

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

MICHAEL DUCKWORTH,

Plaintiff,

v.

Case No.: **3:15-cv-1221-J-25JBT**

PILGRIM'S PRIDE CORPORATION,

Defendant.

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ORDER

THIS CAUSE is before the Court on Defendant Pilgrim's Pride Corporation's (PPC) Motion for Summary Judgment (Dkt. 39). Plaintiff Michael Duckworth (Duckworth) brings this action for alleged disability discrimination in violation of the Florida Civil Rights Act (FCRA) (Dkt. 2).

I. Background

Mr. Duckworth began working for PPC, a poultry processing company, in 2004 to 2008 at its Natchitoches, Louisiana plant, as a debone supervisor (Dkt. 39, ex. 3, p. 3; ex. 4, pp. 10-11; ex. 5, p. 133). On April 1, 2013, PPC hired Mr. Duckworth as a first shift debone supervisor at its Live Oak plant (Dkts. 39, ex. 3, p. 3; ex. 4, pp. 13-18; 43, ex. 45, p. 3).

As the first shift supervisor, Mr. Duckworth typically worked from 5:30 a.m. until 3 p.m. Monday through Friday (Dkt. 39, ex. 7, pp. 58-59). In this

position, Mr. Duckworth supervised two debone production lines of approximately seventy employees (Dkt. 39, ex. 4, p. 18; ex. 8, pp. 34-35).

Mr. Duckworth's responsibilities as debone supervisor included being on the production floor to make the necessary preparations for the production line to start, performing a daily safety check, and ensuring that the machines were functioning (Dkt. 39, ex. 2, pp. 117-19; ex. 4, p. 86).

While he was employed for PPC, Mr. Duckworth's immediate supervisor was Johnny Gay (Dkts. 39, ex. 2, p. 29; ex. 4, pp. 21-22, 86-87; ex. 8, p. 6; 43, ex. 45, p. 12). When Mr. Duckworth was not coming in to work, he would contact Mr. Gay on his personal cell phone or office phone (Dkt. 39, ex. 4, pp. 27, 34-35). At times, Mr. Duckworth would also contact Michael Massey, Mr. Gay's supervisor, about his absences (Dkt. 39, ex. 4, pp. 35, 67, 86).

Any medical leave documents were sent to Princess Williams, the benefits coordinator for PPC's Human Resources department (Dkt. 39, ex. 4, pp. 39-43, 111-12; ex. 5, pp. 8-9). Ms. Williams reported to Abel Acen, PPC's complex human resources manager (Dkt. 39, ex. 2, pp. 21-22, 111-12). At times, Sheryl Robinson, a quality assurance employee at PPC, would submit Mr. Duckworth's medical absence documents to Ms. Williams (Dkt. 39, ex. 4, pp. 40-45; ex. 17, pp. 5-8).

On October 22 and 23, 2013, Mr. Duckworth went to the emergency department at Shands Live Oak with chest pains and received a return to work note dated October 24, 2013 (Dkt. 39, ex. 7, p. 73; ex. 12). On October 24, 2013, Mr. Duckworth was admitted to the emergency department at South Georgia Medical Center and remained until the following day (Dkt. 39, ex. 2, pp. 177-79; ex. 7, pp. 73-76; ex. 13). Mr. Duckworth was again admitted to the hospital on October 28, 2013, and was discharged on October 30, 2013 (Dkt. 39, ex. 2, pp. 177-79; ex. 7, pp. 73-76; ex. 13).

PPC approved Mr. Duckworth to take a medical leave of absence from October 22 through November 6, 2013 (Dkt. 39, ex. 2, pp. 82, 346; ex. 4, pp. 42-56). Upon returning to work on November 6, Mr. Duckworth had symptoms of a stroke and was taken to the emergency department at Shands at the University of Florida and admitted (Dkt. 39, ex. 4, p. 48; ex. 7, pp. 76-79; ex. 15).

PPC approved Mr. Duckworth to take a medical leave of absence from November 7 through 18, 2013 (Dkt. 39, ex. 2, p. 346). On November 14, Mr. Duckworth was admitted to the hospital and scheduled for surgery for "severe cervical stenosis at C3-4 with cord compression." (Dkt. 39, ex. 5, p. 31; ex. 16, pp. 6-15).

Dr. Christopher Rumana, a neurological surgeon at the Tallahassee Neurological Clinic, performed Mr. Duckworth's surgery on November 16, 2013 (Dkt. 39, ex. 16, pp. 6-15). Mr. Duckworth was discharged on November 17, 2013 with instructions as follows: "Light activity and follow up with office in two weeks for routine postoperative follow-up." (Dkt. 39, ex. 16, pp. 18-19).

Dr. Adolfo Dulay, Mr. Duckworth's primary care doctor, provided Mr. Duckworth with a note to be excused from work from November 18 to December 9, 2013, without restrictions (Dkts. 39, ex. 7, pp. 78-79; 137; ex. 10, pp. 48-49; 43, ex. 25, p. 12).

After his postoperative visit on December 5, 2013, Dr. Rumana issued Mr. Duckworth a note that he was "able to return to light work duty" on December 23, 2013 (Dkt. 39, ex. 16, pp. 26-36, 79, 81). Dr. Rumana explained from a medical perspective "light work duty" involved "avoiding lifting much more than 20 pounds . . . significant physical activities," and "significant pushing and pulling." (Dkt. 39, ex. 16, pp. 29-30, 81).

Mr. Duckworth returned to work on December 23, 2013 (Dkt. 39, ex. 7, pp. 77-83). Mr. Duckworth testified that he did not have any physical limitations as a result of the surgery (Dkt. 39, ex. 7, pp. 55-56, 78).

Shortly thereafter, Mr. Duckworth was absent January 6 through 10, and 13, 2014, and did not provide advance notice or documentation for his absences (Dkt. 39, ex. 2, pp. 41-51, 63-65, 81-86, 95-99, 112-55, 185, 215, 295-302, 306-20).

The company policy regarding absences for salaried employees required Mr. Duckworth to report an absence to his direct supervisor, Mr. Gay (Dkt. 39, ex. 2, pp. 119-20). After receiving complaints from Mr. Duckworth's supervisor and two plant managers regarding his absences, Mr. Acen met with Ms. Williams to review Mr. Duckworth's absences from this time period, and concluded proper documentation did not exist to justify his absences (Dkt. 39, ex. 2, pp. 96-99, 112-21, 153).

For instance, on January 6, 2014, Mr. Duckworth sent an email to Edgar Thomas at 7:10 a.m., approximately two hours after his shift had begun, that indicated he would not be at work that day (Dkts. 39, ex. 2, pp. 120-21, 295; 43, ex. 17). At that time, Mr. Thomas was not Mr. Duckworth's direct supervisor and Mr. Gay was the appropriate person to notify about his absence (Dkt. 39, ex. 2, pp. 120-26; ex. 8, p. 6).

On the following day, January 7, 2014, Mr. Duckworth sent an email at 9:53 p.m. to Mr. Thomas and Sabrina Henderson that stated, "the[y] have me off all the week having tro[u]ble with blood pr[essure] and having

proble[m] with my heart be back Monday.” (Dkts. 39, ex. 2, pp. 126-31, 296; 43, ex. 17, p. 4).

On January 8, 2014, Mr. Duckworth sent an email prior to his shift with an identical message as that of the prior day to Ms. Henderson and Mr. Thomas (Dkt. 39, ex. 2, pp. 126-29, 185, 297). Ms. Henderson and Mr. Thomas were not Mr. Duckworth’s direct supervisors (Dkt. 39, ex. 2, pp. 126-32). Mr. Duckworth did not provide any documentation for his absence on January 9, 2014 (Dkt. 39, ex. 2, pp. 132, 295-98).

Mr. Duckworth was also absent on January 10, 2014 (Dkt. 39, ex. 2, p. 132). At 7:12 a.m. on this date, approximately two hours after Mr. Duckworth’s shift would have started, he called in to PPC’s answering machine for employees who are unable to obtain prior approval for an absence (Dkt. 39, ex. 2, p. 316; ex. 3, p. 4).

On January 13, 2014, Mr. Duckworth sent an email at 7:15 a.m. to Heather Horton, Mr. Thomas and Ms. Henderson that he would not be coming in to work, which was approximately two hours after his shift would have started (Dkt. 39, ex. 2, pp. 132-34, 250, 298).

Mr. Duckworth returned to work on January 14, 2014, but the following day he left prior to completing his shift and was absent on January 16 (Dkt. 39, ex. 2, pp. 134, 139-43, 215).

On January 17, 2014, Mr. Duckworth sent an email to Mr. Gay and Ms. Williams at 6:23 a.m. alerting them that he would not be coming in to work that day and that Ms. Robinson would turn in his doctor's note (Dkt. 39, ex. 2, pp. 136-43, 300). The doctor's note PPC received on January 17, 2014 from Dr. Dulay states the basis for the note as "excuse[d] due to illness" with a return to work date of January 20, 2014 (Dkt. 39, ex. 2, pp. 106, 137, 186).

On January 20, Mr. Duckworth notified Mr. Gay and Ms. Williams by email that he would be out until January 22, 2014 (Dkt. 39, ex. 2, pp. 143-44, 301). Mr. Duckworth sent another email at 7:34 a.m. on January 21, 2014 to Mr. Gay, Christopher Kennedy and Ms. Williams that he would return the next day (Dkt. 39, ex. 2, p. 302). On this same date, PPC received a note from Dr. Dulay that said Mr. Duckworth was able to return to work "full duty" on January 22, 2014 (Dkt. 39, ex. 2, pp. 107, 187).

When he arrived at work on January 22, 2014, he was informed by the plant manager to see Mr. Acen, who sent Mr. Duckworth home (Dkt. 39, ex. 2, pp. 64, 138; ex. 4, pp. 66-70). Mr. Acen notified Mr. Duckworth by letter that his employment was terminated effective January 23, 2014 for "Excessive Absenteeism" (Dkt. 39, ex. 2, pp. 153, 253; ex. 4, pp. 66-67).

On November 15, 2014, Mr. Duckworth filed a charge of discrimination with the Florida Commission on Human Relations based in part on alleged disability discrimination (Dkt. 39, ex. 4, pp. 88-91; ex. 5, pp. 13-16, 63).

II. Standard¹

Summary judgment will be granted when “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986) (quoting Fed. R. Civ. P. 56(c)).

A genuine issue of material fact 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). The party seeking summary judgment has the burden to demonstrate no dispute exists as to any material fact in the case. *Branche v. Airtran Airways, Inc.*, 342 F.3d 1248, 1252-53 (11th Cir. 2003). All evidence and inferences from the underlying facts must be viewed in the light most favorable to the

¹ Internal citations and quotations will be omitted throughout this Order.

nonmovant. *Earley v. Champion Int'l Corp.*, 907 F.2d 1077, 1080 (11th Cir. 1990).

III. Analysis

Mr. Duckworth claims PPC discriminated against him based on his disability or perceived disability when it terminated him (Dkt. 2, pp. 3-4). Mainly, Mr. Duckworth's Complaint references his treatment and diagnoses of stroke and heart attacks that proved to be false and his surgery for "three herniated discs pinching the nerve in his neck." (Dkt. 2, pp. 2-3). In his Opposition, Mr. Duckworth argues that his blood pressure and spinal stenosis impeded his ability to work (Dkt. 46, pp. 9-10).

In support of his claim, Mr. Duckworth alleges that PPC treated him differently than similarly situated employees who were not disabled or perceived as disabled (Dkt. 2, p. 3).²

² Mr. Duckworth's Opposition, however, asserts that PPC "terminated him because of his disability and/or refused to continue to provide reasonable accommodations." (Dkt. 46, p. 11). Mr. Duckworth also argues that whether PPC treated non-disabled employees differently is not relevant to whether PPC discriminated against him by failing to reasonably accommodate his disability.

Notably, a disparate treatment claim is distinct from a failure to accommodate claim brought pursuant to the ADA. *Holly v. Clairson Indus., L.L.C.*, 492 F.3d 1247, 1261-62 (11th Cir. 2007) (discussing that it is unnecessary in a failure to accommodate claim to show that the employer treated non-disabled employees differently); see *Monaco v. City of Jacksonville*, 51 F. Supp. 3d 1251, 1257 (M.D. Fla. 2014).

As alleged, Mr. Duckworth's Complaint does not track a failure to accommodate claim. See Eleventh Circuit Civil Pattern Jury Instructions 4.12 (2013); see also *Leme v. S. Baptist Hosp. of Fla., Inc.*, 248 F. Supp. 3d 1319,

Pursuant to the FCRA, it is unlawful for an employer to discriminate against an employee on the basis of a handicap. Fla. Stat. § 760.10. A claim of disability discrimination brought under the FCRA is analyzed under the same framework as claims brought under the Americans with Disabilities Act (ADA). *Greenberg v. Bellsouth Telecomms., Inc.*, 498 F.3d 1258, 1263-64 (11th Cir. 2007). To establish a prima facie case of disability discrimination, a plaintiff must show that he “(1) is disabled, (2) is a qualified individual, and (3) was subjected to unlawful discrimination because of [his] disability.” *Id.*

In a disparate treatment claim, the burden-shifting framework established in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973), applies. See *Raytheon Co. v. Hernandez*, 540 U.S. 44, 49 n.3 (2003). Once a prima facie case is shown, the burden then shifts to the employer to “articulate a legitimate, nondiscriminatory reason for its employment action.” *Id.* Upon the employer satisfying its burden, “the plaintiff can still prove disparate treatment by, for instance, offering evidence demonstrating that the employer’s explanation is pretextual.” *Id.*

1337 n.32 (M.D. Fla. 2017) (noting that plaintiff was precluded from proceeding on a failure to accommodate theory because he failed to plead it).

Even assuming *arguendo* that Mr. Duckworth has presented a prima facie case for disability discrimination, PPC has proffered a legitimate, non-discriminatory reason for terminating Mr. Duckworth.

PPC's proffered reason for terminating Mr. Duckworth was for his absences in January of 2014 and his failure to produce doctor's notes to justify his absences for January 6 through 10, and 13, 2014 (Dkt. 39, ex. 2, pp. 119-55, 185, 215, 295-302, 306-20).

According to the Declaration of Robert Riley, a complex human resources manager at PPC since June of 2014, supervisors were expected to call in an absence two hours before his or her start time (Dkt. 39, ex. 3, pp. 2-4). Mr. Riley stated that PPC could immediately terminate a supervisor without progressive discipline for violating its attendance or leave policies (Dkt. 39, ex. 3, p. 5). Mr. Riley declared that PPC's policies have not changed since Mr. Duckworth's departure (Dkt. 39, ex. 3, p. 2).

One such policy is that after three or more consecutive absences due to an illness, an employee is expected to present a doctor's note (Dkt. 39, ex. 3, pp. 5, 21). Another policy requires an employee to contact his immediate supervisor or call the answering machine prior to the start of his shift if prior approval for an absence is not obtained (Dkt. 39, ex. 3, p. 4).

Further, PPC's Employee Handbook warns employees that if one is absent three consecutive scheduled working days without notifying one's supervisor or department manager, "the Company will assume you have quit and as such, you may be terminated." (Dkt. 39, ex. 2, p. 232).

In addition, the Handbook states that "[e]xcessive absences or failure to comply with the Attendance Policy may result in . . . termination of employment." (Dkt. 39, ex. 2, pp. 232-33). Employees are also informed that "[t]he employee must notify the Company on each day he or she will be absent from work unless other arrangements are made in advance." (Dkt. 39, ex. 2, p. 233). PPC's Handbook does not explicitly mention supervisors, but does state that it applies to all of its salaried employees (Dkt. 39, ex. 2, p. 225). Mr. Duckworth was a salaried supervisor while employed with PPC (Dkt. 39, ex. 2, pp. 174-75; ex. 4, p. 14).

When he began his employment, Mr. Duckworth went through training on PPC's policies for salaried employees and his signature appears on PPC's form acknowledging that he received a copy of the policies and agreed to comply with them (Dkt. 39, ex. 3, pp. 3-4, 37). The record reflects that Mr. Duckworth was expected to report an absence to his direct supervisor, Mr. Gay, or to call PPC's answering machine prior to his normal starting time (Dkt. 39, ex. 2, pp. 119-20, 232-33).

Mr. Acen described the “tremendous hardship on the company” when a supervisor is absent without giving it proper notice in part due to its perishable product and the production process (Dkt. 39, ex. 2, pp. 100-02). According to Mr. Acen, the loss of a supervisor was “[v]ery significant” in the debone area at that time and contributed to the chaos of beginning production (Dkt. 39, ex. 2, pp. 122-25).

Further, Mr. Acen received complaints from Mr. Gay, Mr. Gay’s supervisor, the plant manager, and the complex manager concerning Mr. Duckworth’s absences in January based on Mr. Duckworth’s failure to provide proper advance notice or documentation for his absences before his shift started despite having been released to return to work on December 23 (Dkt. 39, ex. 2, pp. 41-49, 68-69; 100-02, 112-35, 152).

The Court finds that PPC has adequately articulated a legitimate, non-discriminatory reason for Mr. Duckworth’s termination. *See Raytheon Co.*, 540 U.S. at 49 n.3; *McCoy v. Geico Gen. Ins.*, 510 F. Supp. 2d 739, 752 (M.D. Fla. 2007). Because PPC has offered a legitimate, non-discriminatory reason for Mr. Duckworth’s termination, the burden shifts to Mr. Duckworth to demonstrate that PPC’s proffered reason was merely pretext for discrimination. *See Alvarez v. Royal Atl. Developers, Inc.*, 610 F.3d 1253, 1264-65 (11th Cir. 2010).

To show pretext, Mr. Duckworth must present sufficient evidence “to demonstrate a genuine issue of material fact as to the truth or falsity of [PPC’s] legitimate, nondiscriminatory reasons.” See *Corning v. Lodgenet Interactive Corp.*, 896 F. Supp. 2d 1138, 1150 (M.D. Fla. 2012) (quoting *Schoenfeld v. Babbitt*, 168 F.3d 1257, 1269 (11th Cir. 1999)).

Mr. Duckworth can show PPC’s proffered reason was false by pointing to “such weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions in [PPC’s] proffered legitimate reasons for its action that a reasonable factfinder could find them unworthy of credence.” See *Silvera v. Orange Cty. Sch. Bd.*, 244 F.3d 1253, 1258 (11th Cir. 2001).

However, Mr. Duckworth “is not allowed to recast [PPC’s] proffered nondiscriminatory reasons or substitute his business judgment for that of [PPC].” See *Chapman v. Al Transp.*, 229 F.3d 1012, 1030 (11th Cir. 2000). If PPC’s “proffered reason is one that might motivate a reasonable employer, [Mr. Duckworth] must meet that reason head on and rebut it, and [Mr. Duckworth] cannot succeed by simply quarreling with the wisdom of that reason.” *Id.* Likewise, the Court does “not sit as a super-personnel department that reexamines an entity’s business decisions. . . . Rather our

inquiry is limited to whether the employer gave an honest explanation of its behavior.” *Id.*

In his Complaint, Mr. Duckworth alleges that “he was treated differently than similarly situated non-disabled/perceived-as-disabled employees.” (Dkt. 2, p. 3). However, Mr. Duckworth does not identify relevant comparators in his Opposition (Dkt. 46, p. 11). In its motion, PPC provides Mr. Gay and Mr. Massey as relevant comparators based on Mr. Duckworth’s interrogatory responses, which identified them as similarly situated individuals who were treated differently or more favorably because PPC allegedly assigned them to office duty after having surgery (Dkt. 39, p. 22; ex. 4, pp. 85-87; ex. 6, p. 14).

For an employee to be similarly situated for purposes of showing evidence of discrimination, a comparator’s misconduct must be “nearly identical to prevent courts from second-guessing employers’ reasonable decisions and confusing apples with oranges.” *Maniccia v. Brown*, 171 F.3d 1364, 1368 (11th Cir. 1999).

The evidence supports that both Mr. Massey and Mr. Gay held management positions above that of Mr. Duckworth, and that they had their own designated offices from which they worked (Dkt. 39, ex. 4, pp. 85-87).

Mr. Duckworth testified that as a debone supervisor, he did not have

an office. Instead, evidence supports that Mr. Duckworth had a standing position as a supervisor at PPC and was responsible for being on the floor (Dkt. 39, ex. 4, pp. 86-87). In other words, Mr. Duckworth's supervisors had offices while his position required him to be on the production floor (Dkt. 39, ex. 2, pp. 117-18; ex. 4, pp. 18-23, 35, 67, 86-87; ex. 8, p. 6).

Of note, additional testimony was presented that Teshell Phillips, a supervisor of debone packing, was absent for approximately six weeks in 2013 (Dkt. 39, ex. 9, p. 10). Unlike Mr. Duckworth, however, Ms. Phillips was on leave pursuant to the Family and Medical Leave Act during this absence (Dkt. 39, ex. 4, pp. 42-43, 68, 89; ex. 9, pp. 10, 17, 26).

Mr. Duckworth has failed to provide sufficient evidence to support that his proffered comparators were similarly situated to raise a genuine issue of material fact about pretext. Mr. Duckworth also attempts to show pretext by asserting in his Opposition that conflicts in the testimony of Mr. Acen, Ms. Williams, and Edgar Thomas, a shift manager at PPC, support that PPC's proffered reason was not the true reason for his termination (Dkt. 46, p. 13). Underlying Mr. Duckworth's allegations are PPC's policies and how it enforced them.

Whether Mr. Acen requested notes from Mr. Duckworth for his absences in January does not support that PPC's proffered reason was

false. Nor does Mr. Duckworth's claim regarding a lack of evidence that he received written warnings about excessive absenteeism support that PPC's proffered reason was not the true reason for his termination.

To the contrary, the evidence provided supports PPC's proffered reason that Mr. Duckworth was terminated because of his absences and failure to justify those absences (Dkts. 39, ex. 2, pp. 119-44, 253, 295-300; ex. 4, pp. 23-24; ex. 8, pp. 33-35; 43, exs. 6, 8, 17).

Thus, Mr. Duckworth has not provided sufficient evidence for a reasonable factfinder to conclude that PPC's proffered reason for his termination was pretext for discrimination. Accordingly, it is


ORDERED:

1. Defendant's Motion for Summary Judgment (Dkt. 39) is

GRANTED; and

2. The Clerk is directed to enter judgment in favor of Defendant and against Plaintiff and **close** the case.

DONE AND ORDERED this 16 day of February, 2018.


HENRY LEE ADAMS, JR.
United States District Judge

Copies to: Counsel of Record