Partha A. Rai Chowdhuri
(Appellant Case No 18-2319
United States Fourth Circuit Court of Appeals
Petitioner for Writ of Certiorari
Supreme Court of the United States)
13714 Bidwell Place,
Bristow,
VA 20136.

Appendix A: Order of United States Court for District of Maryland dated 16 August 2017.

Appendix B: Order of United States Court for District of Maryland dated 24 October 2018.

Appendix C: Order of United States Court of Appeals for the Fourth Circuit dated 16 July 2019.

Appendix D: Order of United States Court of Appeals for the Fourth Circuit dated 27 August 2019.

Appendix E: Order of United States Court of Appeals for the Fourth Circuit dated 4 September 2019.

Appendix F: Appendix containing Professional Networking pages for Mr. Jonas Okwara with Petitioner's remarks.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

PARTHA A. RAI CHOWDHURI,

Plaintiff,

v. Civil Action No. PX 16-3135

SGT, INC.,
CYBERDATA TECHNOLOGIES, INC.,

Defendants.

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MEMORANDUM OPINION

Pending in this employment discrimination case is a motion to dismiss or, in the alternative, for summary judgment filed by Defendant Cyberdata Technologies, Inc. ("Cyberdata") (ECF No. 22) and two motions for leave to file a surreply filed by Plaintiff Partha A. Rai Chowdhuri ("Plaintiff") (ECF Nos. 90, 91). The issues are fully briefed, and the Court now rules pursuant to Local Rule 105.6 because no hearing is necessary. For the reasons stated below, the Defendant's motion is denied and Plaintiff's motions for leave to file a surreply are denied as moot. Also pending is Plaintiff's motion to proceed in forma pauperis. *See* ECF No. 68. Because Plaintiff appears to be indigent, this motion shall be granted.

I. BACKGROUND[1]

On April 27, 2015, Defendant SGT, Inc. ("SGT") hired Plaintiff as a Software Engineer III. Plaintiff was assigned to SGT's Weather and Climate Computing Infrastructure Services ("WCCIS") contract, under which SGT served as a subcontractor to Defendant Cyberdata. *See*

[1] These facts are taken from Plaintiff's amended complaint and are accepted as true for purposes of assessing the sufficiency of his claim.

Amend. Compl., ECF No. 19 at 4.[2] Carmen Jenkins, a Cyberdata employee, headed the committee that interviewed Plaintiff and recommended his hiring for the WCCIS contract. *Id.*

Although SGT was Plaintiff's employer, Plaintiff alleges that Cyberdata maintained significant control over his work including supervision of his day-to-day activities, issuing work assignments, and conducting performance evaluations. Cyberdata also approved Plaintiff's requests for leave, maintained his time and attendance records, and furnished Plaintiff his work space and equipment. *Id.*

In September 2015, Plaintiff approached Jenkins and an SGT manager, Rexford Bowling, to complain that one of Plaintiff's colleagues, Jonas Okwara, had been given an unreasonable performance review and was ultimately fired because he is African-American. ECF No. 19 at 5. Jenkins responded by criticizing Plaintiff's poor spoken English and telling Plaintiff that he would be "placed in performance appraisal." *Id.*

Plaintiff also alleges that the Defendants deliberately implemented a plan to exclude non-caucasian code developers. By the fourth quarter of 2015, all of the non-caucasian developers had been discharged except for Plaintiff. *Id.* The discharged non-caucasian employees had comparable or higher qualifications than their similarly-situated caucasian employees. Prior to termination, Defendants had given the discharged non-caucasian employees unreasonable workloads and unsubstantiated poor performance reviews.

After Plaintiff complained about the above-described unfair treatment, Cyberdata subjected Plaintiff to multiple additional performance reviews from October 2015 through April 2016. *Id.* at 7. Plaintiff also found himself in "an unbearable and hostile employment environment," marked by false and disparaging commentary regarding his interactions with co-

[2] Defendants SGT and CyberData will be collectively referred to as "the Defendants" for the remainder of this Memorandum.

workers and his work abilities; hurtful jokes about his medical condition; and purposely confusing instructions regarding work assignments. *See id.* at 6–7.

On January 7, 2016, Plaintiff notified SGT that he planned to file a discrimination suit against it. Around that same time, he informed both SGT and Cyberdata that he was suffering from medical issues for which he would need leave from work for treatment. The Defendants, in response, increased his work load and performance evaluations, and falsely accused him of taking leave without permission. *Id.* at 7.

On January 22, 2016 and April 18, 2016, Plaintiff notified both Defendants that he filed administrative charges of discrimination against them with the Prince George's County Human Relations Commission and the Maryland Commission on Civil Rights. In response, Defendants escalated the unreasonable performance reviews, and tightened deadlines on Plaintiff's work assignments. *Id.* at 7–8. SGT then notified Plaintiff in writing on April 25, 2016 that he was terminated. *Id.* at 8. Although SGT claims that it removed Plaintiff from the WCCIS contract "at the customer[] [Cyberdata's] request," Plaintiff maintains that Cyberdata had no legitimate basis to fire him. *Id.* Plaintiff was then replaced with a white employee. *Id.* at 8.

On June 14 and 15, 2016, the Equal Employment Opportunity Commission ("EEOC") issued Plaintiff two right-to-sue letters. *Id.* at 3. Plaintiff filed his complaint in this Court on September 12, 2016 which he amended on December 8, 2016. ECF Nos. 1, 19. Plaintiff brings claims of retaliation and discrimination on account of his race, national origin, and color, as well as hostile work environment, in violation of Title VII of the Civil Rights Act of, 42 U.S.C. §2000e *et seq.*; 42 U.S.C. §1981; the Maryland Fair Employment Practices Act ("FEPA"), Md. Code Ann., State Gov't § 20–601; and § 2–222 of the Prince George's County Code. *See* ECF No. 19.

On December 20, 2016, SGT answered the amended complaint. Cyberdata filed its motion to dismiss or, in the alternative, for summary judgment on December 22. *See* ECF No. 22. Plaintiff's counsel withdrew her appearance on January 23, 2017. *See* ECF No. 28. Plaintiff, now proceeding pro se, responded to the motion. *See* ECF No. 78. Plaintiff has also filed a Motion for Leave to Proceed In Forma Pauperis, *see* ECF No. 68, and two Motions for Leave to File a Surreply, ECF Nos. 90, 91. The Court addresses each motion in turn.

II. STANDARD OF REVIEW

Defendant Cyberdata styles its motion as one to dismiss, or in the alternative, for summary judgment and attaches exhibits to its motion. Pursuant to Fed. R. Civ. P. 12(d), materials beyond the four corners of the complaint may be considered only if the motion to dismiss is treated as a motion for summary judgment and Plaintiff is given an opportunity to respond. Fed. R. Civ. P. 12(d). Whether to convert a motion to dismiss to one for summary judgment is a matter within the Court's "complete discretion." *Sager v. Hous. Comm'n of Anne Arundel Cty.*, 855 F. Supp. 2d 524, 542 (D. Md. 2012). The Court's discretion, however, "should be exercised with great caution and attention to the parties' procedural rights." *Id.* (quoting 5C Charles Alan Wright et al., Federal Practice & Procedure § 1366, at 149 (3d ed. 2004, 2011 Supp.)). "In general, courts are guided by whether consideration of extraneous material 'is likely to facilitate the disposition of the action,' and 'whether discovery prior to the utilization of the summary judgment procedure' is necessary." *Id.* (internal citation omitted). Where, as here an unrepresented plaintiff has stated a facially valid claim for relief, this Court declines to treat the motion as one for summary judgment. *Cf. Strothers v. City of Laurel, Md.*, 118 F. Supp. 3d 852, 866 (D. Md. 2015).

The purpose of a motion to dismiss under Rule 12(b)(6) is to test the sufficiency of the complaint. *Presley v. City of Charlottesville*, 464 F.3d 480, 483 (4th Cir. 2006) (citation and

internal quotation marks omitted). When ruling on a motion under Rule 12(b)(6), the court must "accept the well-pled allegations of the complaint as true," and "construe the facts and reasonable inferences derived therefrom in the light most favorable to the plaintiff." *Ibarra v. United States*, 120 F.3d 472, 474 (4th Cir. 1997). "The mere recital of elements of a cause of action, supported only by conclusory statements, is not sufficient to survive a motion made pursuant to Rule 12(b)(6)." *Walters v. McMahen*, 684 F.3d 435, 439 (4th Cir. 2012) (citing *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)).

To survive a motion to dismiss, a complaint's factual allegations "must be enough to raise a right to relief above the speculative level on the assumption that all the allegations in the complaint are true (even if doubtful in fact)." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (internal citations omitted). "To satisfy this standard, a plaintiff need not 'forecast' evidence sufficient to prove the elements of the claim. However, the complaint must allege sufficient facts to establish those elements." *Walters*, 684 F.3d at 439 (citation omitted). "Thus, while a plaintiff does not need to demonstrate in a complaint that the right to relief is 'probable,' the complaint must advance the plaintiff's claim 'across the line from conceivable to plausible.'" *Id.* (quoting *Twombly*, 550 U.S. at 570).

III. ANALYSIS

Cyberdata first argues that Plaintiff's Title VII claims against it must be dismissed because Plaintiff was employed by SGT, not Cyberdata. "An entity can be held liable in a Title VII action only if it is an 'employer' of the complainant." *Butler v. Drive Automotive Indus. of Am., Inc.*, 793 F.3d 404, 408 (4th Cir. 2015). But even if an entity is not plaintiff's formal employer, it may be considered a joint employer for purposes of Title VII liability if it exercises "sufficient control of the terms and conditions of [the plaintiff's] employment." *Id.* (internal

quotation marks omitted) (citing *Torres–Negrón v. Merck & Co.*, 488 F.3d 34, 40 n.6 (1st Cir. 2007)). The joint employer doctrine "prevents those who effectively employ a worker from evading liability by hiding behind another entity, such as a staffing agency." *Id.* at 410.

The United States Court of Appeals for the Fourth Circuit directs district courts to consider the following factors to determine whether an entity is properly considered a joint employer:

> (1) authority to hire and fire the individual;
>
> (2) day-to-day supervision of the individual, including employee discipline;
>
> (3) whether the putative employer furnishes the equipment used and the place of work;
>
> (4) possession of and responsibility over the individual's employment records, including payroll, insurance, and taxes;
>
> (5) the length of time during which the individual has worked for the putative employer;
>
> (6) whether the putative employer provides the individual with formal or informal training;
>
> (7) whether the individual's duties are akin to a regular employee's duties;
>
> (8) whether the individual is assigned solely to the putative employer; and
>
> (9) whether the individual and putative employer intended to enter into an employment relationship.

Id. at 414. Although none of these factors are dispositive, the first three are the most important. *Id.* As the Fourth Circuit explained:

> The first factor, which entity or entities have the power to hire the putative employee, is important to determining ultimate control. The second factor, to what extent the employee is supervised, is useful for determining the day-to-day, practical control of the employee. The third factor, where and how the work takes

> place, is valuable for determining how similar the work functions are compared to those of an ordinary employee.

Id. at 414–15; *see also Akwei v. Burwell*, No. DKC 15-1095, 2016 WL 3440125, at *5 (D. Md. June 23, 2016).

Applying the *Butler* factors to the amended complaint demonstrates that Cyberdata was Plaintiff's joint employer for purposes of Title VII liability. The first factor weighs in favor of joint employment. Plaintiff specifically avers that Cyberdata's employee, Carmen Jenkins, oversaw the committee that interviewed Plaintiff and recommended his hiring. *See* Amend. Compl., ECF No. 19 at 4. Moreover, Cyberdata could and did direct SGT to fire Plaintiff. *Id.* at 8. Therefore, taking the facts as alleged in the amended complaint as true, Cyberdata's role in Plaintiff's hiring and firing supports Cyberdata's "ultimate control" over Plaintiff. *Cf. Crump v. TCoombs & Assocs., LLC*, No. 2:13-cv-707, 2015 WL 5601885, at *19 (E.D. Va. Sept. 22, 2015) (holding that the first factor indicated that the Navy was the plaintiff's employer because "the Navy had some role in hiring the [p]laintiff, [as] . . . it set the qualifications" for the position and that the Navy had at least partial authority to terminate the plaintiff).

Regarding the second factor, Cyberdata argues that it "had no control over matters governing the essential terms and conditions of employment of any SGT employees, including Plaintiff." ECF No. 22 at 9. However, Plaintiff's amended complaint specifically avers that Jenkins supervised his day-to-day work, assigned him tasks, evaluated his performance on multiple occasions, and was involved in promoting SGT employees. *Id.* Cyberdata also controlled the scope of Plaintiff's interaction with its government clients. The amended complaint, therefore, sufficiently alleges that Cyberdata exerted day-to-day control over Plaintiff's employment.

Plaintiff's amended complaint also puts forward facts to satisfy the remaining *Butler* factors. The amended complaint specifically notes that Plaintiff worked exclusively for the WCCIS/Cyberdata contract, that Cyberdata furnished and serviced the equipment he used during his employment, and that Cyberdata maintained control over Plaintiff's employment records, including his time and attendance sheets. *Id.* at 4–5. As pleaded, therefore, Cyberdata maintained "sufficient control of the terms and conditions of [his] employment" to be considered a "joint employer" with SGT for Title VII purposes. *Butler*, 793 F.3d at 408 (4th Cir. 2015).

Cyberdata alternatively argues that even if it is considered Plaintiff's joint employer, Plaintiff still cannot maintain his claims for discrimination, retaliation, and hostile work environment pursuant to Title VII because the amended complaint fails to establish a *prima facie* case for each claim. Cyberdata also emphasizes that legitimate non-discriminatory and non-retaliatory reasons support Plaintiff's termination. Cyberdata likewise maintains that because Plaintiff's Title VII claims fail, Plaintiff's discrimination and retaliation claims under 42 U.S.C. § 1981, FEPA, and § 2–222 of the Prince George's County Code also fail for the same reasons. *See* ECF No. 22 at 17; *Nana-Akua Takyiwaa Shalom v. Payless Shoesource Worldwide, Inc.*, 921 F. Supp. 2d 470, 483 n.20 (D. Md. 2013) ("Section 1981 and FEPA claims of discrimination are analyzed under the same framework as Title VII."); *Mabry v. Capital One, N.A.*, No. GJH-13-02059, 2014 WL 6875791, at *8 n.4 (D. Md. Dec. 3, 2014) (explaining that Section 2–222 of the Prince George's County Code largely tracks Title VII).

Although Cyberdata correctly articulates the *McDonnell Douglas* burden shifting framework applicable to Title VII discrimination claims,[3] reliance on *McDonnell Douglas* is

[3] To prove discrimination where no direct evidence of discriminatory animus exists, *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973) dictates a three-step order of proof: (1) the plaintiff must first establish a *prima facie* case of employment discrimination or retaliation; (2) the burden of production then shifts to the employer to articulate a non-discriminatory or non-retaliatory reason for the adverse

misplaced at the motion to dismiss stage. The *McDonnell Douglas* framework establishes "an evidentiary standard, not a pleading requirement." *Swierkiewicz v. Sorema N. A.*, 534 U.S. 506, 510 (2002). Thus, a plaintiff in his complaint "need not plead facts sufficient to establish a *prima facie* case . . . to survive a motion to dismiss." *Woods v. City of Greensboro*, 855 F.3d 639, 648 (4th Cir. 2017). Rather, the complaint must simply include "sufficient factual allegations to support a plausible claim" of discrimination. *Id.* Plaintiff has done so here.

Specifically, Plaintiff alleges that he was a qualified and competent non-caucasian engineer capable of performing his job related duties. Plaintiff further alleges with specificity that he endured all manner of Defendants' prolonged unfavorable treatment, including termination, which his white counterparts were spared. Finally, Plaintiff avers that Defendants' adverse treatment was motivated by race, national origin, and color. When read as a whole, Plaintiff's allegations pass the "common sense plausibility analysis" necessary to allow the claims to proceed. *Id.* at 650. Cyberdata's motion to dismiss is therefore denied, and Plaintiff's motion to file a surreply is denied as moot.

IV. CONCLUSION

For the reasons stated above, Defendant Cyberdata's motion to dismiss is denied. Plaintiff's motion for leave to proceed in forma pauperis is granted, and Plaintiff's motions for leave to file a surreply are denied as moot. A separate Order follows.

8/16/2017
Date

/S/
Paula Xinis
United States District Judge

action; finally (3) the burden then shifts back to the plaintiff to prove by a preponderance of the evidence that the stated reason for the adverse employment action is a pretext and that the true reason is discriminatory or retaliatory. *Guessous v. Fairview Prop. Investments, LLC*, 828 F.3d 208, 216 (4th Cir. 2016) (internal citations omitted).

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

*

PARTHA A. RAI CHOWDHURI,

*

Plaintiff,

*

v. Civil Action No. PX 16-3135

*

SGT, INC.,
CYBERDATA TECHNOLOGIES, INC., *

*

Defendants.

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ORDER

For the reasons stated in the foregoing Memorandum Opinion, it is this 16th day of August 2017, by the United States District Court for the District of Maryland, ORDERED that:

1. The Motion to Dismiss or, in the alternative, for Summary Judgment filed by Defendant Cyberdata Technologies, Inc. (ECF No. 22) BE, and the same hereby IS, DENIED;

2. The Motion for Leave to Proceed In Forma Pauperis filed by Plaintiff Partha A, Rai Chowdhuri (ECF No. 68) BE, and the same hereby IS, GRANTED;

3. The Motion for Leave to File a Surreply filed by Plaintiff Partha A, Rai Chowdhuri (ECF Nos. 90, 91) BE, and the same hereby ARE, DENIED AS MOOT;

4. The Clerk is directed to transmit copies of the Memorandum Opinion and this Order to Plaintiff and counsel for Defendants.

/S/
PAULA XINIS
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

PARTHA A. RAI CHOWDHURI,	*	
Plaintiff,	*	
v.	*	Civil Action No. PX 16-3135
SGT, INC., CYBERDATA TECHNOLOGIES, INC.,	*	
Defendants.	*	

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MEMORANDUM OPINION

Pending in this employment discrimination case are motions for summary judgment filed by Defendants Cyberdata Technologies, Inc., ECF No. 129, and SGT, Inc. ECF No. 130. The issues have been fully briefed, and no hearing is necessary. *See* D. Md. Loc. R. 105.6. For the reasons stated below, Defendants' motions are GRANTED.

I. Background[1]

On April 27, 2015, Partha A. Rai Chowdhuri ("Rai Chowdhuri") began working for SGT, Inc., ("SGT") a federal contractor. ECF No. 130-4 ¶¶1, 3. SGT served as a subcontractor to a prime contractor, Cyberdata Technologies ("Cyberdata"), which in turn staffed its contract with the National Oceanic and Atmospheric Administration ("NOAA"). *Id.* ¶2. Rai Chowdhuri, a software engineer, provided computer coding support at a NOAA facility in College Park, Maryland. *Id.* ¶3. In addition to Rai Chowdhuri, who is Asian and a native of India, the contract-employees at the NOAA facility were White, Asian, Hispanic and Black. *Id.* ¶4.

[1] The following facts are undisputed. The facts alleged by Rai Chowdhuri, which Defendants dispute in near totality, are summarized in this Court's earlier Memorandum Opinion, ECF No. 92.

In October of 2015, Rai Chowdhuri's supervisor, Carmen Jenkins, expressed concerns about his performance to the contract program manager, Rexford Bowling, noting that Rai Chowdhuri was taking longer than expected to finish tasks assigned to him and would become defensive when given negative feedback. *Id.* ¶¶6, 7. Jenkins also reported that Rai Chowdhuri's written comments were hard to follow, his work contained errors, and he had not been adequately prepared for a presentation. *Id.* ¶7. Jenkins later memorialized these concerns in an email to Bowling, stating that "[a]t this point in time, I don't think things are irreparable, but we need to see some changes soon." ECF No. 130-5. Bowling then shared Jenkins' concerns with Rai Chowdhuri. ECF No. 130-4 ¶10. In November of 2015, Rai Chowdhuri received a merit increase in salary and an annual bonus, which Bowling later explained was to "encourage improvement." *Id.* ¶11. Rai Chowduri received the lowest bonus of any SGT employee on the contract. *Id.*

On December 4, 2015, Rai Chowdhuri filed a discrimination complaint with the Prince George's County Human Relations Commission and the Equal Employment Opportunity Commission ("EEOC"), alleging that he and his non-white colleagues were "unjustly criticized or reviewed," while white employees "faced no disciplinary action despite acknowledged ineptitude and performance issues." ECF No. 135-2. Rai Chowdhuri told the EEOC he had received a "negative unjustified performance review" that he believed was due to his race, color, and national origin. *Id.*

On December 13, 2015, Jenkins shared with Bowling in person and by email ongoing issues with Rai Chowdhuri's performance. *Id.* ¶13, ECF No. 130-6. As a result, Bowling placed Rai Chowdhuri on a thirty-day Performance Improvement Plan ("PIP") beginning in January of 2016. ECF No. 130-4 ¶13. The PIP, developed in conjunction with SGT's human

resources department, identified four areas for improvement: technical competency, timeliness in completing assignments, communication, and work quality. ECF No. 130-7. In response, Rai Chowdhuri wrote a letter to Bowling, denying vehemently that he needed improvement in any of these areas and stating that after his performance review in October of 2015, he had filed a discrimination complaint with the EEOC. ECF No.130-8.

On January 15, 2016, Rai Chowdhuri filed a second discrimination complaint with the Prince George's County Human Relations Commission and the EEOC, reiterating his allegations that "only dark skinned employees on my same contract receive unjustified criticism regarding our performance[.]" ECF No. 135-4. Rai Chowdhuri also alleged in these complaints that in October of 2015, he had complained of discrimination towards a colleague who was fired, and that same month, Rai Chowdhuri also began to receive unjustified criticism of his work. *Id.*

On January 20, 2016, Jenkins informed Bowling that while Rai Chowdhuri's writing had become clearer, his most recent coding included a major error, he had been unprepared for a code review, and had raised his voice in response to Jenkins' feedback. ECF No. 130-9. Jenkins again reported ongoing concerns on February 3, 2016. ECF No. 130-4. In response to these issues and Rai Chowdhuri's increased absences from work, the PIP was extended another thirty days. ECF No. 130-4 ¶41.

On April 20, 2016, SGT terminated Rai Chowdhuri's employment. ECF No. 135-5. As grounds for termination, SGT noted the ongoing performance deficiencies which persisted throughout the 60-day PIP period and Rai Chowdhuri's inability to complete assignments, as more fully described in the written termination letter. *Id.*

Thereafter, the EEOC issued "Right to Sue" letters to Rai Chowdhuri on June 14 and 15, 2016. ECF Nos. 135-4, -6. On September 12, 2016, Plaintiff filed suit, alleging discrimination

based on race (Asian), national origin (India), and color ("dark skinned"), in violation of Title VII of the Civil Rights Act, 42 U.S.C. § 2000e; 42 U.S.C. § 1981; the Maryland Fair Employment Practices Act ("FEPA") Md. St. Code Ann. State Gov't § 20-601; and § 2-222 of the Prince George's County Code (Counts I-VI); Rai Chowdhuri also alleges that he was subject to a hostile work environment (Count VIII), and retaliation for filing his EEOC complaints (Count VII).

Defendants Cyberdata and SGT (collectively, "Defendants") now move for summary judgment as to all counts, arguing that Plaintiff has failed to generate sufficient evidence to sustain his burden at trial as to all counts. For the following reasons, the Court agrees.

II. Standard of Review

Summary judgment is appropriate when the Court, construing all evidence and drawing all reasonable inferences in the light most favorable to the non-moving party, finds no genuine dispute exists as to any material fact, thereby entitling the movant to judgment as a matter of law. Fed. R. Civ. P. 56(a); *see In re Family Dollar FLSA Litig.*, 637 F.3d 508, 512 (4th Cir. 2011). Summary judgment must be granted "against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). "In responding to a proper motion for summary judgment," the opposing party "must present evidence of specific facts from which the finder of fact could reasonably find for him or her." *Venugopal v. Shire Labs.*, 334 F. Supp. 2d 835, 840 (D. Md. 2004), *aff'd sub nom. Venugopal v. Shire Labs., Inc.*, 134 F. App'x 627 (4th Cir. 2005) (citing *Anderson v. Liberty Lobby,* 477 U.S. 242, 252 (1986)); *Celotex*, 477 U.S. at 322–23. Genuine disputes of material fact are not created "through mere speculation or the building of one inference upon

another." *Othentec Ltd. v. Phelan*, 526 F.3d 135, 140 (4th Cir. 2008) (quoting *Beale v. Hardy*, 769 F.2d 213, 214 (4th Cir. 1985)). Where a party's statement of a fact is "blatantly contradicted by the record, so that no reasonable jury could believe it," the Court credits the record. *Scott v. Harris*, 550 U.S. 372, 380 (2007).

III. Discussion

A. Discriminatory Discharge (Counts I-VI)

Rai Chowdhuri argues that he was terminated on the basis of his race (Asian), national origin (Indian) and color ("dark skinned") in violation of Title VII and its state and local statutory analogs. Because the federal, state, and local claims are subject to the same standards of proof, the Court will treat the claims together. *James v. Booz-Allen & Hamilton, Inc.*, 368 F.3d 371, 375 n.1 (4th Cir. 2004); *Dyer v. Oracle Corp.*, No. PWG-16-521, 2016 WL 7048943, at *2 (D. Md. Dec. 5, 2016); *Schmidt v. Town of Cheverly, MD.*, 212 F. Supp. 3d 573, 579 (D. Md. 2016).

Rai Chowdhuri's discrimination claims are analyzed under the burden-shifting framework announced in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973). *See Wells v. BAE Sys. Norfolk Ship Repair*, 483 F. Supp. 2d 497, 507–08 & n.8 (E.D. Va. 2007); *Ennis v. Nat'l Ass'n of Bus. & Educ. Radio, Inc.*, 53 F.3d 55 (4th Cir. 1995), *as amended* (June 9, 1995), *as amended* (Mar. 14, 2008); *Hawkins v. PepsiCo, Inc.*, 203 F.3d 274, 278 (4th Cir. 2000); *Riddick v. MAIC, Inc.*, 445 F. App'x 686, 687, 689 (4th Cir. 2011). Pursuant to *McDonnell Douglas*, Rai Chowdhuri first must establish a *prima facie* case of discrimination by demonstrating that (1) he is a member of a protected group, (2) he was discharged, (3) he was fulfilling Defendants' legitimate expectations at the time of his discharge, and (4) the circumstances of his discharge raise a reasonable inference of unlawful discrimination (or that

the position was filled by a similarly qualified applicant outside the protected class). *See Wells*, 483 F. Supp. 2d at 507; *Ennis*, 53 F.3d at 58; *King v. Rumsfeld*, 328 F.3d 145, 149 (4th Cir. 2003).

If Rai Chowdhuri establishes his *prima facie* case, the burden then shifts to Defendants to offer a legitimate, non-discriminatory reason for his discharge. *See Guessous v. Fairview Prop. Invs., LLC*, 828 F.3d 208, 216–17 (4th Cir. 2016). If Defendants produce evidence justifying discharge, the burden then shifts back to Rai Chowdhuri to raise a genuine dispute of material fact as to whether the grounds for discharge are mere pretext for discrimination. *See id.* Although the framework "involves a shifting back and forth of the evidentiary burden, Plaintiff, at all times, retains the ultimate burden of persuading the trier of fact that the employer discriminated in violation of" the law. *Venugopal*, 334 F. Supp. 2d at 841.

First with respect to Rai Chowdhuri's *prima facie* case, viewing the evidence most favorably to him, he failed to demonstrate that he had been fulfilling Defendants' legitimate employment expectations at the time of discharge. From October of 2015 to Plaintiff's termination in April of 2016, Defendants consistently documented Rai Chowdhuri's deficiencies in the speed and quality of his work and offered suggestions for improvement. When Plaintiff's performance continued to suffer, Defendants imposed a thirty-day PIP which was extended to sixty days in an effort to address his delays and deficiencies in work product. Indeed, Rai Chowdhuri acknowledged that his work suffered from delays due to code errors. ECF 135-1 at 63-65, 77, 82, 91.

Although Rai Chowdhuri attempts to explain his code errors by asserting that some anonymous third party made "changes" to his coding, he has marshalled no evidence to support his suspicions. *See* ECF 125-1 at 274-75. Because suspicion, standing alone, amounts to little

more than speculation, it is insufficient to create a genuine issue of disputed fact as to the adequacy of Rai Chowdhuri's work performance.[2]

In response, Rai Chowdhuri vigorously argues that his salary increase and bonus distributed in November of 2015 is sufficient evidence to demonstrate that he was fulfilling Defendant's legitimate employment expectations. Even assuming that such an inference is plausible as of November 2015, Chowdhuri was not terminated until five months later, after a pattern of coding errors, delay in work productivity, absences, and other work-related deficiencies culminated in a sixty-day PIP. Accordingly, a one-time pay increase of modest proportions five months before termination cannot generate a dispute of material fact that Chowdhuri was not meeting his employer's legitimate expectations *at the time of discharge*.

Chowdhuri next contends that he "does not believe that he was incompetent at performing his job," ECF No. 134 at 25, thus generating a sufficient issue of disputed fact on performance for resolution at trial. The Court disagrees. Such self-evaluation "of course cannot establish a genuine issue" as to whether he was meeting employer expectations. *King*, 328 F.3d at 149. *See also Evans v. Techs. Applications & Serv. Co.*, 80 F.3d 954, 960–61 (4th Cir. 1996) ("It is the perception of the decision maker which is relevant, not the self-assessment of the plaintiff." (citation and internal quotation marks omitted)). Indeed, for the Court to hold otherwise would allow every discharge claim to reach the jury on the self-serving evaluation of the Plaintiff alone. Without evidence to corroborate that which Rai Chowdhuri claims, he has

[2] Rai Chowdhuri often complained to the Federal Bureau of Investigation of others tampering with his code, ECF 130-18 at 5-11, although the agency never responded in a manner consistent with crediting such complaints. SGT's security team also investigated Rai Chowdhuri's assertions of tampering and "found no evidence of any unauthorized entry". ECF No. 130-4. The Court also notes that even if someone tampered with Chowdhuri's code, coding was only one of many performance deficiencies; Chowdhuri also does not contest that his work included coding errors that he had not corrected.

simply failed to generate sufficient facts to demonstrate that he was meeting his employment expectations at the time of discharge.

Alternatively, even if Rai Chowdhuri could establish a *prima facie* case, he has nonetheless failed to generate sufficient evidence to rebut Defendants' legitimate, non-discriminatory reasons for terminating him. Rai Chowdhuri offers no evidence that Defendants' reasons for discharge were pretextual and that his race, color, or national origin were the true motive behind his termination. Instead, Rai Chowdhuri broadly disagrees that his work performance was deficient and asserts that his work "environment was not favorable . . . for good quality code development in time." ECF No. 134 at 30. Critical to the analysis here, the party opposing summary judgment "may not rest upon the mere allegations or denials of his pleading, but . . . must set forth specific facts showing that there is a genuine issue for trial." *Liberty Lobby, Inc.*, 477 U.S. at 248 (quoting former Rule 56(e)). Rai Chowdhuri has marshalled precious little besides his assertion that he was performing well in his job. This is not enough to create a genuine issue of disputed fact that the grounds for his termination were pretextual. Summary judgment as to the discrimination claims is, therefore, granted.

B. Retaliation (Count VII)

Rai Chowdhuri's retaliation claim is governed by the same burden-shifting framework as his discriminatory discharge claim. *See Strothers v. City of Laurel*, 895 F.3d 317, 327 (4th Cir. 2018). To make out a *prima facie* case of retaliation, Rai Chowdhuri must demonstrate that: (1) he engaged in protected activity, (2) Defendants took an adverse action against him, and (3) a causal link exists between the two. *Id.* at 327; *Rhoads v. FDIC*, 257 F.3d 373, 391–92 (4th Cir. 2001). If plaintiff puts forward sufficient evidence on his *prima facie* case, the burden then shifts to the defendant to show that the "purportedly retaliatory action was in fact the result of a

legitimate non-retaliatory reason." *Id.* at 328 (quoting *Foster v. Univ. of Md.-E. Shore*, 787 F.3d 243, 250 (4th Cir. 2015)). The plaintiff then must demonstrate that such evidence supporting a legitimate reason for the adverse action is instead pretextual. *Id.*

The gravamen of Rai Chowdhuri's retaliation claim rests on adverse employment action taken after he filed two complaints with the EEOC in December of 2015 and January of 2016. ECF No. 19 ¶89. Rai Chowdhuri more particularly contends that once Defendants learned of his complaints, they retaliated by "giving unreasonable workload, providing unreasonable performance reviews, and terminating his employment[.]" *Id.* ¶92.

It is undisputed that Rai Chowdhuri's EEOC complaints are protected activity and discharge is an adverse employment action, thus satisfying the first two elements of the *prima facie* case. The evidence is scant as to the causal link between the two. Rai Chowdhuri complained to the EEOC in December 2015 and January 2016 and was discharged the following April. Although "temporal proximity is sufficient to establish a causal connection at the *prima facie* stage," *Strothers*, 2018 WL 3321317 at *11, when "a plaintiff rests his case on temporal proximity alone, the temporal proximity must be very close." *Penley v. McDowell Cty. Bd. of Educ.*, 876 F.3d 646, 656 (4th Cir. 2017). *See King*, 328 F.3d at 151 n.5 (two and a half month gap between filing of EEOC complaint and termination "is sufficiently long so as to weaken significantly the inference of causation between the two events."). The Court is not convinced that a near three-month gap between the protected conduct and his termination, without any other evidence, is sufficient to survive challenge.

That said, even assuming Rai Chowdhuri has demonstrated a *prima facie* case, he has failed to rebut Defendants' legitimate, non-retaliatory reason for terminating him. Rai Chowdhuri relies solely on his complaints to the EEOC as evidence of pretext. However, "'mere

knowledge on the part of an employer that an employee . . . has filed a discrimination charge is not sufficient evidence of retaliation to counter substantial evidence of legitimate reasons' for any adverse action taken by the employer." *Thomas v. City of Annapolis*, No. BPG-16-3823, 2018 WL 4206951, at *10 (D. Md. Sept. 4, 2018) (quoting *Williams v. Cerberonics, Inc.*, 871 F.2d 452, 457 (4th Cir. 1989)). Accordingly, because Plaintiff has failed to produce evidence that the reasons for termination were pretextual, the claim does not withstand challenge.

C. Hostile Work Environment (Count VIII)

"A hostile work environment exists 'when the workplace is permeated with discriminatory intimidation, ridicule, and insult that is sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive work environment.'" *Chang Lim v. Azar*, 310 F. Supp. 3d 588, 599 (D. Md. 2018) (quoting *Boyer–Liberto v. Fontainebleau Corp.*, 786 F.3d 264, 277 (4th Cir. 2015) (en banc). To prove such a claim, a plaintiff must show that (1) the plaintiff experienced unwelcome harassment; (2) the harassment was based on the plaintiff's race, color, religion, national origin, or age; (3) the harassment was sufficiently severe or pervasive to alter the conditions of employment and to create an abusive atmosphere; and (4) there is some basis for imposing liability on the employer. *Baquir v. Principi*, 434 F.3d 733, 745–46 (4th Cir. 2006).

Notably, Plaintiff must demonstrate that "a reasonable person would have found [the workplace] to be objectively hostile." *Allen v. TV One, LLC*, No. DKC 15-1960, 2016 WL 337533, at *7 (D. Md. Jan. 28, 2016) (citing *Bass v. E.I. DuPont de Nemours & Co.*, 324 F.3d 761, 765 (4th Cir. 2003)). Plaintiff cannot rest on his subjective beliefs alone. *Id.* Whether Plaintiff has demonstrated the existence of a sufficiently hostile work environment is assessed "'by looking at all the circumstances,' which 'may include the frequency of the discriminatory

conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance.'" *Boyer-Liberto*, 786 F.3d at 277 (quoting *Harris v. Forklift Systems*, 510 U.S. 17, 22 (1993). "[C]allous behavior" of superiors is insufficient, *Bass*, 324 F.3d at 765, as is "[l]egitimate criticism of poor performance." *Gomez v. Burwell*, No. RWT 14-00580, 2015 WL 1522926, at *4 (D. Md. Apr. 2, 2015). *See also Honor v. Booz-Allen & Hamilton, Inc.*, 383 F.3d 180, 190 (4th Cir. 2004) (granting summary judgment on a hostile work environment claim based on a critical competency assessment).

Rai Chowdhuri contends that Defendants created a hostile work environment by making "statements . . . to and about Plaintiff about topics that included work assignments and other subjects relating to the terms and conditions of employment and had lasting consequences." ECF No 19 ¶99. Plaintiff further contends that white developers were assigned simpler projects and given work space that was more conducive to productivity, but does not produce any evidence supporting these comparisons in work space or assignments. Plaintiff also views his supervisor's critique as to writing in the passive voice (making "his documentation incredibly difficult to follow," ECF No. 130-5), as harassment because passive tense "is widely used in India" and "not related to developing code." ECF No. 134 at 37.

The complained-of conduct does not describe a legally cognizable "hostile work environment." Negative work evaluations alone are not sufficient. *See Chang Lim,* 310 F. Supp. 3d at 599. Nor is less-than ideal work space accommodations. That Rai Chowdhuri subjectively experienced workplace "hostility," albeit sincerely felt, cannot constitute sufficient evidence to support the claim. *Bass*, 324 F.3d at 765 ("The words 'hostile work environment' are not talismanic, for they are but a legal conclusion[.]"). Viewed in the light most favorable to Rai

Chowdhuri, he has not produced sufficient evidence to support a hostile work environment claim.

IV. Conclusion

The Court does not doubt that Rai Chowdhuri feels deeply wronged in having been terminated from his job. The Court's analysis, however, must be guided by the evidence adduced. To Rai Chowdhuri's certain disappointment, the evidence, viewed most favorably to him, is simply insufficient for the claims to proceed to trial. Because no reasonable fact-finder could conclude that Defendants fired Rai Chowdhuri because of discriminatory animus or retaliatory motive, or that they created a hostile work environment, Defendants' motions for summary judgment are GRANTED. A separate Order follows.

10/24/2018
Date

/S/
Paula Xinis
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

PARTHA A. RAI CHOWDHURI,	*	
Plaintiff,	*	
v.	*	Civil Action No. PX 16-3135
SGT, INC., CYBERDATA TECHNOLOGIES, INC.,	*	
Defendants.	*	

******

ORDER

In accordance with the foregoing Memorandum Opinion, it is this 24th day of October, 2018 hereby ORDERED that:

1. The Motions for Summary Judgment filed by Defendants Cyberdata Technologies, Inc. (ECF No. 129) and SGT, Inc. (ECF No. 130) and BE, and the same hereby ARE, GRANTED;

2. The Clerk is DIRECTED to CLOSE the case and TRANSMIT copies of the Memorandum Opinion and this Order to parties.

/S/
PAULA XINIS
United States District Judge

APPENDIX C

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 18-2319

PARTHA A. RAI CHOWDHURI,

Plaintiff - Appellant,

v.

SGT, INC.; CYBERDATA TECHNOLOGIES, INC.,

Defendants - Appellees.

Appeal from the United States District Court for the District of Maryland, at Greenbelt. Paula Xinis, District Judge. (8:16-cv-03135-PX)

Submitted: May 16, 2019 Decided: July 16, 2019

Before DIAZ and THACKER, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

Partha A. Rai Chowdhuri, Appellant Pro Se. Frank Charles Gulin, Jeffrey J. Pargament, PARGAMENT & HALLOWELL, PLLC, Washington, D.C.; Edward Jay Tolchin, OFFIT KURMAN, PA, Bethesda, Maryland, for Appellees.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Partha A. Rai Chowdhuri appeals the district court's order granting summary judgment in favor of SGT, Inc., and Cyberdata Technologies, Inc., on Rai Chowdhuri's discrimination, retaliation, and harassment claims, brought pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C.A. §§ 2000e to 2000e-17 (West 2012 & Supp. 2018); 42 U.S.C. § 1981 (2012); the Maryland Fair Employment Practices Act, Md. Code Ann., State Gov't §§ 20-606 to 20-609 (West 2014); and Prince George's Cty., Md., Code Ordinances, § 2-222 (2018). We have reviewed the record and find no reversible error. Accordingly, we affirm for the reasons stated by the district court. *See Rai Chowdhuri v. SGT, Inc.*, No. 8:16-cv-03135-PX (D. Md. Oct. 24, 2018). We deny all pending motions filed by Rai Chowdhuri. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

18-2319

APPENDIX D

Partha A. Rai Chowdhuri
13714 Bidwell Place
Bristow, VA 20136

FILED: August 27, 2019

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 18-2319
(8:16-cv-03135-PX)

PARTHA A. RAI CHOWDHURI

Plaintiff - Appellant

v.

SGT, INC.; CYBERDATA TECHNOLOGIES, INC.

Defendants - Appellees

ORDER

The court denies the petition for rehearing.

Entered at the direction of the panel: Judge Diaz, Judge Thacker, and Senior Judge Hamilton.

For the Court

/s/ Patricia S. Connor, Clerk