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-5683-MHC-LTW

ORDER

This case is before the Court on the Final Report and Recommendation ("R&R") of Magistrate Judge Linda T. Walker [Doc. 56] recommending that Defendant's Motion for Summary Judgment ("Def.'s Mot. for Summ. J.") [Doc. 45] be granted. The Order for Service of the R&R [Doc. 57] provided notice that, in accordance with 28 U.S.C. § 636(b)(1), the parties were authorized to file objections within fourteen (14) days of that Order. After receiving an extension of time within which to file her objections, August 9, 2021, Order [Doc. 59], Plaintiff

filed her Objections to the Magistrate Judge's R&R ("Pl.'s Objs.") [Doc. 60].[1] Thereafter, Defendant filed a Response to Plaintiff's Objections [Doc. 63].

I. STANDARD OF REVIEW

In reviewing a Magistrate Judge's Report and Recommendation, the district court "shall 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). "Parties filing objections to a magistrate's report and recommendation must specifically identify those findings objected to. Frivolous, conclusive, or general objections need not be considered by the district court." 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). Absent objection, the district court judge "may accept, reject, or modify, in whole or in part, the findings and recommendations made by the magistrate judge," 28 U.S.C. § 636(b)(1), and need only satisfy itself that there is no plain error on the face of the record in order to accept the recommendation. See United States v. Slay, 714 F.2d 1093, 1095 (11th Cir. 1983). Further, "the district court

[1] Plaintiff's Objections are styled "Objections to the Magistrate Judge's Non-Final R&R," however, the R&R is potentially dispositive of all issues in this case and is a final R&R.

has broad discretion in reviewing a magistrate judge's report and recommendation"—it "does not abuse its discretion by considering an argument that was not presented to the magistrate judge" and "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, 1290-92 (11th Cir. 2009).

II. BACKGROUND[2]

Plaintiff Nicole Owens ("Owens") worked for Defendant State of Georgia, Governor's Office of Student Achievement ("GOSA") from June 2016 until she was terminated on October 11, 2018. R&R at 2, 6 (citing Def.'s Resp. to Pl.'s Add'l Material Facts ¶ 1; Pl.'s Resp. to Def.'s SMF ¶ 42). During the relevant timeframe, Owens reported to her supervisor, Rosaline Tio ("Tio"), and the Executive Director of GOSA was Dr. Cayanna Good ("Good"). Id. at 2 (citing Def.'s Resp. to Pl.'s Add'l Material Facts ¶¶ 9-10).

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[2] The salient facts in this case are not disputed and are taken from the parties' statements of undisputed facts which have been admitted or not otherwise properly contested based upon the requirements of the Local Rules of this Court. See R&R at 2-7; see also Def.'s Statement of Material Facts as to Which There is No Genuine Issue to be Tried ("Def.'s SMF") [Doc. 45-2]; Pl.'s Resp. to Def.'s SMF [Doc. 49-2]; Pl.'s Statement of Add'l Material Facts ("Pl.'s Add'l Material Facts") [Doc. 49-1]; Def.'s Resp. to Pl.'s Add'l Material Facts [Doc. 53].

In early 2018, Owens informed GOSA that she was pregnant and would need to take time off, and she requested Family and Medical Leave Act ("FMLA") paperwork. Id. at 2-3 (citing Def.'s Resp. to Pl.'s Add'l Material Facts ¶ 12). In March 2018, Owens submitted a FMLA leave request form and a medical certification form, which stated Owens had a high-risk pregnancy and that her health conditions would last through July 31, 2018, the expected due date. Id. at 3 (citing Def.'s Resp. to Pl.'s Add'l Material Facts ¶¶ 13-15). On March 19, 2018, GOSA provided Owens with an FMLA approval notice, which stated, among other things, Owens 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. (citing Def.'s Resp. to Pl.'s Add'l Material Facts ¶ 16); FMLA Approval Notice [Doc. 39-5 at 2-5].

Owens gave birth via cesarean section on July 18, 2018. R&R at 3 (citing Def.'s Resp. to Pl.'s Add'l Material Facts ¶ 18). On August 3, 2018, Tio notified Owens that she had exhausted her paid leave and was being placed on leave without pay as of July 20, 2018. Id. at 3 (citing Pl.'s Resp. to Def.'s SMF ¶ 11). That same day, Owens informed GOSA that she intended to return to work via tele-work on August 6, 2018, and provided a doctor's note which stated in its entirety:

> Nicole L. Owens was seen in our medical offices on 8/3/18. She delivered a baby by cesarean on 7/18/2018. She is doing well and may return to work via tele-work from her home.

Id. at 3 (citing Kaiser Permanente Verification of Treatment ("Aug. 3 Doctor's Note") [Doc. 39-8 at 2]); Pl.'s Resp. to Def.'s SMF ¶ 12. At this time, Good believed Plaintiff was doing well and did not know of any medical condition that would prevent her from working in the office. Id. at 3 (citing Pl.'s Resp. to Def.'s SMF ¶ 14).

Owens returned to work on August 6, 2018, but worked remotely. Pl.'s Resp. to Def.'s SMF ¶ 13; Def.'s Resp. to Pl.'s Add'l Material Facts ¶ 21. On September 11, 2018, Owens told her supervisor she would need to continue teleworking based on complications from the cesarean section. R&R at 4 (citing Def.'s Resp. to Pl.'s Add'l Material Facts ¶ 25). The following day, September 12, 2018, Owens e-mailed Tio informing her that Owens would "not be able to return to the office until November 5th, 2018." R&R at 4 (citing Def.'s Resp. to Pl.'s Add'l Material Facts ¶ 26); E-mail from Owens to Tio (Sept. 12, 2018) [Doc. 39-10 at 1]. Owens attached a note from her doctor, which stated in its entirety:

> Nicole L. Owens was seen in our office on 9/11/18. She may return to work November 5, 2018. She may continue to telework at home until then.

Letter from Kaiser Permanente to Whom it May Concern (Sept. 11, 2018) ("Sept. 11 Doctor's Note") [Doc. 39-10 at 4].

On September 14, 2018, the GOSA Human Resources Director, Felicia Lowe ("Lowe"), called Owens and told her that she would need to submit additional documentation to show her telework request was medically necessary, and Owens subsequently informed Lowe that that her doctor was out of the office until September 24, 2018, but that a nurse would reach out to the doctor to request that the doctor update the September 11 Doctor's Note. R&R at 5 (citing Pl.'s Resp. to Def.'s SMF ¶¶ 25-26); see also E-mail from Owens to Lowe (Sept. 14, 2018) [Doc. 39-11 at 1] ("To follow-up on our conversation, I called Kaiser to try to see if there was a way to connect directly with my doctor over the phone to avoid going there outside of my existing appointment schedule. A registered nurse from their offices let me know that my physician is now currently out of the office until 9/24/2018. However, she wrote [Owen's doctor] directly asking her to update the letter she provided me to support that the accommodation is for medical reasons. She also stated that if there is specific documentation that you are looking for that you would need to provide them with a form of what is being requested (if it is more than just an appendage stating that what was put in the original letter was medically advised.)").

On September 20, 2018, Lowe sent Owens the Reasonable Accommodation form ("RA Form") for Owens to provide to her health care provider, which included a release for Owens to sign that would authorize her health care provider to provide medical information to GOSA. R&R at 5 (citing Pl.'s Resp. to Def.'s SMF ¶ 28). The RA Form has a section, among others, for the employee to fill out describing how the employee's limitations restrict his or her ability to perform their job functions and another section asking the employee to "describe the accommodation(s) you are requesting and explain how the requested accommodations(s) would be effective." RA Form [Doc. 39-11 at 3-11]. The RA Form also has multiple sections for the employee's health care provider to complete in order to explain what, if any, impairment(s) the employee has, whether the impairment(s) affect the employee's ability to perform any essential job functions, and whether there are any workplace accommodations that would permit the employee to perform those job functions. Id.

On September 28, 2018, Lowe asked Owens whether she had received the additional paperwork supporting the accommodation request from her doctor and Owens responded three days later, on October 1, 2018, indicating that she had not received any paperwork, but that she was going to follow up with her doctor. R&R at 5 (citing Pl.'s Resp. to Def.'s SMF ¶ 30). Lowe and Owens subsequently had a

telephone conversation during which Lowe informed Owens that if Owens did not return the RA Form by October 2, 2018, and failed to return to the workplace by October 3, 2018, "then business decisions would need to be made." R&R at 5 (citing Pl.'s Resp. to Def.'s SMF ¶ 31). On October 2, 2018, Owens e-mailed Lowe indicating that Owens had called her doctor, but was unable to expedite the paperwork GOSA requested and that Owens was unable to return to work at the physical office on October 3, 2018. Id. (citing E-mail from Owens to Lowe (Oct. 2, 2018) [Doc. 42-13]). GOSA extended the deadline for Owens to submit documentation supporting her accommodation request or return to work until October 10, 2018, and October 11, 2018. Id. at 5-6 (citing Pl.'s Resp. to Def.'s SMF ¶¶ 36-37).

On October 4, 2018, Lowe sent Owens an "official and final" request for documentation supporting her accommodation request:

> Thank you for reaching out to share your thoughts regarding your request for an extended teleworking option from the Governor's Office of Student Achievement. As discussed on 9/14, 9/24 and October 1, 2018, to comply with the provisions under the Americans with Disabilities Act (ADA), you must provide reasonable accommodation medical documentation, provided to you on September 20, 2018, that would give details to assist in determining the continued allowability of teleworking. Although you have provided a statement from your physician dated, September 11, 2018, additional information from your healthcare provider is needed. Please note that your employer, the Governor's Office of Student Achievement, has requested reasonable and sufficient documentation from your healthcare provider to make a

> determination in your request to continue teleworking until November 4, 2018, returning to the worksite on November 5, 2018.
> Please accept this notice as an official and final request for sufficient medical documentation regarding your reasonable accommodation request. Please return the completed reasonable accommodation documentation by Wednesday, October 10, 2018. Failure to provide the completed reasonable accommodation documentation as requested or failure to return to the worksite on Thursday, October 11, 2018, may result in termination of your employment.

Letter from Lowe to Owens (Oct. 3, 2018) [Doc. 39-16 at 3]. On October 11, 2018, Owens sent Lowe an email to inform her that she "was unable to obtain my signed paperwork from Kaiser" and that she "will still be unable to return to work in the office at this time." R&R at 6 (citing E-mail from Owens to Lowe (Oct. 11, 2018) [Doc. 39-19]). Thereafter, it became clear to Good that Owens had not turned in any paperwork supporting her request for accommodation and had not reported to the office, and she decided to terminate Owens's employment. R&R at 6 (citing Pl.'s Resp. to Def.'s SMF ¶ 42).

Based on the foregoing, Owens filed the above-styled lawsuit on December 18, 2019, asserting failure to accommodate and retaliation claims under Section 504 of the Rehabilitation Act, 29 U.S.C. § 794 (Counts One through Five) and a claim for pregnancy discrimination in violation of Title VII and the Pregnancy

Discrimination Act (Count Six). Compl. [Doc. 1] ¶¶ 38-85.[3] GOSA moved for summary judgment on Owens's Rehabilitation Act failure to accommodate claim, arguing, *inter alia*, that Owens caused a breakdown in the interactive process thereby precluding GOSA from fully evaluating any request for accommodation. Def.'s Br. in Supp. of its Mot. for Summ. J. [Doc. 45-1] at 17-20. GOSA moved for summary judgment on Owens's Rehabilitation Act retaliation claim, arguing that Owens fails to make out a prima facie case for retaliation and that Owens has not produced any evidence to support the position that the reasons for her termination were pretext. Id. at 20-23. Similarly, GOSA moved for summary judgment on Owens's Title VII Pregnancy Discrimination claim arguing, *inter alia*, that Owens has not produced any evidence that the reasons for her termination were pretext. Id. at 24-25.

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[3] In her response to GOSA's Motion for Summary Judgment, Owens clarifies that she brings only "three claims in this action: (1) disability discrimination/failure to accommodate under the Rehab[ilitation] Act; (2) retaliation in violation of the Rehab[ilitation] Act; and (3) pregnancy discrimination in violation of the pregnancy provisions of Title VII/ the [Pregnancy Discrimination Act]." Pl.'s Resp. in Opp'n to Def.'s Mot. for Summ. J. [Doc. 49] at 3. She further clarified that "[f]ollowing the close of discovery, Ms. Owens' brings her disability discrimination claim on the theory that GOSA failed to accommodate her disability and not a disparate treatment theory." Id. at 4 n.2. Consequently, Owens abandons her Rehabilitation Act claims to the extent they were based on the theory of disparate treatment. See Compl. ¶¶ 38-60 (Counts One through Three).

The Magistrate Judge agreed with GOSA on all three claims, concluding that Owens's doctor notes were not sufficient to trigger GOSA's duties under the Rehabilitation Act, GOSA did not fail to make reasonable accommodations when it engaged in the interactive process, and Owens was responsible for its breakdown. R&R at 9-17. The Magistrate Judge also agreed that Owens failed to present a prima facie case of retaliation and failed to present any evidence that GOSA's non-discriminatory reason for terminating her was not pretext. Id. at 17-24. Finally, the Magistrate Judge concluded that Owens' Title VII Pregnancy Discrimination claim also failed because there was no evidence to support the position that GOSA's non-discriminatory reason for terminating her was pretextual. Id. at 24-25.

III. PLAINTIFF'S OBJECTIONS

Plaintiff argues that the Magistrate Judge erred by concluding that: (1) neither of the doctor's notes were sufficient to trigger GOSA's accommodation obligations; (2) Owens caused a breakdown in the interactive process; (3) Owens cannot establish a prima facie case of retaliation and that Owens cannot establish that the reason given for her termination was pretextual under the Rehabilitation Act; and (4) Owens could not establish the reason given for her termination was

pretextual under the Pregnancy Discrimination Act. Pl.'s Objs. at 18-39. The Court will consider Owens's arguments *seriatim*.

A. The Magistrate Judge Did Not Err in Concluding that the Doctor's Notes Were Insufficient to Trigger GOSA's Obligations Under the Rehabilitation Act.

Owens argues that the Magistrate Judge erred in concluding that neither of the doctor's notes were sufficient to trigger GOSA's accommodation obligations under the Rehabilitation Act. Pl.'s Objs. at 18-25. Specifically, Owens takes issue with what she characterizes as erroneous conclusions that the doctor's notes were insufficient because they (1) provide no explanation how the requested accommodation was linked to any disability and (2) fail to explain why she needed the accommodation. Id. (quoting R&R at 10-12). A cursory review of the salient portions of the R&R reveals that Owens misunderstands the Magistrate Judge's ruling.

> Plaintiff argues she submitted at least two requests for accommodation—her August 3 doctor's note and her September 11 doctor's note. 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. 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. 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. 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." The note does not say what limitations Plaintiff may have had and does not connect those limitations to any disability. Contrary to Plaintiffs argument, the notes were not "more than enough medical documentation to support her need for accommodation."

R&R at 10-11 (record citations omitted). The crux of the Magistrate Judge's conclusion that the two notes were insufficient to trigger GOSA's accommodation obligations is because neither note conveys "what limitations Plaintiff may have had and does not connect those limitations to any disability." Id.

Plaintiff argues that the totality of evidence presented, including both doctor's notes, makes it "clear that Ms. Owens was requesting accommodations for her childbirth-related disabilities, and GOSA was on notice of the same." Pl.'s Objs. at 22, see also id. at 25 ("The above evidence establishes that GOSA knew that Ms. Owens was requesting a reasonable accommodation to telework because she had complications with her childbirth by cesarean section and Ms. Owens objects to the R&R's conclusion otherwise.") (emphasis added). However, the notes were insufficient not only because they failed to identify a disability or link her disability with the requested accommodation, but also because Owens never

explained what workplace limitations were presented by any such disability and how or why the accommodation was going to address any such limitations.

In order to trigger an employer's duty to provide a reasonable accommodation, the employee must make a request that, at a minimum, is "sufficiently direct and specific" to not only link the accommodation to the disability, but to "explain how the accommodation requested is linked to some disability." Palmer v. McDonald, 824 F. App'x 967, 979 (11th Cir. 2020) (internal punctuation and citation omitted, emphasis added); see also E.E.O.C. v. Chevron Phillips Chem. Co., LP, 570 F.3d 606, 621 (5th Cir. 2009) (holding that in order to trigger an employer's duty to provide a reasonable accommodation, "[t]he employee must explain that the adjustment in working conditions or duties she is seeking is for a medical condition-related reason.").

In Palmer, the Court found that the employee's request for note-taking training accommodations was not sufficient to trigger the employer's duty to provide reasonable accommodations because the employee was obligated to "specifically demand[] an accommodation, meaning that he must have at least explained how his note-taking accommodation was linked to his memory disability." Palmer, 824 F. App'x at 980; see also id. at 981 ("Again, to trigger the VA's accommodation obligations, Palmer must have specifically demanded an

accommodation, meaning that he must have at least explained how his training accommodation was linked to his memory disability."); Reed v. LePage Bakeries, Inc., 244 F.3d 254, 261 (1st Cir. 2001) ("At the least, the request must explain how the accommodation requested is linked to some disability.").

Viewing the evidence in its totality and in a light most favorable to Owens, because Owens failed to identify what limitations she had because of her disability and explain how the accommodation she requested was linked to that disability, the Magistrate Judge was correct in concluding that Owens's doctor notes were not sufficient to trigger GOSA's duties under the Rehabilitation Act. Accordingly, Owens's objection is **OVERRULED**.

B. The Magistrate Judge Did Not Err in Concluding that Owens Caused a Breakdown in the Interactive Process.

> To determine the appropriate reasonable accommodation it may be necessary for the covered entity to initiate an informal, interactive process with the individual with a disability in need of the accommodation. This process should identify the precise limitations resulting from the disability and potential reasonable accommodations that could overcome those limitations.

29 C.F.R. § 1630.2(o)(3). After concluding that the doctor notes were insufficient to trigger GOSA's duties under the Rehabilitation Act, the Magistrate Judge held that "[e]ven 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." R&R at 11.

Owens does not dispute the fact that GOSA was entitled to, and did in fact, engage in the interactive process. Owens objects to the Magistrate Judge's conclusion that she caused the breakdown in the interactive process. Pl.'s Objs. at 25-36. Specifically, Owens argues that she should not have been required to provide additional paperwork supporting her accommodation request because "her doctor notes were sufficient to place GOSA on notice of its need to accommodate Ms. Owens." Id. at 25. As explained above, this argument fails because the notes fail to identify what limitations she had because of her disability and explain how the accommodation she requested was linked to that disability. See *supra.*, Section III(A).

Owens also argues that viewing the evidence in a light most favorable to Owens, the facts demonstrate that GOSA, not Owens, caused the breakdown in the interactive process and to suggest otherwise is "offensive." Pl.'s Objs. at 26-32. Owens contends that she communicated with her doctor almost daily, had difficulty getting her doctor to complete the reasonable accommodation paperwork and she contends she communicated with GOSA regularly regarding her efforts. Id. at 32. However, Owens fails to cite any record evidence indicating GOSA, not

Owens, caused any breakdown in the interactive process. A review of the undisputed evidence reveals the following:

- September 14 - GOSA requested additional information from Owens supporting her accommodation request. R&R at 5 (citing Pl.'s Resp. to Def.'s SMF ¶¶ 25-26)).

- September 14 - Owens informed Lowe that her doctor was out of the office until September 24, 2018, but that a nurse was going to reach out to the doctor to get an update to the September 11, 2018 doctor's note. Id.

- September 20 – Lowe sent Owens the RA Form to be completed by her and her medical care provider. Id. (citing Pl.'s Resp. to Def.'s SMF ¶ 28).

- September 28 - Lowe asked Owens whether she had received the additional paperwork supporting the accommodation request from her doctor. Id. (citing Pl.'s Resp. to Def.'s SMF ¶ 30).

- October 1 - Owens responded that she had not received any paperwork, but that she was going to follow up with her doctor. Id.

- October 1 – phone conversation between Lowe and Owens during which Lowe tells Owens to submit reasonable accommodation paperwork by October 2, 2018, or return to work in the office by October 3, 2018, or "business decisions would need to be made." Id. (citing Pl.'s Resp. to Def.'s SMF ¶ 31).

- October 2 - Owens e-mailed Lowe indicating that Owens had called her doctor, but was unable to expedite the reasonable accommodation paperwork and that Owens was unable to return to work at the physical office on October 3. Id. (citing E-mail from Owens to Lowe (Oct. 2, 2018) [Doc. 42-13]).

- October 4 - Lowe sent Owens the "official and final" request for documentation supporting her accommodation request which extended the deadline or Owens to submit documentation supporting her accommodation

request to October 10, or return to work in person on October 11. The letter warned Owens that failure to submit the paperwork or return to the worksite "may result in termination." Id. at 6 (citing Letter from Lowe to Owens (Oct. 3, 2018)).

- October 9 - Owens emailed Tio that she "was in the process of trying to get [her] reasonable accommodation form completed, and [she] will follow up with [Tio] tomorrow." Id. (citing E-mail from Owens to Tio (Oct. 9, 2018) [Doc. 42-18]).

- October 11 - Owens emailed Lowe to inform her that she "was unable to obtain my signed paperwork from Kaiser" and that she "will still be unable to return to work in the office at this time." Id. (citing mail from Owens to Lowe (Oct. 11, 2018)).

Viewed in a light most favorable to Owens, the evidence in this case reveals that GOSA requested additional information from Owens on September 14 and that, despite Owens's testimony that she communicated with her doctor "frequently" in an attempt to get the requested reasonable accommodation paperwork, and communicated with GOSA "regularly" about her efforts, see Def.'s Resp. to Pl.'s Add'l Material Facts ¶¶ 30-31, Owens never provided any information by the October 10, 2018, deadline. Instead, Owens informed GOSA on October 11, 2018, that she "was unable to obtain my signed paperwork from Kaiser" and "unable to return to work in the office at this time." As noted by the Magistrate Judge, Owens never attempted to explain further her attempts to obtain any documentation and there is no evidence in the record that Owens ever obtained

any additional documentation supporting her reasonable accommodation request. R&R at 12. The undisputed evidence also reflects the fact that although Owens was "unable to expedite any paperwork" from Kaiser, she knew that the process could take as long as twenty days,[4] yet she did not share this information with GOSA. As accurately summarized by the Magistrate Judge:

> 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. [citing Owens Dep. at 163, 165]. 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 (alteration in original).

[4] See Dep. of Nicole Owens (Nov. 18, 2020) ("Owens Dep.") [Doc. 39] at 156 (testifying that Owens knew it could take Kaiser at least twenty days to complete the requested paperwork: "Kaiser has a Records and Release department that goes through their own queue. And even with FMLA paperwork going back to my pregnancy, having to even try to get paperwork expedited back then, I was told that Records and Release has a queue, a window of 20 days to get paperwork in and out of their system within that time frame with FMLA paperwork, and that was back in the time doing FMLA."); see also R&R at 13-14 (citing Pl.'s Resp. to Def.'s SMF ¶¶ 11-12) (noting that the undisputed evidence reflects that Owens was able to get documentation from her doctor much quicker as evidenced by the fact that Owens got a note from her doctor on the same day she was notified that she exhausted her paid leave).

R&R at 14-15. Viewed in a light most favorable to Owens, this Court agrees with the Magistrate Judge that "Plaintiff was the cause of the breakdown in the interactive process." Id. at 15.

Owens also argues that the Magistrate Judge erred by discounting evidence that she "would have happily signed a release to allow GOSA to speak directly with her doctor about its concerns and GOSA made no efforts to take her up on that offer even though it was legally permitted to do so." Pl.'s Objs. at 32-33, 35. The Magistrate Judge correctly found this argument unpersuasive given the undisputed evidence that Owens was in possession of a release that was provided to her on September 20, 2018, as part of the RA Form, but she never signed it. See R&R at 18.

Finally, Owens cites Monterroso v. Sullivan & Cromwell, LLP, 591 F. Supp. 2d 567, 572-75 (S.D.N.Y. 2008), and contends that she, like the employee in that case, "identified that she needed a reasonable accommodation to telecommute through November 5, 2018," and this Court should similarly reject GOSA's argument that Owens caused the breakdown in the interactive process. Pl.'s Objs. at 34-35. Monterroso is easily distinguishable from this case. Unlike this case, Monterroso and her doctor furnished information regarding her disability, the limitations caused by her disability, and explained how the requested

accommodations addressed those limitations each time the employer requested information. Further, Monterroso authorized the employer to talk to the doctor:

> Monterroso formally authorized the disclosure of at least one of Dr. Bruno's May 27, 2005 letters through an official HIPAA form. By doing so, Monterroso in effect authorized Dr. Bruno to speak to [Monterroso's employer]. Moreover, every time [Monterroso's employer] requested more medical information, another letter from Dr. Bruno was provided.

Id., 591 F. Supp. 2d at 581.

Accordingly, Owens's objection is **OVERRULED**.

C. The Magistrate Judge Did Not Err in Concluding that Owens Failed to Establish a Prima Facie Case of Retaliation or Demonstrate that GOSA's Decision to Terminate Owens Was Pretextual.

To establish a prima facie case for retaliation under the Rehabilitation Act Owens must show: "(1) that [s]he engaged in statutorily protected activity; (2) that [s]he 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). The Magistrate Judge found that any inference of a causal connection between her request for an accommodation and her termination based on the temporal proximity "is severed by Plaintiff's intervening conduct, namely her failure to provide any additional documentation to support her teleworking request." R&R at 19 (citing Henderson v. FedEx Express, 442 F.

App'x. 502, 506 (11th Cir. 2011) (holding that the employee's intervening conduct "can break any causal link between the protected conduct and the adverse employment action.").

Owens argues that the Magistrate Judge erred because GOSA, not Owens, caused the interactive process to breakdown, referencing the same argument it made in relation to her failure to accommodate claim. Pl.'s Objs. at 36-37. The Court rejects this argument for the same reasons articulated in Section III(B), *supra.*

The Magistrate Judge then concluded that, even if Owens had presented a prima facie case of retaliation, GOSA articulated a legitimate, nondiscriminatory reason for her termination — "Plaintiff failed to submit any additional documentation for weeks, and she refused to return to the office" — and Owens failed to present any evidence to demonstrate that the stated reason was pretextual. R&R at 19-24. Owens objects to this conclusion arguing that substantial record evidence demonstrates that Owens was unable to submit the additional paperwork, not that she "failed to submit it," and GOSA did not actually need the paperwork. Pl.'s Objs. at 37-38. Plaintiff's objection fails to demonstrate pretext.

An employer need only proffer a nondiscriminatory reason "that might motivate a reasonable employer," which GOSA has done in this case. Chapman v.

AI Transp., 229 F.3d 1012, 1030 (11th Cir. 2000). Once a nondiscriminatory reason has been proffered, the employee must demonstrate "such weaknesses, implausibilities, inconsistencies, 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). Owens failed to do this, and the evidence in the record demonstrates that she had ample time and opportunity to provide GOSA with the appropriate paperwork but did not do so and failed to request additional time. The Magistrate Judge did not err when she held:

> It was not implausible, incoherent, or inconsistent for Defendant to request additional documentation to support Plaintiffs 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.

R&R at 23-24 (citing Brooks v. Cnty. Comm'n of Jefferson Cnty., 446 F,3d 1160, 1163 (11th Cir. 2006)).

Accordingly, Owens's objection is **OVERRULED**.

D. The Magistrate Judge Did Not Err in Concluding that Owens Failed to Demonstrate that GOSA's Decision to Terminate Owens

Was Pretextual for Purposes of Her Pregnancy Discrimination Act Claim.

The Magistrate Judge correctly ruled Owens's Pregnancy Discrimination Act claim is subject to the McDonnell Douglas[5] burden shifting framework wherein Owens, in response to GOSA's proffered nondiscriminatory reason for her termination, is "required to show that the [Defendant's] legitimate, nondiscriminatory reasons for denying her accommodation were pretextual." R&R at 24 (quoting Everett v. Grady Mem'l Hosp. Corp., 703 F. App'x 938, 948 (11th Cir. 2017)). The Magistrate Judge concluded that Owens failed to demonstrate pretext:

> 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. 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. Faced with that note, Defendant requested additional documentation to demonstrate what limitations, if any, Plaintiff had. Plaintiff was terminated when she failed to either provide additional documentation or return to work. 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.

[5] McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973).

R&R at 25.

Owens objects to the conclusion that Owens cannot establish pretext and references the argument she made in support of her objections to the Rehabilitation Act retaliation claim. Pl.'s Objs. at 38-39. The Court rejects this argument for the same reasons articulated in Section III(C), *supra.*

Accordingly, Owens's objection is **OVERRULED**.

IV. CONCLUSION

Therefore, after consideration of Owen's objections and a de novo review of the record, it is hereby **ORDERED** that Plaintiff's Corrected Objections to the Magistrate Judge's R&R ("Pl.'s Objs.") [Doc. 60] are **OVERRULED**. The Court **APPROVES AND ADOPTS** the Final Report and Recommendation [Doc. 56] as the opinion and order of this Court. It is hereby **ORDERED** that Defendant's Motion for Summary Judgment [Doc. 45] is **GRANTED**, and that judgment be entered in favor of Defendant State of Georgia, Governor's Office of Student Achievement.

IT IS SO ORDERED this 17th day of September, 2021.

Mark H. Cohen

MARK H. COHEN
United States District Judge