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[PUBLISH]

IN THE
UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 21-13200

[Filed November 9, 2022]

NICOLE OWENS,
Plaintiff-Appellant,

versus

STATE OF GEORGIA, GOVERNOR'S OFFICE OF STUDENT ACHIEVEMENT,
Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Georgia
D.C. Docket No. 1:19-cv-05683-MHC

Opinion of the Court

Before LUCK, BRASHER, and HULL, Circuit Judges.

BRASHER, Circuit Judge:

This appeal requires us to answer a question of first impression about the Rehabilitation Act. We have held that, to trigger an employer's duty to provide an

accommodation under the Rehabilitation Act, a disabled employee must (1) make a specific demand for an accommodation and (2) demonstrate that such an accommodation is reasonable. *Frazier-White v. Gee*, 818 F.3d 1249, 1255–56 (11th Cir. 2016). But we have never addressed what information a disabled employee must provide to her employer to trigger the employer's duty to accommodate her disability.

This appeal presents that question. Following her c-section childbirth in July 2018, Nicole Owens informed her employer, the State of Georgia, Governor's Office of Student Achievement ("GOSA"), that she would need to work remotely for several months. In support of this request, Owens provided GOSA two notes from her physician, which mentioned Owens's c-section delivery, stated that she was "doing well," and concluded that she "may" telework until November 2018. Owens separately informed GOSA that she was seeking to telework due to childbirth-related "complications" but provided no detail about the nature of these complications or how they would be accommodated by teleworking. Finding this information insufficient to support Owens's accommodation request, GOSA asked Owens to either submit additional documentation or return to the office. When Owens failed to do either, GOSA terminated her employment.

Owens sued GOSA for (1) failure to accommodate in violation of the Rehabilitation Act; (2) retaliation in violation of the Rehabilitation Act; and (3) pregnancy discrimination under the Pregnancy Discrimination Act. The district court granted summary judgment for GOSA on all three claims. As to the first claim, the

district court reasoned that Owens failed to establish a prima facie case of failure to accommodate because she never notified GOSA of her disability or connected that disability with her requested accommodation. As to the other claims, the district court concluded that Owens failed to establish that GOSA's proffered reasons for terminating her were pretext for discrimination.

We agree with the district court. We hold that, as part of her initial burden to establish that a requested accommodation is reasonable under the Rehabilitation Act, an employee must put her employer on notice of the disability for which she seeks an accommodation and provide enough information to allow her employer to understand how the accommodation she requests would assist her. Because Owens did not identify any disability from which she suffered or give GOSA any information about how her requested accommodation—teleworking—would accommodate that disability, the district court correctly granted summary judgment. We conclude that Owens's other claims fail for the lack of evidence that GOSA's proffered reasons for terminating her were pretext for discrimination. Accordingly, we affirm.

I.

Nicole Owens began working for GOSA in 2016 as a web content specialist and served in this role without reprimand until her termination in 2018. Although GOSA employees were allowed to work from home one day per week, Dr. Cayanna Good—GOSA's Executive Director—did not favor full-time teleworking because she believed it impeded effective staff supervision and

support. As Executive Director, Good was GOSA's ultimate decisionmaker for both accommodation requests and firing of GOSA staff.

In early 2018, Owens informed GOSA that she had a "high-risk pregnancy" and wanted to take time off under the Family Medical Leave Act ("FMLA") until her due date. GOSA sent Owens a letter approving her FMLA request. The approval letter stated GOSA's policy that an employee taking FMLA leave is "required to present a medical release before returning to work" containing "any restrictions and the duration of same." But the policy does not specify whether "returning to work" meant returning to the physical office. Owens was on FMLA paid leave from early 2018 until July 20, 2018.

Owens gave birth via c-section on July 18, 2018. Thereafter, Owens notified her immediate supervisor, Rosaline Tio, that she was experiencing childbirth-related complications arising from her c-section, which required two blood transfusions.

On August 3, 2018, Tio informed Owens that Owens had exhausted her paid FMLA leave and was being placed on unpaid leave as of July 20, 2018. Owens responded that same day, informing GOSA that she would return to work remotely on August 6, 2018. She attached a note from her physician, which stated that Owens "delivered a baby by cesarean on 7/18/2018," "is doing well," and "may return to work via tele-work from her home."

Good believed this note qualified as a "medical release" for Owens to "return to work" under GOSA's

FMLA policy. Owens, too, admits that this note cleared her to return to work, though only in a remote capacity.

Good was unaware at the time of this initial telework request that Owens was experiencing any medical complications that would prevent her from working in the office. Nonetheless, because she knew that "most childcare facilities don't accept infants younger than six weeks," Good allowed Owens to telework temporarily so that Owens could make childcare arrangements. Because Good believed that Owens's August 3 telework request was unrelated to any health complications, Good did not require Owens to provide additional medical documentation before approving her temporary teleworking arrangement. Owens thus resumed work remotely on August 6, 2018. The parties agree that, at that time, Owens was no longer on FMLA leave.

Owens routinely communicated with Tio about her post-delivery medical appointments. Knowing Owens had her six-week "milestone appointment" scheduled for September 11, 2018, Tio wrote Owens on September 12, asking how the appointment went. Owens responded that, because of complications from her c-section delivery, she would need to continue teleworking until November 5, 2018. Owens attached a second doctor's note dated 9/11/2018, which stated only that Owens "may return to work November 5, 2018" and "may continue to telework at home until then." The note said nothing about Owens's medical conditions or the medical necessity of teleworking.

Tio forwarded this information to Good and Felicia Lowe, a Human Resources Director in the Office of

Planning and Budget, which carried out GOSA's human resources functions. Because Owens's second doctor's note stated only that Owens "may" telework, not that she "must," Good believed it was ambiguous and lacked enough information for her to evaluate Owens's accommodation request. Because Tio had expressed concerns with Owens's productivity and responsiveness while teleworking, Good found it important to ensure that Owens's teleworking accommodation was necessary, not merely her own personal preference.

At Good's direction, Lowe called Owens and told her that she needed to submit additional documentation to show her telework request was medically necessary. Owens followed up with Lowe that same day after speaking with her doctor's nurse. She told Lowe that if GOSA required more detail than "just an appendage" to the September 11 note stating its contents were "medically advised," GOSA would need to provide the doctor's office with an information request form.

Accordingly, on September 20, 2018, Lowe sent Owens reasonable accommodation paperwork for her and her physician to complete. The accommodation paperwork asked for information verifying Owens's disability and the limitations caused by that disability, describing how those limitations restrict Owens's ability to perform her job functions, and identifying any workplace accommodations that would permit Owens to perform these job functions. Included with the reasonable accommodation paperwork was an "Employee Release" for Owens to sign that would authorize GOSA to acquire medical information from

Owens's doctor directly. There is no evidence that Owens ever completed or returned this release to GOSA.

On September 24, 2018, Owens forwarded the reasonable accommodation paperwork to her doctor's records and release department for completion. Owens knew it could take the records department up to twenty days to fulfill such requests, but she never informed GOSA of this timeline.

Although GOSA did not initially provide Owens a deadline for returning the completed paperwork, Lowe contacted Owens on October 1 and told her that if she did not either submit the documentation to GOSA by the next day, October 2, or return to the office on October 3, "business decisions would need to be made."

Owens emailed Lowe on October 2, stating that she had not received the completed paperwork from her doctor and would be unable to return to the office the next day. Owens wrote that she had called her doctor's office "numerous times" trying to expedite the paperwork and had "notified everyone that the process to get paperwork signed by the office typically takes time" but that she could not "expedite internal processes out of [her] control."

Lowe shared this email with Good, who decided to give Owens another week to submit her paperwork or return to the office. Lowe informed Owens of this extension and sent her "an official and final request" for "details to assist in determining the continued allowability of teleworking." This final request memorandum informed Owens that "[f]ailure to

provide the completed reasonable accommodation documentation" by October 10, 2018, or "to return to the worksite" by October 11, 2018, "may result in termination of your employment."

Owens called her doctor's office daily trying to expedite her paperwork request and informed GOSA of these efforts. In the meantime, Good and Tio began outlining a proposed teleworking plan for Owens, should her reasonable accommodation paperwork reveal that teleworking was a reasonable accommodation for her disability. And Tio had arranged to discuss this new teleworking protocol with Owens on October 10.

On the evening of October 10, after hearing no word from Owens about her paperwork or whether she planned to return to the office the next day, Tio sent Good a memorandum summarizing Tio's interactions with Owens related to her accommodation request. Tio also emailed Owens to ask if she would be coming into the office the next day. Owens did not respond. Instead, on October 11, Owens emailed Lowe, stating that she had not obtained her paperwork from her doctor and would not be returning to the office that day. Later that morning, Good fired Owens for failing to return her medical documentation or return to the office as instructed.

Based on these events, Owens sued GOSA alleging failure to accommodate and retaliation, in violation of Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and discrimination, in violation of the Pregnancy Discrimination Act, 42 U.S.C. § 2000e(k). The district

court granted summary judgment for GOSA on all three claims.

The court reasoned that Owens never triggered GOSA's accommodation obligations under the Rehabilitation Act because the information neither identified a specific disability nor explained how telework would accommodate it. And, even if Owens triggered GOSA's accommodation duties, the court determined that her accommodation claim still failed because she caused a "breakdown" in the "interactive process" between her and GOSA. The district court also reasoned that, even if Owens established a prima facie case of retaliation under the Rehabilitation Act and discrimination under the Pregnancy Discrimination Act, both those claims failed because she did not show that GOSA's stated reasons for firing her were pretext for discrimination. The district court entered final judgment in GOSA's favor. Owens timely appealed.

II.

We review an appeal from summary judgment *de novo*. *Scantland v. Jeffry Knight, Inc.*, 721 F.3d 1308, 1310 (11th Cir. 2013). Summary judgment is proper "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." *Id.* (quoting Fed. R. Civ. P. 56(a)). Although we must view the evidence in the light most favorable to the nonmoving party, drawing "all justifiable inferences" in that party's favor, "inferences based upon speculation" are not justifiable. *Kernel Recs. Oy v. Mosley*, 694 F.3d 1294, 1301 (11th Cir. 2012) (quotations omitted). Thus, where "the nonmoving party presents evidence that is 'merely

colorable or not significantly probative,'" the movant is entitled to judgment as a matter of law. *Boyle v. City of Pell City*, 866 F.3d 1280, 1288 (11th Cir. 2017) (quoting *Stephens v. Mid–Continent Cas. Co.*, 749 F.3d 1318, 1321 (11th Cir. 2014)).

III.

A.

Section 504 of the Rehabilitation Act, 29 U.S.C. § 794(a), prohibits covered employers from discriminating against employees based on their disabilities. *Sutton v. Lader*, 185 F.3d 1203, 1207 (11th Cir. 1999). In employment discrimination cases, the standards for determining whether an employer violates the Rehabilitation Act "shall be the standards applied under title I of the Americans with Disabilities Act of 1990 (42 U.S.C. 12111 et seq.) and the provisions of sections 501 through 504, and 510, of the Americans with Disabilities Act of 1990 (42 U.S.C. 12201 to 12204 and 12210)" relating to employment. 29 U.S.C. § 794(d). "[T]hus, cases involving the ADA are precedent for those involving the Rehabilitation Act." *Ellis v. England*, 432 F.3d 1321, 1326 (11th Cir. 2005) (citing *Cash v. Smith*, 231 F.3d 1301, 1305 n.2 (11th Cir. 2000)).

"To establish a prima facie case of discrimination under the [Rehabilitation] Act, an individual must show that (1) he has a disability; (2) he is otherwise qualified for the position; and (3) he was subjected to unlawful discrimination as the result of his disability." *Sutton*, 185 F.3d at 1207–08 (citations omitted). Unlawful discrimination under the Rehabilitation Act

includes failing to provide reasonable accommodations for employees' known disabilities. *Boyle*, 866 F.3d at 1289 (citing *Lucas v. W.W. Grainger, Inc.*, 257 F.3d 1249, 1255 (11th Cir. 2001)).

The Rehabilitation Act does not require employers to speculate about their employees' accommodation needs. Instead, we have held that to trigger an employer's duty to provide a reasonable accommodation, the employee must (1) make a specific demand for an accommodation and (2) demonstrate that such accommodation is reasonable. *Frazier-White*, 818 F.3d at 1255–56; *see Willis v. Conopco, Inc.*, 108 F.3d 282, 284–86 (11th Cir. 1997). Only after the employee provides this information must the employer "initiate an informal, interactive process" with the employee to discuss the employee's specific limitations, explore potential accommodations, and select the most appropriate accommodation for both the employer and the employee. *See* 29 C.F.R. § 1630.2(o)(3); *see also D'Onofrio v. Costco Wholesale Corp.*, 964 F.3d 1014, 1021 (11th Cir. 2020) (citing *Gaston v. Bellingrath Gardens & Home, Inc.*, 167 F.3d 1361, 1363 (11th Cir. 1999)), *cert. denied*, 141 S. Ct. 1435 (2021); *Willis*, 108 F.3d at 284–86.

Owens argues that she triggered GOSA's accommodation duties when she informed GOSA that she was requesting a teleworking accommodation for childbirth-related complications. We disagree. By informing GOSA of her need to telework following her childbirth, Owens made a specific demand for an accommodation in satisfaction of the first part of our failure-to-accommodate test. But the second part of our

test—demonstrating that the requested accommodation is reasonable—requires that an employee put her employer on notice of the disability for which she seeks an accommodation and provide enough information to allow an employer to understand how the accommodation would address the limitations her disability presents. Because Owens did neither, we conclude that Owens did not demonstrate that her requested accommodation was reasonable.

1.

We have not specifically addressed how an employee who makes a demand for an accommodation can meet her obligation to demonstrate that her requested accommodation is reasonable. But we believe that an employee must do at least two things: identify her disability and suggest how the accommodation will overcome her physical or mental limitations.

First, our caselaw and the statutory text establish that an employee must identify her disability before an employer is obligated to engage in an interactive process about accommodating that disability. We have held that a plaintiff cannot sustain a prima facie case of disability discrimination without proof that her employer knew of her disability. *Morisky v. Broward Cnty.*, 80 F.3d 445, 448 (11th Cir. 1996). Our requirement that disabled employees notify their employers of their disability flows from the Rehabilitation Act's text, which imposes a duty on employers to accommodate only disabilities that are "known" to them. 42 U.S.C. § 12112(b)(5)(A); *see* 29 U.S.C. § 794(d) (incorporating § 12112); *see also* 29 C.F.R. § Pt. 1630, App. § 1630.9 ("[A]n employer would

not be expected to accommodate disabilities of which it is unaware."). It is "evident that an employee cannot be fired 'because of' a disability" in violation of the statute "unless the decisionmaker has *actual* knowledge of the disability." *Cordoba v. Dillard's, Inc.*, 419 F.3d 1169, 1185 (11th Cir. 2005).

In most cases, to identify a disability, an employee must provide at least some information about how a physical or mental condition limits her functioning. The statutory text defines a disability as a physical or mental impairment that limits a major life activity, such as "performing manual tasks, . . . lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working." 42 U.S.C. § 12102(1)(a), (2)(a) (defining disability under the ADA). Consistent with that definition, the statute requires employers "to make reasonable accommodation only to the *physical or mental limitations*" caused by the employee's physical or mental condition. 29 C.F.R. § Pt. 1630, App. § 1630.9 (emphasis added). Accordingly, to put her employer on notice of her disability, an employee must identify—at least in broad strokes—the limitations her mental or physical condition imposes.

Second, we believe an employee must provide her employer enough information to assess how her proposed accommodation would help her overcome her disability's limitations. We have held that "[a]n accommodation can qualify as 'reasonable' . . . only of it enables the employee to perform the essential functions of the job." *Lucas*, 257 F.3d at 1255–56 (citing *LaChance v. Duffy's Draft House, Inc.*, 146 F.3d 832,

835 (11th Cir. 1998)). The same accommodation might be appropriate for one disability and inappropriate for another, and the same disability may require different accommodations for different employees. *See Ward v. McDonald*, 762 F.3d 24, 31 (D.C. Cir. 2014) ("Few disabilities are amenable to one-size-fits-all accommodations."). Accordingly, an employee must link her disability to her requested accommodation by explaining how the requested accommodation could alleviate the workplace challenges posed by her specific disability.

The bottom line is that employees must give employers enough information to respond effectively to an accommodation request. We have made clear that "an employer is not required to accommodate an employee in *any* manner that the employee desires—or even provide that employee's preferred accommodation." *D'Onofrio*, 964 F.3d at 1022, *cert. denied*, 141 S. Ct. 1435 (2021). Therefore, when an employee triggers an employer's accommodation duties, the employer must expend time and expense to explore the universe of reasonable accommodations, identify one that is mutually agreeable to the parties, and implement it. To begin this interactive process, "an employer needs information about the nature of the individual's disability and the desired accommodation." *Ward*, 762 F.3d at 31.

The type and extent of information that an employee must provide will depend, of course, on the particulars of each case. The link between the disability and the requested accommodation may often be obvious. "[A]n employee confined to a wheelchair,"

for instance, "would hardly need a doctor's report to show that she needed help in getting to her workstation if this were accessible only by climbing a steep staircase." *Id.* at 32 (quoting *Langon v. Dep't of Health & Human Servs.*, 959 F.2d 1053, 1058 (D.C. Cir. 1992)). But in other circumstances, the link between a person's limitations and the requested accommodation will be unclear without additional information. Because this information is "typically possessed only by the individual or her physician," *id.*, it is reasonable that the employee inform her employer how the accommodation she seeks will address her limitations before requiring the employer to initiate the interactive process.

Even so, we expect an employee's informational burden to be modest. Although "[v]ague or conclusory statements revealing an unspecified incapacity are not sufficient to put an employer on notice" of its accommodation duties, *Morisky*, 80 F.3d at 448, an employee is not required to provide her employer with detailed or private information about her disability to initiate the employer's duty to engage in an interactive assessment about the need for an accommodation. We recognize that "[d]isabled employees . . . may have good reasons for not wanting to reveal unnecessarily every detail of their medical records because much of the information may be irrelevant to identifying and justifying accommodations, could be embarrassing, and might actually exacerbate workplace prejudice." *Taylor v. Phoenixville Sch. Dist.*, 184 F.3d 296, 315 (3d Cir. 1999). Rather, to trigger an employer's accommodation duties, a disabled employee need only identify a

statutory disability and explain generally how a particular accommodation would assist her.

2.

Owens argues that she sufficiently notified GOSA of her disability and linked that disability to her telework request. She points to her doctor's statement that she had delivered a child by c-section and may work remotely until November and her statement that she experienced "childbirth-related complications," requiring "two blood transfusions." We disagree that this information was sufficient.

Courts and regulators have recognized that neither childbirth nor pregnancy qualifies as a disability under the statute. *See* 29 C.F.R. pt. 1630, App. § 1630.2(h) ("Other conditions, such as pregnancy, that are not the result of a physiological disorder are also not impairments."); *Farrell v. Time Serv., Inc.*, 178 F. Supp. 2d 1295, 1298 (N.D. Ga. 2001) ("It is clearly established that pregnancy *per se* does not constitute a disability under federal law.") (collecting cases). "Disability" is a statutory term, which the Rehabilitation Act defines as "a physical or mental impairment that substantially limits one or more major life activities." *Boyle*, 866 F.3d at 1288 (quoting 29 U.S.C. § 705(9)(B) (incorporating 42 U.S.C. § 12102)). To be sure, a pregnancy- or childbirth-related impairment may qualify as a disability, but only if that impairment substantially limits a major life activity. 29 C.F.R. pt. 1630, App. § 1630.2(h). But the conditions themselves are not disabilities.

Although Owens's unspecified "childbirth-related complications" may have caused a disability, Owens never identified what that disability was. She points to her c-section and blood transfusions as information identifying a disability, but these are medical procedures and treatments, not disabilities. *See cesarean section*, MERRIAM-WEBSTER'S MEDICAL DICTIONARY (2016) ("a surgical procedure . . . for delivery of offspring"); *blood transfusion*, MERRIAM-WEBSTER'S MEDICAL DICTIONARY (2016) ("a medical treatment in which someone's blood is put into the body of another person"). As with childbirth-related complications, such procedures or treatments may cause a disability, but Owens failed to identify any such disability in her communications with GOSA.[1] There is no obvious limitation on functioning that arises from having had a c-section or a blood transfusion five or six weeks earlier.

Having failed to identify a disability, Owens also failed to explain to GOSA why teleworking would accommodate her disability. Although her doctor's recommendation that she telework qualifies as a

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[1] By way of comparison, the Equal Employment Opportunity Commission's enforcement guidance identifies several specific pregnancy-related impairments that it says could be sufficiently severe to substantially limit a person's functions. U.S. Equal Emp. Opportunity Comm'n, EEOC-NVTA-2015-2, Questions and Answers about the EEOC's Enforcement Guidance on Pregnancy Discrimination and Related Issues (June 25, 2015), https://www.eeoc.gov/laws/guidance/questions-and-answers-about-eeocs-enforcement-guidance-pregnancy-discrimination-and (all internet materials as visited Sept. 27, 2022, and available in Clerk of Court's case file).

demand for a specific accommodation, it does not explain how that accommodation would alleviate any physical or mental limitation.

Viewed in its entirety, and in the light most favorable to Owens, the information Owens provided GOSA amounts to nothing but "[v]ague or conclusory statements revealing an unspecified incapacity." *Morisky*, 80 F.3d at 448. Because such information is not enough to trigger an employer's duties under the Rehabilitation Act, Owens's claim that GOSA discriminated against her by failing to provide her reasonable accommodations fails as a matter of law. Accordingly, we need not decide whether her claim fails on the ground that she caused a breakdown in the interactive process. *Cf. Lucas*, 257 F.3d at 1256.

B.

Owens also maintains that the district court erred when it granted GOSA summary judgment on Owens's retaliation and pregnancy discrimination claims on the ground that she failed to show pretext. We disagree.

In addition to imposing liability for failing to provide reasonable accommodations, the Rehabilitation Act also prohibits retaliating against an employee for engaging in protected activity. 29 U.S.C.§ 794(a). Further, Title VII, as amended by the Pregnancy Discrimination Act, prohibits discrimination based on pregnancy, childbirth, or related medical conditions. 42 U.S.C. § 2000e(k) (amending 42 U.S.C. § 2000e-2). Because both claims are governed by the same legal framework, *see Standard v. A.B.E.L. Servs., Inc.*, 161 F.3d 1318, 1328 (11th Cir. 1998); *Ellis*, 432 F.3d at

1326 (citing *Cash*, 231 F.3d at 1305 n.2), we address them together.

Where, as here, a plaintiff claims discrimination or retaliation based on circumstantial evidence, we ordinarily apply the burden-shifting framework established in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973).[2] *See Alvarez v. Royal Atl. Developers, Inc.*, 610 F.3d 1253, 1264 (11th Cir. 2010) (citing *Wilson v. B/E Aerospace, Inc.*, 376 F.3d 1079, 1087 (11th Cir. 2004)); *Tolar v. Bradley Arant Boult Commings, LLP*, 997 F.3d 1280, 1294 (11th Cir. 2021) (citing *Johnson v. Miami-Dade Cnty.*, 948 F.3d 1318, 1325 (11th Cir. 2020)).

Under the *McDonnell Douglas* framework, the plaintiff bears the initial burden of establishing a prima facie case. *Alvarez*, 610 F.3d at 1264 (citing *Wilson*, 376 F.3d at 1087); *Tolar*, 997 F.3d at 1294 (citing *Johnson*, 948 F.3d at 1325). If the plaintiff satisfies this burden, the burden of production then shifts to her employer to articulate a legitimate, nondiscriminatory reason for its actions. *Alvarez*, 610 F.3d at 1264 (citing *Wilson*, 376 F.3d at 1087); *Tolar*,

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[2] Alternatively, we have said that, even if a plaintiff fails to satisfy her burden under the *McDonnell Douglas* framework, she may still defeat summary judgment by presenting "a convincing mosaic" of circumstantial evidence that "raises a reasonable inference that the employer discriminated" against her. *Smith v. Lockheed-Martin Corp.*, 644 F.3d 1321, 1328 (11th Cir. 2011); *see also Lewis v. City of Union City*, 934 F.3d 1169, 1185 (11th Cir. 2019) (describing types of relevant circumstantial evidence under *Smith*). Owens does not argue that she satisfies this alternative framework on appeal.

997 F.3d at 1294 (citing *Johnson*, 948 F.3d at 1325). If the employer proffers even one such reason, the burden then shifts back to the plaintiff, who must show that the reason given by the employer was a mere pretext for discrimination. *Alvarez*, 610 F.3d at 1264 (citing *Wilson*, 376 F.3d at 1087); *Tolar*, 997 F.3d at 1294 (citing *Johnson*, 948 F.3d at 1325). "Importantly, throughout this entire process, the ultimate burden of persuasion remains on the employee." *Sims v. MVM, Inc.*, 704 F.3d 1327, 1333 (11th Cir. 2013).

To establish pretext and avoid summary judgment, the plaintiff "must present 'significant probative' evidence," *Mayfield v. Patterson Pump Co.*, 101 F.3d 1371, 1376 (11th Cir. 1996) (citations removed), "sufficient to permit a reasonable fact finder to conclude that the discriminatory animus was the 'but-for' cause of the adverse employment action," *Sims*, 704 F.3d at 1332 (citing *Gross v. FBL Fin. Servs., Inc.*, 557 U.S. 167, 176 (2009)). This evidence must reveal "such weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions in the employer's proffered legitimate reasons for its action that a reasonable factfinder could find them unworthy of credence." *Jackson v. Ala. State Tenure Comm'n*, 405 F.3d 1276, 1289 (11th Cir. 2005) (quoting *Combs v. Plantation Patterns*, 106 F.3d 1519, 1538 (11th Cir. 1997)).

Our review on this issue is limited. We "do not sit as a super-personnel department that reexamines an entity's business decisions." *Elrod v. Sears, Roebuck & Co.*, 939 F.2d 1466, 1470 (11th Cir. 1991) (quoting *Mechnig v. Sears, Roebuck & Co.*, 864 F.2d 1359, 1365

(7th Cir. 1988)). Nor may we analyze whether an employer's proffered reasons "are prudent or fair," *Damon v. Fleming Supermarkets of Florida, Inc.*, 196 F.3d 1354, 1361 (11th Cir. 1999), or find pretext "by simply quarreling with the wisdom of th[ose] reason[s]," *Furcron v. Mail Ctrs. Plus, LLC*, 843 F.3d 1295, 1314 (11th Cir. 2016) (quoting *Chapman v. AI Transp.*, 229 F.3d 1012, 1030 (11th Cir. 2000)). We have made clear that an "employer may fire an employee for a good reason, a bad reason, a reason based on erroneous facts, or for no reason at all, as long as its action is not for a discriminatory reason." *Nix v. WLCY Radio/Rahall Commc'ns*, 738 F.2d 1181, 1187 (11th Cir.1984). If the evidence shows that the "employer[] w[as] dissatisfied with [the plaintiff] for . . . non-discriminatory reasons, even if mistakenly or unfairly so," the employer is entitled to summary judgment. *Alvarez*, 610 F.3d at 1266 (citing *Elrod*, 939 F.2d at 1470).

Here, even assuming Owens established a prima facie case of retaliation and pregnancy discrimination, both claims still fail because Owens has not shown that GOSA's legitimate, non-retaliatory reasons for firing her—failing to return her reasonable accommodation paperwork or return to the office as requested—were pretextual.

Owens argues that GOSA's first reason—Owens's failure to submit her reasonable accommodation paperwork by GOSA's deadline—was pretextual because Owens made every effort to expedite her doctor's paperwork process (a process outside of her control); GOSA knew of these efforts; and, in any event,

GOSA did not need this information to make an informed decision about Owens's accommodation request. We disagree. The undisputed evidence negates any inference that GOSA's request for additional information, or its choice to fire Owens after she failed to abide by that request, were motivated by illegal discrimination.

We already concluded that Owens failed to provide GOSA with sufficient information to allow it to adequately assess Owens's accommodation request. GOSA was therefore within its right to request additional information from Owens before deciding whether to approve her teleworking accommodation.

The evidence also demonstrates GOSA's genuine interest in obtaining this information and establishes that GOSA was prepared to approve Owens's accommodation request upon its receipt. Not only did GOSA extend Owens's deadline for submitting her paperwork, but GOSA had already begun preparing a teleworking plan for Owens in anticipation of receiving it.

This evidence establishes that GOSA fired Owens, not for any discriminatory reason, but rather because Owens kept GOSA in the dark as to when it could expect to receive Owens's paperwork or what that paperwork would reveal about her medical condition. Owens never communicated with GOSA directly about how telework would reasonably accommodate any childbirth-related disability. She also failed to submit GOSA's medical release, which would have authorized GOSA to contact Owens's doctor directly. Finally, she neglected to share with GOSA that her doctor had a 20-

day turnaround for paperwork requests. An employer is not required to wait indefinitely for necessary information supporting an accommodation request. A reasonable jury could not find pretext here.

Next, Owens argues that GOSA's second proffered reason for firing her—failing to return to the office after several warnings—was also pretextual because it was implausible, incoherent, and inconsistent, given GOSA's own policy required employees on FMLA leave to submit a medical release before returning to work. Owens argues that, under this policy, she was not permitted to return to work, as her doctor cleared her to work only remotely. Because we conclude that GOSA's first reason for firing Owens was not pretextual, Owens's retaliation and pregnancy discrimination claims fail as a matter of law even if she is correct that GOSA's second reason is suspect. *Wascura v. City of South Miami*, 257 F.3d 1238, 1243 (11th Cir. 2001) (explaining that employer is entitled to summary judgment unless the employee establishes that "each of the [employer's] proffered reasons is pretextual").

In any event, we disagree that this second reason for firing Owens was pretextual. GOSA's FMLA policy did not require an employee to be released to return to the physical office; it required only that she be released "to return to work." The parties agree that Owens's August 3 doctor's note released her to return to work in a remote capacity, and that Owens was no longer on FMLA leave once she began teleworking on August 6. And by requiring that an employee's medical release specify any "restrictions" on an that employee's return,

GOSA's FMLA policy contemplates the possibility of "returning to work" in a limited capacity, such as remotely. Owens was thus free to return to work under GOSA's medical release policy.

And no matter what we believe the policy requires, the evidence that *Good believed* Owens was medically released to return to work under the policy forecloses Owens's pretext argument. The pretext analysis centers on the employer's subjective beliefs; "the employee's beliefs" or even "reality as it exists outside of the decision maker's head" is irrelevant. *Alvarez*, 610 F.3d at 1266 (citing *Holifield v. Reno*, 115 F.3d 1555, 1565 (11th Cir. 1997)); *see also Elrod*, 939 F.2d at 1470. And Good's belief that Owens had been medically released to return to work is entirely consistent with her decision to fire Owens for failing to return to the office.

Because the evidence shows Good was "dissatisfied" with Owens "for . . . non-discriminatory reasons, even if mistakenly or unfairly so," Owens has not shown pretext, and both her retaliation and pregnancy discrimination claims fail as a matter of law. *See Alvarez*, 610 F.3d at 1266 (citing *Elrod*, 939 F.2d at 1470).

IV.

For these reasons, the district court is AFFIRMED.

APPENDIX B

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

CIVIL ACTION FILE
NO. 1:19-CV-5683-MHC-LTW

[Filed September 17, 2021]

NICOLE OWENS, Plaintiff,	)
v.	)
STATE OF GEORGIA, GOVERNOR'S OFFICE OF STUDENT ACHIEVEMENT, Defendant.	)

ORDER

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

Order [Doc. 59], Plaintiff filed her Objections to the Magistrate Judge's R&R ("Pl.'s Objs.") [Doc. 60].[1] Thereafter, Defendant filed a Response to Plaintiff's Objections [Doc. 63].

I. STANDARD OF REVIEW

In reviewing a Magistrate Judge's Report and Recommendation, the district court "shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1). "Parties filing objections to a magistrate's report and recommendation must specifically identify those findings objected to. Frivolous, conclusive, or general objections need not be considered by the district court." United States v. Schultz, 565 F.3d 1353, 1361 (11th Cir. 2009) (quoting Marsden v. Moore, 847 F.2d 1536, 1548 (11th Cir. 1988)) (internal quotation marks omitted). Absent objection, the district court judge "may accept, reject, or modify, in whole or in part, the findings and recommendations made by the magistrate judge," 28 U.S.C. § 636(b)(1), and need only satisfy itself that there is no plain error on the face of the record in order to accept the recommendation. See United States v. Slay, 714 F.2d 1093, 1095 (11th Cir. 1983). Further, "the district court has broad discretion in reviewing a magistrate judge's report and recommendation"—it "does not abuse its discretion by considering an argument that was not presented to the

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

magistrate judge" and "has discretion to decline to consider a party's argument when that argument was not first presented to the magistrate judge." Williams v. McNeil, 557 F.3d 1287, 1290-92 (11th Cir. 2009).

II. BACKGROUND[2]

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

In early 2018, Owens informed GOSA that she was pregnant and would need to take time off, and she requested Family and Medical Leave Act ("FMLA") paperwork. Id. at 2-3 (citing Def.'s Resp. to Pl.'s Add'l Material Facts ¶ 12). In March 2018, Owens submitted a FMLA leave request form and a medical certification form, which stated Owens had a high-risk pregnancy and that her health conditions would last through

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

July 31, 2018, the expected due date. Id. at 3 (citing Def.'s Resp. to Pl.'s Add'l Material Facts ¶¶ 13-15). On March 19, 2018, GOSA provided Owens with an FMLA approval notice, which stated, among other things, Owens had to "present a medical release to return to work" and that the release "must contain any restrictions and the duration of the same." Id. (citing Def.'s Resp. to Pl.'s Add'l Material Facts ¶ 16); FMLA Approval Notice [Doc. 39-5 at 2-5].

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

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

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

Owens returned to work on August 6, 2018, but worked remotely. Pl.'s Resp. to Def.'s SMF ¶ 13; Def.'s

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

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

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

On September 14, 2018, the GOSA Human Resources Director, Felicia Lowe ("Lowe"), called Owens and told her that she would need to submit additional documentation to show her telework request was medically necessary, and Owens subsequently informed Lowe that that her doctor was out of the office until September 24, 2018, but that a nurse would reach out to the doctor to request that the doctor update the September 11 Doctor's Note. R&R at 5 (citing Pl.'s Resp. to Def.'s SMF ¶¶ 25-26); see also E-mail from Owens to Lowe (Sept. 14, 2018) [Doc. 39-11 at 1] ("To follow-up on our conversation, I called Kaiser to try to see if there was a way to connect directly with my

doctor over the phone to avoid going there outside of my existing appointment schedule. A registered nurse from their offices let me know that my physician is now currently out of the office until 9/24/2018. However, she wrote [Owen's doctor] directly asking her to update the letter she provided me to support that the accommodation is for medical reasons. She also stated that if there is specific documentation that you are looking for that you would need to provide them with a form of what is being requested (if it is more than just an appendage stating that what was put in the original letter was medically advised.)").

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

On September 28, 2018, Lowe asked Owens whether she had received the additional paperwork supporting the accommodation request from her doctor and Owens responded three days later, on October 1, 2018, indicating that she had not received any paperwork, but that she was going to follow up with her doctor. R&R at 5 (citing Pl.'s Resp. to Def.'s SMF ¶ 30). Lowe and Owens subsequently had a telephone conversation during which Lowe informed Owens that if Owens did not return the RA Form by October 2, 2018, and failed to return to the workplace by October 3, 2018, "then business decisions would need to be made." R&R at 5 (citing Pl.'s Resp. to Def's SMF ¶ 31). On October 2, 2018, Owens e-mailed Lowe indicating that Owens had called her doctor, but was unable to expedite the paperwork GOSA requested and that Owens was unable to return to work at the physical office on October 3, 2018. Id. (citing E-mail from Owens to Lowe (Oct. 2, 2018) [Doc. 42-13]). GOSA extended the deadline for Owens to submit documentation supporting her accommodation request or return to work until October 10, 2018, and October 11, 2018. Id. at 5-6 (citing Pl.'s Resp. to Def's SMF ¶¶ 36-37).

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

> Thank you for reaching out to share your thoughts regarding your request for an extended teleworking option from the Governor's Office of Student Achievement. As discussed on 9/14, 9/24 and October 1, 2018, to comply with the

> provisions under the Americans with Disabilities Act (ADA), you must provide reasonable accommodation medical documentation, provided to you on September 20, 2018, that would give details to assist in determining the continued allowability of teleworking. Although you have provided a statement from your physician dated, September 11, 2018, additional information from your healthcare provider is needed. Please note that your employer, the Governor's Office of Student Achievement, has requested reasonable and sufficient documentation from your healthcare provider to make a determination in your request to continue teleworking until November 4, 2018, returning to the worksite on November 5, 2018. Please accept this notice as an official and final request for sufficient medical documentation regarding your reasonable accommodation request. Please return the completed reasonable accommodation documentation by Wednesday, October 10, 2018. Failure to provide the completed reasonable accommodation documentation as requested or failure to return to the worksite on Thursday, October 11, 2018, may result in termination of your employment.

Letter from Lowe to Owens (Oct. 3, 2018) [Doc. 39-16 at 3]. On October 11, 2018, Owens sent Lowe an email to inform her that she "was unable to obtain my signed paperwork from Kaiser" and that she "will still be unable to return to work in the office at this time." R&R at 6 (citing E-mail from Owens to Lowe (Oct. 11, 2018) [Doc. 39-19]). Thereafter, it became clear to Good

that Owens had not turned in any paperwork supporting her request for accommodation and had not reported to the office, and she decided to terminate Owens's employment. R&R at 6 (citing Pl.'s Resp. to Def.'s SMF ¶ 42).

Based on the foregoing, Owens filed the above-styled lawsuit on December 18, 2019, asserting failure to accommodate and retaliation claims under Section 504 of the Rehabilitation Act, 29 U.S.C. § 794 (Counts One through Five) and a claim for pregnancy discrimination in violation of Title VII and the Pregnancy Discrimination Act (Count Six). Compl. [Doc. 1] ¶¶ 38-85.[3] GOSA moved for summary judgment on Owens's Rehabilitation Act failure to accommodate claim, arguing, *inter alia,* that Owens caused a breakdown in the interactive process thereby precluding GOSA from fully evaluating any request for accommodation. Def.'s Br. in Supp. of its Mot. for Summ. J. [Doc. 45-1] at 17-20. GOSA moved for summary judgment on Owens's Rehabilitation Act

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

retaliation claim, arguing that Owens fails to make out a prima facie case for retaliation and that Owens has not produced any evidence to support the position that the reasons for her termination were pretext. Id. at 20-23. Similarly, GOSA moved for summary judgment on Owens's Title VII Pregnancy Discrimination claim arguing, *inter alia,* that Owens has not produced any evidence that the reasons for her termination were pretext. Id. at 24-25.

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

III. PLAINTIFF'S OBJECTIONS

Plaintiff argues that the Magistrate Judge erred by concluding that: (1) neither of the doctor's notes were sufficient to trigger GOSA's accommodation obligations; (2) Owens caused a breakdown in the interactive process; (3) Owens cannot establish a prima facie case of retaliation and that Owens cannot

establish that the reason given for her termination was pretextual under the Rehabilitation Act; and (4) Owens could not establish the reason given for her termination was pretextual under the Pregnancy Discrimination Act. Pl.'s Objs. at 18-39. The Court will consider Owens's arguments *seriatim*.

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

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

> Plaintiff argues she submitted at least two requests for accommodation—her August 3 doctor's note and her September 11 doctor's note. It appears neither note was sufficient to trigger Defendant's "accommodation obligations" because they provide no explanation "how [Plaintiff's requested] accommodation was linked to [any] disability." See Palmer v.

> McDonald, 824 F. App'x 967, 980 (11th Cir. 2020). The first note contains an open-ended suggestion that Plaintiff "may return to working via tele-work from her home," but it does not connect this with any disability or limitations. The note mentions that Plaintiff "delivered a baby by cesarean" but does not indicate that there were any complications from the delivery that may have continued to limit Plaintiff. Instead, the note says Plaintiff was "doing well" and there is no medical evidence in the record suggesting that Plaintiff's condition worsened after August 3. The second note is even more vague. In its entirety, the note says: "Nicole L. Owens was seen in our office on 9/11/18[.] She may return to work on November 5, 2018. She may continue to telework at home until then." The note does not say what limitations Plaintiff may have had and does not connect those limitations to any disability. Contrary to Plaintiffs argument, the notes were not "more than enough medical documentation to support her need for accommodation."

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

Plaintiff argues that the totality of evidence presented, including both doctor's notes, makes it "clear that Ms. Owens was requesting accommodations

for her childbirth-related disabilities, and GOSA was on notice of the same." Pl.'s Objs. at 22, see also id. at 25 ("The above evidence establishes that GOSA knew that Ms. Owens was requesting a reasonable accommodation to telework because she had complications with her childbirth by cesarean section and Ms. Owens objects to the R&R's conclusion otherwise.") (emphasis added). However, the notes were insufficient not only because they failed to identify a disability or link her disability with the requested accommodation, but also because Owens never explained what workplace limitations were presented by any such disability and how or why the accommodation was going to address any such limitations.

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

In Palmer, the Court found that the employee's request for note-taking training accommodations was

not sufficient to trigger the employer's duty to provide reasonable accommodations because the employee was obligated to "specifically demand[] an accommodation, meaning that he must have at least explained how his note-taking accommodation was linked to his memory disability." Palmer, 824 F. App'x at 980; see also id. at 981 ("Again, to trigger the VA's accommodation obligations, Palmer must have specifically demanded an accommodation, meaning that he must have at least explained how his training accommodation was linked to his memory disability."); Reed v. LePage Bakeries. Inc., 244 F.3d 254, 261 (1st Cir. 2001) ("At the least, the request must explain how the accommodation requested is linked to some disability.").

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

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

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

> the disability and potential reasonable accommodations that could overcome those limitations.

29 C.F.R. § 1630.2(o)(3). After concluding that the doctor notes were insufficient to trigger GOSA's duties under the Rehabilitation Act, the Magistrate Judge held that "[e]ven assuming the notes and Plaintiff's communications were sufficient to trigger Defendant's duties under the Rehabilitation Act, Defendant was entitled to engage Plaintiff in an interactive process." R&R at 11.

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

Owens also argues that viewing the evidence in a light most favorable to Owens, the facts demonstrate that GOSA, not Owens, caused the breakdown in the interactive process and to suggest otherwise is "offensive." Pl.'s Objs. at 26-32. Owens contends that she communicated with her doctor almost daily, had

difficulty getting her doctor to complete the reasonable accommodation paperwork and she contends she communicated with GOSA regularly regarding her efforts. Id. at 32. However, Owens fails to cite any record evidence indicating GOSA, not Owens, caused any breakdown in the interactive process. A review of the undisputed evidence reveals the following:

- September 14 - GOSA requested additional information from Owens supporting her accommodation request. R&R at 5 (citing Pl.'s Resp. to Def.'s SMF ¶¶ 25-26)).
- September 14 - Owens informed Lowe that her doctor was out of the office until September 24, 2018, but that a nurse was going to reach out to the doctor to get an update to the September 11, 2018 doctor's note. Id.
- September 20 – Lowe sent Owens the RA Form to be completed by her and her medical care provider. Id. (citing Pl.'s Resp. to Def.'s SMF ¶ 28).
- September 28 - Lowe asked Owens whether she had received the additional paperwork supporting the accommodation request from her doctor. Id. (citing Pl.'s Resp. to Def.'s SMF ¶ 30).
- October 1 – Owens responded that she had not received any paperwork, but that she was going to follow up with her doctor. Id.

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

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

- October 4 - Lowe sent Owens the "official and final" request for documentation supporting her accommodation request which extended the deadline or Owens to submit documentation supporting her accommodation request to October 10, or return to work in person on October 11. The letter warned Owens that failure to submit the paperwork or return to the worksite "may result in termination." Id. at 6 (citing Letter from. Lowe to Owens (Oct. 3, 2018)).

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

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

Viewed in a light most favorable to Owens, the evidence in this case reveals that GOSA requested additional information from Owens on September 14 and that, despite Owens's testimony that she communicated with her doctor "frequently" in an attempt to get the requested reasonable accommodation paperwork, and communicated with GOSA "regularly" about her efforts, see Def.'s Resp. to Pl.'s Add'l Material Facts ¶¶ 30-31, Owens never provided any information by the October 10, 2018, deadline. Instead, Owens informed GOSA on October 11, 2018, that she "was unable to obtain my signed paperwork from. Kaiser" and "unable to return to work in the office at this time." As noted by the Magistrate Judge, Owens never attempted to explain further her attempts to obtain any documentation and there is no evidence in the record that Owens ever obtained any additional documentation supporting her reasonable accommodation request. R&R at 12. The undisputed evidence also reflects the fact that although Owens was "unable to expedite any paperwork" from Kaiser, she knew that the process could take as long as twenty days,[4] yet she did not share this information

[4] See Dep. of Nicole Owens (Nov. 18, 2020) ("Owens Dep.") [Doc. 39] at 156 (testifying that Owens knew it could take Kaiser at least twenty days to complete the requested paperwork: "Kaiser

with GOSA. As accurately summarized by the Magistrate Judge:

> In other words, Plaintiff knew her healthcare provider had "a window of 20 days to get paperwork in and out of their system," and she knew to expect her paperwork on or around October 14. [citing Owens Dep. at 163, 165]. But there is no evidence that Plaintiff told Defendant either of those pieces of information. Instead, Plaintiff left Defendant in the dark regarding when, if ever, it could expect to receive the missing documentation. When a breakdown is caused by missing information, "the party withholding the information may be found to have obstructed the [interactive] process." Palmer, 824 F. App'x at 980 (alteration in original).

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

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

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

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

> Monterroso formally authorized the disclosure of at least one of Dr. Bruno's May 27, 2005 letters through an official HIPAA form. By doing so, Monterroso in effect authorized Dr. Bruno to speak to [Monterroso's employer]. Moreover,

> every time [Monterroso's employer] requested more medical information, another letter from Dr. Bruno was provided.

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

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

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

To establish a prima facie case for retaliation under the Rehabilitation Act Owens must show: "(1) that [s]he engaged in statutorily protected activity; (2) that [s]he suffered an adverse employment action; and (3) a causal link between the protected activity and the adverse action." Standard v. A.B.E.L. Servs., Inc., 161 F.3d 1318, 1328 (11th Cir. 1998). The Magistrate Judge found that any inference of a causal connection between her request for an accommodation and her termination based on the temporal proximity "is severed by Plaintiff's intervening conduct, namely her failure to provide any additional documentation to support her teleworking request." R&R at 19 (citing Henderson v. FedEx Express, 442 F. App'x. 502, 506 (11th Cir. 2011) (holding that the employee's intervening conduct "can break any causal link between the protected conduct and the adverse employment action.").

Owens argues that the Magistrate Judge erred because GOSA, not Owens, caused the interactive

process to breakdown, referencing the same argument it made in relation to her failure to accommodate claim. Pl.'s Objs. at 36-37. The Court rejects this argument for the same reasons articulated in Section III(B), *supra*.

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

An employer need only proffer a nondiscriminatory reason "that might motivate a reasonable employer," which GOSA has done in this case. Chapman v. AI Transp., 229 F.3d 1012, 1030 (11th Cir. 2000). Once a nondiscriminatory reason has been proffered, the employee must demonstrate "such weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions in the employer's proffered legitimate reasons for its action that a reasonable factfinder could find them unworthy of credence." Jackson v. State of Ala. State Tenure Comm'n, 405 F.3d 1276, 1289 (11th Cir. 2005). Owens failed to do this, and the evidence in the record demonstrates that she had ample time and opportunity to provide GOSA with the appropriate

paperwork but did not do so and failed to request additional time. The Magistrate Judge did not err when she held:

> It was not implausible, incoherent, or inconsistent for Defendant to request additional documentation to support Plaintiffs teleworking request. And it was not implausible, incoherent, or inconsistent for Defendant to assume Plaintiff could work in the office if there was no medical documentation demonstrating Plaintiff had any functional limitations. When Plaintiff failed to either demonstrate that she had disabling limitations or return to the office after months of teleworking, Defendant decided to terminate her. Plaintiff fails to show "both that [Defendant's] reason was false, and that [retaliation] was the real reason" for the termination, and as such her retaliation claim fails as a matter of law.

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

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

D. The Magistrate Judge Did Not Err in Concluding that Owens Failed to Demonstrate that GOSA's Decision to Terminate Owens Was Pretextual for Purposes of Her Pregnancy Discrimination Act Claim.

The Magistrate Judge correctly ruled Owens's Pregnancy Discrimination Act claim is subject to the

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

> As discussed above, Plaintiff has not shown pretext. At the time Plaintiff was terminated, Defendant had been accommodating Plaintiff's pregnancy and related medical complications for approximately eight months. But Plaintiff's most recent doctor's note did not state Plaintiff had any functional limitations and was contradictory regarding whether Plaintiff was released to return to work. Faced with that note, Defendant requested additional documentation to demonstrate what limitations, if any, Plaintiff had. Plaintiff was terminated when she failed to either provide additional documentation or return to work. Plaintiff points to no evidence demonstrating that Defendant's reasons for its actions are "unworthy of credence." See Jackson, 405 F.3d at 1289. As such, Plaintiff has not shown pretext, and her pregnancy discrimination claim fails as a matter of law. See Everett, 703 F. App'x at 948-49.

R&R at 25.

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

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

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

IV. CONCLUSION

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

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

/s/ Mark H. Cohen
MARK H. COHEN
United States District Judge

APPENDIX C

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

CIVIL ACTION FILE
NO. 1:19-cv-5683-MHC

[Filed September 17, 2021]

NICOLE OWENS, Plaintiff(s), vs. STATE OF GEORGIA, GOVERNOR'S OFFICE OF STUDENT ACHIEVEMENT, Defendant(s).	)

J U D G M E N T

This action having come before the court, Honorable Mark H. Cohen, United States District Judge, for consideration of the magistrate judge's report and recommendation and of defendant's Motion for Summary Judgment, and the court having adopted the report and recommendation and having granted said motion, it is

Ordered and Adjudged that the plaintiff take nothing; that the defendant recover its costs of this

action, and the action be, and the same hereby is, **dismissed**.

Dated at Atlanta, Georgia, this 17th day of September, 2021.

KEVIN P. WEIMER
CLERK OF COURT

By: s/D. Burkhalter
Deputy Clerk

Prepared, Filed, and Entered
in the Clerk's Office
September 17, 2021
Kevin P. Weimer
Clerk of Court

By: s/D. Burkhalter
Deputy Clerk

APPENDIX D

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

CIVIL ACTION FILE NO. 1:19-cv-05683-MHC-LTW

[Filed July 30, 2021]

NICOLE OWENS,	)
	)
Plaintiff,	)
	)
v.	)
	)
STATE OF GEORGIA, GOVERNOR'S OFFICE OF STUDENT ACHIEVEMENT;	)
	)
Defendant.	)
	)

MAGISTRATE JUDGE'S FINAL REPORT AND RECOMMENDATION

This case is before the Court on a Motion for Summary Judgment ([Doc. 45]) filed by Defendant State of Georgia, Governor's Office of Student Achievement ("GOSA"). For the reasons provided below, the undersigned **RECOMMENDS** that the Motion be **GRANTED**.

FACTUAL BACKGROUND

The factual background is from the parties' statements of material facts to the extent such facts are undisputed. When a fact is disputed and both parties have cited to evidence in the record, the Court has reviewed the evidence and has viewed all evidence and made all factual inferences in the light most favorable to Plaintiff. See Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986).

Plaintiff began working for GOSA in June 2016. [Doc. 53 ¶1].[1] During the relevant timeframe, Plaintiff reported to Rosaline Tio ([id. ¶10]), and Dr. Cayanna Good was the Executive Director of GOSA ([id. ¶9). Plaintiff was permitted to telework one day a week, which was typical for employees in positions like Plaintiff's. [Id. ¶¶8, 10]. The entire GOSA office worked remotely after the I-85 bridge collapse, with Plaintiff testifying that the remote work lasted "more than a month." [Id. ¶11]; [Doc. 39 at 25:25–26:18]. However, Dr. Good did not favor full-time teleworking because she felt it was more challenging for supervisors to properly manage and support their direct reports, so no positions were 100% remote while she was the Executive Director. [Doc. 49-2 ¶5].

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[1] Defendant's response to Plaintiff's Statement of Additional Facts is just over 40 pages long. [Doc. 53]. The Scheduling Order states that Defendant's "response to [Plaintiff's] statement of additional material facts shall not exceed thirty (30) double-spaced pages." [Doc. 12 at 7] (emphasis in original). The undersigned will consider Defendant's response, but defense counsel is warned that future violations of the Court's Scheduling Order may result in sanctions.

In early 2018, Plaintiff informed GOSA that she was pregnant and would need to take time off. [Doc. 53 ¶12]. In March 2018, Plaintiff submitted a Family and Medical Leave Act ("FMLA") leave request form and a medical certification form, which stated Plaintiff had a high-risk pregnancy and that her health conditions would last through July 2018. [Id. ¶¶13, 15]. GOSA provided Plaintiff with an FMLA approval notice, which stated Plaintiff had to "present a medical release to return to work" and that the release "must contain any restrictions and the duration of the same." [Id. ¶16].

Plaintiff gave birth via cesarean section on July 18, 2018. [Id. ¶18]. On August 3, 2018, Tio notified Plaintiff that she had exhausted her paid leave and was being placed on leave without pay. [Doc. 49-2 ¶11]. That day, Plaintiff provided GOSA with a doctor's note saying, "She is doing well and may return to working via tele-work from her home." [Doc. 39-8 at 2, 4]. Dr. Good believed Plaintiff was doing well and did not know of any medical condition that would prevent her from working in the office. [Doc. 49-2 ¶14];[2] see also

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[2] Plaintiff asserts this fact is "Disputed" with no explanation. [Doc. 49-2 ¶14]. To deny a fact, a party "is required to explain the reason for the denial." [Doc. 12 at 6–7]. Absent such an explanation, the Court is unable to determine why a party is disputing a fact. The Court cannot cull through the five depositions and seven exhibits Plaintiff cites to craft an explanation. Even if the Court tried to do so, nothing Plaintiff cites appears to dispute Defendant's fact. The note from Plaintiff's doctor says Plaintiff was "doing well," does not mention any medical complications arising from childbirth and does not indicate that Plaintiff was prevented from working in the office. [Doc. 39-8 at 2, 4]. Nor does any of the testimony support the

[Doc. 43 at 23:16–24]. Dr. Good testified that she decided to let Plaintiff telework because it "just didn't seem to be fair to ask her to find a way to come back" to the office since "most childcare facilities don't accept infants younger than six weeks." See [Doc. 43 at 23:16–24:16]; see also [id. at 22:11–17].

On September 11, 2018, Plaintiff told her supervisor she would need to continue teleworking based on complications from the cesarean section. [Doc. 53 ¶25]. The next day, Plaintiff provided a doctor's note saying Plaintiff "may return to work November 5, 2018" and that she "may continue to telework at home until then." [Id. ¶26]. Prior to this interaction, Dr. Good did not know Plaintiff would be teleworking until November 5, 2018. [Doc. 49-2 ¶18]. Dr. Good testified that she thought the September 2018 doctor's note was unclear because it said Plaintiff "may" telework, not that she "must," and it did not contain "enough information [for GOSA] to make the determination" on what Plaintiff needed as an accommodation. [Doc. 43 at 27:19–28:21]. Dr. Good had operational concerns about extending Plaintiff's teleworking arrangement and requested that Human Resources Director Felicia Lowe send Plaintiff a Request for Reasonable Accommodation form (the "RA form"), to be returned with documentation from Plaintiff's doctor to support her request. [Doc. 49-2 ¶¶23–24]; see also [Doc. 42-19] (email from Dr. Good stating Plaintiff's supervisor "indicated that the current teleworking arrangement led to some

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notion that Dr. Good believed Plaintiff suffered a medical condition that prevented her from working in the office. See [Doc. 49-2 ¶14].

concerns with [Plaintiff's] work productivity and responsiveness").

On September 14, 2018, Lowe told Plaintiff she would need to submit additional documentation to show her telework request was medically necessary, and Plaintiff informed Lowe that her physician was "out of the office until 9/24/2018" but that a nurse reached out to the physician "asking her to update the letter she provided [Plaintiff] to support that the accommodation is for medical reasons." [Doc. 49-2 ¶¶25–26]; see also [Doc. 39-11 at 1]. On September 20, 2018, Lowe sent Plaintiff the RA form, which includes an "Employee Release" authorizing Plaintiff's medical provider to give Defendant the requested medical information. [Doc. 49-2 ¶28]; [Doc. 39-11 at 10].

On September 28, 2018, Lowe followed up with Plaintiff to ask whether she had received the paperwork from her doctor, and several days later Plaintiff replied that she had not. [Doc. 49-2 ¶30]; see also [Doc. 42-12]. Plaintiff and Lowe then had a phone call during which Lowe told Plaintiff "if she did not submit the RA form by October 2nd, and failed to return to the office by October 3rd, then business decisions would need to be made." [Doc. 49-2 ¶¶30–31]. On October 2nd, Plaintiff sent Lowe an email stating she "called to inquire about [the form] with [her] physician's office numerous times" but that she was "unable to expedite any paperwork and [was] also unable to return to work at the physical office on 10/3/2018." [Doc. 42-13]. Dr. Good decided to give Plaintiff an additional week to turn in the RA form and

instructed Lowe to extend the deadline. [Doc. 49-2 ¶36].

On October 4, 2018, Lowe emailed Plaintiff "an official and final request for sufficient medical documentation regarding [her] reasonable accommodation request," stating that Plaintiff needed to "return the completed reasonable accommodation documentation by Wednesday October 10, 2018" and that a failure to do so or "return to the worksite on Thursday, October 11, 2018, may result in termination." [Doc. 39-16 at 3]. On October 9, 2018, Plaintiff emailed her supervisor and Lowe saying she was "in the process of trying to get [her] reasonable accommodation form completed" and that she would "follow up with [them] both tomorrow." [Doc. 42-18]. The next day, Plaintiff's supervisor memorialized her interactions with Plaintiff in an email that concluded, "As of 6:00pm on October 10, I have not received any further communication from [Plaintiff] regarding her paperwork or if she plans to be in the office tomorrow." [Doc. 40-22 at 2]. The next day, Plaintiff sent Lowe an email saying she "was unable to obtain [her] signed paperwork from [her healthcare provider]" and that she would "still be unable to return to work in the office." [Doc. 39-19].

Once it was clear Plaintiff had not reported to the office or submitted the required medical documentation by the deadline, Dr. Good decided to terminate Plaintiff. [Doc. 49-2 ¶42]. In deciding to terminate Plaintiff, Dr. Good felt the situation was similar to two other GOSA employees who were terminated for failing

to timely submit reasonable accommodation paperwork and failing to return to work. [Id. ¶48].[3]

LEGAL STANDARD

Summary judgment is appropriate when "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). The movant can discharge this burden by merely "'showing'—that is, pointing out to the district court—that there is an absence of evidence to support the nonmoving party's case." Celotex Corp. v. Catrett, 477 U.S. 317, 323–25 (1986). After the movant has carried her burden, the non-moving party is then required to "go beyond the pleadings" and present competent evidence designating specific facts showing a genuine disputed issue for trial. Id. at 324.

While the court is to view all evidence and factual inferences in a light most favorable to the non-moving party, Nat'l Parks Conservation Ass'n v. Norton, 324 F.3d 1229, 1236 (11th Cir. 2003), "the mere existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no *genuine* issue of *material* fact." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247–48 (1986) (emphasis in

[3] Plaintiff purports to dispute this fact because the other employees had not "returned full-time to work." [Doc. 49-2 ¶48]; see also [Doc. 53 ¶¶59–60]. Plaintiff's dispute is not relevant because Dr. Good did not assert that those employees had returned to full-time work; she said the employees "fail[ed] to return to work." [Doc. 49-2 ¶48].

original). A fact is material when it is identified as such by the controlling substantive law. Id. at 248.

Moreover, the non-movant "must do more than simply show that there is some metaphysical doubt as to the material facts . . . . Where the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is no 'genuine issue for trial.'" Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586-87 (1986) (citations omitted). An issue is not genuine if it is unsupported by evidence, or if it is created by evidence that is "merely colorable" or is "not significantly probative." Anderson, 477 U.S. at 249-50. To the extent one party's version of events "is blatantly contradicted by the record," the "court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment." Scott v. Harris, 550 U.S. 372, 379–81 (2007).

LEGAL ANALYSIS

Plaintiff brings claims under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 791 *et seq*. (the "Rehabilitation Act") for discrimination and retaliation, and a claim for "gender/pregnancy discrimination" under Title VII of the Civil Rights Act of 1964 ("Title VII"), particularly 42 U.S.C. § 2000e(k). [Doc. 1 ¶¶38–85]. The Court discusses each claim in turn.

I. Rehabilitation Act Discrimination Claim

To establish a prima facie case of discrimination under the Rehabilitation Act, Plaintiff must show that she: (1) has a disability; (2) is otherwise qualified for the position; and (3) was subjected to unlawful discrimination as the result of her disability. Sutton v.

Lader, 185 F.3d 1203, 1207 (11th Cir. 1999). Defendant does not dispute that Plaintiff is a qualified individual with a disability, and thus the issue is whether she was discriminated against. [Doc. 45-1 at 6]. For purposes of the Rehabilitation Act, discrimination includes "not making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability." 42 U.S.C. § 12112(b)(5)(A).[4]

"Of course, there are limits to the accommodations an employer must provide. The key is 'reasonability,' meaning an employer is not required to accommodate an employee in *any* manner that the employee desires—or even provide that employee's preferred accommodation." D'Onofrio v. Costco Wholesale Corp., 964 F.3d 1014, 1022 (11th Cir. 2020) (emphasis in original), *cert. denied*, 141 S. Ct. 1435, 209 L. Ed. 2d 155 (2021). When an employee requests an accommodation, the employer may need to engage in an interactive process to ascertain what accommodation is appropriate considering "the precise limitations resulting from the disability." 29 C.F.R. § 1630.2(o)(3). An employer is not liable for a failure to accommodate if it engages in such an interactive process and "the employee is responsible for [a] breakdown of the interactive process." D'Onofrio, 964 F.3d at 1022; see also Stewart v. Happy Herman's

[4] The Rehabilitation Act incorporates "the standards applied under title I of the Americans with Disabilities Act of 1990." 29 U.S.C. § 794(d); see also Ellis v. England, 432 F.3d 1321, 1326 (11th Cir. 2005) (noting that "cases involving the ADA are precedent for those involving the Rehabilitation Act").

Cheshire Bridge, Inc., 117 F.3d 1278, 1287 (11th Cir. 1997).

Plaintiff argues she submitted at least two requests for accommodation—her August 3 doctor's note and her September 11 doctor's note. See [Doc. 49 at 5–6]. It appears neither note was sufficient to trigger Defendant's "accommodation obligations" because they provide no explanation "how [Plaintiff's requested] accommodation was linked to [any] disability." See Palmer v. McDonald, 824 F. App'x 967, 980 (11th Cir. 2020). The first note contains an open-ended suggestion that Plaintiff "may return to working via tele-work from her home," but it does not connect this with any disability or limitations. See [Doc. 39-8 at 2]. The note mentions that Plaintiff "delivered a baby by cesarean" but does not indicate that there were any complications from the delivery that may have continued to limit Plaintiff. [Id.]. Instead, the note says Plaintiff was "doing well" and there is no medical evidence in the record suggesting that Plaintiff's condition worsened after August 3. See [id.]. The second note is even more vague. In its entirety, the note says: "Nicole L. Owens was seen in our office on 9/11/18[.] She may return to work on November 5, 2018. She may continue to telework at home until then." [Doc. 39-10 at 4]. The note does not say what limitations Plaintiff may have had and does not connect those limitations to any disability. [Id.]. Contrary to Plaintiff's argument, the notes were not "more than enough medical documentation to support her need for accommodation." See [Doc. 49 at 13].

Even assuming the notes and Plaintiff's communications were sufficient to trigger Defendant's duties under the Rehabilitation Act, Defendant was entitled to engage Plaintiff in an interactive process because the notes were "not sufficient to determine *why* [s]he needed those accommodations." See Palmer, 824 F. App'x at 980 (emphasis in original). The fact that Plaintiff alleged that she needed the accommodation "based on complications from her July 18, 2018 cesarean section and delivery" does not, standing alone, show the accommodation was reasonable, *i.e.* necessary for Plaintiff to perform the essential functions of her job. See [Doc. 49 at 10]. Defendant was entitled to request documentation to determine "the precise limitations resulting from [Plaintiff's alleged] disability." 29 C.F.R. § 1630.2(o)(3).

Defendant did just that by requesting additional documentation on September 14, 2018. [Doc. 39 at 144:25–145:16]. That day, Plaintiff spoke with her healthcare provided and got a nurse to write the physician "asking her to update the [September 11 note] to support that the accommodation is for medical reasons." [Doc. 39-11 at 1]. Plaintiff initially said she could not get additional documentation because her doctor was "out of the office until 9/24/2018." [Doc. 39-11 at 1]. But Plaintiff's doctor did not provide additional documentation after September 24 either. On October 2, 2018, Plaintiff stated that "the process to get paperwork signed by the office typically takes time" and that she had "called to inquire about this with [her] physician's office numerous times" but could not "expedite internal processes out of [her] control." [Doc. 39-14].

Defendant responded by giving Plaintiff additional time in which to submit the required paperwork. [Doc. 39-16 at 3]. With the new deadline approaching, Plaintiff stated she was "in the process of trying to get [her] reasonable accommodation form completed" and that she would "follow up" on October 10, 2018. [Doc. 42-18]. But Plaintiff did not follow up on October 10. [Doc. 40-22 at 2]. Instead, on October 11, 2018, Plaintiff sent an email saying she "was unable to obtain [her] signed paperwork" with no further explanation. [Doc. 39-19]. There is no evidence in the record indicating that Plaintiff *ever* received any additional documentation stating that she needed to telework due to limitations arising from a disability.

Plaintiff contends that she "told GOSA that she would sign a release for them to speak with her doctor directly, but GOSA made no efforts to take her up on that offer." [Doc. 49 at 11–12]. This argument is unpersuasive for three reasons. First, Plaintiff cites no authority suggesting that she could pass off her duty to engage in the interactive process by requiring Defendant to acquire the additional documentation. See [id.]. Second, Plaintiff already had an Employee Release authorizing her health care provider to provide information to Defendant. [Doc. 39-11 at 10]. There is no evidence Plaintiff filled out that release and provided it to Defendant. [Doc. 39 at 205:7–15]. And third, the release (or lack thereof) was not the problem. The issue was that "the process to get paperwork signed by [Plaintiff's doctor] typically takes time." [Doc. 39-14]. Plaintiff points to no evidence that a release would have solved the problem. Instead, the breakdown in the interactive process occurred because Plaintiff

never told Defendant when she expected to receive the paperwork back and did not request an extension.

During her deposition, Plaintiff asserted that her healthcare provider's "Records and Release department" has "a queue, a window of 20 days to get paperwork in and out of their system." [Doc. 39 at 165:2–8]. But this pertains only to the RA form submitted through the Records and Release department. Plaintiff was apparently able to get notes from her doctor much quicker. Plaintiff provided GOSA with a doctor's note clearing her to return to work on the very day Tio notified Plaintiff that she had exhausted her paid leave. [Doc. 49-2 ¶11]; [Doc. 39-8 at 2, 4]. On September 11, 2018, Plaintiff told her supervisor she would need to continue teleworking, and the next day she provided a doctor's note regarding the same. [Doc. 53 ¶¶25–26]. Plaintiff does not explain why she did not get a more detailed note from her doctor, other than her statement that she chose to call "over the phone to avoid going [to the doctor's office] outside of [her] existing appointment schedule." See [Doc. 39-11 at 1].

Even if Plaintiff thought the only documentation that she could provide was a completed RA form, Plaintiff should have gotten the RA form back by Defendant's October 10 deadline if she had submitted it the day she received it. See [Doc. 39 at 164:20–165:1]. Plaintiff submitted the RA form the following week, but she should still have gotten the paperwork on or around October 14. See [id. at 163:8–12]. Plaintiff knew Defendant planned to terminate her if she did not submit additional documentation by October 10 or

return to work the following day. [Doc. 39-16 at 3]. But Plaintiff never requested an extension of the October 10 deadline and never told Defendant she expected to receive the RA form on or around October 14. See [Doc. 39-14]; [Doc. 39-19]; [Doc. 42-18].

In other words, Plaintiff knew her healthcare provider had "a window of 20 days to get paperwork in and out of their system," and she knew to expect her paperwork on or around October 14. [Doc. 39 at 165:2–8]; [Doc. 39 at 163:8–12]. But there is no evidence that Plaintiff told Defendant either of those pieces of information. Instead, Plaintiff left Defendant in the dark regarding when, if ever, it could expect to receive the missing documentation. When a breakdown is caused by missing information, "the party withholding the information may be found to have obstructed the [interactive] process." Palmer, 824 F. App'x at 980 (quoting Jackson v. City of Chi., 414 F.3d 806, 813 (7th Cir. 2005)) (alteration in original). As such, Plaintiff was the cause of the breakdown in the interactive process.

Defendant initially gave Plaintiff approximately two weeks to return the documentation. When Plaintiff failed to do so, Defendant apparently credited her explanation that "the process to get paperwork signed by [Plaintiff's doctor] typically takes time." [Doc. 39-14]. Defendant gave Plaintiff another week but warned her that she could be terminated if she refused to return to the office or provide adequate documentation. [Doc. 39-16 at 3]. In the face of possible termination, Plaintiff simply said she "was unable to obtain [her] signed paperwork" with no further explanation, no date

by which she expected to receive the paperwork, and no request for a further extension. [Doc. 39-19].

Plaintiff insists Defendant should have just accepted a note that says she "may continue to telework" without any explanation of what limitations, if any, Plaintiff had. [Doc. 39-10 at 4]. In Plaintiff's opinion, that note was "more than enough medical documentation to support her need for accommodation." See [Doc. 49 at 13]. It was not. Defendant was entitled to request medical documentation to determine "the precise limitations resulting from [Plaintiff's alleged] disability." 29 C.F.R. § 1630.2(o)(3). Three weeks after Plaintiff was given a RA form for her doctor to complete and nearly four weeks after Plaintiff's doctor was informed Plaintiff needed additional documentation, Plaintiff simply said she "was unable to obtain" anything to show she needed a reasonable accommodation. See [Doc. 39-19].

If Plaintiff had submitted a more detailed doctor's note that explained what functional limitations she had and Defendant had rejected such documentation, Defendant would be the one liable for the breakdown in the interactive process. See Hollingsworth v. O'Reilly Auto. Stores, Inc., No. 4:13-CV-01623-KOB, 2015 WL 412894, at *12 (N.D. Ala. Jan. 30, 2015) (noting a lack of "precedent establishing that a plaintiff must comply with an employer's formal procedures"). But Plaintiff did not want to go to her doctor's office "outside of [her] existing appointment schedule," so she apparently only tried calling about the RA paperwork. See [Doc. 39-11 at 1]. Plaintiff knew this would not work because she could not "expedite internal processes out of [her]

control." [Doc. 39-14 at 1]. Plaintiff also knew to expect the RA paperwork on or around October 14. [Doc. 39 at 163:8–12]. And Plaintiff knew that Defendant had already demonstrated a willingness to offer her additional time. See [Doc. 39-16 at 3]. If Plaintiff had requested an extension and Defendant had refused, the result in this case be different. But Plaintiff did not, and she did not provide Defendant any information as to when, if ever, it could expect to receive additional documentation. Plaintiff caused the breakdown in the interactive process, and thus her failure to accommodate claim fails as a matter of law. See D'Onofrio, 964 F.3d at 1022; Stewart, 117 F.3d at 1287.[5]

II. Rehabilitation Act Retaliation Claim

In the absence of direct evidence, Plaintiff's retaliation claim is analyzed under the framework outlined by the Supreme Court in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). See Ring, v. Boca Ciega Yacht Club Inc., No. 20-11571, 2021 WL 2908145, at *10 (11th Cir. July 12, 2021). Plaintiff first has the burden of establishing a prima facie case of

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[5] Plaintiff also argues Defendant "misled" her into believing her "FMLA leave had expired when it had not" and that it "hid this information from [her]." [Doc. 49 at 14]. Plaintiff's own testimony tells a different story. Plaintiff testified that she was told she had to "either return to work *or take unpaid leave*." [Doc. 39 at 64:3–8] (emphasis added). Plaintiff did not want to take unpaid FMLA leave because she "could not have afforded to not receive any income at that time." [Id. at 110:4–13]. Contrary to the suggestion of Plaintiff's counsel, Defendant did not cause a breakdown in the interactive process by failing to "recommend[]" an accommodation Plaintiff did not want. See [Doc. 49 at 14].

retaliation. See McDonnell Douglas, 411 U.S. at 802; Texas Dep't of Cmty. Affairs v. Burdine, 450 U.S. 248, 253 (1981). If Plaintiff meets her burden, Defendant must articulate a legitimate, nondiscriminatory reason for the termination. McDonnell Douglas, 411 U.S. at 802; Burdine, 450 U.S. at 254; Chapman v. AI Transp., 229 F.3d 1012, 1024 (11th Cir. 2000) (*en banc*). Plaintiff then must show that Defendant's proffered nondiscriminatory reason was merely pretext for retaliation. Burdine, 450 U.S. at 253; Chapman, 229 F.3d at 1024.

To establish a prima facie case of retaliation, Plaintiff must show (1) she engaged in statutorily protected activity; (2) she suffered an adverse employment action; and (3) a causal link between the protected activity and the adverse action. Standard v. A.B.E.L. Servs., Inc., 161 F.3d 1318, 1328 (11th Cir. 1998). Defendant only challenges the third element. [Doc. 45-1 at 21]. Plaintiff argues she can "show a close temporal proximity between her protected activities and the adverse actions," pointing to her request for "an extension of her reasonable accommodation on September 12." [Doc. 49 at 17–18]. Defendant accurately argues the correct date is when Plaintiff actually requested the teleworking accommodation on August 3. See [Doc. 45-1 at 21–22]. Plaintiff did not request "an extension," as she suggests. The August 3 note contained no end date for the teleworking arrangement. [Doc. 39-8 at 2].

Even using the August 3 date, the undersigned assumes without deciding that Plaintiff has shown "a close temporal proximity" between her request and her

termination almost ten weeks later. See Farley v. Nationwide Mut. Ins. Co., 197 F.3d 1322, 1337 (11th Cir. 1999) (holding that the plaintiff showed "a close temporal proximity" where he was fired seven weeks after engaging in protected activity); but see Brown v. Alabama Dep't of Transp., 597 F.3d 1160, 1182 (11th Cir. 2010) (holding that "a three-month interval between the protected expression and the employment action . . . is too long"). But the "close temporal proximity between two events, standing alone, is not a panacea, absent any other evidence that the employment decision was causally related to the protected activity." Hankins v. AirTran Airways, Inc., 237 F. App'x 513, 520 (11th Cir. 2007). As Defendant correctly argues, any "inference of a causal connection" is severed by Plaintiff's intervening conduct, namely her failure to provide any additional documentation to support her teleworking request. See [Doc. 45-1 at 22–23]; see also Henderson v. FedEx Express, 442 F. App'x 502, 507 (11th Cir. 2011) (holding that a plaintiff's intervening conduct "can break any causal link between the protected conduct and the adverse employment action").

Even if Plaintiff had presented a *prima facie* case of retaliation, that would not end the inquiry. Defendant articulates a legitimate, nondiscriminatory reason for Plaintiff's termination: Plaintiff failed to submit any additional documentation for weeks, and she refused to return to the office. See [Doc. 43 at 47:24–48:4]. Plaintiff argues this was not a "legitimate" reason for terminating her "since GOSA made no efforts to assist [Plaintiff]." [Doc. 49 at 22]. That is not correct because Defendant did give Plaintiff additional time in which to

submit the RA form. See [Doc. 39-16 at 3]. Even if Defendant had not given Plaintiff additional time, Plaintiff cites no authority for the proposition that an employer cannot terminate an employee unless they actively assist the employee's efforts to obtain additional documentation. See [Doc. 49 at 22]. To articulate a legitimate, non-discriminatory reason for an adverse action, the employer only needs to give a reason that "might motivate a reasonable employer." Chapman, 229 F.3d at 1030. Terminating Plaintiff for failing to comply with Defendant's policy is just such a reason. See [Doc. 43 at 47:24–48:4].

Next, Plaintiff argues Defendant's reason for the termination is pretextual because the notion that Dr. Good "needed more evidence" to support Plaintiff's teleworking request "is unreasonable on its face and utterly lacks credibility." [Doc. 49 at 22–23]. As discussed above, Plaintiff's assertion that her doctor's notes were "more than enough medical documentation to support her need for accommodation" is unavailing. See [Doc. 49 at 13]. The first note mentions the fact that Plaintiff "delivered a baby by cesarean," but it also says that she was "doing well." [Doc. 39-8 at 2]. While the note says Plaintiff "may" telework, it never says teleworking was medically necessary and makes no mention of any disabling limitations. [Id.]. The second note did not mention Plaintiff's delivery or any complications, did not mention any disabling limitations, and did not say it was medically necessary for Plaintiff to work from home. See [Doc. 39-10 at 4]. The note just says Plaintiff "may continue to telework at home." [id.].

To show the reason for her termination was pretextual, Plaintiff must demonstrate "such weaknesses, implausibilities, incoherencies, or contradictions in the employer's proffered legitimate reasons for its action that a reasonable factfinder could find them unworthy of credence." Jackson v. State of Ala. State Tenure Comm'n, 405 F.3d 1276, 1289 (11th Cir. 2005) (quoting Combs v. Plantation Patterns, 106 F.3d 1519, 1538 (11th Cir. 1997)). Dr. Good's statement that she needed medical documentation explaining what limitations, if any, Plaintiff had is not at all "implausibl[e]." Plaintiff cannot show pretext "by simply quarreling with the wisdom of" Dr. Good's decision to request additional documentation. Chapman, 229 F.3d at 1030.

Plaintiff also argues Defendant's decision to terminate her "because she did not return to work" is "not in the least bit credible" because "GOSA has a policy requiring employees who are on FMLA to be released to return to work by their doctor before they can return to the office." [Doc. 49 at 24–25]. Plaintiff tries to rely on the testimony of Lowe to support her position. [Id.]. When asked if Plaintiff could return "to the office without a release for her doctor to do so," Lowe said, "I guess no." [Doc. 42 at 40:24–41:3]. Lowe's statement was thus a "guess" as to whether additional documentation was needed for Plaintiff to return to the office. But more importantly, Lowe was not the decisionmaker, Dr. Good was.

When asked whether "that's the policy," *i.e.* whether Plaintiff "was not permitted to return to the office until her doctor released her to do so," Dr. Good pointed to

"the typical paperwork" regarding "a Return to Work." [Doc. 43 at 28:22–29:14]. Defendant's policy regarding "Return to Work" says an employee must "present a medical release *before returning to work*." [Doc. 39-5 at 3] (emphasis added). Plaintiff presented just such a release saying she "may return to working" on August 3, 2018. [Doc. 39-8 at 2]. Defendant's policy never says an employee must present a release specifically releasing them to "return to the office," as Plaintiff's counsel suggests. See [Doc. 39-5].

Plaintiff ignores her doctor's first note saying she "may return to working" and argues she was not released "to return to work [until] November 5, 2018" by pointing to her doctor's September 11 note. [Doc. 49 at 25]. To be sure, that note says Plaintiff "may return to work November 5, 2018," but it also says Plaintiff "may continue to telework at home until then." [Doc. 39-10 at 4]. In other words, Plaintiff tries to argue that Defendant "did not really need the additional paperwork in the first instance" because her doctor's notes were clear. [Doc. 49 at 22]. But then Plaintiff argues Defendant needed more paperwork because her doctor's note was unclear regarding whether she "was released to return to work [before] November 5, 2018." [Id. at 24–25].

This supports Defendant, not Plaintiff. Plaintiff cannot show Defendant's reasoning is pretextual by pointing to a contradictory doctor's note *she* provided. Dr. Good agreed that the second doctor's note was "vague" and "unclear." [Doc. 43 at 27:8–28:21]. To the extent the note suggested Plaintiff could not "return to work" until November 5, that notion was not

reasonable because "she was already working" per the doctor's first note. [Id. at 27:13–17]. The vague second note was "what really triggered the need for [Defendant] to have the formal paperwork filled out." [Id. at 28:15–21]. Defendant needed to know if Plaintiff was or was not cleared to work. If Plaintiff was cleared to work but only in a limited capacity, Defendant needed to know Plaintiff's functional limitations to assess what accommodation was necessary.

It was not implausible, incoherent, or inconsistent for Defendant to request additional documentation to support Plaintiff's teleworking request. And it was not implausible, incoherent, or inconsistent for Defendant to assume Plaintiff could work in the office if there was no medical documentation demonstrating Plaintiff had any functional limitations. When Plaintiff failed to either demonstrate that she had disabling limitations or return to the office after months of teleworking, Defendant decided to terminate her. Plaintiff fails to show "both that [Defendant's] reason was false, and that [retaliation] was the real reason" for the termination, and as such her retaliation claim fails as a matter of law. See Brooks v. Cty. Comm'n of Jefferson Cty., Ala., 446 F.3d 1160, 1163 (11th Cir. 2006).

II. Title VII Discrimination Claim

To establish a prima facie case of pregnancy discrimination, Plaintiff must show that: (1) she is a member of a protected class; (2) she requested an accommodation; (3) Defendant refused her accommodation, and (4) Defendant accommodated other employees similar in their ability or inability to work. Young v. United Parcel Serv., Inc., 575 U.S. 206,

135 S. Ct. 1338, 1354, 191 L. Ed. 2d 279 (2015). Assuming without deciding that Plaintiff can make out a prima facie case of pregnancy discrimination, her claim must still be analyzed "through application of the McDonnell Douglas framework." Young, 135 S. Ct. at 1353. In other words, Plaintiff is "still required to show that [Defendant's] legitimate, nondiscriminatory reasons for denying her accommodation were pretextual." Everett v. Grady Mem'l Hosp. Corp., 703 F. App'x 938, 948 (11th Cir. 2017).

As discussed above, Plaintiff has not shown pretext. At the time Plaintiff was terminated, Defendant had been accommodating Plaintiff's pregnancy and related medical complications for approximately eight months. See [Doc. 53 ¶¶13–17]. But Plaintiff's most recent doctor's note did not state Plaintiff had any functional limitations and was contradictory regarding whether Plaintiff was released to return to work. [Doc. 39-10 at 4]. Faced with that note, Defendant requested additional documentation to demonstrate what limitations, if any, Plaintiff had. See [Doc. 43 at 28:15–21]. Plaintiff was terminated when she failed to either provide additional documentation or return to work. See [id. at 47:24–48:4]. Plaintiff points to no evidence demonstrating that Defendant's reasons for its actions are "unworthy of credence." See Jackson, 405 F.3d at 1289. As such, Plaintiff has not shown pretext, and her pregnancy discrimination claim fails as a matter of law. See Everett, 703 F. App'x at 948–49.

CONCLUSION

For the reasons explained above, the undersigned **RECOMMENDS** that Defendant's Motion for

Summary Judgment ([Doc. 45]) be **GRANTED**. As this is a final Report and Recommendation and there are no other matters pending before this Court, the Clerk is directed to terminate the reference to the undersigned.

SO REPORTED AND RECOMMENDED, this 30 day of July, 2021.

/s/ Linda T. Walker
LINDA T. WALKER
UNITED STATES MAGISTRATE JUDGE

APPENDIX E

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 21-13200-DD

[Filed January 5, 2023]

NICOLE OWENS,	)
Plaintiff - Appellant,	)
	)
versus	)
	)
STATE OF GEORGIA, GOVERNOR'S OFFICE OF STUDENT ACHIEVEMENT,	)
Defendant - Appellee.	)
	)

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

ON PETITION(S) FOR REHEARING AND PETITION(S) FOR REHEARING EN BANC

BEFORE: LUCK, BRASHER, and HULL, Circuit Judges.

PER CURIAM:

The Petition for Rehearing En Banc is DENIED, no judge in regular active service on the Court having requested that the Court be polled on rehearing en banc. (FRAP 35) The Petition for Panel Rehearing is also denied. (FRAP 40)