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

PARESHA PATEL,	*	
	*	
Plaintiff,	*	
	*	
v.	*	1:19-CV-05020-ELR
	*	
WELLSTAR ATLANTA MEDICAL CENTER, INC.,	*	
	*	
	*	
Defendant.	*	
	*	

O R D E R

This case is before the Court on Magistrate Judge Linda T. Walker's Final Report and Recommendation ("R&R") [Doc. 61] and the objection thereto. The Court sets forth its reasoning and conclusions below.

I. Procedural History

On November 5, 2019, Plaintiff Paresha Patel filed the instant action against Defendant Wellstar Atlanta Medical Center, Inc. (hereinafter "Wellstar"). See Compl. [Doc. 1]. By her Complaint, Plaintiff brings two (2) claims for discrimination and retaliation against Defendant in violation of the Age Discrimination in Employment Act of 1967, 29 U.S.C. § 621, *et seq.* (hereinafter "ADEA"). See generally id. Following the close of discovery, on January 10, 2021,

Defendant filed its Motion for Summary Judgment [Doc. 50], which Plaintiff opposes. [Doc. 55]. On April 20, 2021, Judge Walker issued her R&R, recommending the Court grant Defendant's motion and dismiss Plaintiff's claims with prejudice. See generally R&R [Doc. 61]. Plaintiff timely filed her objection to the R&R [Doc. 66], to which Defendant responded. [Doc. 67]. The R&R, Plaintiff's objection thereto, and Defendant's response are now ripe for the Court's review.

II. Factual Background

Before turning to the substance of Plaintiff's objection, the Court first sets forth the relevant factual background from the R&R. The R&R provides:

> Wellstar Atlanta Medical Center is a medical facility located at 303 Parkway Drive, Atlanta, Georgia 30312. [Defendant's Statement of Material Facts ("DSMF") ¶ 1]. Wellstar is an equal opportunity employer which maintains an equal employment policy prohibiting discrimination on the basis of any legally protected characteristic, including age. [DSMF ¶ 2].
>
> Plaintiff Paresha Patel, who was born in 1971, began working at Wellstar in 2004 as a Nuclear Medicine Technologist in a PRN classification. [DSMF ¶ 3]. A Nuclear Medicine Technologist prepares and administers radioactive drugs to patients for therapeutic or imaging purposes. [DSMF ¶ 4]. PRN is a classification of employees who are scheduled to work only as needed. [DSMF ¶ 5]. At the time of Plaintiff's hire, Wellstar was operated by Tenet Healthcare. [DSMF ¶ 6].
>
> Wellstar begin operating the Atlanta Medical Center facility in 2016. [DSMF ¶7]. When the Atlanta Medical Center became a Wellstar facility, Plaintiff received some training on Wellstar policies. [DSMF ¶ 8; Plaintiff's Deposition ("Pl. Dep.") at 18–20]. Plaintiff had

previously been trained on these policies, as she had been working at Wellstar Paulding Hospital as a PRN Nuclear Medicine Technologist since 2012. [DSMF ¶ 9; Pl. Dep. at 10, 19]. Plaintiff was first introduced to Wellstar's Remote Access policy at Atlanta Medical Center. [Doc. 55-2, Plaintiff's Statement of MaterialFacts ("PSMF") ¶ 6]. In April 2018, Plaintiff received two days of training on the EPIC system, which is an electronic medical records system used by Wellstar. [PSMF ¶ 7; DSMF ¶ 37; Plaintiff's Response ("Pl. Resp.") to DSMF ¶ 8; Pl. Dep. at 19–21]. Plaintiff testified that the other two PRN employees who worked in the Nuclear Medicine Department received more training than she did. [Pl. Dep. at 22].

From 2012 until 2017, Plaintiff picked up shifts at both Wellstar Paulding and the Atlanta Medical Center. [DSMF ¶ 10]. In 2017, Plaintiff stopped working at Wellstar Paulding when her home office assignment was transferred by WellStar from Paulding to Atlanta Medical Center. [Pl. Dep. at 11–12, 15–16; PSMF ¶ 2]. Plaintiff worked shifts at a Northside facility in Holly Springs from September 2017 until January 2018. [PSMF ¶ 1; DSMF ¶ 11; Pl. Dep. at 11, 48–50]. Plaintiff was asked and testified to the following:

> Q. So from September 2017 to January 2018 you were working shifts at both Northside Holly Springs and Atlanta Medical Center?
>
> A. Yes, sir. [Pl. Dep. at 50].

At the time Plaintiff's employment with Wellstar ended in August 2018, Michael McMillan, who was born in 1973, was the Manager of the Nuclear Medicine Department and Plaintiff's direct supervisor. [DSMF ¶ 12]. McMillan was Plaintiff's supervisor throughout her employment at the Atlanta Medical Center from 2004 to 2018, other than a short period of time McMillan was on leave. [DSMF ¶ 13]. The Nuclear Medicine Department employed one other full-time employee, Elizabeth "Beth" Webb. [DSMF ¶ 14]. Like McMillan, Webb worked at the Atlanta Medical Center the entire time Plaintiff worked there. [DSMF ¶ 15]. Plaintiff never complained about Webb and felt they had a "good bond." [DSMF ¶ 16].

In addition to McMillan and Webb, three PRN employees worked in the Nuclear Medicine Department: Plaintiff, Abbas Hussein (born in

1984), and Golshon Mummadi (born in 1982). [DSMF ¶ 17]. Hussein was hired in October 2011 and Mummadi was hired in April 2016. [DSMF ¶ 18]. As full-time employees, McMillan and Webb were scheduled first and then the PRN employees were scheduled as needed to cover shifts based on patient volume. [DSMF ¶ 19]. Prior to the beginning of the month, either McMillan or Webb would post a written calendar for the month showing which employees were scheduled for which days, including PRN employees such as Plaintiff. [DSMF ¶ 20]. Prior to 2017, McMillan was primarily responsible for creating the monthly schedule. Beginning sometime in 2017, McMillan delegated that responsibility to Webb. [DSMF ¶ 21].

Although a PRN employee may be on the schedule for a day, whether the PRN employee was actually needed for the shift was not known until the day before or even the day of the shift, as it would depend on the actual patient volume that day. [DSMF ¶ 22]. The patient volume for any particular day fluctuated up to the last minute. [DSMF ¶ 23]. If the number of tests for the day was completed early, a PRN employee could be directed to leave prior to the end of his/her shift. [DSMF ¶ 25]. Plaintiff was made aware of the schedule each month via email or text message for all PRNs. [PSMF¶ 3]. The schedule was also physically posted around the first of the month. [PSMF ¶ 4]. The initials written on the schedule determined who was working: top initials indicated the individual was scheduled for day shift while the bottom initials indicated the individual was scheduled to be on call. [PSMF ¶ 5]. Manager Michael McMillan testified that either he or Beth Webb would text the PRN employee on the schedule for the day early in the morning to let him/her know whether he/she needed to report that day. [McMillan Declaration ("Dec.") ¶ 7]. However, Plaintiff testified, "McMillan or Webb did not consistently send scheduling notices to PRNs regarding their need to report, and I drove in prior to receiving notice I was not needed on several occasions." [Doc. 55-9, Pl. Dec. ¶ 8].

Plaintiff testified that she reviewed documentation provided by Defendant and produced a table showing that between December 31, 2017 and August 16, 2018, she worked significantly fewer hours than either of the other two PRN employees (Mummadi or Hussein) in the Nuclear Medicine Department. [Pl. Dec. ¶ 6, Ex. 1; PSMF ¶¶ 10–12]. On July 11, 2018, Plaintiff sent Karen Cates (born in 1966), Director of

Imaging Services, an email complaining about the number of hours she was scheduled versus the other PRN employees while also stating: "I am working here 15 yrs [and] with Wellstar since Jan. 2012, started with Paulding, and I used to work with Cobb [and] still working with Douglas too. All 3 locations treated me good and equally about Hours [and] everything. I am in this field 20 yrs." [DSMF ¶ 26; PSMF ¶ 17].

In her role as Director of Imaging Services, Cates was McMillan's direct supervisor. [DSMF ¶ 27]. Cates testified that she reviewed the number of regular hours each of the PRN employees (Plaintiff, Mummadi, and Hussein) worked for the previous 30 days (presumably, between June 11 and July 10, 2018) and did not see any evidence of unfairness. [Cates Dec. ¶ 6]. Cates sent Plaintiff an email on July 11, 2018, stating: "You have actually worked just as many hours as one PRN employee and actually more hours than the [second] PRN employee during that time frame. There is no evidence of scheduling unfairness during this period of time and I am sorry that this is your perception." [Cates Dec. ¶ 7, Ex. 1]. Cates explained to Plaintiff that patient volumes had declined significantly which would result in the Department continuing to cut PRN employees' hours with short notice. [DSMF ¶ 30]. Cates also reminded Plaintiff that as a PRN employee she was not guaranteed a set number of hours and encouraged her to consider picking up shifts at other Wellstar facilities. [DSMF ¶ 31].

Cates testified that after Plaintiff received Cates' email, Plaintiff continued to send emails to Cates referencing concerns about her hours; however, Cates was unsure about the exact nature of her complaint because Plaintiff indicated she was not asking to work more hours. [DSMF ¶ 32; Cates Dec. ¶ 9; PSMF ¶ 9]. For example, in response to Cates' July 11 email, Plaintiff wrote back to Cates saying, among other things, "I am not saying I need more hours . . . . Anytime Michael [McMillan] said I have to leave I left. I know everyone leave early. So I have no question and I know I am as needed employee, so I not expect guaranteed hours." [DSMF ¶ 33]. Therefore, Cates worked to arrange an in-person meeting to discuss the situation. [DSMF ¶ 34]. Before that meeting could take place, Plaintiff began to make specific references to when the other PRN employees were working. [DSMF ¶ 35]. Cates asked Plaintiff how she was able to determine when other

employees worked, and Plaintiff stated she located that information in EPIC, Wellstar's electronic medical records system. [DSMF ¶ 36].

Cates testified that EPIC does not show when an employee is scheduled to work or what hours an employee worked. [DSMF ¶ 38]. Plaintiff, likewise, testified: "I cannot find out who work that day and I'm not sure even what time they leave. EPIC cannot tell that. Like, what worker[,] what time leave[,] and what time come. Like, HR person Ms. [Eulanda] Morrison say[s], I check schedule to other people, how many hours they work, and actually EPIC cannot give that information." [Pl. Dep. at 85]. In her declaration, Plaintiff stated, "In the EPIC software, I can see the scheduled tests and associated employees for the day. When I stated I 'accessed record,' I meant that I was able to access patient scheduling data to view patient flow. I did not view protected health information or medical records." [Pl. Dec. ¶¶ 3–5].

Cates and McMillan testified that the only way to determine whether an employee worked on a particular day from the information contained in EPIC is to go into a patient's medical record and see whether the employee entered any information into the patient's medical record on that day. [Cates Dec. ¶ 11; McMillan Dec. ¶ 8]. Plaintiff was granted access by McMillan for "any work-related reason," such as learning the software, billing, charges, etc. [PSMF ¶ 14]. In July 2018, McMillan specifically told Plaintiff that she should start looking at the schedule since flex scheduling, in which Plaintiff may be sent home for slower patient flow days. [PSMF ¶ 15]. McMillan told Plaintiff she must download EPIC onto her home laptop to check for flex scheduling before driving to work at risk of getting in trouble. [PSMF ¶ 16]. However, Wellstar policy prohibits an employee from accessing a patient's medical record without a need to know. [DSMF ¶ 40].

During the timeframe of mid to late July 2018, other Nuclear Medicine Technologists reported to McMillan on multiple occasions that they were unable to access a patient's medical record in EPIC because EPIC indicated Plaintiff was in the patient's medical record even though she was not working that day. [DSMF ¶ 41]. EPIC will not allow more than one user to be in a patient's medical record at the same time, so if one user is logged into the record no other user can

access the record. [DSMF ¶ 42]. On or about July 31, 2018, McMillan called Wellstar's Compliance Hotline to report concerns about Plaintiff improperly accessing patient medical records. [DSMF ¶ 43]. Vice President of Compliance Rebecca Ruhl (born in 1966) investigated the complaint. [DSMF ¶ 44].

McMillan testified that on August 8, 2018, while the matter was being investigated, a Nuclear Medicine Technologist again reported to McMillan that he or she (McMillan does not remember who reported it) was unable to access a patient's medical record because EPIC indicated Plaintiff was in the patient's records even though she was not working that day. [McMillan Dec. ¶ 11; DSMF ¶ 45]. McMillan also testified that the Technologist took a picture of the message and forwarded the picture to McMillan who then forwarded it to Ruhl. [McMillan Dec. ¶ 11, Ex. 1; DSMF ¶ 46]. Ruhl testified that her investigation found Plaintiff had accessed the medical records of 45 patients on three days she was not working. [Ruhl Dec. ¶ 5, Ex. 1; DSMF ¶ 47]. Plaintiff, however, testified that she either did not access or had reason to access EPIC for work-related purposes on the dates in the exhibit provided by Ruhl: July 11, 2018; August 6, 2018; and August 8, 2018. [Pl. Resp. to DSMF ¶ 47; Pl. Dec. ¶¶ 10–13]. On August 8, 2018, Plaintiff received a call from Karen Cates, in which Cates informed Plaintiff that she was to stop checking the patient list from home. [PSMF ¶ 18]. Plaintiff was not presented with any documentation reflecting her alleged violations. [PSMF ¶ 19].

On August 17, 2018, Ruhl, Cates, and Senior Human Resources Consultant Eulanda Morrison (born in 1969) met with Plaintiff. [DSMF ¶ 48; Pl. Resp. to DSMF ¶ 48]. Ruhl's office is not located at the Atlanta Medical Center so she participated in this meeting by telephone. [DSMF ¶ 49]. Plaintiff told Ruhl that McMillan granted her the ability to access EPIC remotely for any work-related purpose. [DSMF ¶ 51]. Plaintiff was asked and testified to the following:

> Q. So when you talk about checking schedules in EPIC, you're referring to the schedule of the number of patients who have exams that day?
>
> A. Yes, sir.

> Q. Okay. Not employee schedules?
>
> A. No. And as I say, it's not sure information you can get it, and not that many times. And if I want to do that, I can do every single day and try – only three days. But as I say, I saw schedule. [Pl. Dep. at 99].

After Plaintiff was given an opportunity to respond to the finding, she was asked to leave the room to allow Cates, Morrison, and Ruhl to discuss the situation. [DSMF ¶ 52]. In her role as Vice President of Compliance, Ruhl was responsible for recommending what action, if any, should be taken. [DSMF ¶ 53; Pl. Resp. to DSMF ¶ 53]. Ruhl, Cates, and Morrison testified that Ruhl recommended the termination of Plaintiff's employment. [Ruhl Dec. ¶ 9, Ex. 2; Cates Dec. ¶ 13; Morrison Dec. ¶ 6; DSMF ¶ 54]. Ruhl testified that she recommended termination because "Ms. Patel's action in improperly accessing patient medical records violated" company policy. [Ruhl Dec. ¶ 9]. After Ruhl made her recommendation, she dropped off the call and Plaintiff was asked to return to the room. [DSMF ¶ 56]. Morrison explained to Plaintiff that it was recommended her employment be terminated, but that the recommendation would need to be approved by upper-level Human Resources and Legal prior to being finalized. [Morrison Dec. ¶ 7; Cates Dec. ¶ 14; Ruhl Dec. ¶ 10; DSMF ¶ 57]. Plaintiff asked whether she could resign, and Morrison indicated she would need to check with her supervisors. [DSMF ¶ 58]. Morrison later told Plaintiff she could resign so it would not "mess[] up her record, and Plaintiff submitted a letter of resignation." [DSMF ¶ 59].

Plaintiff testified that she first complained about discrimination in 2017 when she complained to Michael McMillan. [Pl. Dep. at 41]. Plaintiff was asked and testified to the following:

> Q. So did you tell Michael [McMillan] you felt you were being discriminated against because of your age?
>
> A. I did not use the word age, but I clearly told him I feel discriminated against to Golshon [Mummadi] and Abbas [Hussein]. And after that many times I told I feel unfair, not only hours, but about other treatment also, the way they make me commenting, the

> way they make me send home earlier. So, other stuff also I talked to him.
>
> Q. Did you ever tell anyone at Wellstar while you were still working there that you felt that you were being discriminated against because of your age?
>
> A. I did not use age, but I said discriminated. Because that time I really thought I don't know age is a concern or race is also a concern, and I feel both at that time. So I did not use any word. I just used discriminated against Golshon [Mummadi] and Abbas [Hussein]. [Pl. Dep. at 41].
>
> The only person who made a comment that Plaintiff felt was derogatory about her age was Hussein, who in 2017 said that Plaintiff was the same age as his mother. [DSMF ¶ 61]. Plaintiff does not feel Manager Michael McMillan discriminated against her. [DSMF ¶ 62]. Plaintiff never complained to Vice President of Compliance Rebecca Ruhl about discrimination. [DSMF ¶ 63]. Plaintiff does not know who, if anyone, replaced her. [DSMF ¶ 64]. During Plaintiff's unemployment hearing, Karen Cates stated that there were two levels of access to EPIC: the schedule and the patient's medical record. [PSMF ¶ 25]. Morrison confirmed in the same hearing that Defendant Wellstar would have processed Plaintiff's discharge had she not resigned. [PSMF ¶ 26].

See R&R at 1–12.

III. Legal Standards

Having laid out the relevant factual background from the R&R, the Court first examines the relevant legal standards. With respect to an R&R, the Court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." See 28 U.S.C. § 636(b)(1); see also FED. R. CIV. P. 72(b)(3). Portions of the R&R, to which no objection has been raised, are reviewed

for clear error. See Thomas v. Arn, 474 U.S. 140, 154 (1985); see also Macort v. Prem, Inc., 208 F. App'x 781, 784 (11th Cir. 2006); Tauber v. Barnhart, 438 F. Supp. 2d 1366, 1373 (N.D. Ga. 2006). However, the Court "shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made." See 28 U.S.C. § 636(b)(1); see also FED. R. CIV. P. 72(b)(3). A party objecting to an R&R "must specifically identify those findings objected to. Frivolous, conclusive, or general objections need not be considered by the district court." See United States v. Schultz, 565 F.3d 1353, 1361 (11th Cir. 2009) (quoting Marsden v. Moore, 847 F.2d 1536, 1548 (11th Cir. 1988)) (internal quotation marks omitted). Presently, Plaintiff objects to the Magistrate Judge's recommendation that the Court should grant Defendant's motion for summary judgment.

The Court may grant summary judgment only if the record shows "that there is no genuine dispute as to any material fact and that the movant is entitled to judgment as a matter of law." See FED. R. CIV. P. 56(a). A factual dispute is genuine if there is sufficient evidence for a reasonable jury to return a verdict in favor of the non-moving party. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). When ruling on the motion, the Court must view all evidence in the record in the light most favorable to the non-moving party and resolve all factual disputes in the non-moving party's favor. See Reeves v. Sanderson Plumbing Prods., Inc., 530 U.S.

133, 150 (2000). The moving party need not positively disprove the opponent's case; rather, the moving party must establish the lack of evidentiary support for the non-moving party's position. See Celotex Corp. v. Catrett, 477 U.S. 317, 325 (1986). If the moving party meets this initial burden, in order to survive summary judgment, the non-moving party must then present competent evidence beyond the pleadings to show that there is a genuine issue for trial. See id. at 324–26. The essential question is "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." See Anderson, 477 U.S. at 251–52.

IV. Plaintiff's Objections to the R&R

Having set forth the relevant legal standards, the Court now turns to Plaintiff's objections to the R&R.[1] Plaintiff only raises one (1) objection to the findings of the R&R, arguing the R&R fails to weigh the evidence in the light most favorable to the non-moving party, Plaintiff. [See Doc. 66 at 3]. Moreover, Plaintiff maintains that, when weighed in the light most favorable to her, sufficient evidence exists for her ADEA retaliation claim to survive summary judgment. [See id. at 4–7].

To bring a viable claim for retaliation pursuant to the ADEA, a plaintiff must

[1] Plaintiff admits that "she is unable to prove the necessary elements of ADEA discrimination" and filed no objections to the R&R's conclusion that Defendant is entitled to summary judgment on Plaintiff's ADEA discrimination claim as a matter of law. See R&R at 14–15; [see also Doc. 55 at 9–10]. The Court has reviewed that portion of the R&R and finds no clear error; thus, the Court adopts the Magistrate Judge's recommendation on the ADEA discrimination claim as the opinion of this Court.

prove a prima facie case of retaliation using the burden-shifting framework as set forth by the Supreme Court. See McDonell Douglas Corp. v. Green, 411 U.S. 792, 802–03 (1973). "A plaintiff alleging retaliation establishes a prima facie case by showing that (1) [she] engaged in statutorily protected expression, (2) [she] suffered an adverse employment action, and (3) there was a causal link between the protected expression and the adverse action." King v. Adtran, Inc., 616 F. App'x 789, 792 (11th Cir. 2015) (internal citation omitted). The Magistrate Judge determined Plaintiff did not meet her burden of proving a prima facie case by failing to show that she engaged in statutorily protected activity. See R&R at 16.

Plaintiff contends that she participated in statutorily protected activity when she made several complaints regarding alleged scheduling discrepancies, and that the Magistrate Judge improperly weighed this evidence in favor of Defendant. [See Doc. 66 at 3]. Plaintiff argues that viewing "the context of Plaintiff's complaints" in the light most favorable to her as the non-moving party shows that summary judgment should be denied on her ADEA retaliation claim because "an objectively reasonable person could understand that Plaintiff's complaints were specifically referencing age discrimination[.]"[2] [See id.]

In support, Plaintiff claims that the evidence of her repeated complaints to her

[2] Curiously, the Court notes that despite Plaintiff's acknowledgment that she lacked evidence to bring a claim of ADEA discrimination, the majority of Plaintiff's brief in opposition to the R&R argues that the context should be construed as to show age discrimination in order to meet the first prong of her ADEA retaliation claim. [See generally Doc. 66].

supervisor regarding how "she felt she was not being treated similarly to other Nuclear Medicine Technicians" allows for a reasonable inference that her supervisor "understood Plaintiff was making a complaint of age discrimination." [See id. at 4]. Particularly, Plaintiff contends that her reporting shows that she was "being treated unfairly compared to her two peers who were both outside of [the] protected [age] class." [See id.] Additionally, Plaintiff claims that she sufficiently demonstrates she held a "good faith, reasonable belief" that she was discriminated against because: (1) she reported her concerns to both her direct supervisor and to Karen Cates in July 2018, and (2) Cates took the initiative to check Plaintiff's scheduled hours against those of her co-workers. [See id. at 5]. Thus, according to Plaintiff, when viewed in the light most favorable to her, the evidence demonstrates that a jury could find she engaged in statutorily protected activity. [See id. at 6–7].

The Court is not convinced. To have engaged in statutorily protected activity, a plaintiff must show "that [s]he had a good faith, reasonable belief that the employer was engaged in unlawful employment practices." See Elite Amenities, Inc. v. Julington Creek Plantation Cmty. Dev. Dist., 784 F. App'x 750, 752 (11th Cir. 2019) (quoting Butler v. Ala. Dep't of Transp., 536 F.3d 1209, 1213 (11th Cir. 2008)). Importantly, "this standard has both a subjective and an objective component." See Elite Amenities, 784 F. App'x at 752. "A plaintiff must not only show that [s]he subjectively (that is, in good faith) believed that [her] employer was engaged in

unlawful employment practices, but also that [her] belief was *objectively reasonable* in light of the facts and record presented." Id. at 752–53 (emphasis added). Thus, Plaintiff's subjective belief comprises only half of the legal standard for determining whether she engaged in "statutorily protected activity." See id.

Even if the Court accepts that Plaintiff subjectively believed her employer engaged in an unlawful employment practice, she nonetheless fails to demonstrate the objective reasonableness of her belief. Plaintiff admitted in her deposition testimony that she never explicitly told her employer that she felt discriminated against due to her age. [See Doc. 51 at 45]. Both the Magistrate Judge (in her R&R) and Defendant (in its Motion for Summary Judgment) cite several Eleventh Circuit decisions that require plaintiffs to allege more than general grievances about discrimination and unfairness to show that they engaged in statutorily protected activity. See R&R at 18–20; [see also Doc. 50 at 5–6].

Plaintiff does not dispute the cited caselaw provided by either the Magistrate Judge or Defendant; rather, she relies exclusively on the holding in Olson v. Lowe's Home Ctrs., Inc., 130 F. App'x 380, 391 n.22 (11th Cir. 2005), an unpublished case, to distinguish the general pleading requirements from the present matter. In Olson, the Eleventh Circuit noted an employee complaining of a co-worker's behavior did not have to specifically call the behavior "sexual harassment" to place her employer on sufficient notice that she was reporting behavior that constituted sex

discrimination. See id. Thus, by extension, Plaintiff contends that she need not have explicitly told her employer she felt discriminated against because of her age to place her employer on notice of the alleged age discrimination. [See Doc. 66 at 3].

The Court finds Olson distinguishable from the instant matter. In Olson, the plaintiff had conversations with her manager in which she reported behavior tantamount to sexual harassment. See Olson, 130 F. App'x at 383–84. While the plaintiff never explicitly labeled the reported behavior as "sexual harassment," plaintiff alleged that her manager independently characterized the exchange as sexual harassment and informed the plaintiff she would take further action. See id. at 390–91. The Eleventh Circuit held that, despite the plaintiff not explicitly calling the reported behavior "sexual harassment," "[the manager's] own reference to sexual harassment and that she would take action" gave rise to a reasonable factual inference that the plaintiff was reporting sexual harassment. See id. at 390.

Unlike the facts in Olson, Plaintiff proffers no evidence to reasonably suggest that Defendant or any of Plaintiff's supervisors understood her complaints to mean that she felt discriminated against due to her age. Plaintiff points to the repeated complaints she made to her supervisor regarding the "fairness of scheduling" in relation to her two (2) younger co-workers as sufficient context to support an inference of age discrimination. [See Doc. 66 at 3–5]. However, the Court finds that Plaintiff's remarks about scheduling issues only amount to general complaints,

as no evidence alludes to Plaintiff complaining of age discrimination. Importantly, binding precedent from the Eleventh Circuit has established that general complaints of unfair treatment do not constitute engaging in protected activity. See, e.g., Gerard v. Bd. of Regents, 324 F. App'x 818, 826 (11th Cir. 2009) (holding plaintiff's general list of grievances does not constitute statutorily protected activity since the complaint offered no evidence to make a reasonable inference of discrimination).[3]

Plaintiff also points to her interaction with Karen Cates, alleging "that Cates indeed understood Plaintiff's complaints about disparity in hours." [See Doc. 66 at 5]. However, none of Cates' testimony points to such a conclusion. [See generally Doc. 50-6]. Cates admitted that she investigated scheduling discrepancies after receiving Plaintiff's July 2018 email, but ultimately "did not see any evidence of unfairness." [See id. ¶ 6]. In fact, Cates declared that she "was unsure [of] the exact nature of [Plaintiff's] complaint." [See id. ¶ 9]. Without further evidentiary support, the Court cannot find Plaintiff's belief objectively reasonable, and thus, she fails to demonstrate the first prong necessary to prove her ADEA retaliation claim.

Accordingly, after completing a de novo review of the facts in this case and weighing all factual inferences in the light most favorable to Plaintiff, the Court finds

[3] As the Seventh Circuit concisely wrote, "[s]tautorily-protected activity 'requires more than simply a complaint about some situation at work, no matter how valid the complaint might be.'" See Skiba v. Ill. Cent. R.R. Co., 884 F.3d 708, 718 (7th Cir. 2018) (quoting Cole v. Bd. of Trs. of N. Ill. Univ., 838 F.3d 888, 901 (7th Cir. 2016)). While Plaintiff presents evidence regarding the disputed scheduling, nothing in the record appears to make this claim more than "a complaint about some situation at work." See Skiba, 884 F.3d at 718.

Plaintiff fails to demonstrate the objective reasonableness of her belief that Defendant engaged in discriminatory behavior. Because Plaintiff's belief is not objectively reasonable, the first prong of her prima facie case of ADEA retaliation fails, and Defendant is entitled to summary judgment in its favor.

V. Conclusion

For the foregoing reasons, the Court **OVERRULES** Plaintiff's objection [Doc. 66] and **ADOPTS** the R&R [Doc. 61] as the opinion of this Court. Accordingly, the Court **GRANTS** Defendant's Motion for Summary Judgment [Doc. 50] and **DISMISSES WITH PREJUDICE** Plaintiff's claims. Finally, the Court **DIRECTS** the Clerk to **ENTER JUDGMENT** in favor of Defendant and to **CLOSE** this case.

SO ORDERED, this 2nd day of August, 2021.

Eleanor L. Ross

Eleanor L. Ross
United States District Judge
Northern District of Georgia