RECORD NO. _____

IN THE
Supreme Court of the United States

REGINALD ERIC SPROWL,

Petitioner,

v.

MERCEDES-BENZ U.S. INTERNATIONAL, INC.,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

APPENDIX

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IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 19-14136
Non-Argument Calendar

D.C. Docket No. 7:18-cv-00446-LSC

REGINALD ERIC SPROWL,

Plaintiff-Appellant,

versus

MERCEDES-BENZ U.S. INTERNATIONAL, INC.,

Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Alabama

(July 7, 2020)

Before WILLIAM PRYOR, Chief Judge, JILL PRYOR and BRANCH, Circuit Judges.

PER CURIAM:

Reginald "Eric" Sprowl appeals from the district court's grant of summary judgment in favor of his former employer, Mercedes-Benz U.S. International, Inc. (hereinafter "Mercedes-Benz"), in his case alleging race-based discrimination, retaliation, and constructive discharge in violation of 42 U.S.C. § 1981 and Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.* Sprowl argues that the district court erred in granting Mercedes-Benz's motion for summary judgment because (1) Mercedes-Benz's proffered legitimate, nondiscriminatory reasons for not promoting him were pretext for discrimination, (2) he established a *prima facie* case of retaliation and that Mercedes-Benz's proffered reasons were pretext, and (3) he presented sufficient evidence of discriminatory harassment to submit the constructive discharge claim to a jury. After review, we affirm.

I. Background

In March 2017, Sprowl, a black male, resigned from his position as a maintenance technician at Mercedes-Benz, which he had held since September 2012. Approximately a year later, on March 22, 2018, Sprowl filed a complaint against Mercedes-Benz, alleging violations of Title VII and 42 U.S.C. § 1981. Specifically, Sprowl's amended complaint alleged that Mercedes-Benz denied him promotion to team leader because of his race, retaliated against him for filing a racial discrimination complaint, and constructively discharged him. After discovery, Mercedes-Benz moved for summary judgment. Along with its motion,

Mercedes-Benz filed a series of exhibits which demonstrated the following undisputed facts.

In September 2012, Sprowl began working at Mercedes-Benz as a maintenance technician team member in "Zone 2." Each six-person maintenance team included a "team leader." A "team leader" is one rank above a "team member," and, as the title suggests, directs the team. A "group leader," in turn, supervises the team leaders. The group leader also conducts the team members' performance evaluations.[1] Above the group leader is the maintenance manager. Scotty Morris was Sprowl's group leader and Scott McCall was the maintenance manager.

In 2015, the acting team leader of Sprowl's team, Ken Gamble, called a group of black employees "wild animals swinging in trees." Sprowl complained about this comment to Morris, and the HR department investigated the complaint. Gamble was discharged shortly after.

Sprowl claimed his relationship with Morris soured after this incident because Morris rated him as "Needs Development" in the potential appraisal

[1] The performance evaluations consist of two parts. First, the employer reviews the employee's performance in their current job. A score of 3.00 or higher shows that the employee "Meets Expectations." Second and separately, the employer rates the employee's potential for advancement to other positions. This potential appraisal results in either "Ready" or "Needs Development" labels.

category on every performance review.[2] Sprowl also came to believe that Morris had turned Sprowl's colleagues against him after he complained about Gamble; he noticed that, after they spoke with Morris, colleagues who had once greeted him and talked with him no longer did so. However, Sprowl did not hear Morris telling anyone not to associate with or not to be friendly towards him.[3] Further, none of the team members said anything to Morris about Gamble's termination, and Morris himself was unaware of any campaign to bring Gamble back to work. Morris knew that Gamble's termination stemmed from Sprowl's complaints, but none of the team members had personally expressed any resentment about this fact to him.

In January 2016, Mercedes-Benz posted an opening for a team leader position (the "2016 team leader promotion") and Sprowl signed up for consideration. The promotional process at Mercedes-Benz consisted of the

[2] Sprowl had received two performance reviews from Morris prior to his complaint about Gamble and application for the promotion. In 2013, Sprowl received a performance review from Morris who gave him a performance evaluation score of 3.00 and a "Needs Development" potential appraisal rating. With regard to the potential appraisal rating, Morris stated that Sprowl was progressing well but needed to continue to develop his technical skills, take a leadership role on a project or assignment, and cross-train in other areas of the shop, which he could do by volunteering to work during his off week. Morris also suggested specific courses Sprowl could take to improve his leadership qualities. In his 2014 performance review, Morris again gave him a performance evaluation score of 3.00 and a "Needs Development" potential appraisal rating along with similar suggestions for improvement. Sprowl did not receive a performance review in 2015.

[3] Sprowl felt particularly uncomfortable around one coworker, Sprayberry, who tried to help Gamble get his job back and told others at the plant that Gamble was not a racist. But after Sprowl reported this behavior to the HR department and also to one of the managers, he stopped hearing as much about Sprayberry's behavior.

following steps: (1) signing up for the promotion on the self-nomination form; (2) attending the team leader academy; and (3) receiving a peer review and performance evaluation. In addition, to be considered, the employee needed to complete the "Team Leader Assessment," and have a current performance review on file. The performance review itself was a two-part process consisting of an evaluation of (1) the employee's skill level (the "performance evaluation") and (2) the employee's ability and readiness to develop to the next level (the "potential appraisal").[4] The selection decision was made jointly between Morris, the group leader, and McCall, the maintenance manager.

Pursuant to this process, Mercedes-Benz circulated a peer input form, which allowed a promotional candidate's coworkers to comment about whether they thought the candidate would be a good team leader. Sprowl noticed that his name was not listed on the peer input forms and sent Morris an email requesting an

[4] A member of the Mercedes-Benz HR department further explained Mercedes-Benz's team leader promotional process as follows. Team members who signed up to be considered for a promotion to team leader and who met certain basic requirements were evaluated and given either 1 or 2 points for each of 3 separate criteria: (1) the team member assessment (scores of 29 and above resulted in 2 points, while scores less than 29 resulted in 1 point); (2) the potential appraisal rating (a rating of "Ready" resulted in 2 points, while a rating of "Needs Development" resulted in 1 point); and (3) the peer input ratings (scores of 3.5 and above resulted in 2 points, while scores less than 3.5 resulted in 1 point). Members who received 2 points for each category were designated as "Ready 1," those who received 2 points for 2 out of the 3 categories were designated as "Ready 2," and those who received 1 point in 2 or more categories were designated as "Needs Development." Mercedes-Benz management then filled the team leader position from the candidates who were designated "Ready 1" or "Ready 2," while those designated "Needs Development" overall were ineligible for promotion. Morris never saw any part of the peer review process except for the ultimate score from the HR department.

explanation for the omission. Morris responded that there had been a mistake as a result of a mix-up between Sprowl's first name, "Reginald," and the name he went by, "Eric."[5] Mercedes-Benz then amended the peer input sheet and handed out the new sheets to the employees.

Because Sprowl did not have a current performance review, Morris conducted a review in February 2016. Morris gave Sprowl a performance evaluation score of 3.04, which was 0.04 higher than his last evaluation. Morris gave him a "Needs Development" potential appraisal rating, explaining that he was not ready for promotion at that time because he needed more exposure to a particular area of the maintenance crew, "East End of Zone 1," and to cross-train in other areas of the shop. Morris also recommended that Sprowl demonstrate his leadership skills by filling in for the team leader when he was absent, filling out the Daily Turnover Report, and leading a project in a neighboring area of the facility.[6] In the employee comment section of the review, Sprowl took umbrage with these recommendations. He claimed that he had worked on both ends of Zone 1,

[5] The HR employee who made this mistake was did not know Sprowl and was unaware of Sprowl's race.

[6] These comments differ from his comments for "Needs Development" on the past two evaluations in 2013 and 2014. For example, in 2013 and 2014, Morris noted that Sprowl generally needed to "continue to develop his technical skills" and "[t]ake a leadership role on a project or assignment. In 2016, Morris gave more specific and focused steps, such as "needs more exposure to the East End of Zone 1" and "could show his leadership skills by filling in for his [Team Leader] when he is off shift."

including the east end for about a year. He further stated that he believed his "Needs Development" potential appraisal rating was an unfair assessment intended to keep him from obtaining the team leader position.[7]

Ten Mercedes-Benz employees applied for the 2016 team leader promotion and three were selected. Sprowl—the only candidate who was not white—was not one of those three. The three candidates selected had been received either a "Ready 1" or "Ready 2" promotion rating, as opposed to Sprowl's "Needs Development" promotion rating, which disqualified him.[8] Besides Sprowl, one other candidate received a "Needs Development," promotion rating and was therefore also not eligible for consideration. Morris and McCall believed the selected candidates were the best qualified for the position because they exhibited superior leadership skills, regularly filled in as team leader, had significant experience filling out shift turnover reports, had high technical skills, adeptly solved problems, and had experience throughout the entire shop. After not receiving the promotion, Sprowl filed a charge with the EEOC ("2016 EEOC

[7] During his deposition after filing his lawsuit, Sprowl disputed additional recommendations in the performance evaluation. He argued that he had occasionally filled in as the team leader—at least prior to his complaint and the deterioration of his relationship with Morris—and had developed his technical and leadership skills through courses and special trainings. Moreover, he asserted that he had volunteered to work during his weeks off.

[8] Confusingly, Mercedes-Benz uses the term "Needs Development" for both the potential assessment conducted by the team leader and the overall assessment, which accounted for the potential assessment, peer input, and performance evaluation, conducted by HR. Here, we mean the "Needs Development" label produced by the HR department which, unlike the "Needs Development" on the potential assessment, disqualified Sprowl for promotion.

charge"). He claimed that in not promoting him, Mercedes-Benz discriminated against him because of his race and retaliated against him for complaining about Gamble. Neither Morris nor McCall was aware that Sprowl filed the 2016 EEOC charge.

In March 2017, Mercedes-Benz posted another opening for a team leader position (the "2017 team leader promotion."), for which Sprowl again signed up. Sprowl once again received an updated performance review from Morris, in which he received a performance evaluation score of 3.08 and another "Needs Development" potential appraisal rating. This evaluation listed essentially the same overall performance comments and skills that Sprowl needed to enhance as in Sprowl's previous evaluations. But in the potential appraisal section, Morris noted that Sprowl could obtain "Ready" status by volunteering to act as a team leader, attending leadership workshops offered at Mercedes-Benz's training center, and taking the lead on a project in his work area.[9]

Seven candidates applied for the 2017 team leader promotion and one was selected. Again, Sprowl was the only candidate who was not white. And again, he was not selected. The selected candidate was rated "Ready 1" in his promotion

[9] Sprowl, in the section for employee comments on his evaluation, wrote that it was a "travesty" that a ten-year U.S. Navy veteran was being told that he was not ready for a promotion to team leader when younger, white males with no experience as leaders, less seniority, and less education were being rated "Ready." He further stated that the evaluation was "the continuation of a discriminatory Group Leader that [was] retaliating against [him] for reporting a violation of [his] civil rights."

rating. Morris and McCall believed that the selected candidate was the most qualified for the position based on the same considerations they relied on in selecting the candidates for the 2016 team leader promotion. And Sprowl was again not eligible for the position because of his "Needs Development" promotion rating. The two other candidates who also received a "Needs Development" promotion rating were also not selected.

After not receiving the March 2017 promotion at Mercedes-Benz, Sprowl decided to look for a new job and join his family in South Carolina. Sprowl claimed he left Mercedes-Benz because management and his co-workers continued to harass him and he did not believe he would ever be promoted. No one at Mercedes-Benz told him to resign, but he felt he needed to for the sake of his mental and physical well-being. At his new job in South Carolina, Sprowl worked as a multi-craft maintenance technician, just as he did at Mercedes-Benz, and earned $29.75 per hour—slightly less than his approximately $32 per hour wage at Mercedes-Benz—in addition to overtime pay and a full benefits package. In April 2017, Sprowl filed an EEOC charge ("2017 EEOC charge) complaining that his former employer, Mercedes-Benz, retaliated against him for filing the 2016 EEOC charge by denying him promotion. The EEOC provided Sprowl a notice of right to sue in February 2018, along with an investigator's report into the matter, and

Sprowl filed his complaint in the United States District Court for the Northern District of Alabama shortly thereafter.

The district court granted Mercedes-Benz's motion for summary judgment. With regard to his discrimination claim, the district court found that Sprowl had shown that he was qualified for the promotions and thus established a *prima facie* case of discrimination on the basis of race, but that he had not produced sufficient evidence to disprove the legitimate reasons presented by Mercedes-Benz for not promoting him. As to Sprowl's retaliation claim, the court found that he failed to present a *prima facie* case of retaliation because he did not establish a causal link between the failure to promote and the protected activity, and had also failed to establish pretext. Finally, regarding Sprowl's constructive discharge claim, the district court found that, even construing the facts in the light most favorable to Sprowl, no reasonable person in his position would find his working conditions so intolerable that they felt compelled to resign. Accordingly, the district court granted Mercedes-Benz's motion and dismissed Sprowl's complaint with prejudice. Sprowl timely filed a notice of appeal.

II. Standard of Review

We review a district court's order granting summary judgment *de novo*, "viewing all the evidence, and drawing all reasonable inferences, in favor of the

non-moving party." *Vessels v. Atlanta Indep. Sch. Sys.*, 408 F.3d 763, 767 (11th Cir. 2005).

III. Discussion

Sprowl argues that the evidence he presented was sufficient to defeat summary judgment for his discrimination, retaliation, and constructive discharge claims related to his employer's failure to promote.[10] As explained further below, we conclude that Sprowl has not shown that his employer's articulated and legitimate reasons for promoting other candidates were pretextual, thus making summary judgment appropriate for both his retaliation and discrimination claims.[11] We also hold that summary judgement was appropriate for the constructive discharge claim because, even construing the evidence in the light most favorable to Sprowl, no reasonable jury could find that his working conditions had become so unbearable that a reasonable person in his position would be compelled to

[10] Although these claims were brought under both Title VII and 42 U.S.C. § 1981, the claims have the same burden and are both subject to the same *McDonnell Douglas* framework. *See Lewis v. City of Union City, Ga.*, 918 F.3d 1213, 1217 (11th Cir. 2019).

[11] In his reply brief, Sprowl appears to argue that the discrimination happened before the failure to promote, not during the promotion process. Because such an argument would concede that no discrimination affected the adverse employment action, *i.e.*, the failure to promote, and because an adverse employment action is central to the claims Sprowl advances, we decline to consider this argument. In any case, this argument was waived by not raising it at the district court level or even in the opening brief. *See Finnegan v. Comm'r of Internal Revenue*, 926 F.3d 1261, 1271 (11th Cir. 2019) ("The general rule is that we will not consider an issue raised for the first time on appeal."); *Little v. T-Mobile USA, Inc.*, 691 F.3d 1302, 1306 (11th Cir. 2012) (collecting binding cases which hold arguments not raised in the opening brief are waived).

resign. As we proceed through the analysis, we are guided by the principle that "unsubstantiated assertions alone are not enough to withstand a motion for summary judgment." *Rollins v. TechSouth, Inc.*, 833 F.2d 1525, 1529 (11th Cir. 1987). Likewise, inferences predicated on speculation, or a mere scintilla of evidence in support of the nonmoving party, will not suffice to overcome a motion for summary judgment. *Melton v. Abston*, 841 F.3d 1207, 1219 (11th Cir. 2016).[12]

A. Failure to Promote: Race Discrimination and Retaliation Charges

Title VII makes it an unlawful employment practice for an employer to take adverse employment actions against an employee "because of such individual's race, color, religion, sex, or national origin." 42 U.S.C. § 2000e-2(a). Further, under Title VII, an employer may not retaliate against an employee "because he has opposed any practice made an unlawful employment practice by this subchapter, or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subchapter." *Id.* § 2000e-3(a). In the absence of direct evidence of discrimination, a plaintiff can prove a discrimination claim or a retaliation claim under Title VII through

[12] On account of these evidentiary principles, we decline to address Sprowl's claim that the district court was incorrect to exclude the EEOC investigator's report from evidence. For the purposes of this appeal, we presume the evidence was admissible. However, the statements contained within the report are "inferences predicated on speculation" from employees with no personal knowledge of the hiring process, and therefore do not advance Sprowl's case. *Melton*, 841 F.3d at 1219. Similarly, we decline to address Sprowl's contentions that his supervisor turned his coworkers against him because he offers no evidence to support this belief.

circumstantial evidence, which we analyze using the three-step, burden-shifting framework established in *McDonnell Douglas v. Green*, 411 U.S. 792 (1973). *See Brown v. Ala. Dep't of Transp.*, 597 F.3d 1160, 1181 (11th Cir. 2010); *E.E.O.C. v. Joe's Stone Crabs, Inc.*, 296 F.3d 1265, 1272 (11th Cir. 2002). To succeed under this framework, a plaintiff must first present enough evidence to establish a *prima facie* case of discrimination; the employer then has the burden of production to articulate legitimate, nondiscriminatory reasons for the adverse employment action; and then the plaintiff must prove that those reasons were pretext. *Joe's Stone Crabs*, 296 F.3d at 1272. Here, we may proceed directly to the pretext step (or "third step") of the analysis for both the retaliation and racial discrimination claims and presume, as the district court did, that Sprowl established a *prima facie* case for each.[13] *See Ctr. v. Sec'y, Dep't of Homeland Sec., Customs & Border Prot. Agency*, 895 F.3d 1295, 1303 (11th Cir. 2018). Because both claims fail at the same step of the *McDonnell-Douglas* test, and because the facts underlying each claim are the same, we analyze them together.

Under the third step of the *McDonnell-Douglas* framework, the court must consider all the evidence to determine if a reasonable factfinder could conclude

[13] The district court found that Sprowl did not meet a *prima facie* case for retaliation because he could not establish a causal connection between his 2015 internal complaint about Gamble or his 2016 EEOC charge and Mercedes Benz's decision not to promote him in 2016 or 2017. Because, for the purpose of our analysis, we assume that Sprowl could establish a *prima facie* case, we do not address whether his retaliation claim stems from his internal complaint or his 2016 EEOC charge.

that the employer's legitimate reasons for the adverse conduct were pretext for discrimination. *Combs v. Plantation Patterns*, 106 F.3d 1519, 1538 (11th Cir. 1997). The burden to prove pretext is on the plaintiff. *See Hornsby-Culpepper v. Ware*, 906 F.3d 1302, 1312 (11th Cir. 2018). An employer's proffered reason for the adverse action is not pretext for discrimination unless the plaintiff can show "*both* that the reason was false, *and* that discrimination was the real reason." *St. Mary's Honor Ctr. v. Hicks*, 509 U.S. 502, 515 (1993) (emphasis in original). A plaintiff may establish pretext by showing that "the legitimate nondiscriminatory reasons should not be believed" or that "discriminatory reasons more likely motivated the decision than the proffered reasons." *Standard v. A.B.E.L. Servs., Inc.*, 161 F.3d 1318, 1332 (11th Cir. 1998).

Mercedes-Benz proffered two reasons for its 2016 and 2017 team leader promotion decisions: first, that Sprowl did not demonstrate the leadership qualities necessary for the promotion, and second, that the candidates chosen were the most qualified. Sprowl advances the following arguments to show that these were pretext for discrimination or retaliation: (1) Sprowl's "Needs Development" ratings in his performance reviews were inconsistent with his actual experience and demonstrated potential; (2) two fellow employees thought Sprowl was qualified for the promotion and was passed over due to the Gamble incident; (3) Sprowl's name was initially not on the list to be considered for the 2016 team leader promotion,

even though he had applied for it; (4) all the candidates chosen were white; and (5) all the candidates chosen had similar performance reviews to Sprowl's.

These arguments are clearly insufficient to show pretext. First, Sprowl's disagreement with his "potential appraisal" rating in his performance reviews does not render Mercedes-Benz's explanation of its promotion decisions pretextual. For starters, when weighing whether an employee actually needed development, our caselaw makes clear that only the employer's legitimate belief matters. *Vessels v. Atlanta Indep. Sch. Sys.*, 408 F.3d 763, 771 (11th Cir. 2005); *Kidd v. Mando Am. Corp.*, 731 F.3d 1196, 1206 (11th Cir. 2013). But even if we were to consider Sprowl's disagreement, Mercedes-Benz presented unrefuted evidence that the potential appraisal rating in his performance review was only one of several factors considered in the promotion decision. Further, Morris gave numerous reasons for Sprowl's "Needs Development" potential appraisal ratings, most of which Sprowl does not contest. For example, Sprowl does not dispute that he had not taken certain leadership courses, led projects in his area, completed administerial tasks behooving of a team leader such as filling out shift turnover reports, or obtained cross-training in all aspects of his maintenance team. Sprowl "can not [sic] establish pretext merely by disagreeing with the evaluations." *Standard*, 161 F.3d at 1333.

Sprowl's contention that the initial exclusion of his name from the peer input sheet shows pretext is also not persuasive. The record shows that this oversight was an administrative mistake and corrected immediately. *See Ctr. v. Sec'y, Dep't of Homeland Sec., Customs & Border Prot. Agency*, 895 F.3d 1295, 1303–04 (11th Cir. 2018) (finding that an agency error which was quickly corrected did not establish pretext because there was "no evidence to establish that this temporary error was anything but a genuine oversight."). Moreover, the employee who made the mistake did not know Sprowl or that he was black.

Sprowl's argument that he was comparably qualified to the selected candidates is likewise unpersuasive. It is not enough for Sprowl to "simply argu[e] or even [] show[] that he was better qualified than the person who received the position he coveted." *Springer v. Convergys Customer Mgmt. Grp.*, 509 F.3d 1344, 1349 (11th Cir.2007) (per curiam) (quoting *Brooks v. County Comm'n of Jefferson Cty.*, 446 F.3d 1160, 1163 (11th Cir. 2006)). Rather, he "must show that the disparities between the successful applicant's and [his] own qualifications were 'of such weight and significance that no reasonable person, in the exercise of impartial judgment, could have chosen the candidate selected over the plaintiff.'" *Id.* (quoting *Cooper v. Southern Co.*, 390 F.3d 695, 732 (11th Cir. 2004)). Sprowl has not even attempted to make that showing. Nor could he. The candidates selected were rated more highly in their performance reviews and peer evaluations,

which resulted in them receiving "Ready 1" or "Ready 2" promotion ratings. By comparison, Sprowl's lower ratings in his performance review and peer evaluation resulted in a "Needs Development" promotion rating. This rating disqualified him from consideration. True, these are subjective criteria for promotion, but "[a]bsent evidence that subjective hiring criteria were used as a mask for discrimination, the fact that an employer based a hiring or promotion decision on purely subjective criteria will rarely, if ever, prove pretext under Title VII or other federal employment discrimination statutes." *Id*. at 1185. The fact that these candidates were white while Sprowl was black does not refute the legitimate differences the employer perceived between the candidates, especially because other white candidates who had similar reviews to Sprowl were also rejected.

At base, Sprowl disagrees with his employer's choices. But arguments that "merely dispute the wisdom" of an employer's choices are "insufficient to establish pretext." *Hornsby-Culpepper*, 906 F.3d at 1313. Thus, both Sprowl's retaliation claim and racial discrimination claim fail.

B. Constructive Discharge Claim

To establish a valid constructive discharge claim, a plaintiff must show that his "working conditions were 'so intolerable that a reasonable person in [his] position would have been compelled to resign.'" *Poole v. Country Club of Columbus, Inc.*, 129 F.3d 551, 553 (11th Cir. 1997) (quoting *Thomas v. Dillard*

Dep't Stores, Inc., 116 F.3d 1432, 1433–34 (11th Cir. 1997)). This showing has "two basic elements": (1) that the plaintiff "was discriminated against by his employer to the point where a reasonable person in his position would have felt compelled to resign," and (2) "that he actually resigned." *Green v. Brennan*, 136 S. Ct. 1769, 1777 (2016).

Sprowl argues that his working conditions were intolerable because (1) he was blamed for Gamble's termination such that his coworkers no longer associated with him and (2) Mercedes-Benz declined to promote him on two occasions. Even assuming that "placing blame" on an employee is an intolerable working condition, Sprowl has not set forth any objective evidence establishing that anyone blamed him for Gamble's termination or that one of his superiors at Mercedes-Benz instructed his coworkers to be unfriendly towards him. *See Fitz v. Pugmire Lincoln-Mercury, Inc.*, 348 F.3d 974, 977–78 (11th Cir. 2003) ("Mere suspicion of an unsubstantiated plot is not an intolerable employment condition."). And absent a showing of additional, difficult working conditions, failure to promote does not give rise to an intolerable working condition. *See Wardwell v. Sch. Bd. of Palm Beach Cty., Fla.*, 786 F.2d 1554, 1558 (11th Cir. 1986) (holding that a plaintiff "who may have been frustrated" by her failure to be promoted, combined with added workload and "embarrassment" at work, "simply d[id] not rise to the intolerable level at which a reasonable person would feel compelled to resign.").

Thus, the district court did not err in granting Mercedes-Benz's motion for summary judgment as to Sprowl's constructive discharge claim.

AFFIRMED.

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U.S. DISTRICT COURT
N.D. OF ALABAMA

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
WESTERN DIVISION**

REGINALD ERIC SPROWL,	)	
	)	
Plaintiff,	)	
	)	
v.	)	7:18-cv-00446-LSC
	)	
MERCEDES-BENZ U.S. INTERNATIONAL, INC.,	)	
	)	
Defendant.	)	

Memorandum of Opinion

I. Introduction

Plaintiff Reginald Eric Sprowl ("Sprowl"), an African-American, brings this action against his former employer, Mercedes-Benz U.S. International, Inc. ("MBUSI"). In Counts I and II of his Amended Complaint, Sprowl asserts race discrimination and retaliation claims under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.* ("Title VII"), and 42 U.S.C. § 1981. In Count III, Sprowl alleges that he was constructively discharged because of his race.

Presently before the Court are MBUSI's Motion for Summary Judgment (doc. 24) and Motion to Strike (doc. 36). For the reasons stated below, MBUSI's

motion for summary judgment (doc. 24) is due to be GRANTED, and MBUSI's motion to strike (doc. 36) is due to be DENIED as MOOT.

II. Background[1]

On September 4, 2012, Sprowl began his employment with MBUSI as a maintenance member in MBUSI's Assembly Plant 2. During Sprowl's employment with MBUSI, Scotty Morris ("Morris") was his group leader and Scott McCall ("McCall") was his manager.

MBUSI periodically provides performance evaluations for its maintenance team members. The performance evaluations consist of two pages, the first of which provides team members with an overall numerical rating for their current performance in their existing job. A score of 3.00 or higher indicates that the employee "Meets Expectations." On the second page of the evaluation, maintenance team members are rated as to their potential for advancement

[1] The facts set out in this opinion are gleaned from the parties' submissions of facts claimed to be undisputed, their respective responses to those submissions, and the Court's own examination of the evidentiary record. These are the "facts" for summary judgment purposes only. They may not be the actual facts. *See Cox v. Adm'r U.S. Steel & Carnegie Pension Fund*, 17 F.3d 1386, 1400 (11th Cir. 1994). The Court is not required to identify unreferenced evidence supporting a party's position. As such, review is limited to exhibits and specific portions of the exhibits specifically cited by the parties. *See Chavez v. Sec'y, Fla. Dept. of Corr.*, 647 F.3d 1057, 1061 (11th Cir. 2011) ("[D]istrict court judges are not required to ferret out delectable facts buried in a massive record . . . .") (internal quotations omitted).

("potential appraisal") for the next level as either "Ready" or "Needs Development."

Morris provided Sprowl's performance evaluations. For Sprowl's first performance evaluation, which took place in October 2013, Morris evaluated Sprowl's performance as Meets Expectations with a numerical grade of 3.00 ("Meets Expectations"). For Sprowl's potential appraisal, Morris evaluated Sprowl as "Needs Development." In November 2014, for his second performance evaluation of Sprowl, Morris again evaluated Sprowl's performance with a numerical grade of 3.00 and marked Sprowl's potential appraisal as "Needs Development."

In September 2015, Sprowl reported to Morris that fellow maintenance team member Ken Gamble ("Gamble") had made a racist comment. MBUSI investigated the incident and ultimately terminated Gamble's employment. Sprowl testified that several of the other maintenance team members blamed him for Gamble's firing. Specifically, Sprowl believed that Morris tried to turn people against him after he complained about Gamble, though Sprowl admitted that he never heard or saw Morris doing so, nor did anyone tell Sprowl that Morris did so. During the course of the EEOC's investigation of MBUSI, two of Sprowl's co-workers stated that Sprowl was treated differently after making the Gamble

complaint. Dennis Finnen ("Finnen"), who worked at MBUSI from 2014 to 2016, said that Sprowl was "shunned" by the Maintenance crew after making the Gamble complaint. A fellow team member, Cecil Agee ("Agee"), said that there was an "uproar" over Gamble's termination and that Sprowl was blamed. Agee also considered this incident to be the reason why Sprowl was not promoted to team leader.

In January 2016, MBUSI posted an opening for an Assembly maintenance team leader position. The team leader is the person responsible for directing work when the group leader is unavailable. As group leaders do not work the night shift, team leaders effectively act as group leaders during night shifts in the Assembly Shop. Additionally, the team leader position is considered a stepping stone to the group leader position. The January 2016 Team Leader Open Nomination Form listed the following as eligibility requirements for team leader promotions: (1) completion of the team leader assessment prior to signup; (2) no current corrective performance review; (3) ability to perform the essential functions of the position; (4) overall "S" on performance evaluation; (5) must be a MBUSI team member in Assembly Plant 2; and (6) must have been in current position for at least six months.

MBUSI evaluates team members who apply for a team leader promotion—and who meet the basic eligibility requirements—based on three separate criteria. MBUSI assigns the team members either 1 or 2 points for each criterion. These three criteria include the team member's assessment result (29 and above = 2 points, less than 29 = 1 point), the team member's potential appraisal for the next level (Ready = 2 points, Needs Development = 1 point), and the team member's peer input ratings (3.5 and above = 2 points, less than 3.5 = 1 point). Based on these three criteria, MBUSI designates team members as Ready 1 (overall receiving 6 points or 2 points in each of the three categories), Ready 2 (overall receiving 5 points or 2 points in two categories and 1 point in one category), or Needs Development (receiving 1 point in two or more categories). MBUSI fills the team leader position from Ready 1 and Ready 2 candidates. A candidate with an overall rating of Needs Development is considered by MBUSI as not eligible for consideration for promotion.

Sprowl signed up to be considered for the January 2016 team leader job posting. Sprowl also completed a team leader assessment form. However, when MBUSI solicited peer input for the candidates for the maintenance team leader position, Sprowl's name did not appear on the peer input sheet. Sprowl raised this issue with Morris, and MBUSI determined that it had mistakenly left Sprowl's

name off the peer input sheet. According to MBUSI's HR specialist Val Banta ("Banta"), Sprowl had been left off the list because she initially could not find a record that Sprowl had completed the team leader assessment. Banta contends this is because she originally looked up his information under the name Eric Sprowl while Sprowl's team leader assessment result had been listed under the name Reginald Sprowl. Once MBUSI discovered the mistake, it discarded the original peer input sheets and repeated the peer input process with Sprowl's name included.

At the time of the January 2016 team leader job posting, Sprowl did not have a current performance evaluation. Four white candidates for the maintenance team leader position also did not have current performance evaluations. As a result, Morris provided Sprowl and the four white candidates with updated performance evaluations. Sprowl received a performance evaluation of Meets Expectations with a numerical grade of 3.04 and potential appraisal score of Needs Development. While Morris rated two of the four white candidates with a potential appraisal score of Ready, the other two white candidates received a score of Needs Development.

Morris cited several reasons why he rated Sprowl as Needs Development on the potential appraisal. Morris testified that Sprowl needed to volunteer to fill in as team leader when necessary and fill out shift turn over reports. Morris also said

that Sprowl needed to gain more technical experience and experience on the other side of the shop. Morris also felt that Sprowl did not demonstrate leadership qualities necessary for the team leader position. However, Sprowl testified in his deposition that he did fill in as team leader and that he had participated in leadership programs, including a program in Germany.

Sprowl's peer input score, which his fellow team members supplied, was 3.4. Sprowl points out, however, that he received a higher overall performance evaluation score than two of the three white candidates selected for promotion. Based on the criteria MBUSI uses to evaluate eligibility for promotions, MBUSI assigned Sprowl only 1 point for peer input and 1 point for his potential appraisal. Accordingly, Sprowl was rated as Needs Development overall, and MBUSI determined that he was Not Ready for the January 2016 promotion to team leader.

Ultimately, Chris Jones ("Jones"), Brian Cooper ("Cooper"), and Chris Hearle ("Hearle") were selected to fill the available team leader positions. All three of these individuals are white. During the evaluation process, Cooper had been rated Ready 1, while Jones and Hearle were rated Ready 2. According to Morris and McCall, these three candidates were selected as team leaders because they considered them to be the best qualified for the position (and more qualified than Sprowl). The potential appraisals for Cooper and Hearle indicated that they

filled in for the team lead, completed all tasks a team leader would complete in a normal work week, showed a "desire to advance," and requested and accepted additional projects. The potential appraisal for Jones indicated that he filled in for the team leader and completed all of the shift turnover information, that he was capable of leading a team, and that he escalated when necessary.

In March 2016, Sprowl filed an EEOC charge based on MBUSI's failure to promote him to the January 2016 team leader position. After investigation, the EEOC issued Sprowl a Notice of Right to Sue, stating that the EEOC "found reasonable cause to believe that violations of the statute(s) occurred." (Doc. 16-1 at 2.) Both Morris and McCall testified that, at that time, they were not made aware that Sprowl had filed an EEOC charge.

In March 2017, Sprowl applied for another maintenance team leader position that had been posted. The March 2017 Team Leader Open Nomination Form listed the same eligibility requirements as the January 2016 Team Leader Open Nomination Form. Again, Sprowl's performance evaluation was not current, so Morris provided him with another performance evaluation. This time, Morris rated Sprowl as Meets Expectations on his performance evaluation with a grade of 3.08. Sprowl's potential appraisal score was again rated as Needs Development. Sprowl's peer input score for this job posting again fell below a rating of 3.5.

Because MBUSI only awarded Sprowl 1 point for the categories of potential appraisal and peer review, Sprowl's overall score placed him in the Not Ready class. Therefore, Sprowl was not eligible for the March 2017 team leader promotion. MBUSI selected Nate Davis ("Davis"), who is white and was rated Ready 1, to fill this team leader position. Again, Morris and McCall believed that Davis was the most qualified because of his leadership skills, his experience, and his escalation and problem-solving skills.

After Sprowl did not get the March 2017 promotion to team leader, he decided to move back to his home state of South Carolina. Sprowl secured a job with Sealed Air in South Carolina, and he started his employment at Sealed Air on June 26, 2017.

III. Standard

Summary judgment is appropriate "if the movant shows that there is no genuine dispute as to any material fact[2] and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). A dispute is genuine if "the record taken as a whole could lead a rational trier of fact to find for the nonmoving party." *Hickson Corp. v. N. Crossarm Co., Inc.*, 357 F.3d 1256, 1260 (11th Cir. 2004). A genuine dispute as to a material fact exists "if the nonmoving party has produced evidence

[2] A material fact is one that "might affect the outcome of the case." *Urquilla-Diaz v. Kaplan Univ.*, 780 F.3d 1039, 1049 (11th Cir. 2015).

such that a reasonable factfinder could return a verdict in its favor." *Greenberg v. BellSouth Telecomms., Inc.*, 498 F.3d 1258, 1263 (11th Cir. 2007) (quoting *Waddell v. Valley Forge Dental Assocs.*, 276 F.3d 1275, 1279 (11th Cir. 2001)). The trial judge should not weigh the evidence, but determine whether there are any genuine issues of fact that should be resolved at trial. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986).

In considering a motion for summary judgment, trial courts must give deference to the nonmoving party by "view[ing] the materials presented and all factual inferences in the light most favorable to the nonmoving party." *Animal Legal Def. Fund v. U.S. Dep't of Agric.*, 789 F.3d 1206, 1213–14 (11th Cir. 2015) (citing *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 157 (1970)). However, "unsubstantiated assertions alone are not enough to withstand a motion for summary judgment." *Rollins v. TechSouth, Inc.*, 833 F.2d 1525, 1529 (11th Cir. 1987). Conclusory allegations and "mere scintilla of evidence in support of the nonmoving party will not suffice to overcome a motion for summary judgment." *Melton v. Abston*, 841 F.3d 1207, 1219 (11th Cir. 2016) (per curiam) (quoting *Young v. City of Palm Bay*, 358 F.3d 859, 860 (11th Cir. 2004)). In making a motion for summary judgment, "the moving party has the burden of either negating an essential element of the nonmoving party's case or showing that there is no

evidence to prove a fact necessary to the nonmoving party's case." *McGee v. Sentinel Offender Servs., LLC*, 719 F.3d 1236, 1242 (11th Cir. 2013). Although the trial courts must use caution when granting motions for summary judgment, "[s]ummary judgment procedure is properly regarded not as a disfavored procedural shortcut, but rather as an integral part of the Federal Rules as a whole." *Celotex Corp. v. Catrett*, 477 U.S. 317, 327 (1986).

IV. Discussion

Absent direct evidence of racial discrimination or retaliation, such as specific statements made by the employer's representatives, a plaintiff may demonstrate circumstantial evidence of disparate treatment through the *McDonnell Douglas* burden-shifting framework. *See McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973); *see also Tex. Dep't of Cmty. Affairs v. Burdine*, 450 U.S. 248 (1981).[3] Under this framework, the aggrieved employee creates a presumption of unlawful discrimination by first establishing a *prima facie* case of discrimination. *See Lewis v. Union City*, 918 F.3d 1213, 1220–21 (11th Cir. 2019) (en banc). The burden then shifts to the employer "to articulate a legitimate, nondiscriminatory reason for its actions." *Id.* at 1221 (citing *Burdine*, 450 U.S. at 253). If the employer proffers a

[3] Because Sprowl has not offered any direct evidence of discrimination, the Court addresses his claims under the standards applicable to circumstantial evidence of discrimination. *See Alvarez v. Royal Atl. Developers, Inc.*, 610 F.3d 1253, 1264 (11th Cir. 2010).

legitimate, nondiscriminatory reason, the burden returns to the employee to prove that the employer's reason is a pretext for unlawful discrimination. *Crawford v. Carroll*, 529 F.3d 961, 976 (11th Cir. 2008). Although the *McDonnell Douglas* framework is one way of showing discriminatory intent, it is not the only way to show discriminatory intent in a Title VII or § 1981 discrimination claim. *See Smith v. Lockheed–Martin Corp.*, 644 F.3d 1321, 1328 (11th Cir. 2011). "[T]he plaintiff will always survive summary judgment if he presents circumstantial evidence that creates a triable issue concerning the employer's discriminatory intent." *Id.*

A. Race Discrimination[4]

1. *Prima Facie* Case

Sprowl argues that he was discriminated against based on his race when MBUSI failed to promote him to a team leader position in January 2016 and in March 2017. To establish a *prima facie* case for failure to promote, a plaintiff must show: (1) he is a member of a protected class, (2) he was qualified and applied for

[4] MBUSI argues that, as an initial matter, it is entitled to summary judgment on Sprowl's Title VII race discrimination claim concerning the March 2017 team leader promotion because Sprowl failed to exhaust his administrative remedies regarding that claim. When he filed his EEOC charge regarding the March 2017 promotion, Sprowl alleged only retaliation, not race discrimination. (*See* Doc. 16-1 at 3.) Sprowl appears to concede this point. (*See* Doc. 31 at 15.) However, as Sprowl points out, race discrimination claims brought under Title VII and § 1981 "have the same requirements of proof and use the same analytical framework." *Standard v. A.B.E.L. Servs., Inc.*, 161 F.3d 1318, 1330 (11th Cir. 1998). There is no administrative exhaustion requirement for race discrimination claims brought under § 1981. *See CBOCS West, Inc. v. Humphries*, 553 U.S. 442, 454–55 (2008). Accordingly, the Court will proceed to the merits of Sprowl's race discrimination claims concerning both the January 2016 and March 2017 team leader promotions.

the position at issue, (3) he was rejected, and (4) the position was filled by a person outside his protected class. *See Vessels v. Atlanta Ind. Sch. Sys.*, 208 F.3d 763, 768 (11th Cir. 2005) (per curiam) (citing *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802 (1973)).

It is undisputed that Sprowl is a member of a protected class, that he applied for the positions and was rejected, and that the positions were filled by persons outside his protected class. MBUSI, however, contends that Sprowl has failed to show that he was qualified for the promotions at issue. Specifically, Morris testified that Sprowl needed to gain more technical experience and experience on the other side of the shop. Morris also felt that Sprowl did not demonstrate leadership qualities necessary for the team leader position. It is well settled that "only evidence that is *objectively verifiable* and either obtainable or within the plaintiff's possession" is considered at the *prima facie* stage. *Id.* at 769. Subjective criteria such as "leadership style . . . have no place in the plaintiff's initial prima facie case." *Id.* at 768–69. To be sure, the employer may "introduce its subjective evaluations of the plaintiff at the later stages of the *McDonnell Douglas* framework." *Id.* at 769. But to show that he was qualified for the position for purposes of the *prima facie* case, a plaintiff "need only show that he . . . satisfied an employer's objective qualifications." *Id.* Further, the plaintiff is not required to produce

evidence of the "relative qualifications" of other candidates at the *prima facie* stage: only that the plaintiff himself was qualified. *See Walker v. Mortham*, 158 F.3d 1177, 1193 (11th Cir. 1998).

Although the parties' briefs focus on whether Sprowl satisfied MBUSI's three evaluation criteria—the assessment result, the potential appraisal, and the peer input ratings—the proper inquiry at the *prima facie* stage is whether Sprowl met the initial eligibility requirements listed on the Team Leader Open Nomination Form. For both the January 2016 and March 2017 promotions, the Team Leader Open Nomination Form listed the following six eligibility requirements for team leader promotions: (1) completion of the team leader assessment prior to signup; (2) no current corrective performance review; (3) ability to perform the essential functions of the position; (4) overall "S" on performance evaluation; (5) must be a MBUSI team member in Assembly Plant 2; and (6) must have been in current position for at least six months. MBUSI's HR Specialist, Val Banta, stated in her declaration that "[t]eam members who meet certain basic requirements" are subsequently evaluated based on the three criteria described above.

a. January 2016 Promotion

Sprowl has shown that he was qualified for the January 2016 promotion for purposes of satisfying his *prima facie* case. First, it is undisputed that Sprowl

"[met] the stated written job requirements identified in the [team leader] job description." (Doc. 31 at 11, ¶ 25.) In response to this statement of fact, MBUSI merely "[c]larified" that "[Sprowl] was not qualified . . . for TL promotion because he was assigned only 1 point for peer input and potential appraisal." (Doc. 35 at 2, ¶ 25.) Further, Sprowl presented unrebutted deposition testimony that he completed the team leader assessment prior to sign up; that he had no corrective performance review; that he had an overall "S" on his performance evaluation; that he was a team member in Assembly Plant 2; and that he was in his current position for at least six months. Finally, it is undisputed that "[t]eam members who meet certain basic requirements" are subsequently evaluated based on MBUSI's three evaluation criteria, and that MBUSI evaluated Sprowl for the January 2016 promotion under its three evaluation criteria. Because MBUSI evaluated Sprowl for the promotion, Sprowl must have satisfied all six "basic requirements" listed on the Team Leader Open Nomination Form. Therefore, Sprowl has sufficiently established that he was qualified for the January 2016 promotion for the purposes of satisfying his *prima facie* case.

b. March 2017 Promotion

Sprowl has also shown that he was qualified for the March 2017 promotion for purposes of satisfying his *prima facie* case. Just as with the January 2016

promotion, Sprowl satisfied all six "basic requirements" listed on the Team Leader Open Nomination Form for the March 2017 promotion. Therefore, Sprowl has sufficiently established that he was qualified for the March 2017 promotion for the purposes of satisfying his *prima facie* case.

2. Legitimate, Nondiscriminatory Reasons

Once the plaintiff makes out a *prima facie* case, the burden shifts to the employer "to articulate a legitimate, nondiscriminatory reason for its actions." *Lewis*, 918 F.3d at 1221 (citing *Burdine*, 450 U.S. at 253). The burden at this stage "is exceedingly light." *Perryman v. Johnson Prods. Co.*, 698 F.2d 1138, 1142 (11th Cir. 1983). It is merely a burden of production, not a burden of proof. *Id.*

a. January 2016 Promotion

MBUSI has articulated several legitimate and nondiscriminatory reasons for its decision not to promote Sprowl in January 2016. Specifically, Morris testified that Sprowl did not demonstrate the leadership qualities necessary for the team leader position, and also that Sprowl needed to gain more technical experience as well as experience on the other side of the shop. Further, Morris and McCall testified that they selected Jones, Cooper, and Hearle as team leaders because they (Morris and McCall) considered Jones, Cooper, and Hearle to be the best qualified for the position. Jones was more qualified than Sprowl because he filled in for the

team leader, completed shift turnover reports, and escalated when necessary. Further, Hearle and Cooper were more qualified because they filled in for the team lead, completed all tasks a team leader would complete in a normal work week, showed a "desire to advance," and requested and accepted additional projects. Jones and Hearle were also more qualified because they each received only one score of "1" as part of MBUSI's three-part evaluation. They each received a "1" in the potential appraisal category, a category scored by MBUSI itself. By contrast, Sprowl scored a "1" in both the potential appraisal and peer input categories. Jones, Hearle, and Cooper, on the other hand, were more qualified because they each received a score of "2" in the peer input category, which depends on ratings given by their peers, *not* MBUSI. In sum, Sprowl received a lower score than Jones, Hearle, and Cooper in the category determined by his peers, and Sprowl received the same score as Jones and Hearle in the category determined directly by MBUSI.

Therefore, MBUSI has proffered legitimate, nondiscriminatory reasons for its decision not to promote Sprowl in January 2016.

b. March 2017 Promotion

MBUSI has also articulated legitimate and nondiscriminatory reasons for its decision not to promote Sprowl in March 2017. MBUSI states that Nate Davis, a

white male, was selected for the promotion because Davis was the most qualified for the position. Specifically, Davis "showed better leadership skills, had filled in on more occasions as team leader, had more experience filling out shift turnover reports, had better technical skills, escalated and problem solved better, and had more experience throughout the entire assembly shop." (Doc. 24 at 16, ¶ 81.) Further, Davis received scores of "2" in the potential appraisal and peer input categories, while Sprowl received scores of "1" in both categories. Therefore, MBUSI has proffered a legitimate, nondiscriminatory reason for its decision not to promote Sprowl in March 2017.

3. Pretext

Once the employer articulates a legitimate, nondiscriminatory reason for its decision, "the burden shifts back to the plaintiff to produce evidence that the employer's proffered reason [is] a pretext for discrimination." *Alvarez*, 610 F.3d at 1264. "The plaintiff can show pretext 'either directly by persuading the court that a discriminatory reason more likely motivated the employer or indirectly by showing that the employer's proffered explanation is unworthy of credence,'" *Kragor v. Takeda Pharms. Am., Inc.*, 702 F.3d 1304, 1308 (11th Cir. 2012) (quoting *Burdine,* 450 U.S. at 256), such that a rational trier of fact could disbelieve the employer's proffered nondiscriminatory reason, *Wilson v. B/E Aerospace, Inc.*, 376

F.3d 1079, 1088 (11th Cir. 2004). "When a plaintiff chooses to attack the veracity of the employer's proffered reason, the inquiry is limited to whether the employer gave an honest explanation of its behavior." *Kragor*, 702 F.3d at 1310–11 (internal quotation marks omitted). A *prima facie* case plus sufficient evidence of pretext may permit the factfinder to find unlawful discrimination, making summary judgment inappropriate. *See Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 148 (2000).

a. January 2016 Promotion

Sprowl has failed to present sufficient evidence to rebut MBUSI's claim that it promoted three white candidates over him because those candidates were better qualified. To successfully challenge an employer's explanation that it promoted the better qualified candidate, the plaintiff must show that "the disparities between the successful applicant's and his own qualifications were 'of such weight and significance that no reasonable person, in the exercise of impartial judgment, could have chosen the candidate selected over the plaintiff.'" *Springer v. Convergys Customer Mgmt. Grp. Inc.*, 509 F.3d 1344, 1349 (11th Cir. 2007) (per curiam) (quoting *Cooper v. Southern Co.*, 390 F.3d 695, 732 (11th Cir. 2004), *overruled in part by Ash v. Tyson Foods, Inc.*, 546 U.S. 454 (2006)); *see also Ash v. Tyson Foods, Inc.*, 546 U.S. 454 (2006) (approving of this language from *Cooper*). Further, the

plaintiff cannot prove pretext by merely arguing or even showing that he was better qualified than the individual who received the promotion: rather, the plaintiff must show that the "defendant's employment decisions . . . were in fact motivated by race." *Springer*, 509 F.3d at 1349.

Sprowl insists that he was more qualified for the promotion than his evaluations suggest. As an initial matter, this Court notes that Sprowl had received potential appraisals of Needs Development on two occasions prior to the Gamble incident, which helps dispel any inference that Sprowl was rated Needs Development on this occasion based upon his race. Further, Sprowl has failed to present evidence that the chosen candidates—Jones, Cooper, and Hearle—were *not* qualified or that they were less qualified than Sprowl. Sprowl avers that Jones, Cooper, and Hearle received "identical cut and paste performance assessments" before they were selected. However, Sprowl does not quarrel with the substance of their assessments, let alone present evidence that any of the assessments were false.

Sprowl further asserts that he received a higher score on his performance assessment than two of the white candidates selected for promotion (Jones and Hearle), and that this is evidence that MBUSI's reasons for not promoting him are pretextual. This Court is not persuaded by Sprowl's argument. The performance

assessment is just one part of MBUSI's three-part evaluation, and Jones and Hearle each received higher scores than Sprowl on the other two parts of the evaluation: potential appraisal and peer input. Cooper, the other white candidate who was selected, had a *higher* performance assessment score than Sprowl, and Sprowl does not argue—let alone prove—that any of facts relied on by MBUSI in calculating Cooper's score were false or unworthy of credence.

The evidence in the record shows that MBUSI "gave an honest explanation of its behavior" when it promoted Jones, Hearle, and Cooper because they were the most qualified candidates. *See Kragor*, 702 F.3d at 1310–11. Jones's potential appraisal indicates that he filled in for the team leader, completed shift turnover reports, and escalated when necessary. Sprowl failed to present any evidence that these descriptions of Jones are false. Further, Hearle's and Cooper's potential appraisals indicate that they filled in for the team lead, completed all tasks a team leader would complete in a normal work week, showed a "desire to advance," and requested and accepted additional projects. Sprowl failed to present any evidence that these descriptions of Hearle and Cooper are false. And Sprowl presented no evidence that *he* had completed all tasks a team leader would complete in a normal work week, showed a "desire to advance," or requested and accepted additional projects—characteristics of both Hearle and Cooper. Therefore, Sprowl has failed

to undermine MBUSI's explanation that it promoted Jones, Hearle, and Cooper because they were the best qualified for the team leader position. It follows that Sprowl cannot show that the disparities between the successful candidates' qualifications and his own were so great that no reasonable person could have chosen those candidates over himself. *See Springer*, 509 F.3d at 1349.

This Court acknowledges that Sprowl has presented *some* evidence that would allow a rational factfinder to disbelieve some of MBUSI's proffered legitimate, nondiscriminatory reasons for not promoting him in 2016. Specifically, Morris had cited Sprowl's lack of leadership skills as a reason why Sprowl was deemed Not Ready for the January 2016 promotion, including that Sprowl needed to fill in as team leader. However, Sprowl testified in his deposition that he had filled in as team leader and that he had participated in leadership programs, including a program in Germany.

Nevertheless, Sprowl has still failed to show that the disparities between the successful candidates' qualifications and his own were so great that no reasonable person could have chosen those candidates over Sprowl. *See Springer*, 509 F.3d at 1349. Therefore, even construing the facts in the light most favorable to him, Sprowl has failed to show that MBUSI's proffered reasons for promoting three white candidates in January 2016 was a pretext for race discrimination.

b. March 2017 Promotion

Regarding the March 2017 promotion, Sprowl does not argue—let alone prove—that he was more qualified than Nate Davis, the white employee who was selected for the promotion. Instead, Sprowl avers that two other female employees who sought the promotion were also deemed Not Ready for the promotion. Sprowl further avers that he expressed his displeasure with the evaluation process to MBUSI, and that one of the female employees also expressed frustration with the allegedly subjective standards used by MBUSI in its evaluation process. It appears that Sprowl presents this evidence in an attempt to cast MBUSI as discriminatory in general: in other words, that MBUSI discriminates based on both race and gender, to the detriment of black and female employees and to the benefit of white male employees. However, this Court is not convinced that evidence of MBUSI's alleged gender discrimination, even if true, is relevant to Sprowl's own claim that he was discriminated against based on his race.

Further, Sprowl fails to argue or present any evidence to undermine MBUSI's claim that it promoted Davis over himself because Davis "showed better leadership skills, had filled in on more occasions as team leader, had more experience filling out shift turnover reports, had better technical skills, escalated and problem solved better, and had more experience throughout the entire

assembly shop." (Doc. 24 at 16, ¶ 81.) It appears that MBUSI "gave an honest explanation of its behavior" when it promoted Davis because he was the most qualified candidate. *See Kragor*, 702 F.3d at 1310–11. In sum, even construing the facts in the light most favorable to him, Sprowl has failed to show that the disparities between Davis's qualifications and his own were so great that no reasonable person could have chosen Davis over Sprowl. *See Springer*, 509 F.3d at 1349.

No reasonable jury could conclude that either (1) MBUSI's decision to promote Jones, Hearle, and Cooper over Sprowl in 2016 or (2) MBUSI's decision to promote Davis over Sprowl in 2017 was based upon unlawful race discrimination. Therefore, MBUSI is entitled to summary judgment on Sprowl's race discrimination claim (Count I).

B. Retaliation

Next, Sprowl claims that MBUSI's failure to promote him to the team leader position in January 2016 and in March 2017 was unlawful retaliation for Sprowl's complaining about Gamble's racial slur and for filing discrimination charges with the EEOC. A plaintiff successfully establishes a *prima facie* case of retaliation if he demonstrates that (1) he engaged in statutorily protected activity; (2) he suffered an adverse employment action; and (3) a causal link exists between the protected

activity and the adverse employment action. *See Brown v. Ala. Dep't of Transp.*, 597 F.3d 1160, 1181 (11th Cir. 2010). MBUSI argues that Sprowl cannot meet his initial burden under *McDonnell Douglas* because he cannot establish a causal connection between his statutorily protected activity and the alleged adverse employment action.

One way a plaintiff can establish a causal connection is by showing that the employer knew of his statutorily protected activity and there was a close temporal proximity between this awareness and the adverse employment action. *Higdon v. Jackson*, 393 F.3d 1211, 1220 (11th Cir. 2004); *see also Clark Cty. Sch. Dist. v. Breeden*, 532 U.S. 268, 273 (2001) (stating that the temporal proximity must be "very close" and concluding that a 20-month delay was too long). A claim of retaliation fails as a matter of law "[i]f there is a substantial delay between the protected expression and the adverse action in the absence of other evidence tending to show causation." *Higdon*, 393 F.3d at 1220. The plaintiff may also prove causation by showing that the desire to retaliate was the "determinative influence" on the defendant's decision to take an adverse action. *See Sims v. MVM, Inc.*, 704 F.3d 1327, 1337 (11th Cir. 2013).

Sprowl points to his complaint about Gamble and the filing of his EEOC charge as satisfying the protected activity prong of his *prima facie* case. It is

undisputed that Sprowl reported Gamble's racist comment in September 2015, applied for the first team leader job posting in January 2016, and was subsequently denied the promotion to team leader. Without other evidence of causation, a three- to four-month passage of time between protected activity and an adverse action is too long for the purposes of establishing a causal link. *See Clark*, 532 U.S. at 273–74. Thus, Sprowl cannot rely on temporal proximity alone to establish a causal connection between his internal complaint, which was made in September 2015, and MBUSI's first failure to promote him to a team leader position, which occurred sometime after January 2016.

Standing alone, the temporal gap between Sprowl's complaint and MBUSI's failure to promote him to the second team leader position also does not support a finding of causation. MBUSI posted this team leader position in March 2017. Thus, well over a year passed between the filing of Sprowl's internal complaint and MBUSI's failure to promote Sprowl to this position. The temporal proximity between these two events is far too attenuated to establish a causal link, in the absence of other evidence of causation.

Nor is the temporal proximity between Sprowl's filing of his EEOC charge and MBUSI's failure to promote him to the second team leader position sufficiently close to establish causation on its own. Sprowl filed his EEOC charge

in March 2016, which was approximately one year prior to the second team leader position job posting. Thus, without more, the length of time between these two events fails to establish causation. Even if the temporal proximity had been closer, close timing, without evidence of decisionmaker knowledge of the protected activity, is insufficient to demonstrate causation. *See Brungart v. BellSouth Telecomms., Inc.*, 231 F.3d 791, 798–99 (11th Cir. 2000). Here, Morris and McCall, the relevant decisionmakers with respect to the team leader promotions, testified that they did not learn of Sprowl's EEOC charge until after the filing of this lawsuit. Sprowl does not dispute this testimony. Accordingly, Sprowl has failed to establish a causal link between the filing of his EEOC charge and MBUSI's failure to promote him when the second team leader position became available.

Nonetheless, Sprowl argues that Morris's knowledge of his complaint about Gamble, combined with what he asserts is other relevant evidence, sufficiently establishes causation for the purposes of his *prima facie* case of retaliation with respect to both instances of MBUSI's failure to promote him to the team leader position. According to Sprowl, the following is sufficient to create a question of material fact on the issue of causation: (1) evidence that MBUSI did not initially consider Sprowl for the January 2016 team leader position due to confusion about his name; (2) the fact that Morris marked Sprowl's performance as Needs

Development when he issued Sprowl's potential appraisal; (3) evidence that, after Sprowl complained about Gamble, Morris did not conduct Sprowl's annual performance evaluations close to the date of the anniversary of his hire as required; (4) evidence that, although Sprowl received similar performance assessments to two white employees who had not made complaints about racism, the two white employees received potential appraisals that rated them ready for promotion; and (5) the fact that during the EEOC's investigation into this matter a witness reported that MBUSI employees blamed Sprowl for Gamble's termination and that this witness believed that Sprowl's complaint is what prevented him from being promoted to team leader. (*See* Doc. 31 at 23–25.)

Assuming, *arguendo*, that Sprowl had been able to establish a *prima facie* case of retaliation, the burden of production would then shift to MBUSI to produce a legitimate, nondiscriminatory reason for failing to promote Sprowl to team leader. As stated above in Part IV.A.2, MBUSI's explanation for its promotion decisions—that it chose the most qualified candidates to fill the team leader positions—meets this burden.

Accordingly, the burden shifts back to Sprowl to show that MBUSI's proffered reason is mere pretext for unlawful retaliation. A plaintiff may succeed in demonstrating pretext either "directly by persuading the court that a

discriminatory reason more likely motivated the employer or indirectly by showing that the employer's proffered explanation is unworthy of credence." *Burdine*, 450 U.S. at 256. In determining whether the proffered reason is pretextual, courts are not in the "business of adjudging whether employment decisions are prudent or fair," but instead, are solely concerned with "whether unlawful discriminatory animus motivates a challenged employment decision." *Damon v. Fleming Supermarkets of Fla., Inc.*, 196 F.3d 1354, 1361 (11th Cir. 1999).

Even if Sprowl did satisfy his *prima facie* case, Sprowl has nonetheless failed to produce sufficient evidence of pretext to survive summary judgment on his retaliation claim. First, although MBUSI did not initially consider Sprowl for the January 2016 team leader position due to confusion about his name, MBUSI fixed the problem, and ultimately Sprowl was considered for the position. Second, although Morris marked Sprowl's performance as Needs Development when he issued Sprowl's potential appraisal, Sprowl had received potential appraisals of Needs Development on two occasions prior to complaining about Gamble, which helps dispel any inference that Sprowl was rated Needs Development on this occasion in retaliation for his complaint. Third, although Morris did not timely conduct Sprowl's annual performance evaluations after Sprowl complained about Gamble, it is undisputed that Morris also did not timely conduct performance

evaluations for four white candidates. And, in any event, Morris gave Sprowl updated performance evaluations so that Sprowl was considered for both promotions.

Fourth, although Sprowl received similar performance assessments to two white employees who had not made complaints about racism, and those two white employees received potential appraisals that rated them Ready for promotion, these facts do not give rise to an inference of retaliatory animus. The performance assessment is based on separate criteria from the potential appraisal: the former considers the employee's current job performance, while the latter considers whether the employee has the requisite skills for a promotion. To be sure, some employees who have demonstrated good performance in their current jobs also have the requisite skills for a promotion. But good performance in one's current job does not necessarily mean that one is ready for a promotion. Therefore, no retaliatory animus can be inferred from MBUSI's conclusions that (1) Sprowl had performed well in his current job but had not demonstrated the requisite skills for a promotion, and (2) two white candidates had performed well in their current jobs and had also demonstrated the requisite skills for a promotion. Finally, the witness's report to the EEOC that MBUSI employees blamed Sprowl for Gamble's termination is purely speculative and, therefore, insufficient grounds to conclude

that MBUSI acted out of retaliatory animus. Similarly, the witness's belief that Sprowl's complaint prevented him from being promoted to team leader is purely speculative and, therefore, insufficient grounds to conclude that MBUSI acted out of retaliatory animus.

Further, just as with his discrimination claim, Sprowl has failed to rebut MBUSI's nonretaliatory reason for not promoting him: that MBUSI chose the employees who were the most qualified. For all the same reasons discussed in Part IV.A.3, *supra*, Sprowl has neither shown that MBUSI's proffered reason is false nor that the real reason was unlawful retaliation as it pertains to either the January 2016 or the March 2017 promotions.

No reasonable jury could conclude that MBUSI's failure to promote him in either January 2016 or March 2017 was motivated by unlawful retaliatory animus. Therefore, MBUSI is entitled to summary judgment on Sprowl's retaliation claim (Count II).

C. Constructive Discharge

Sprowl's final claim is a claim for constructive discharge. "A constructive discharge occurs when a discriminatory employer imposes working conditions that are '*so intolerable* that a reasonable person in [the employee's] position would have been compelled to resign.'" *Fitz v. Pugmire Lincoln-Mercury, Inc.*, 348 F.3d 974,

977 (11th Cir. 2003) (emphasis added) (quoting *Poole v. Country Club of Columbus, Inc.*, 129 F.3d 551, 553 (11th Cir. 1997)); *see also Green v. Brennan*, 136 S. Ct. 1769, 1776 (2016). Courts are to evaluate the plaintiff's working conditions under an objective standard. *Penn. State Police v. Suders*, 542 U.S. 129, 141 (2004). "Establishing a constructive discharge claim is a more onerous task than establishing a hostile work environment claim." *Bryant v. Jones*, 575 F.3d 1281, 1298 (11th Cir. 2009) (citing *Landgraf v. USI Film Prods.*, 968 F.2d 427, 430 (5th Cir. 1992)).

Sprowl alleges that his working conditions were intolerable because of (1) two instances in which MBUSI declined to promote Sprowl to team leader; and (2) the fallout from the firing of Gamble, for which Sprowl alleges that he was blamed. As explained earlier, Sprowl reported Gamble for using a racial slur, and Gamble was subsequently fired. Sprowl testified that he believes that Morris tried to turn people against him after he complained about Gamble, though Sprowl admits that he never heard or saw Morris doing so, and no one ever told him that Morris did so. However, Dennis Finnen, who worked at MBUSI from 2014 to 2016, said that Sprowl was "shunned" by the maintenance crew after the Gamble incident. Another team member, Cecil Agee, said that there was an "uproar" over Gamble's termination and that Sprowl was blamed.

Even construing the facts in the light most favorable to Sprowl, no reasonable person in Sprowl's position would find Sprowl's working conditions so intolerable that they felt compelled to resign. The Eleventh Circuit requires more from the plaintiff to overcome summary judgment on a constructive discharge claim. For example, in *Poole*, the Eleventh Circuit found that a genuine issue of material fact existed as to the plaintiff's age discrimination claim because of the following working conditions: the defendant refused to process the plaintiff's worker's compensation claim for over a year; the defendant told the plaintiff that she was "as old as [defendant's] mother" and told others that plaintiff "was too old, had too many lines in her face, and too many gray hairs"; the plaintiff was moved to a new office with no desk or computer; the defendant instructed other employees not to speak to the plaintiff; and the plaintiff's "duties and responsibilities were reduced to virtually nothing." 129 F.3d at 551–52. Given that the she was "[s]tripped of all responsibility, given only a chair and no desk, and isolated from conversations with other workers," the plaintiff had presented sufficient evidence that a reasonable person might find her working conditions intolerable. *Id.* at 553.

Sprowl has failed to meet the onerous burden of proving constructive discharge at the summary judgment stage. Unlike in *Poole*, there is no evidence

here that MBUSI knew about or condoned other employees' decisions to "shun" Sprowl or blame Sprowl for the Gamble incident. Sprowl cites his belief that Morris tried to turn other employees against him; however, this is pure speculation, as Sprowl admits he never saw, heard, or was told about Morris doing this. Similarly, the statements of Fennin and Agee fail to show that MBUSI knew about or condoned employees' alleged mistreatment of Sprowl following the Gamble incident. And unlike the plaintiff in *Poole*, Sprowl cannot point to any direct statements of racial animus, elimination of duties or responsibilities, or any other conditions that are "so intolerable that a reasonable person in [Sprowl's] position would have been compelled to resign." *Fitz*, 348 F.3d at 977. In sum, MBUSI's failure to promote Sprowl over better qualified candidates on two occasions, combined with unpleasant treatment from co-workers that was not condoned by the employer, are insufficient to allow Sprowl's constructive discharge claim to survive summary judgment.

Therefore, Sprowl's constructive discharge claim (Count III) is due to be dismissed.

V. Conclusion

For the reasons stated above, MBUSI's Motion for Summary Judgment (doc. 24) is due to be GRANTED. MBUSI's Motion to Strike (doc. 36) is due to

be DENIED as MOOT.[5] An Order consistent with this Opinion will be entered contemporaneously herewith.

DONE and **ORDERED** on September 20, 2019.

L. Scott Coogler
United States District Judge

199335

[5] MBUSI's Motion to Strike objected to the use of the EEOC's Letter of Determination ("EEOC Letter") and the EEOC's Investigator Memorandum ("EEOC Memorandum"). Even if this Court concluded that either the EEOC Letter or the EEOC Memorandum were admissible, it would not change the results of this Opinion. Therefore, the Motion is denied as moot.

FILED
2019 Sep-20 AM 09:22
U.S. DISTRICT COURT
N.D. OF ALABAMA

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
WESTERN DIVISION

REGINALD ERIC SPROWL,	)	
	)	
Plaintiff,	)	
	)	
v.	)	7:18-cv-00446-LSC
	)	
MERCEDES-BENZ U.S. INTERNATIONAL, INC.,	)	
	)	
Defendant.	)	

ORDER

For the reasons stated in the Memorandum of Opinion entered contemporaneously herewith, Defendant's Motion for Summary Judgment (doc. 24) is GRANTED, and Defendant's Motion to Strike (doc. 36) is DENIED as MOOT. Accordingly, this action is DISMISSED WITH PREJUDICE. Costs are taxed to the Plaintiff.

DONE and **ORDERED** on September 20, 2019.

L. Scott Coogler
United States District Judge

199335

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
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EEOC Charge Number: 420-2016-01437

Reginald Sprowl
105 Folly Bend Drive
Greenwood, South Carolina 29649

Charging Party

Mercedes Benz US International
1 Mercedes Drive
Vance, AL 35490

Respondent

LETTER OF DETERMINATION

Under the authority vested in me by the Commission, I issue the following determination as to the merits of the subject charge filed under Title VII of the Civil Rights Act of 1964, as amended.

Respondent is an employer within the meaning of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e, et seq. Timeliness and all other requirements for coverage have been met.

The Charging Party alleged that the Respondent engaged in unlawful employment practices in violation of Title VII of the Civil Rights Act of 1964, as amended, by discriminating against him because of his race (Black) and by retaliating against him after he complained about a racial slur made by a White co-worker. According to the Charging Party, three White employees who were less qualified than him were selected for the Team Leader position. He contends that the evaluation performed by his Supervisor did not reflect his true performance.

The Respondent denies the Charging Party's allegations of discrimination and retaliation and contends that there is no evidence to support the allegations. The Respondent asserts that the selected candidates had higher overall scores and were deemed "ready" for promotion while the Charging Party was evaluated as "Needs Development." The Respondent agrees that the Charging Party made a complaint against a co-worker regarding a discriminatory comment and that immediate, corrective action was taken in response. The Respondent denies that the Charging Party's non-selection was retaliatory in nature or that it had anything to do with his race.

The evidence obtained through the investigation supports the Charging Party's allegation that he was qualified for the position and that he was viewed as a leader on his shift by his peers. Testimony obtained disputes the Respondent's position that the Charging Party did not take on projects or that he failed to step into the Team Leader role when vacant. The available evidence establishes that the Charging Party volunteered to fill in as a Team Leader and that he was selected to go to Germany for a project in 2015.

Accordingly, I have concluded that there is reasonable cause to believe that Respondent retaliated against Charging Party in violation of Section 703 of Title VII of the Civil Rights Act of 1964, as amended.

This determination is final. When the Commission finds that violations have occurred, it attempts to eliminate unlawful practices by informal methods of conciliation. Therefore, I invite the parties to join with the Commission in reaching a just resolution of this matter. Disclosure of information obtained by the Commission during the conciliation process will be made only in accordance with the Commission's Procedural Regulations (29 CFR Part 1601.26).

If the Respondent wishes to accept this invitation to participate in conciliation efforts, you may do so by reviewing the enclosed agreement as presented or provide a counter proposal to the Commission's representative, Annette George, within 14 days of the date of this determination. Should the Respondent have further questions regarding the conciliation process or the conciliation terms it would like to propose, we encourage it to contact Annette George, Investigator, at 251-690-2363. Should there be no response from the Respondent in 14 days, we may conclude that further conciliation efforts would be futile or nonproductive.

Respondent is reminded that Federal law prohibits retaliation against persons who have exercised their right to inquire or complain about matters they believe may violate the law. Discrimination against persons who have cooperated in Commission investigations is also prohibited. These protections apply regardless of the Commission's determination on the merits of the charge.

On Behalf of the Commission:

11:27.17
Date

Erika LaCour
Local Office Director

cc: Respondent Representative
Michael Lucas, Esq.
BURR FORMAN, LLP
3400 Wells Fargo Tower
420 North 20th Street
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INVESTIGATOR MEMORANDUM

Charge Number: 425-2016-01437

FROM: Annette George, Investigator

SUBJECT: Reginald Sprowl v. Mercedes Benz USA

The Charging Party alleges he was discriminated against by the Respondent because of his race (Black) and retaliated against after he complained of discrimination. CP alleges he was not promoted to the Team Leader position in Feb 2016. He made a complaint of discrimination in Oct 2015.

Respondent states CP was not promoted the position of Team Leader because the successful candidates scored better (ready) on the overall evaluation process and CP was not eligible because his overall rating was needs development.

CP was hired by R in 2012 as a Team Member. He reports R promoted Chris Hearle (White/Team Member), Brian Cooper (White/Team Member), and Chris Jones (White/Team Member) because of their race.

CP reports he complained about a racist comment made by a co-worker, Ken Gamble, in Oct 2015. He asserts the employee was terminated and he was shunned by employees and blamed for the termination of Gamble.

After his complaint, CP asserts R retaliated against him when employees with less seniority, skills and experience were promoted to the Team Lead position over him.

R does not dispute that the CP was hired as a Team Member.

R reports three Team Leader positions became available in Jan 2016[1].R reports Charging Party bid in response to a posting for a Team Leader Maintenance position in the Assembly Department. According to R they have an established process for Team Leader promotions. "Team Members who apply for the position are evaluated based on three separate criteria and assigned either I or 2 points for each criteria: (1) their Team Leader Assessment result; (2) their potential appraisal for the next level rating; and (3) their peer input results. Considering these three criteria, candidates are designated as Ready I (overall 2), Ready 2 (overall 1.67), or Needs

[1] The CP filed the EEOC Charge in March 2016.

Development (overall 1.33). MBUSI Management then fills the opening from the Ready I and Ready 2 candidates.

R states they solicited peer input from the candidates' who had applied for the position and who had completed the Team Leader Assessment. However, input was not solicited for Charging Party because the HR Specialist in charge of the process found no record that Charging Party had completed the Team Leader Assessment.[2] Charging Party actually had completed the Team Leader Assessment but his name was searched as Reginald Sprowl rather than Eric Sprowl. "As a result, a mistake had been made and Mr. Sprowl was left off the original peer input solicitation." Charging Party was off work that week. When Charging Party returned to work he raised this issue. MBUSI looked into the matter and determined that Charging Party erroneously had been left off the peer input list. As a result, MBUSI discarded the prior peer input sheets and repeated the process with Charging Party's name included.

Also, with respect to performance evaluations, the applicable Group Leader was requested to provide evaluations for those candidates who did not have current evaluations. This request included four other candidates, all of whom were white. [3]

Charging Party was assigned a needs development on his February I 0, 2016 performance evaluation. (See Tab D, Exhibit A). That performance evaluation provided Charging Party an overall evaluation level of 3.04 which was greater than his prior overall evaluation level which was 3.0. (See Tab D, Exhibit B). However, Charging Party was listed as needs development because "he needs to increase his proficiency on the east end of Zone I". Charging Party primarily worked on the west end of Zone I.

In addition to bettering his technical proficiency, R reports Charging Party needs to be able to lead repairs in breakdown situations and to better communicate. The Charging Party had been encouraged to increase his proficiency on the east end of Zone 1, his leadership skills and his communication skills. In order to do so, R reports the Charging Party could volunteer to work on the east end of Zone 1 during his off weeks, take advantage of the Controls Engineer, take training courses which have been suggested to him by his Group Leader, and continue to develop his proficiency.

The following is a list of those individuals who were up for the Team Lead promotion in Feb 2016:

NAME	RACE	GROUP LEADER	POTENTIAL APPRAISAL	TEAM LEADER ASSESSMENT	PEER INPUT	AVERAGE
J. Cherry	W	S. Morris	Ready (2)	25(1)	4.2 (2)	1.67 (Ready 2)
Turner	W	S. Morris	ND (1)	29(2)	3.7 (2)	1.67 (Ready 2)
Jones*	W	S. Morris	Ready (2)	26.5 (1)	4.2 (2)	1.67 (Ready 2)
ER Sprowl	B	S. Morris	ND (1)	32.5 (2)	3.4 (1)	1.33 (ND)

[2] CP's employee number was next to his name on the signup sheet and was not utilized to find him in the Respondent's database.
[3] CP did not receive a "special" evaluation. The evaluation was required for the selection process because his last evaluation was completed over a year prior to the promotion assessment.

Cooper*	W	S. Morris	Ready (2)	33 (2)	4.2 (2)	2.00 (Ready 1)
Jacobs	W	S. Morris	Ready (2)	31 (2)	4.0 (2)	2.00 (Ready 1)
Hearle*	W	S. Morris	Ready (2)	28.5 (1)	4.4 (2)	1.67 (Ready 2)
Garduno	W	S. Morris	ND (1)	37 (2)	3.2 (1)	1.33 (ND)
Greenwood	W	S. Morris	Ready (2)	30 (2)	2.7 (1)	1.67 (Ready 1)
Corder	W	S. Morris	Ready (2)	22.5 (1)		

Those individuals who have an asterisk next to their name were selected for the Team Lead position.

R reports Hearle, Cooper, and Jones were selected because they scored in the Ready 1 or Ready 2 rankings. CP scored as a Needs Development and therefore was not eligible for promotion.

Onsite Interview

Scotty Morris (Maintenance Supervisor) reports he was hired by the Respondent as a Maintenance Team Member in Sep 2004. He reports he supervises Team Members, Team Leaders, and Group Leaders. He states he supervises about 47 employees with 10 of those individuals being Team leaders. He states one of the Team Leaders is Black.

He states duties of the Team Leaders are to escalate any problems that shut down the production line, coordinate Team Member activities, repair broken equipment, and they are the technical leader on the ground. He states they also submit reports to him at the end of the shift.

He asserts employees rotate shifts from days to evenings and then to nights. He states if there is an issue that a Team Leader can't handle and he is not present they call him at home.

He states there is a process in place to become a Team Leader. First the employee self nominates them self for the position. He states the employee must complete the Team Leader assessment given by AIDT to self-nominate. He asserts the TL assessment puts the employee through situations and grades them on how they react and handle specific scenarios. They are also graded on paperwork skills, organization skills and the process.

He states then each employee has a peer review. He asserts HR brings the peer review forms to the employees to complete.

Last, the employee is graded on their yearly evaluation. He asserts this is either ready or needs development. He states he does the yearly evals on all his employees. He states he observes the employees when they work. He reports he also takes notice of those who volunteer to take part in projects or to fill in and be a leader when the leader is absent. He also looks at the technical ability of the individual and their willingness to learn. He reports he schedules training. He reports he posts a sign-up sheet each week regarding cross training in different areas. He reports leadership training is also available through AIDT. He reports employees have to go through him to attend this training. He states there are formal and informal training sessions available weekly.

He reports evaluations expire after one year. So, if an employee nominates themselves for a promotion and their evaluation is expired, a new one must be completed. He reports CP

received a Needs Development because he was not completely familiar with the entire shop. He states CP was mostly familiar with the West end and not as much with the East end. Also, he reports CP did not seek training on his off time much. He reports he can see when a group of people are together to solve a problem, he can see who steps up and who has the technical ability to be the TL.

He states CP is able to work mostly without support. He states he is lacking in PLL programming (robotic components).

He reports when CP nominated himself in Jan 2016, HR looked him up under the name he signed up under. He reports that is not his legal name or his name in their system so the HR Rep did not find him. He reports he looked at the list and saw that CP was not on it. He reports he assume that CP did not complete the Self-assessment. Once the issue was discovered the situation was rectified and the whole process started from the beginning to include CP.

He states he has the opportunity to observe all employees work. He reports all three of the selectees in Feb 2016 have volunteered for a project, small or large. He states all of them have also filled in as the TL. He states all three did shift reports and escalated down time issues to him. He states all three are good technical leaders.

He reports CP is a good employee. He asserts he hired CP and he does not regret it because CP has been able to fulfill his responsibilities as a Team Member.

Witness Interviews

Dennis Finnen (Electrical Maintenance) reports he worked for R from 2004 – 2016. He reports Scotty Morris was his supervisor. He reports he worked with CP and he was very knowledgeable about his job. He asserts CP also took initiative when it came to the work. He states he does not know why CP was not selected for the Team Leader Position. "Some do more ass kissing than others."

He states Ken Gamble was terminated after CP complained that he made a racist remark. He reports R was looking for a reason to terminate Gamble because he was pushing for the union to come in and pushing for the plant to be safer for workers.

He reports he retired from R in 2016 due to his health issues (of his own accord).

He reports after CP complained about Gamble he was shunned by the rest of the maintenance crew. He asserts the three White employees who were selected as Team Leaders were not as qualified as CP.

He reports when the Team Leader was out employees could volunteer to fill in. He states CP filled in a couple of times.

In regards to training, he reports employees must sign up for training and some training is conducted during duty hours so a vacation day would be spent if training was approved and attended on a duty day.

Cecil Agee (Maintenance Team Engineer) reports he was hired in 2004 as a Maintenance Team Member. He reports his supervisor is Scott McCall. He reports he works with all of the maintenance personnel. He states Scotty Morris began working for R about 8 months after he did. He reports Morris calls him and his team members when they need help and they call Morris and his Team members if they need additional help.

He states he knows CP, "he just recently resigned his position." He reports CP resigned because he was unhappy about not being promoted. He asserts the rules to become a TL change all the time. He reports currently you have to sign up on a list and attended TL training.

He states Morris would ask certain individuals, who he wanted in the position, to sign up. He states the selection on TLs is basically up to the manager's discretion.

He asserts some training is mandated, but there is additional training available. He reports some of the training is available to employees during their off time or employees could train on duty. He asserts there are many people who don't come in on their time off to train. He does not know who is coming in for training outside of their normal duty days. He reports R has rosters to sign up for training. He reports CP has attended training. He states CP was sent to Germany to learn more about the business. He reports R would not send someone to Germany who was not knowledgeable about the processes.

He reports filling in for the TL is voluntary. He states managers don't ask or request for employees to fill in. He reports he believes CP has filled in as the TL some times.

He states after CP complained about Ken Gamble, he (CP) felt that everything went downhill from there. He reports CP felt alienated by his co-workers.

He states in his opinion, CP would have done a fine job as the TL. He asserts he was equally or better qualified than those who were promoted. He states he believes that the issue with Gamble caused CP to not get the promotion. He reports there was a huge uproar of Gamble's termination and CP was blamed.

He reports Morris has his favorites. He states he feels that there is favoritism and racism in the plant.

Kristi Guardino (Team Member) reports she was hired by R in Jan 1997. She reports Scotty Morris is her supervisor.

She reports she has attended training outside the plant, but she has not trained during her off time.

She reports Morris did not want CP to have the TL position. She states after the Ken Gamble issue it became impossible for CP to be promoted because of how CP was viewed. She states

people blamed CP for Gamble's termination. She reports CP was very qualified, more qualified than those selected. She states Morris grooms those he wants to get the promotion.

She reports there is no sign up for training. She states Morris would ask for people take training and employees could request to be trained.