UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

LASONYA BARNES, Plaintiff, v. EMORY HEALTHCARE SERVICES MANAGEMENT, LLC, Defendant.	CIVIL ACTION NO. 1:19-cv-04688-JPB

ORDER

This matter is before the Court on the Magistrate Judge's Final Report and Recommendation ("Report"). ECF No. 48. Having reviewed and fully considered the Report and related filings, the Court finds as follows:

I. BACKGROUND[1]

Plaintiff Lasonya Barnes' ("Barnes") complaint alleges claims against Defendant Emory Healthcare, Inc.[2] ("Emory") under the Family and Medical Leave Act of 1993 ("FMLA"). In a nutshell, Barnes claims that Emory interfered with her exercise of rights provided by the FMLA (Count I) and retaliated against her for exercising those rights (Count II).

[1] The Report provides a comprehensive description of the relevant undisputed facts, so the Court will provide only a summary here.
[2] Emory states that its proper name is "Emory Healthcare, Inc."

Specifically, the record shows that prior to Barnes' resignation from Emory on September 6, 2019, she was employed as an Electrocardiogram Technician ("EKG Technician") and served patients at Emory's hospital in Decatur, Georgia. She resigned following unsuccessful attempts to find a new position within Emory after a medical issue prevented her from continuing to work as an EKG Technician. Barnes contends that Emory failed to find a position for her when she returned from leave and failed to hire her for alternate positions in violation of the FMLA.

Prior to her resignation, Barnes received twelve weeks of continuous FMLA leave from November 24, 2016, to February 16, 2017, and from August 3, 2018, to October 26, 2018. She also received more than two weeks of intermittent FMLA leave between 2018 and 2019.

On November 16, 2018, Barnes' physician directed that Barnes should not lift more than twenty-five pounds; push or pull more than twenty-five to thirty pounds; walk long distances; or walk any distance with the Electrocardiogram machine. These restrictions prevented Barnes from being able to perform the essential function of her job—traveling to patients' rooms with the machine and rolling cart, which weighed seventy-five pounds.

About a week later, Barnes was involved in a car accident, which prevented her from working in any capacity for numerous weeks. Emory allowed Barnes to take non-FMLA leave through January 21, 2019.

On February 28, 2019, Barnes began working for another employer.

On March 18, 2019, Barnes provided another doctor's note, which indicated that Barnes would not be released to work without restrictions until June 18, 2019. Emory again extended Barnes' non-FMLA leave and directed her to work with the recruiting department to identify a new position that would accommodate her medical restrictions.

Barnes applied for more than twenty positions within Emory between March 2019 and her resignation in September 2019. She was not hired for any of the roles. Some job requisitions were cancelled and never filled; she was not invited to interview for at least one position because she lacked the requisite experience; and she withdrew herself from consideration for others because the positions did not offer her preferred shift or were not at her preferred location.

Barnes interviewed for a Medical Assistant position in July 2019, and the recruiter initially told Barnes that she would be offered the position but later stated that he had communicated the job offer in error. Barnes was not the most qualified candidate for the position.

In mid-August 2019, Emory reached out to Barnes to inquire about Barnes' license/certificate for another Medical Assistant position. Barnes responded that her certifications had expired, and the recruiter advised her to renew the certifications as quickly as possible. Barnes provided evidence of the renewals within one week of the conversation.

On August 29, 2019, Barnes declined an interview for what appears to be a different Medical Assistant position.

Barnes resigned on September 6, 2019, to accept a position with another company.

Barnes disputes Emory's assertion that the recruiting staff facilitating her applications were not aware that Barnes had previously taken FMLA leave. However, she does not dispute that the hiring managers who made the ultimate decisions regarding employment lacked such knowledge.

The magistrate judge recommends granting summary judgment in favor of Emory on both counts of the Complaint. As to the first count (interference claim), the Report concludes that there can be no liability for failing to reinstate Barnes to her previous position because Barnes' physician advised that Barnes could not perform the essential functions of the EKG Technician position, and the "FMLA

provides a right of reinstatement [only] to an existing job, not a transfer to a new job that an employee may prefer." ECF No. 48, pp. 33-34.

As to the second count of the complaint (retaliation claim), the Report concludes that even assuming that Barnes can present evidence that Emory's decision not to hire her in alternate positions was an adverse employment action, she cannot establish a causal link between her FMLA leave and her inability to secure another position with Emory. The magistrate judge found that Barnes failed to show that there was a close temporal connection between the end of her FMLA leave in October 2018 and the decision not to hire her in July or August of 2019.

The magistrate judge also rejected Barnes' claim of constructive discharge because Barnes did not establish that her conditions of employment were so intolerable that any reasonable person would have resigned from the position.

Barnes objects to the Report on three grounds. She argues that the Report: (i) accepted Emory's version of certain disputed facts; (ii) ignored certain relevant evidence; and (iii) misconstrued the record and her argument regarding the causal link between her FMLA leave and Emory's allegedly adverse action.

In response, Emory points out that Barnes did not object to the part of the Report recommending dismissal of her FMLA interference claim and therefore only a clear error standard of review should apply to that claim.

Additionally, Emory argues that the Report properly considered the facts identified in Barnes' first and second objections, and, regardless, Barnes has not shown how those facts impacted the Report's ultimate conclusion.

Finally, Emory argues that the Court should not consider Barnes' argument regarding ongoing retaliation because she did not raise it with the magistrate judge, and the record does not support Barnes' allegation that she was not hired in alternate positions for retaliatory reasons.

II. DISCUSSION

A district judge has broad discretion to accept, reject or modify a magistrate judge's proposed findings and recommendations. *United States v. Raddatz*, 447 U.S. 667, 680 (1980). Pursuant to 28 U.S.C. § 636(b)(1), the Court reviews any portion of the Report that is the subject of a proper objection on a *de novo* basis and any portion to which there is no objection under a "clearly erroneous" standard.

A party objecting to a recommendation "must specifically identify those findings objected to. Frivolous, conclusive, or general objections need not be considered by the district court." *Marsden v. Moore*, 847 F.2d 1536, 1548 (11th Cir. 1988). "This rule facilitates the opportunity for district judges to spend more time on matters actually contested and produces a result compatible with the

purposes of the Magistrates Act." *United States v. Schultz*, 565 F.3d 1353, 1361 (11th Cir. 2009).

Notably, "a district court has discretion to decline to consider a party's argument when that argument was not first presented to the magistrate judge." *Williams v. McNeil*, 557 F.3d 1287, 1292 (11th Cir. 2009). Citing similar conclusions from sister circuits, the Eleventh Circuit has explained that "'requir[ing] a district court to consider evidence not previously presented to the magistrate judge would effectively nullify the magistrate judge's consideration of the matter and would not help to relieve the workload of the district court.'" *Id*. Further, "'[s]ystemic efficiencies would be frustrated and the magistrate judge's role reduced to that of a mere dress rehearser if a party were allowed to feint and weave at the initial hearing, and save its knockout punch for the second round.'" *Id*.

A. Legal Standard

"Summary judgment is appropriate when the record evidence, including depositions, sworn declarations, and other materials, shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." *Feliciano v. City of Miami Beach*, 707 F.3d 1244, 1247 (11th Cir. 2013) (quoting Fed. R. Civ. P. 56) (quotation marks omitted). A material fact is any fact

that "is a legal element of the claim under the applicable substantive law which might affect the outcome of the case." *Allen v. Tyson Foods, Inc.*, 121 F.3d 642, 646 (11th Cir. 1997). A genuine dispute exists when "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). Ultimately, "[t]he basic issue before the court . . . 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.'" *Allen*, 121 F.3d at 646 (citation omitted).

The party moving for summary judgment bears the initial burden of showing that no genuine issue exists as to any material fact, "and in deciding whether the movant has met this burden the court must view the movant's evidence and all factual inferences arising from it in the light most favorable to the nonmoving party." *Id.*

After the movant satisfies this initial burden, the nonmovant bears the burden of showing specific facts indicating summary judgment is improper because a material issue of fact does exist. *Id.* In carrying this burden, "[a] mere 'scintilla' of evidence supporting the opposing party's position will not suffice; there must be enough of a showing that the jury could reasonably find for that party." *Walker v. Darby*, 911 F.2d 1573, 1577 (11th Cir. 1990) (citation omitted).

In sum, if the record taken as a whole cannot 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, 587 (1986) (citation omitted).

B. Analysis

As an initial matter, because Barnes does not object to the portion of the Report that recommends granting summary judgment as to Count I of the Complaint, the Court reviews that portion only for clear error. Having found none, the Court approves and adopts the Report with respect to Count I.

With respect to Count II of the Complaint, the Court disagrees with Emory's contention that Barnes' objections are insufficient to trigger *de novo* review. As set forth in section I, *supra*, the Court identified specific objections Barnes makes to the Report.[3] The Court will address those objections in turn.

Under the FMLA, "'[a]n employer is prohibited from discriminating against employees or prospective employees who have used FMLA leave.'" *Brungart v. BellSouth Telecomms., Inc.*, 231 F.3d 791, 798 (11th Cir. 2000) (quoting 29 C.F.R. § 825.220(c) (alteration in original)). "In order to establish a prima facie case of

[3] The arguments underlying the objections were generally presented to the magistrate judge, so the Court will address them here.

retaliatory discharge . . . , a plaintiff must show that (1) she engaged in statutorily protected conduct; (2) she suffered an adverse employment action; and (3) there is a causal connection between the protected conduct and the adverse employment action." *Id*.

To establish the requisite causal connection, "a plaintiff need only show that the protected activity and the adverse action were not wholly unrelated." *Id*. at 799 (quoting *Clover v. Total Sys. Servs., Inc.*, 176 F.3d 1346, 1354 (11th Cir. 1999)). However, the burden is satisfied only if the evidence shows that "the decision maker was aware of the protected conduct at the time of the adverse employment action." *Id*. In other words, because "[a] decision maker cannot have been motivated to retaliate by something unknown to him," the failure to offer evidence that the decision maker knew the employee took FMLA leave is fatal to a claim of retaliatory discharge. *Id*. Thus, "temporal proximity alone is insufficient to create a genuine issue of fact as to causal connection where there is unrebutted evidence that the decision maker did not have knowledge that the employee engaged in protected conduct." *Id*.

Here, even if the Court accepts Barnes' objection that the Report did not consider that Emory's recruiters knew about Barnes' FMLA leave or that Barnes provided renewed certifications after Emory requested them, such facts would not

change the result. It remains that the decision makers—the hiring managers—had no knowledge of Barnes' FMLA leave. Without such knowledge, Barnes cannot show that they were motivated to retaliate against her based on her FMLA leave. Her retaliation claim must therefore fail.

Similarly, even if, as Barnes contends, the Report failed to consider that she applied for approximately thirty to fifty jobs without success and that a hiring manager changed her mind regarding a job offer to Barnes, these facts do not rehabilitate the fatal flaw in Barnes' retaliation claim: she cannot show that the hiring managers knew of her FMLA leave.

Further, the Court agrees with the magistrate judge that Barnes cannot show constructive discharge because she has not cited evidence of deteriorated conditions of employment sufficient to succeed on such a claim. *See Hill v. Winn-Dixie Stores, Inc.*, 934 F.2d 1518, 1527 (11th Cir. 1991) (stating that "'[t]o show constructive discharge, the employee must prove that his working conditions were so difficult or unpleasant that a reasonable person would have felt compelled to resign'" and that an employee must show "a high degree of deterioration in . . . working conditions, approaching the level of 'intolerable'" (quoting *Wardwell v. School Bd. of Palm Beach Cnty.*, 786 F.2d 1554, 1557-58 (11th Cir.1986))). Viewing the facts in the light most favorable to Barnes, the record shows that some

job requisitions were never filled; Barnes lacked the requisite experience for certain positions; and she withdrew herself from consideration for others.

Moreover, Barnes' claim of ongoing retaliation is not supported by the record for reasons including that Barnes, herself, declined interviews and made other decisions that limited the number of opportunities available to her. Accordingly, Barnes' objections with respect to Count II of the Complaint are overruled.

Based on the foregoing analysis, the Court approves and adopts the Report and Recommendation (ECF No. 48) as the judgment of the Court and **GRANTS** Emory's Motion for Summary Judgment (ECF No. 35). The Clerk is **DIRECTED** to close the case.

SO ORDERED this 25th day of August, 2021.

J. P. BOULEE
United States District Judge