F.3d 1012, 1024 (11th Cir. 2000) (*en banc*). Plaintiff then must show that Defendant's proffered nondiscriminatory reason was merely pretext for retaliation. Burdine, 450 U.S. at 253; Chapman, 229 F.3d at 1024.

To establish a prima facie case of retaliation, Plaintiff must show (1) she engaged in statutorily protected activity; (2) she suffered an adverse employment action; and (3) a causal link between the protected activity and the adverse action. Standard v. A.B.E.L. Servs., Inc., 161 F.3d 1318, 1328 (11th Cir. 1998). Defendant only challenges the third element. [Doc. 45-1 at 21]. Plaintiff argues she can "show a close temporal proximity between her protected activities and the adverse actions," pointing to her request for "an extension of her reasonable accommodation on September 12." [Doc. 49 at 17–18]. Defendant accurately argues the correct date is when Plaintiff actually requested the teleworking accommodation on August 3. See [Doc. 45-1 at 21–22]. Plaintiff did not request "an extension," as she suggests. The August 3 note contained no end date for the teleworking arrangement. [Doc. 39-8 at 2].

Even using the August 3 date, the undersigned assumes without deciding that Plaintiff has shown "a close temporal proximity" between her request and her

termination almost ten weeks later. See Farley v. Nationwide Mut. Ins. Co., 197 F.3d 1322, 1337 (11th Cir. 1999) (holding that the plaintiff showed "a close temporal proximity" where he was fired seven weeks after engaging in protected activity); but see Brown v. Alabama Dep't of Transp., 597 F.3d 1160, 1182 (11th Cir. 2010) (holding that "a three-month interval between the protected expression and the employment action . . . is too long"). But the "close temporal proximity between two events, standing alone, is not a panacea, absent any other evidence that the employment decision was causally related to the protected activity." Hankins v. AirTran Airways, Inc., 237 F. App'x 513, 520 (11th Cir. 2007). As Defendant correctly argues, any "inference of a causal connection" is severed by Plaintiff's intervening conduct, namely her failure to provide any additional documentation to support her teleworking request. See [Doc. 45-1 at 22–23]; see also Henderson v. FedEx Express, 442 F. App'x 502, 507 (11th Cir. 2011) (holding that a plaintiff's intervening conduct "can break any causal link between the protected conduct and the adverse employment action").

Even if Plaintiff had presented a *prima facie* case of retaliation, that would not end the inquiry. Defendant articulates a legitimate, nondiscriminatory reason for Plaintiff's termination: Plaintiff failed to submit any additional documentation for weeks, and she refused to return to the office. See [Doc. 43 at 47:24–48:4]. Plaintiff argues this was not a "legitimate" reason for terminating her "since GOSA made no

efforts to assist [Plaintiff]." [Doc. 49 at 22]. That is not correct because Defendant did give Plaintiff additional time in which to submit the RA form. See [Doc. 39-16 at 3]. Even if Defendant had not given Plaintiff additional time, Plaintiff cites no authority for the proposition that an employer cannot terminate an employee unless they actively assist the employee's efforts to obtain additional documentation. See [Doc. 49 at 22]. To articulate a legitimate, non-discriminatory reason for an adverse action, the employer only needs to give a reason that "might motivate a reasonable employer." Chapman, 229 F.3d at 1030. Terminating Plaintiff for failing to comply with Defendant's policy is just such a reason. See [Doc. 43 at 47:24–48:4].

Next, Plaintiff argues Defendant's reason for the termination is pretextual because the notion that Dr. Good "needed more evidence" to support Plaintiff's teleworking request "is unreasonable on its face and utterly lacks credibility." [Doc. 49 at 22–23]. As discussed above, Plaintiff's assertion that her doctor's notes were "more than enough medical documentation to support her need for accommodation" is unavailing. See [Doc. 49 at 13]. The first note mentions the fact that Plaintiff "delivered a baby by cesarean," but it also says that she was "doing well." [Doc. 39-8 at 2]. While the note says Plaintiff "may" telework, it never says teleworking was medically necessary and makes no mention of any disabling limitations. [Id.]. The second note did not mention Plaintiff's delivery or any complications, did not mention

any disabling limitations, and did not say it was medically necessary for Plaintiff to work from home. See [Doc. 39-10 at 4]. The note just says Plaintiff "may continue to telework at home." [id.].

To show the reason for her termination was pretextual, Plaintiff must demonstrate "such weaknesses, implausibilities, incoherencies, or contradictions in the employer's proffered legitimate reasons for its action that a reasonable factfinder could find them unworthy of credence." Jackson v. State of Ala. State Tenure Comm'n, 405 F.3d 1276, 1289 (11th Cir. 2005) (quoting Combs v. Plantation Patterns, 106 F.3d 1519, 1538 (11th Cir. 1997)). Dr. Good's statement that she needed medical documentation explaining what limitations, if any, Plaintiff had is not at all "implausibl[e]." Plaintiff cannot show pretext "by simply quarreling with the wisdom of" Dr. Good's decision to request additional documentation. Chapman, 229 F.3d at 1030.

Plaintiff also argues Defendant's decision to terminate her "because she did not return to work" is "not in the least bit credible" because "GOSA has a policy requiring employees who are on FMLA to be released to return to work by their doctor before they can return to the office." [Doc. 49 at 24–25]. Plaintiff tries to rely on the testimony of Lowe to support her position. [Id.]. When asked if Plaintiff could return "to the office without a release for her doctor to do so," Lowe said, "I guess no." [Doc. 42 at

40:24–41:3]. Lowe's statement was thus a "guess" as to whether additional documentation was needed for Plaintiff to return to the office. But more importantly, Lowe was not the decisionmaker, Dr. Good was.

When asked whether "that's the policy," *i.e.* whether Plaintiff "was not permitted to return to the office until her doctor released her to do so," Dr. Good pointed to "the typical paperwork" regarding "a Return to Work." [Doc. 43 at 28:22–29:14]. Defendant's policy regarding "Return to Work" says an employee must "present a medical release *before returning to work*." [Doc. 39-5 at 3] (emphasis added). Plaintiff presented just such a release saying she "may return to working" on August 3, 2018. [Doc. 39-8 at 2]. Defendant's policy never says an employee must present a release specifically releasing them to "return to the office," as Plaintiff's counsel suggests. See [Doc. 39-5].

Plaintiff ignores her doctor's first note saying she "may return to working" and argues she was not released "to return to work [until] November 5, 2018" by pointing to her doctor's September 11 note. [Doc. 49 at 25]. To be sure, that note says Plaintiff "may return to work November 5, 2018," but it also says Plaintiff "may continue to telework at home until then." [Doc. 39-10 at 4]. In other words, Plaintiff tries to argue that Defendant "did not really need the additional paperwork in the first instance" because her doctor's notes were clear. [Doc. 49 at 22]. But then Plaintiff argues

Defendant needed more paperwork because her doctor's note was unclear regarding whether she "was released to return to work [before] November 5, 2018." [Id. at 24–25].

This supports Defendant, not Plaintiff. Plaintiff cannot show Defendant's reasoning is pretextual by pointing to a contradictory doctor's note *she* provided. Dr. Good agreed that the second doctor's note was "vague" and "unclear." [Doc. 43 at 27:8–28:21]. To the extent the note suggested Plaintiff could not "return to work" until November 5, that notion was not reasonable because "she was already working" per the doctor's first note. [Id. at 27:13–17]. The vague second note was "what really triggered the need for [Defendant] to have the formal paperwork filled out." [Id. at 28:15–21]. Defendant needed to know if Plaintiff was or was not cleared to work. If Plaintiff was cleared to work but only in a limited capacity, Defendant needed to know Plaintiff's functional limitations to assess what accommodation was necessary.

It was not implausible, incoherent, or inconsistent for Defendant to request additional documentation to support Plaintiff's teleworking request. And it was not implausible, incoherent, or inconsistent for Defendant to assume Plaintiff could work in the office if there was no medical documentation demonstrating Plaintiff had any functional limitations. When Plaintiff failed to either demonstrate that she had disabling limitations or return to the office after months of teleworking, Defendant

decided to terminate her. Plaintiff fails to show "both that [Defendant's] reason was false, and that [retaliation] was the real reason" for the termination, and as such her retaliation claim fails as a matter of law. See Brooks v. Cty. Comm'n of Jefferson Cty., Ala., 446 F.3d 1160, 1163 (11th Cir. 2006).

II. Title VII Discrimination Claim

To establish a prima facie case of pregnancy discrimination, Plaintiff must show that: (1) she is a member of a protected class; (2) she requested an accommodation; (3) Defendant refused her accommodation, and (4) Defendant accommodated other employees similar in their ability or inability to work. Young v. United Parcel Serv., Inc., 575 U.S. 206, 135 S. Ct. 1338, 1354, 191 L. Ed. 2d 279 (2015). Assuming without deciding that Plaintiff can make out a prima facie case of pregnancy discrimination, her claim must still be analyzed "through application of the McDonnell Douglas framework." Young, 135 S. Ct. at 1353. In other words, Plaintiff is "still required to show that [Defendant's] legitimate, nondiscriminatory reasons for denying her accommodation were pretextual." Everett v. Grady Mem'l Hosp. Corp., 703 F. App'x 938, 948 (11th Cir. 2017).

As discussed above, Plaintiff has not shown pretext. At the time Plaintiff was terminated, Defendant had been accommodating Plaintiff's pregnancy and related medical complications for approximately eight months. See [Doc. 53 ¶¶13–17]. But

Plaintiff's most recent doctor's note did not state Plaintiff had any functional limitations and was contradictory regarding whether Plaintiff was released to return to work. [Doc. 39-10 at 4]. Faced with that note, Defendant requested additional documentation to demonstrate what limitations, if any, Plaintiff had. See [Doc. 43 at 28:15–21]. Plaintiff was terminated when she failed to either provide additional documentation or return to work. See [id. at 47:24–48:4]. Plaintiff points to no evidence demonstrating that Defendant's reasons for its actions are "unworthy of credence." See Jackson, 405 F.3d at 1289. As such, Plaintiff has not shown pretext, and her pregnancy discrimination claim fails as a matter of law. See Everett, 703 F. App'x at 948–49.

CONCLUSION

For the reasons explained above, the undersigned **RECOMMENDS** that Defendant's Motion for Summary Judgment ([Doc. 45]) be **GRANTED**. As this is a final Report and Recommendation and there are no other matters pending before this Court, the Clerk is directed to terminate the reference to the undersigned.

SO REPORTED AND RECOMMENDED, this 30 day of July, 2021.

Linda T. Walker

LINDA T. WALKER
UNITED STATES MAGISTRATE JUDGE