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

JAMILA DAVIS, Plaintiff, v. TEACHERS RETIREMENT SYSTEM OF GEORGIA, Defendant.	Civil Action No. 1:19-cv-01026-SDG

ORDER

This matter is before the Court on United States Magistrate Judge Alan J. Baverman's Final Report and Recommendation (R&R) [ECF 84], which recommends that Defendant Teachers Retirement System of Georgia's (TRS) motion for summary judgment [ECF 65] be granted. Plaintiff Jamila Davis has filed objections to certain findings and conclusions in the R&R [ECF 88]. For the following reasons, Davis's objections are **OVERRULED** and the R&R is **ADOPTED** as the Order of this Court. Accordingly, TRS's motion for summary judgment is **GRANTED.**

I. BACKGROUND

The Court incorporates by reference the thorough recitation of the facts, procedural history, and legal standard for resolving a motion for summary

judgment as set forth in the R&R. For purposes of this Order, the Court provides a brief summary of the pertinent facts as follows.

Plaintiff Jamila Davis's amended complaint alleges that Defendant TRS retaliated against her in violation of Title VII.[1] Davis was a retirement specialist at TRS who was responsible for processing accounts of deceased TRS retirees, including processing payments to designated beneficiaries.[2] On February 7, 2017, Davis filed an EEOC charge against TRS claiming that she was being harassed and retaliated against by her supervisor, Jennifer Alridge.[3] The EEOC issued a notice of right to sue on February 16, 2017, stating it was unable to concluded that the information obtained from its investigation established Title VII violations.[4] On May 8, 2017, Davis sent an email to TRS Human Resources Generalist Surbrena Johnson stating that Alridge was retaliating against her (Davis) because Davis had filed the EEOC charge.[5] Davis was notified of her termination on May 11, 2017.[6]

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1 ECF 26; *see* ECF 24.

2 ECF 84, at 5.

3 *Id.* at 4–5.

4 *Id.* at 7.

5 *Id.* at 9, 10.

6 *Id.* at 11.

On May 17, 2017, Davis filed a second charge of discrimination with the EEOC.[7] The EEOC investigated and found that, after Davis's first charge, TRS increased the level of scrutiny of her work product and terminated her employment; TRS's nondiscriminatory reason for termination did not withstand scrutiny; and there was reasonable cause to conclude that TRS had retaliated against Davis for filing her first charge.[8]

II. OBJECTIONS TO A REPORT AND RECOMMENDATION

A party challenging a report and recommendation issued by a United States Magistrate Judge must file written objections that specifically identify the portions of the proposed findings and recommendations to which an objection is made and must assert a specific basis for the objection. *United States v. Schultz*, 565 F.3d 1353, 1361 (11th Cir. 2009). The district court must "make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1); *Jeffrey S. ex rel. Ernest S. v. State Bd. of Educ. of Ga.*, 896 F.2d 507, 512 (11th Cir. 1990).

Absent objection, the district court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge,"

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7 *Id.*

8 *Id.* at 12–13.

28 U.S.C. § 636(b)(1), and need only satisfy itself that there is no clear error on the face of the record. Fed. R. Civ. P. 72(b). The district court has broad discretion in reviewing a magistrate judge's report and recommendation. In addressing objections, it may consider an argument that was never presented to the magistrate judge, and it may also decline to consider a party's argument that was not first presented to the magistrate judge. *Williams v. McNeil*, 557 F.3d 1287, 1290–92 (11th Cir. 2009). However, "[f]rivolous, conclusive, or general objections need not be considered by the district court." *Schultz*, 565 F.3d at 1361 (quoting *Marsden v. Moore*, 847 F.2d 1536, 1548 (11th Cir. 1988)).

III. DISCUSSION

The R&R correctly applied the burden-shifting framework set out in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973), to Davis's claim.[9] Davis was required to make out a *prime facie* case of discrimination. If she did, TRS was then required to show a legitimate, nondiscriminatory reason for why it terminated Davis's employment. Davis then would have the opportunity to show that the proffered reason was pretextual.[10]

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9 ECF 84, at 14–16.

10 *Id.*

A. Statutorily Protected Conduct to Establish a *Prima Facie* Case of Discrimination

Davis first objects that the R&R incorrectly concluded that she had not engaged in statutorily protected conduct.[11] She argues that her February EEOC charge constituted a statutorily protected activity because it was a protected instance of participation, and the retaliatory actions were a result of the filing of the charge, rather than the contents of the charge itself.[12] Davis claims that it is "nonsensical" to find that a charge protects a plaintiff from retaliation only if specific language is included, as this would allow defendants to act in a retaliatory manner without repercussions until the charge is fully investigated.[13] Davis concludes by stating the February charge was a protected activity under the participation clause of Title VII, sufficient to establish her *prima facie* case of retaliation.[14]

In her February charge, Davis checked the box for discrimination based on retaliation.[15] The charge stated, in relevant part:

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11 ECF 88, at 4.

12 *Id.* at 6.

13 *Id.* at 5.

14 *Id.* at 6–7.

15 *Id.* at 6.

> I. I was hired by the above-named employer on March 16, 2016, as a Retirement Specialist. Since August 2016, I have witnessed and been subjected to harassment from Jennifer Alridge, Retirement Supervisor, against me and my colleagues. Despite my repeated complaints to Tonia Morris, Human Resources Director, Surbrina Johnson, Human Resources Generalist, and Corey Buice, Director, the harassment has persisted.
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> II. No reason has been given for this treatment.
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> III. I believe that I have been retaliated against for opposing unlawful employment practices, in violation of Title VII of the Civil Rights Act of 1964 [(Title VII)], as amended[, 42 U.S.C. § 2000e, *et seq.*].[16]

The R&R correctly concluded that Davis has failed to show she engaged in statutorily protected conduct, as the February EEOC charge does not contain complaints about discrimination based on a Title VII protected characteristic. In coming to this conclusion, the R&R relies on *Langford v. Magnolia Advanced Materials, Inc.*, which held that filing an EEOC charge is not protected activity if the charge does not allege violations of Title VII. 709 F. App'x 639, 643 (11th Cir. 2017).

In *Langford*, the plaintiff filed an EEOC charge that had the retaliation box checked; the charge explained that the plaintiff had complained about unsafe work

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16 *Id.* at 6–7.

practices to his supervisor and was told if he contacted OSHA he would be fired. The plaintiff then listed the alleged retaliatory conduct and stated, "I believe that I have been retaliated against for opposing . . . unlawful employment practices, in violation of Title VII." No. 1:15-CV-1115-AT-JFK, 2017 WL 5203048, at *4 (N.D. Ga. Jan. 3, 2017), *report and recommendation adopted*, 2017 WL 5202889 (N.D. Ga. Feb. 13, 2017), *aff'd*, 709 F. App'x 639 (11th Cir. 2017). Because the EEOC charge was a complaint about being retaliated against for trying to report unsafe work practices, and did not include complaints about discrimination based on a Title VII protected characteristic, the Eleventh Circuit stated that "just as we've held that Title VII does not protect unfair treatment not based on a protected ground, we cannot conclude that Title VII protects a person from discrimination based on the filing of an EEOC charge not based on a protected ground." *Langford*, 709 F. App'x at 643 (citing *Coutu v. Martin Cnty. Bd. of Cnty. Comm'rs*, 47 F.3d 1068, 1074 (11th Cir. 1995)).

Looking specifically to Davis's February EEOC charge—the only conduct in her objections that she argues is a protected activity—it does not contain any allegations regarding how Title VII was purportedly violated. The charge has the retaliation box checked, and simply alleges Davis "witnessed and [has] been subjected to harassment . . . . No reason has been given for this treatment. I believe

that I have been retaliated against for opposing unlawful employment practices, in violation of Title VII . . . ."[17] Davis does not allege in the charge that she was being harassed because of a Title VII protected characteristic, and she does not allege what unlawful employment practice under Title VII she opposed. Simply put, the charge is a grievance about general work-related problems, and is not a charge alleging specific discrimination based on race, color, religion, sex, or national origin—conduct that would be a violation of Title VII.

As noted in *Langford*,

> several of our sister circuits have held that filing an EEOC charge is not protected activity if the charge does not allege violations of Title VII or § 1981. *See Slagle v. Cnty. of Clarion*, 435 F.3d 262, 267 (3d Cir. 2006) (holding that § 2000e-3(a) protection extended only to charges that alleged discrimination on the basis of race, color, sex, religion, or national origin); *Balazs v. Liebenthal*, 32 F.3d 151, 159–60 (4th Cir. 1994) (holding that a retaliation claim failed because the EEOC charge had "nothing to do with his race, color, religion, sex or national origin"); *Learned v. City of Bellevue*, 860 F.2d 928, 932 (9th Cir. 1988) (holding that § 2000e-3(a) only applied if the charge filed alleged discrimination prohibited by Title VII).

709 F. App'x at 643. Therefore, because Davis's February EEOC charge is not based on a protected ground under Title VII, the charge is not statutorily protected

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[17] ECF 84, at 7.

conduct, and Davis has failed to make a *prima facie* case of retaliation under the *McDonnell-Douglas* framework. *See Goldsmith v. Bagby Elevator Co.*, 513 F.3d 1261, 1277 (11th Cir. 2008).

B. Showing of Pretext

Davis next objects to the R&R's finding that she failed to show that TRS's proffered reasons for her termination were pretextual.[18] Summary judgment in favor of TRS is proper because Davis cannot make a *prima facie* case of retaliation. Even if she had done so, Davis cannot show that TRS's proffered legitimate, nondiscriminatory reasons for her termination were pretextual. Such a showing would have precluded the entry of summary judgment in favor of TRS. *See Brooks v. Cnty. Comm'n of Jefferson Cnty., Ala.*, 446 F.3d 1160, 1162 (11th Cir. 2006). Notably, in proving pretext, "[i]f the employer proffers more than one legitimate, non-discriminatory reason, the plaintiff must rebut *each* of the reasons to survive a motion for summary judgment." *Garcia v. DS Waters of Am., Inc.*, 372 F. App'x 925, 927 (11th Cir. 2010) (emphasis original) (citing *Chapman v. AI Transp.*, 229 F.3d 1012, 1037 (11th Cir. 2000)).

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18 ECF 88, at 7–9.

Judge Baverman correctly concluded that Davis failed to show pretext. TRS stated that it terminated Davis because she (1) altered a benefit application; (2) interacted with her supervisor in an unprofessional manner, which led to an oral reprimand; (3) made numerous processing errors that resulted in money being incorrectly taken from retirees' bank accounts; (4) failed to properly request leave; and (5) failed to give notice of her need for a two-week absence, which caused hardship to her team.[19]

Davis's first objection regarding the R&R's finding of a lack of pretext is that there was conflicting testimony regarding a February 1, 2017 meeting among Davis, Alridge, and Hilda Perry, a quality control coordinator responsible for reviewing Davis's work, resulting "in a classic 'he said, she said' scenario, in which the Court . . . should . . . leave the question of credibility to a jury."[20] The R&R cited Davis's own statement of material facts and noted that during the meeting Davis and Alridge "went back and forth" about what was proper process.[21] TRS did not dispute this fact.[22] The R&R then cited TRS's statement of facts, which stated that

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19 ECF 84, at 23–24.

20 ECF 88, at 8.

21 ECF 84, at 5.

22 ECF 82, ¶ 2.

after the meeting, Alridge issued Davis an oral reprimand that indicated "Davis displayed an unprofessional demeanor during the meeting."[23] Davis did not dispute that this statement was made, only that its description of her conduct was inaccurate—as in, Davis claims she did not act disrespectfully towards Alridge.[24]

The R&R did not conclude whether Davis truly was disrespectful towards Alridge (nor did it need to), but instead simply (1) described the meeting as involving a "back and forth," and (2) noted that Alridge later issued Davis a reprimand stating Davis was "unprofessional" during the meeting. Therefore, the R&R properly relied on facts that were not in dispute and did not decide an issue of material fact when it determined Davis had not made a showing of pretext. TRS's reason—among others—for terminating Davis was because it believed she interacted with Alridge in an unprofessional manner. Further, even though Davis does not believe she acted unprofessionally during the meeting, she did not present any evidence that TRS did not honestly believe she had acted in an unprofessional manner. "The inquiry into pretext centers on the employer's beliefs, not the employee's beliefs and, to be blunt about it, not on reality as it exists outside of the decision maker's head. . . . The question to be resolved is not the

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23 ECF 84, at 6.

24 ECF 80-2, ¶ 12.

wisdom or accuracy of [the employer's] conclusion that [plaintiff's] performance was unsatisfactory, or whether the decision to fire her was prudent or fair. Instead, our sole concern is whether unlawful discriminatory animus motivated the decision." *Alvarez v. Royal Atl. Devs., Inc.*, 610 F.3d 1253, 1266 (11th Cir. 2010) (cleaned up). Therefore, the R&R correctly held Davis failed to show that TRS's belief that Davis interacted with Alridge in an unprofessional manner was pretextual.

Davis next makes a conclusory objection by stating she "provided probative evidence that the reasons concerning leave and processing errors provided by Defendant were pretextual, as neither had constituted punishable actions prior to Plaintiff's protected activity, and because the conflicting testimony creates an issue of material fact."[25] Davis fails to cite any "probative evidence" or "conflicting testimony" in making this objection. As previously stated, conclusive objections need not be considered by the district court. *Schultz*, 565 F.3d at 1361. Further, Davis has not presented evidence that there was a disparity in treatment among her and other employees regarding violations of the leave policy and document processing policy, or that any delay between Davis's violations and her

[25] ECF 88, at 8.

termination could allow a jury to reasonably infer pretext. *See Damon v. Fleming Supermarkets of Fla., Inc.*, 196 F.3d 1354, 1363 (11th Cir. 1999) ("On summary judgment, we have written that the 'work rule' defense is arguably pretextual when a plaintiff submits evidence . . . that if she did violate the rule, other employees outside the protected class, who engaged in similar acts, were not similarly treated."); *Turner v. Ala. Agric. & Mech. Univ.*, No. 5:17-CV-2142-AKK, 2019 WL 4254138, at *8 (N.D. Ala. Sept. 6, 2019) (finding that a jury could reasonably infer pretext when there was disparity in punishment among employees and a seven-month delay in discharge of plaintiff). Therefore, the R&R correctly held that Davis failed to make a showing of pretext regarding the reasons for her termination, including violations of the leave policy and document processing policy.

Davis then objects that the "primary" reason for her termination—that she allegedly altered a benefit-application package—is pretextual by arguing that she did not alter the document, and that this reason for termination is not credible because she "was allowed to continue working and handling sensitive documents despite the serious nature of this alleged offense."[26] Davis fails to cite any evidence

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[26] *Id.* at 8–9.

in making this objection. Even if Davis properly cited evidence to show she did not alter the document or was permitted to continue handling sensitive documents after the alleged offense, however, it is not the Court's role to determine whether TRS's actions were the best business decisions. Rather, the Court must assess whether TRS was motivated by unlawful discriminatory animus in making its decisions. *See Alvarez*, 610 F.3d at 1266.

Davis has not presented evidence showing that TRS did not honestly believe she altered the document. Further, TRS confirmed this belief—that the document was altered—once Davis was on leave, and Davis was then terminated one day after returning to work.[27] The facts are silent on whether Davis was permitted to handle sensitive documents during the one day before she was terminated.[28] Therefore, the R&R correctly held Davis has not made a showing of pretext regarding TRS terminating her employment for its belief that she altered the document. *See Gogel v. Kia Motors Mfg. of Ga., Inc.*, 967 F.3d 1121, 1150 n.25 (11th Cir. 2020) ("[W]hen dealing with . . . an employer's personnel action based on the employer's good faith belief: In carrying out its business and in making business decisions (including personnel decisions), the employer can lawfully act

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27 ECF 84, at 10–11.

28 *Id.*

on a level of certainty that might not be enough in a court of law. . . . Therefore, an employer, in these situations is entitled to rely on its good faith belief about falsity, concealment, and so forth . . . . Pretext is not demonstrated by showing simply that the employer was mistaken." (cleaned up) (quoting *E.E.O.C. v. Total Sys. Servs., Inc.*, 221 F.3d 1171, 1176 (11th Cir. 2000)).

The R&R correctly concluded that, even if Davis had made a *prima facie* showing of retaliation, her claims would still be subject to dismissal because she failed to show that each of TRS's reasons was pretextual.

IV. CONCLUSION

The Court **ADOPTS** the R&R [ECF 84] in its entirety as the Order of this Court. Accordingly, Defendant's motion for summary judgment [ECF 65] is **GRANTED.** The case is **DISMISSED WITH PREJUDICE**. The Clerk is **DIRECTED** to enter judgment and close this case.

SO ORDERED this the 17th day of September, 2021.

Steven D. Grimberg
United States District Court Judge