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OPINIONS AND ORDERS

OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT (MAY 12, 2023)

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

SULEIMAN ABDU IBRAHIM,

Plaintiff-Appellant,

v.

DEPARTMENT OF INTERIOR,
Deb Haaland, Secretary,

Defendant-Appellee.

No. 22-30537
Summary Calendar

Appeal from the United States District Court
for the Eastern District of Louisiana
USDC Nos. 2:19-CV-101, No. 2:19-CV-2201,
USDC No. 2:19-CV-9316

Before: DAVIS, SMITH, and DOUGLAS,
Circuit Judges.

PER CURIAM:*

Plaintiff, Suleiman Abdu Ibrahim ("Ibrahim"), filed this action against his former employer, the Department of the Interior ("DOI"), seeking various forms of relief under Title VII for discriminatory and retaliatory conduct. For the reasons set forth below, we AFFIRM.

Plaintiff is a naturalized citizen of the United States who emigrated from Sudan. He is a fifty-five-year-old black male and a practicing Muslim. Plaintiff began work as a petroleum engineer with DOI in August 2013. He was terminated from his employment in October 2018.

The magistrate judge,[1] based on careful, detailed reasons, granted summary judgment to DOI and dismissed Plaintiff's claims of discrimination based on his age, race, gender, and religion, as well as his hostile work environment claim. The magistrate judge thereafter conducted a bench trial regarding the remainder of Plaintiff's claims, which included claims of discrimination based on national origin, retaliation, and retaliatory hostile work environment. At the conclusion of trial, the magistrate judge dismissed those claims, dictating reasons on the record. A final judgment was later entered in favor of DOI.

Although we liberally construe *pro se* briefs, *pro se* litigants must still adequately brief issues in order

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* This opinion is not designated for publication. *See* 5th Cir. R. 47.5.

[1] The parties consented to proceed before a magistrate judge pursuant to 28 U.S.C. § 636(c).

to preserve them on appeal.[2] As DOI asserts, Plaintiff has waived any argument regarding the summary judgment dismissing his claims of age, race, gender, and religious discrimination, as well as his hostile work environment claim, by failing to brief the issues upon which that ruling was based.[3] Furthermore, although Plaintiff attempts to challenge the dismissal of the remaining claims tried during the bench trial, he has also waived any argument regarding that dismissal by failing to describe how and/or why the magistrate judge's conclusions were erroneous.

Furthermore, we nonetheless have carefully reviewed the record in this matter, which fully supports the magistrate judge's summary-judgment dismissal, as well as the court's rejection of the remaining claims following trial. We agree with the magistrate judge that Plaintiff failed to present summary-judgment evidence sufficient to support his claims of age, race, gender, and religious discrimination, as well as his hostile work environment claim under Title VII. The court did not err in granting DOI summary judgment on those claims.

We have also carefully reviewed the record, which fully supports the magistrate judge's dismissal of the Plaintiff's remaining claims after conducting a bench trial. The testimony and evidence adduced at trial illuminate the reasons for Plaintiff's difficulties

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[2] *Geiger v. Jowers*, 404 F.3d 371, 374 n.6 (5th Cir. 2005) ("[P]ro se litigants have no general immunity from the rule that issues, and arguments not briefed on appeal are abandoned.").

[3] *Brinkmann v. Dallas Cty. Deputy Sheriff Abner*, 813 F.2d 744, 748 (5th Cir. 1987) (This Court "will not raise and discuss legal issues [Plaintiff] has failed to assert.").

in the workplace that led to his termination. The record fully supports the magistrate judge's conclusion that Plaintiff was actively hostile to and disrespected his supervisors and was openly insubordinate and discourteous to them. He refused to follow instructions and office policies. He also refused to develop the skills that his supervisors wanted him to acquire to perform his job properly. When he was asked to mediate his dispute with his supervisors, he refused to do so.

In sum, Plaintiff failed to establish a prima facie case supporting any of his discrimination or retaliation claims.

For these reasons and those expressed in the magistrate judge's thorough order granting summary judgment and reasons dictated on the record at the conclusion of the bench trial, we AFFIRM the judgment of the district court.

JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT (MAY 12, 2023)

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

SULEIMAN ABDU IBRAHIM,

Plaintiff-Appellant,

v.

DEPARTMENT OF INTERIOR,
Deb Haaland, Secretary,

Defendant-Appellee.

No. 22-30537
Summary Calendar

Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. 2:19-CV-101
USDC No. 2:19-CV-2201
USDC No. 2:19-CV-9316

Before: DAVIS, SMITH, and DOUGLAS,
Circuit Judges.

This cause was considered on the record on appeal and the briefs on file.

IT IS ORDERED and ADJUDGED that the judgment of the District Court is AFFIRMED.

IT IS FURTHER ORDERED that Appellant pay to Appellee the costs on appeal to be taxed by the Clerk of this Court.

BENCH TRIAL, JUDGE'S DECISION, UNITED STATES DISTRICT COURT EASTERN DISTRICT OF LOUISIANA (AUGUST 4, 2022)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

SULEIMAN IBRAHIM

v.

DEPARTMENT OF INTERIOR, ET AL

Civil Action No. 19-101

Day 4 of 4

Transcript of the Trial Held on August 4th, 2022, Held Before the Honorable Karen Wells Roby, United States Magistrate Judge

[August 4, 2022, Transcript, p. 146]

THE COURT: You rest. I'm ready to rule. Okay.

So Title 7 provides that all personnel actions affecting employees shall be made free from any discrimination based on race, color, religion, sex, or national origin. That's in 42 U.S.C. 2000e-16, Subsection A.

"A section of the act bars employers from discriminating against any employee or job applicant because that individual has opposed any practice made unlawful by Title 7, or because

that individual has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing."

Now, the complaint, the remaining complaint, that has been submitted to the Court by Mr. Suleiman Ibrahim consists of–sit down, sir–consists of the following:

In his opinion, he was discriminated against because of his national origin, which is Sudanese. He testified that he came over to America as a refugee and that, prior to coming to America, had obtained a geology degree, a geology and natural resources degree, and then later acquired a petroleum engineering degree.

He believes that, per his testimony, the national origin discrimination took the form of discriminating against him because of how he speaks because he was not naturally born an American citizen. He did concede in his testimony that, in 2004, he became a naturalized American citizen, which means that at the time that he was hired he was actually a naturalized American citizen.

His resume, according to his testimony and others, reflected that he attended school in Sudan and that actually the hiring officials, who were Mr. Trocquet and Mr. Carter, his direct supervisor, were actually people who made a decision to hire him even though he was from Sudan, which was clearly reflected on his resume. The fact that he was from Sudan did not bar him from being hired by the agency.

The term "national origin," on its face refers to the country where a person was born or more broadly

the country from which his or her ancestors have come. A person's national origin has, however, nothing to do with what you look like, Mr. Ibrahim, *i.e.* color because there have been questions from you asking witnesses what do you see and what do you think of when you look at me. But that is not national origin.

It has nothing to do with your religion, sir, or your race. National origin is deemed to be inextricably intertwined with your accent, but your accent did not present a bar from you being hired by the agency and it was clear to the Court that, when Mr. Carter and Mr. Trocquet made the decision to bring you on to their agency, they were well aware of where you were from and that did not inhibit them from hiring you.

As in any discrimination case, a plaintiff complaining of discrimination on the basis of national origin bears the burden of proving by a preponderance of the evidence that his employment was adversely affected by his status. This burden can be met by direct evidence or, in the absence of direct, a plaintiff can prove his case with indirect circumstantial evidence; and, quite honestly, there has been none.

Nevertheless, to establish intentional discrimination by circumstantial evidence, an individual must first establish a prima facie case of intentional discrimination due to national origin.

In other words, to establish a prima facie case of discrimination, the plaintiff must show, number one, that the individual is a member of a protected class, which you are; that he was qualified for

the position. They hired you; and that he was terminated from the position and replaced by a person outside of the group or that he was discharged because of his national origin. There's been no evidence presented to the Court that, in the termination of Mr. Ibrahim that someone outside of the protected group was hired to replace him, nor is there any evidence presented to the Court that his discharge was based upon his national origin.

Instead, the evidence presented to the Court regarding the reason for his termination could be characterized as follows:

As discourteous conduct. In other words, Mr. Ibrahim felt it was beneath him to follow the instructions of Mr. Carter because Mr. Carter did not have a petroleum degree as he did. So, rather than to submit to the leadership of Mr. Carter, he overtly became defiant and refused to do as instructed by his manager. He was, in many instances from the testimony of the witnesses, rude, insolent, disgraceful, and made very disparaging remarks toward his supervisor and, even when questioning Mr. Carter, made sure that Mr. Carter knew that he did not like him even though Mr. Carter expressed no personal animus toward Mr. Ibrahim.

Mr. Ibrahim was terminated because he was boisterous and disruptive during regular office hours even though he testified that he went to community college school for business training and learned how to behave in an office program. He seemed to have abandoned his training in that area because, regardless of what the itinerary

for the meeting, which we were provided of, it was clear that all engineers knew what the order of the day was with regards to the meeting, what Mr. Carter's plan was, and he was the only person who stood up and interrupted the meeting and instructed, I might add, very disruptively to his superior "don't interrupt me" as though he was a person of authority as opposed to a subordinate in the room.

That was the second reason for recommending termination, or second and third, which is insubordination.

There was testimony not only from Mr. Carter, but from Mr. Trocquet, and not disputed by Mr. Ibrahim, that he disregarded directives. In fact, there was written submissions of emails by Mr. Ibrahim that he will not follow policy as instructed because he can't get his way.

The most astonishing thing that the Court has heard during these proceedings is that the witness just said that nobody was as good as him and he was better than everybody, which meant, quite honestly, painfully, it seems that, although he feels they looked at him poorly because he was Sudanese, he did not respect anybody he worked with and he showed contempt to everybody he worked with.

With regards to the confidential recording of conversations, this is my opinion. I don't think that the policy of BSEE is an official policy that gives adequate notice to employees that there is a prohibition against recording. It is not posted anywhere in the office. It is not contained in the

office handbook. There is no document that these employees, whether engineers or other subordinates, have to execute to confirm that they're aware that there is a no recordation policy, and the law permits it if this is recording on one side or consent on one side.

However, the fact that I don't think BSEE complies with the law in that respect, I also don't think that the instruction by Mr. Carter or the direction by Mr. Carter to not record me was the result of any discrimination animus, but poor communication or direction by his superior that violates the law. But that doesn't constitute discrimination.

I do think, and I want to say on the record, BSEE ought to fix that because I think that is a huge problem and you just cannot ignore the law because you're a supervisor or they need to have some of these minds in the DOJ tell them to fix that. Okay. But that does not constitute discrimination. So the burden with regards to establishing national origin discrimination is not a tough one.

Mr. Ibrahim, according to the law, since you are a proponent of the law and want to uphold and enforce the law, your job under the law was to establish a prima facie case by showing that it was related to your national origin.

But here's the problem, the very guy that you said didn't like you because you were Sudanese is the very guy that hired you despite the fact that you were Sudanese.

So I cannot say, based on the record that I have, that Mr. Carter had any animus to you because

of your national origin. I cannot say that Mr. Trocquet had any animus to you because you were Sudanese. The sad thing is maybe you have a self image of being less than because you're Sudanese, but that's not coming from these American gentlemen who were trying to do their job.

The next issue–so let me just say for clarity. So I do not find that he established or that there was discrimination based on national origin and I grant a judgment in favor of the defendant on that issue and against the plaintiff.

The remaining issues are retaliation and retaliatory work environment or hostile work environment.

Mr. Ibrahim, at lunch, I was sitting here thinking and reflecting on the testimony over these days and I'm going to enumerate all the things you said that you believe created hostility towards you or a hostile environment, particularly retaliatory, because you filed an administrative claim and EEO claim for every year from 2015 to 2018.

First, you say that it was disrespectful and hostile towards you for you to be called a field engineer. The position which you applied to and was hired for.

Second, you say, it was disrespectful and hostile to you to require you to come to your supervisor to discuss your personnel issue with your supervisor.

Next, you say, it was disrespectful and hostile to you for requiring you to conform to the policy of going on the morning of to the inspector to get added to the manifest, so that they can do the

proper weighting of the helicopter to make sure they had enough fuel, not too much fuel, and not too little fuel. But you put in writing I'm not going. But, nonetheless, you claim that making you go to say "yes, I'm going to be on the helicopter" was disrespectful and hostile to you.

You say, generally speaking, you challenged your manager's instruction. If he said go right, you said I'm not. But, nonetheless, any instruction given to you by Mr. Carter, which is really, really clear to me, you found hostile because you disrespected Mr. Carter. You felt he was beneath you because he did not have a petroleum degree and you ignored his years of experience in the petroleum engineering field in addition to his degree. You ignored it. You say it's not good enough. He's beneath you. "I don't have to listen to you." To you, that was hostility.

You claim it was hostile to you because you were denied a promotion in 2015. You claim that it was hostile to you because Mr. Carter did not move quick enough to get your vouchers paid and, in fact, it resulted in a two-month delay to you to getting those two vouchers paid. I believe they were in October and November and I don't recall the year.

You claim that it was hostility to you because he refused to allow you to raise the issue of your travel and your leave time in the middle of a meeting where he's trying to get status reports from your coworkers.

You claim that it was hostile to you because they did not adequately accommodate your religious

requests. You claim that it was hostile to you when Mr. Carter, or I think this might have been Mr. Trocquet, had your coworkers review and approve your WAR reports because according to Mr. Butts there was at least 70 errors out of 200 WAR reports.

You claim that it was hostile to you because you say you were not adequately trained because you did not get to go to the DOI trainings as often as your coworkers, but you presented no evidence to support that.

Then, number 12, you claim that you were denied continued training.

Now, as it relates to all of these, there's testimony that directly contradicts what you said. So we'll start off with the religious accommodation request. The evidence and the testimony suggest that you were able to go to pray. The evidence and the testimony suggest that the time that it would take for you to go and pray would take about an hour and a half. You only had half an hour for lunch. So, in other words, you needed to get religious comp time, which means you'd have to come in an hour early to get that comp time in a daylight savings period time. They allowed you to do that and you were able to do that. That's not hostility. They accommodated.

It's clear to me that your perception of any interaction with any of your coworkers, whether it was Mr. Butts, Mr. Adams, it didn't matter. People–even the lady who was administrative, let me find her name, Ms. Rita Lewis. Even Ms. Lewis, when you asked "how do you feel toward

plaintiff," she said "I thought we had a working relationship." Your response to them was "what if I told you I don't like you?" Right. So what you saw in your head as to how they viewed you was not how they viewed you. That's how you view them.

The denial of your promotion in 2015. The testimony supports the conclusion that there were some skills that they wanted you to acquire that had not been developed, and I understand your frustration was this. That, according to–and I don't remember who it was. According to the testimony, it normally takes six to nine months to train an engineer. It took you five years and you seemed to have maxed out on the level or the length of training required for a person and you believed that, based on your education, that you were above everybody else who was training you.

But there were certain core skills that needed to be developed to help you to become an effective engineer and, according to the assessment, which was not done singularly, right, because there's a perception, or your perception, that Mr. Carter didn't like you and Mr. Carter was out to get you and that it was Mr. Carter who came up with this concept of how to build a case to get rid of you.

But all the testimony from Mr. Trocquet and Mr. Saucier, what he said was, no, Lynard consulted us on every move. He asked us "what do I do about this, how do I fix this, how do I make him a functioning employee," and when they came to the conclusion that there was nothing that they could do because you were stubborn and you were

not going to do it, they were left with no choice, but to let you go.

You blamed Mr. Saucier for signing off on the proposal to terminate you and I understand that being terminated can be a very traumatic experience. But the witness testified he may have seen you in a room once or twice at district meetings, but he never really had any personal engagement or contact with you to make an assessment about you or your performance.

What he testified to was that what he did do was review all the evidence that was submitted and attached to the proposal and he evaluated it, number one, to see if there was something they could fix and, number two, if it was not curable, then, yes, he'd have to approve it.

So let's talk about what is retaliation. So Title 7 makes it unlawful for a person to discriminate against an employee in retaliation for either participating in a Title 7 proceeding or opposing an employer's discriminatory practice.

So let's talk about that. Yes, you participated in many Title 7 proceedings. But there's been no testimony that any action by the employer was in response to those proceedings. In fact, it was clear to me, it appeared to me from up here when you were questioning your coworkers and you asked them "did you know that I filed EEO complaints," they all looked at you, like, no, and they said "not for a long time." "When did you find out?" Some, only recently found out. Right.

Your perception again was that everybody knew what you were doing. But if your bosses were

doing their job right, your coworkers weren't supposed to know, and every last one of them said they had no knowledge about that, number one.

Were you opposing any discriminatory conduct by your employer? All of the testimony suggests that you were just opposing instruction. Not discriminatory practice. There's a difference. There's no evidence that you were denied DOI training because of your protected status even in any other category.

So under Title 7, it's your burden, Mr. Ibrahim, to prove by prima facie evidence that you were discriminated against by raising that inference that your employer did something with discriminatory intent to harm you.

Here's the thing, even if Mr. Carter said "I did not like you," not liking you is not a discriminatory ground. He can be a difficult manager and you may not like him, but that is not discrimination. So when you cannot produce direct evidence of intent, you can still prove it by circumstantial evidence. But I don't have any circumstantial evidence.

Even under the *McDonald* framework, it's still your burden to show, in the case of a retaliatory discharge, that it's because of one of those two: That you actually had participated in a procession or opposed a discriminatory practice. I'm going to say it again, so that the record is clear, there is no evidence that you were terminated because you opposed a discriminatory practice.

Yes, there's evidence that you kept filing EEO complaints and filing administrative complaints, but the tangible discipline that you received was because of your disruptive behavior, because of your rudeness in the workplace, because you were not playing well in the sandbox.

Part of being a good employee is to learn how to get along with people and work with people and navigate your differences and perspective with people, but every bad thing that happens in the workplace is not the result of discrimination no matter how many times you say the word "discrimination."

You suggested that there was unlawful practice. Like you kept saying "I want to support the law. I will object to unethical behavior." Let me say this. Title 7 doesn't protect against unethical behavior. Title 7 doesn't protect against what you perceive to be rudeness to you.

Several times throughout the trial, you mentioned that things were beneath you, your dignity, because of your title, because of your title as a petroleum engineer. It seemed that you placed an overemphasize on your educational experience and not enough interest in your actual tangible work experience and it's because of your status as a petroleum engineer that you felt that certain requests of your employer or even requests for help by your coworkers were beneath you. That's not discrimination. Hostility is not this.

As an example of the employer's efforts to try to make you a productive employee, one of the things that stuck out to me was that Mr. Dunne

arranged to have you go mediate with Mr. Carter and what was telling to me was, even though the mediator did not say what she saw, she said I quit, which means no cooperation in trying to fix the problem. Problems can't be fixed unless two people agree to fix the problems. Part of mediation is sometimes you give up some things you feel strongly about to get to the ultimate result, which to me your ultimate result would have been some sort of promotion to get to that grade level to make the $79,000. But instead, you were so stubborn that you refused to even mediate.

As Mr. Dunne reminded us, the reason why they were disciplining you was not to punish you, not to demean you, not to denigrate you even though you had a petroleum engineering degree. But the purpose behind disciplining you was to try to rehabilitate you to get you to see that your behavior was not right in the workplace, so that everybody can go on about doing the business that the agency was created for and get compensated as a result.

But instead, even your testimony suggests to me, that rather than being rehabilitated, you became angrier and more obstinate. So even though there was disruption, I would say, in the workplace, I could not characterize that disruption in the workplace as the result of the employer's hostility to the employee. The actual disruption and hostility came from you.

So with that having been said, I believe that the weight of the testimony is in favor of the defendant. That there was no retaliatory hostile work

environment created by the employer. That, unfortunately, the employer had a very difficult employee who refused to submit and humble himself and learn the ways of the office and do the job that was expected of him.

So I grant a judgment in favor of the defendant on the retaliatory hostile work environment claim and against the plaintiff, Mr. Suleiman Ibrahim.

[. . .]

JUDGMENT OF THE UNITED STATES DISTRICT COURT EASTERN DISTRICT OF LOUISIANA (AUGUST 4, 2022)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

SULEIMAN IBRAHIM

v.

DEB HAALAND, SECRETARY, DEPARTMENT OF INTERIOR

Civil Action No. 19-0101 c/w 19-9316 c/w 19-2201 All Cases

Section: "KWR"

Before: The Hon. KAREN WELLS ROBY, United States Magistrate Judge.

This matter having come before the Court for non-jury trial on consent of the parties pursuant to 28 U.S.C. § 636(c), for the reasons orally assigned at the conclusion of trial, and those previously assigned in the Court's Order and Reasons (ECF No. 78) granting in part defendant's Motion for Summary Judgment; accordingly,

IT IS ORDERED, ADJUDGED, AND DECREED that, having granted summary judgment, there is judgment in favor of defendant, Deb Haaland, Secretary, Department of Interior, and against plaintiff

Suleiman Ibrahim dismissing with prejudice plaintiff's age, race, gender, and religious discrimination and hostile work environment claims under Title VII, 42 U.S.C. § 2000e; each party to bear its own costs.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that there is judgment in favor of defendant, Secretary Deb Haaland, Department of Interior, and against plaintiff Suleiman Ibrahim, dismissing with prejudice plaintiff's national origin discrimination, retaliation, and retaliatory hostile work environment claims on the Court's finding at trial of no evidence to support plaintiff's national origin discrimination, retaliation, or retaliatory hostile work environment claims under Title VII, 42 U.S.C. § 2000e; each party to bear its own costs.

New Orleans, Louisiana, this 4th day of August, 2022.

/s/ Karen Wells Roby
United States Magistrate Judge

MINUTE ENTRY
SUMMARY OF TRIAL PROCEEDINGS
(AUGUST 1, 2022)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

SULEIMAN IBRAHIM

v.

DAVID BERNHARDT

Civil Action Number. 19-0101 c/w 19-2201, 19-9316

Section: "KWR"

Before: The Hon. KAREN WELLS ROBY,
United States Magistrate Judge.

Non Jury Trial
Day 1

Case Manager: Charles A. Armond
Court Reporter: Sandy Minutillo

Appearances: Suleiman Ibrahim, Pro Se, Counsel for plaintiff Glenn Kenneth Schreiber and Sandra Lee Sears, Counsel's for defendant

Court begins at 9:00 a.m.

Case called.

All present and ready.

Counsel makes appearances for record.

Court recessed at 9:05 a.m. for counsel conference.

Court resumed at 9:15 a.m.

Plaintiff's witnesses:

Tom Capello: sworn and testified.

Thomas Edward Dunn: sworn and testified.

Exhibit bates numbers 1285, 1294, 1313, 1322, 1334, 1337, 1364 1369, 1387, 1707, 1784, 1973, 1977, 1978 offered and admitted. Court recessed at 11:53 a.m. and resumed at 1:08 p.m.

Plaintiff's witnesses:

Thomas Edward Dunn: resumes testimony.

Carlos Torres: sworn and testified.

Court recessed at 3:02 p.m. and resumed at 3:15 p.m.

Plaintiff's witness:

Carlos Torres: resumes testimony.

Plaintiff's witnesses:

Thomas Meyer: sworn and testified.

Lance Benedietto: sworn and testified.

Matter continued until August 2, 2022.

Court Adjourned at 5:00 p.m.

Notice for Removal of Exhibits given to counsel. (attached)

Non Jury Trial
Day 2

Case Manager: Charles A. Armond
Court Reporter: Sandra Minutillo

Appearances: Suleiman Ibrahim, Pro Se, Counsel for plaintiff Glenn Kenneth Schreiber and Sandra Lee Sears, Counsel's for defendant

Trial resumed from August 1, 2022.

Court begins at 9:00 a.m.

All present and ready.

Exhibit bates numbers 373-385, 386-411, 761-772, 1060, 1159, 1377, 1683, 1785, 1832, 1836-1838, 1865-1872, 1875, 1887-1888, 1896, 1990, 2035 offered and admitted.

Plaintiff's witness:

Diane Chisholm: sworn and testified.

Court recessed at 10:51 a.m. and resumed at 10:59 a.m.

Plaintiff's witness:

Diane Chisholm: resumed testimony.

Exhibit bates numbers 1010-1021, 1038-1050, 1217 offered and admitted.

Plaintiff's witness:

Christopher Adams: sworn and testified.

Court recessed at 11:53 a.m. and resumed at 1:19 p.m.

Plaintiff's witness:

Pedro Flores: sworn and testified.

Exhibit bates number 1031 offered and admitted.

Plaintiff's witness:

Justin Josey: sworn and testified.

Court recessed at 2:52 p.m. and resumed at 3:03 p.m.

Exhibit bates number 1394 offered and admitted.

Plaintiff's witness:

Michael Sonnier: sworn and testified.

Exhibit bates numbers 900, 919, 922-924 offered and admitted.

Plaintiff's witness:

Rita Lewis: sworn and testified.

Matter continued until August 3, 2022.

Court Adjourned at 4:50 p.m.

Non Jury Trial
Day 3

Case Manager: Charles A. Armond
Court Reporter: Sandra Minutillo

Appearances: Suleiman Ibrahim, Pro Se, Counsel for plaintiff Glenn Kenneth Schreiber and Sandra Lee Sears, Counsel's for defendant

Trial resumed from August 2, 2022.

Court begins at 9:15 a.m.

All present and ready.

Plaintiff's witness

Joe Lee Butts, Jr.: sworn and testified.

Exhibit bates number 1299 offered and admitted.

Court recessed at 10:27 a.m. and resumed at 10:41 a.m.

Plaintiff's witnesses

Shadi Sarhan: sworn and testified.

Michael Saucier: sworn and testified.

Court recessed at 11:15 am. and resumed at 11:25 a.m.

Plaintiff's witness

Michael Saucier: resumes testimony.

Exhibit bates number 69, 1314-1320, 1360-1362, 1786-1792 offered and admitted.

Court recessed at 12:03 p.m. and resumed at 1:17 p.m.

Plaintiff's witness

David Trocquet: sworn and testimony.

Court recessed at 2:30 p.m. and resumed at 2:45 p.m.

Plaintiff's witness

David Trocquet: resumes testimony.

Court recessed at 4:00 p.m. and resumed at 4:17 p.m.

Plaintiff's witness

David Trocquet: resumes testimony.

Exhibit bates numbers 1876-1888, 2032-2034 offered and admitted.

Matter continued until 8/4/2022.

Court Adjourned at 4:43 p.m.

Non Jury Trial
Day 4

Case Manager: Charles A. Armond
Court Reporter: Sandra Minutillo

Appearances: Suleiman Ibrahim, Pro Se, Counsel for plaintiff Glenn Kenneth Schreiber and Sandra Lee Sears, Counsel's for defendant

Trial resumed from August 3, 2022.

Court begins at 9:05 a.m.

All present and ready.

Plaintiff's motion to add additional witness: Denied

Plaintiff's witness:

Lynard Carter: sworn and testified.

Court recessed at 10:16 a.m. and resumed at 10:28 a.m.

Plaintiff's witness:

Lynard Carter: resumes testimony.

Exhibit bates numbers 381, 1377-1386 offered and admitted. Court recessed at 11:52 a.m. and resumed at 1:14 p.m.

Plaintiff:

Suleiman Ibrahim: sworn and testified.

Plaintiff rest.

Defendant's motion for Directed Verdict under Rule 52: Denied.

Defendant rest.

Judgment to be entered by the Court as read on the record.

Trial concluded at 2:55 p.m.


SUPREME COURT
PRESS

Gmail SULEIMAN IBRAHIM <slmibrah6@gmail.com>

Suleiman: Mail box back to court

2 messages

editor@supremecourtpress.com <editor@supremecourtpress.com> Fri, Sep 8, 2023 at 2:35 PM
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SULEIMAN IBRAHIM <slmibrah6@gmail.com> Fri, Sep 8, 2023 at 5:29 PM
To: editor@supremecourtpress.com

Thank you so much, Mr. Barton. Definitely I will mail it back tomorrow the Sat September 9, 2023. Am sorry I was not feeling good today & have not checked my email earlier today. Thank again & wish you long healthy life & have a great weekend. Thank you
Suleiman Ibrahim
Metairie, NOLA
Sent from Gmail Mobile
[Quoted text hidden]

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001

September 1, 2023

Suleiman Abdu Ibrahim
6801 Veterans Memorial Blvd.
Apt. R7
Metairie, LA 70003-4472

RE: Ibrahim v. Interior Department
USAP5 No. 22-30537

Dear Mr. Ibrahim:

Returned are 40 copies of the petition for writ of certiorari in the above-entitled case postmarked on August 25, 2023 and received on August 31, 2023, which fails to comply with the Rules of this Court.

The order(s) of the U.S. District Court (order and reasons dated February 3, 2022) must be included in the appendix. Rule 14.1 (i). Each order must be reproduced so that it complies with Rule 33.1.

The lower court caption, showing the name of the issuing court or agency, the title and number of the case, and the date of entry, must be included with the opinion in the appendix to the petition. Rule 14.1(i)(ii).

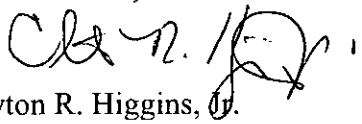
You may submit the District Court order and reasons in a separate supplemental appendix (40 copies in the booklet format and one unbound copy on 8 1/2 X 11).

Your petitions and check in the amount of $300.00 are herewith returned.

Kindly correct the petition so that it complies in all respects with the Rules of this Court and return it to this Office promptly so that it may be docketed. Unless the petition is submitted to this Office in corrected form within 60 days of the date of this letter, the petition will not be filed. Rule 14.5.

Three copies of the corrected petition must be served on opposing counsel. Rule 29.3.

When making the required corrections to a petition, no change to the substance of the petition may be made.

Sincerely,
Scott S. Harris, Clerk
By: 
Clayton R. Higgins, Jr.
(202) 479-3019

Enclosures

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001

July 24, 2023

Suleiman Abdu Ibrahim
6801 Veterans Memorial Blvd.
Apt. R7
Metairie, LA 70003-4472

RE: Ibrahim v. Interior Department

Dear Mr. Ibrahim:

Returned are three copies of the petition for writ of certiorari in the above-entitled case postmarked on July 17, 2023 and received on July 21, 2023, which fails to comply with the Rules of this Court.

If you intend to pay the $300 docket fee, the petition must be in booklet format and on paper that measures 6 1/8 by 9 1/4 inches. Rule 33.1(a).

The appendix to the petition as required by Rule 14 must be in booklet format and on paper that measures 6 1/8 by 9 1/4 inches. Rule 33.1(a).

Rule 33.1(c) prohibits the use of spiral, plastic, metal or string bindings. Staples may be used, at least two, along the left margin covered with tape.

The petition must bear a suitable cover consisting of heavy paper, front and back. Rule 33.1(e).

The text of the petition and appendix must be typeset in a Century family (e.g., Century Expanded, New Century Schoolbook, or Century Schoolbook) 12-point type with 2-point or more leading between lines. The typeface of footnotes must be 10-point or larger with 2-point or more leading between lines. Rule 33.1(b).

All of the pages in the petition and appendix must contain margins of at least three-fourths of an inch on all sides. The text field, including footnotes, may not exceed 4 1/8 by 7 1/8 inches. Rule 33.1(c).

The text of the document must appear on both sides of the pages. Rule 33.1(b).

The order(s) of the U.S. Court of Appeals and the U.S. Dstrict Court must be included in the appendix. Rule 14.1 (i). Each order must be reproduced so that it complies with Rule 33.1.

The lower court caption, showing the name of the issuing court or agency, the title and number of the case, and the date of entry, must be included with the opinion in the appendix to the petition. Rule 14.1(i)(ii).

The proof of service must be separate from the petition, not within it. See Rule 29.5.

In accordance with Rule 29.4(a), please serve three copies of your petition upon the Solicitor General of the United States, Room 5614, Department of Justice, 950 Pennsylvania Avenue, N.W., Washington, D.C. 20530-0001, and forward proof of said service to this office.

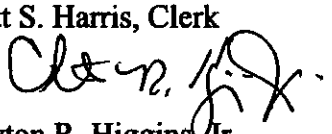
Your petitions and check in the amount of $300.00 are herewith returned.

Kindly correct the petition and appendix so that it complies in all respects with the Rules of this Court and return it to this Office promptly so that it may be docketed. Unless the petition is submitted to this Office in corrected form within 60 days of the date of this letter, the petition will not be filed. Rule 14.5.

Three copies of the corrected petition must be served on opposing counsel. Rule 29.3.

When making the required corrections to a petition, no change to the substance of the petition may be made.

In addition to the forty copies of the booklet-format petition and appendix, you must also submit one copy of the documents on 8 ½- by 11-inch paper. Rule 33.1(f).

Sincerely,
Scott S. Harris, Clerk
By: 

Clayton R. Higgins, Jr.
(202) 479-3019

Enclosures

ORDER AND REASONS,
U.S. DISTRICT COURT FOR THE
EASTERN DISTRICT OF LOUISIANA
(FEBRUARY 3, 2022)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

SULEIMAN IBRAHIM,

v.

DEB HAALAND, SECRETARY
DEPARTMENT OF THE INTERIOR

Civil Action No: 19-0101
c/w 19-9316; c/w 19-2201
Section: "KWR"

Before: Karen Wells ROBY,
United States Magistrate Judge.

Before the Court is a Motion to Dismiss and/or Alternatively For Summary Judgement (R. Doc. 68) filed by the Defendant, Deb Haaland, Secretary of the Department of Interior ("Secretary", "Defendant" or "DOI") seeking an order pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, to dismiss the claims which fail to state a claim. (R. Doc. 68). In the alternative, Defendant seeks an order pursuant to Rule 56(c) of the Federal Rules of Civil Procedure for Summary Judgement in the Secretary's favor. (R. Doc. 68). Plaintiff Suleiman Ibrahim ("Ibrahim" or "Plaintiff") opposes this motion. (R. Doc. 70). On Novem-

ber 1, 2019, the parties' consented to proceed before the United States Magistrate Judge in accordance with Title 28 U.S.C. § 636(c). R. Doc. 45. This motion was heard on briefs.

I. Factual and Procedural Background

a. Factual Background

Pro Se Plaintiff Ibrahim is a 55-year-old, black male, who is a practicing Muslim that worked for the Bureau of Safety and Environment Enforcement ("BSEE") as a Petroleum Engineer, Offshore Operations & Safety (a/k/a "Field Engineer or "Junior Engineer") since August 2013. BSEE-GOMR regulates offshore oil and gas production in the Gulf of Mexico, with five district offices, each of which handle the daily operation of the industry. The New Orleans Office was comprised of nine engineers and eight inspectors, with one supervisory inspector. R. Doc. 68-1. The Engineers were responsible for reviewing permits for oil and gas production activity, *e.g.*, drilling new wells and modifying existing wells, etc. *Id.*

As a junior engineer, Ibrahim's primary job responsibilities were reviewing Weekly Activity Reports (WARs) and End of Operation Reports (EORs) submitted by operators of offshore wells and providing comments regarding their compliance with certain permits. R. Doc. 68-4 p. 192; 366-372. Ibrahim was also required to fly offshore with the inspection staff once every two weeks. *Id.*

The events giving rise to Ibrahim's claims began three years into his employment in 2016 but notably he filed complaints against his managers starting in the fall 2015. The subject dispute involves multiple

employment decisions which were purportedly made based on race, color, age, sex, religion, retaliation, sex, and national origin.

1. Within Grade Increase-Denial

The first issue is the denial of Ibrahim's Within-Grade-Increase ("WIGI"). WIGI is an increase in income without a grade change due to alleged minimally successful overall performance.[1] During this period Ibrahim was a GS-11. R. Doc. 68-6, p. 134. In August or September 2015, Ibrahim lodged a complaint against his supervisor the nature which is unknown. R. Doc. 68-6, Tr. 40. In November 2015, Ibrahim received an evaluation for the period of 10-01-2014 through 9-30-2015 pursuant to the Employee Performance Appraisal Plan ("EPAP")[2]. R. Doc. 68-11, Official 2015 EPAP. He was rated in five areas; in three of the areas, Ibrahim received a 2 rating and two areas he received a 3 rating. *Id.* Ibrahim declined to sign the EPAP. *Id.* To receive a WIGI, the employee must meet at least at level 3 (fully successful) or equivalent in each area. *Id.* Ibrahim's performance was minimally successfully and the income increase was denied. R. Doc. 68-6, p. 134.

In Ibrahim's 2015 EPAP, his supervisor, Carter, assigned a rating of 2 in Critical Elements 2, 3 and 5. Critical Element 2, measured assistance to district engineering staff in support of Strategic Plan Goal 1. Carter concluded that when other district engineers

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[1] https://www.opm.gov/ pay & leave

[2] The rating scale in the EPAP was Exceptional (5 points), Superior (4 points), Fully Successful (3 points), Minimally Successful (2 points), Unsatisfactory (0 points). *See* R. Doc. 68-9.

were absent, Ibrahim failed to perform assignments as directed by the Section Chief or District Manager which included reviewing permits for preapproval on at least four or more occasions. R. Doc. 68-6, p. 319-325. Carter noted that Ibrahim did not on four or more occasions demonstrate an ability to perform assignments as directed without substantial correction or guidance. *Id.* He also noted that he failed to meet deadlines because of poor time management practices and further noted that Ibrahim did not understand the instructions despite his training. *Id.* The evaluation form does not identify the occasions in which Ibrahim failed to perform an assignment during the review period nor does it reference the instructions he did not understand.

Critical Element 3 evaluated special projects. Carter gave Ibrahim a 2 rating for not preparing standard procedures that document key critical district processes. He also notes that Ibrahim did not participate in special projects and did not stay informed of new technology requirements in the organization. *Id.*

Critical Element 5 addressed the employee's performance in correspondence, communication, meetings, and teamwork. It assessed the employees verbal and written communications and whether it was clear and concise, timely, responsive, and willing to share information with others. This element also evaluated whether the employee effectively participated in industry meetings and was an effective team player. *Id.* at p. 324. Carter indicated that on three or more occasions Ibrahim failed to deliver "completed staff work", failed to communicate timely to others, and failed to be an effective team player by refusing to work in a courteous and professional manner. *Id.*

The Defendant indicates that after the FY15 EPAP was completed Carter had Ibrahim sign off on 3 substitute pages to add a narrative for the "minimally successful rating of Critical Elements 2, 3, and 5" in September 2016. However, the only document located in the record is a memorandum dated September 9, 2016, sent by Carter explaining to Ibrahim why he did not receive the within-grade increase from GS-11 Step 2 to GS-11 Step 3. Carter explained that in the FY15 appraisal his deficiencies were in Critical Element 2, Assist District Engineering Staff, and Critical Element 3 Special Projects where he was rated minimally successful. He did not reference Critical Element 5, communication, which was also rated a 2 in the original EPAP, as a reason for denying Ibrahim an income increase.

In the memo, he advised Ibrahim that his performance for FY2016 was essentially the same as the evaluation from FY2015 but further referenced Ibrahim's duty to review the Weekly Activity Reports (WAR) and the End of Operations Reports and to ensure that BSEE's customers complied with the approval Application for Permit to Modify (APM) or the application for Permit to Drill (APD). *Id.*

Carter advised Ibrahim that his performance demonstrated a lack of understanding of which permit to use when more than one weekly operation included more than one permit. *Id.* He further advised Ibrahim that he failed in three additional areas: (1) to check the Significant Events and Attachment Sections (2) to check the Wellbore History section to verify casing information when casing is run and (3) to follow the contents of the written permits to compare with the WAR. *Id.* He obtained Ibrahim's signature on the

memo. Although the memo referenced the FY2015 and FY2016 evaluations as being attached, they were not.

Ibrahim contends that his WIGI denial was due to Carter intentionally changing his evaluation standards. R. Doc. 68-4 p. 130-34. He also contends that Carter falsified the EPAP by changing his ratings in order to deny him a pay increase. *Id.* The alleged falsification occurred when Carter had him sign off on 3 substitute pages for his FY2015 EPAP that were modified to include narratives. He alleges that the change was intentional because he was not an American citizen by birth and it therefore constitutes national origin discrimination. *Id.* at 133.

2. Notice of Proposed Suspension April 2016, Approved June 2016

On April 22, 2016, Carter issued a Notice of Proposal to Suspend Ibrahim for 14 days because of: (1) five instances of failing to follow instructions to not record his meetings with him, and (2) two instances of misconduct on February 4, 2016 namely; disrupting the staff meeting and being disrespectful to Carter by discussing his travel voucher rather than reporting on an operational issue as directed. R. Doc. 68-6, p. 330-31.

Carter provided an explanation for the penalty indicating that Ibrahim is a GS-11 Petroleum Engineer, not a supervisor who represents the agency in a position of trust in the oil and gas industry. R. Doc. 68-6, p. 333. Carter pointed out that Ibrahim's position directly interacts and must give guidance to the industry. Furthermore, he noted that Ibrahim's misconduct directly related to the job because of his disruptive behavior, not following instructions, and disrespect

of supervision compromises the employee/supervisor trust and relationship. *Id.* He noted Ibrahim had no record of past disciplinary actions. *Id.* However, he generally noted that Ibrahim's relationship with his coworkers had deteriorated. *Id.* Carter further indicated in the penalty provision that Ibrahim compromised management's (Carter's) confidence in his ability to perform his duties by the disruptive behavior and failure to follow verbal and written instruction of his supervisor. *Id.*

In response to the allegation of recording conversations, Ibrahim claimed that he had a legal right to do so because he "knew his supervisors were conspiring against him." R. Doc. 68-1, p. 8-9. According to Ibrahim, he openly recorded the meetings to protect himself during closed door meetings with his supervisor. *Id.* On December 31, 2015, Ibrahim emailed Carter and copied Trainer Chris Adams asking for his supervisor's permission to allow his trainer to attend the meeting. R. Doc. 68-4, p. 58. Ibrahim made his request because he felt threatened by Carter's language, which he described as putting him down, he also indicated that if the trainer could not attend, then he would record the meetings. *Id.* He also suggested that 14 days was a harsh penalty for his first violation as indicated by the office policy suggestion of 5 days. R. Doc. 68-8, p. 161-69.

Michael Saucier, Regional Supervisor, of the Regional Field Operations reviewed the discipline proposal and by memorandum to Ibrahim agreed with the proposal to suspend him for 14 days. R. Doc. 68-10, p. 116-23, Notice of Proposed Removal Memorandum; R. Doc. 68-8, p. 129-131, Decision to Sustain Proposed Suspension Memorandum. The notice was effective

on June 12, 2016 and would end on June 26, 2016. R. Doc. 68-8, p. 131, Notification of Personnel Action.

Saucier gave reasons for upholding the April 2016 notice of intent to suspend. R. Doc. 68-8, p. 129-131. According to Saucier, Ibrahim was being disciplined because he engaged in repeated failure to follow the instruction to stop recording conversations with his supervisor.[3] *Id.* Another reason is the disrupting of a staff meeting by raising a personal reimbursement matter unrelated to the subject of the meeting and telling his supervisor not to interrupt him when the supervisor requested that he stay on topic. Saucier found that each of these instances were related to refusal to follow reasonable instructions and disregard for his supervisor's authority. He also noted that Carter's confidence in Ibrahim's behavior has been reduced. *Id.*

During this time, Carter conducted Ibrahim's FY16 EPAP for the period of October 1, 2015 through September 30, 2016 assigning Ibrahim a 2 in all areas of evaluation and Ibrahim declined to sign the evaluation. R. Doc. 68-6, p. 405.

Ibrahim contends that the original suspension recommendation and the review decision are the result of discrimination and a hostile work environment. He further contends that he had a legal right to record conversations with his supervisor in the workplace.

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[3] The record indicates that a 2 day suspension was recommended for time he recorded his conversation with his boss (RC) or engaged in disruptive behavior (DB): 1-15-16 (RC-2 days.), 1-15-16 (RC-2 days.), 1-21-16 (RC-2 days.), 2-4-16 (RC-2 days.), 2-25-16 (RC-2 days), 2-3-16 (DB-2 days.), 2-3-16 (DB-days.). R. Doc. 68-10, p. 106-110.

Moreover, he contends that he wrongly suffered a suspension, an adverse employment action, because of his protected status.

3. Notice of Proposed Suspension June 25, 2018, approved July 13, 2018

The second proposed suspension occurred as a result of events which occurred between March 2017 and March 2018. R. Doc. 68-6, p. 288-99. On June 25, 2018 Carter issued a memorandum to Ibrahim and noticed him of his proposal that Ibrahim be suspended for 14 days. *Id.* Carter proposed the suspension because of Ibrahim's: 1) failure to follow established leave procedures; 2) absent without leave (AWOL); 3) inappropriate conduct; 4) failure to perform assigned work; and 5) failure to follow instructions. *Id.* He noted that since Ibrahim's 2016 suspension his behavior had not improved and that he has repeated incidents of the same type. He noted that Ibrahim was denied a within-grade increase to Step 3 on August 7, 2016 and October 31, 2017 because his work performance was unacceptable.

In the twelve-page memorandum he detailed Ibrahim work infractions. First, he reminded Ibrahim of the flexible work schedule, which stated that he could not report to work before 6 a.m. or leave work before 3:30 p.m. Carter reminded him of his thirty (30) minute lunch break and that he could flex, or increase the length, of his lunch period with the approval of his supervisor. *Id.* at p. 289. He further referenced five (5) instances when Ibrahim did not comply with the leave policy. He thereafter reminded him of the policy regarding leave and the need to request leave before leaving work unless there was

an emergency. *Id.* at p. 291-92. He also reminded Ibrahim of his public defiance in a meeting held on February 6, 2018 when he responded that he would only send an email to notify supervisors when he was leaving the office. In other words, he did not plan on getting approval. *Id.*

Carter thereafter cited to two other instances of inappropriate conduct, (1) raising an issue about a coworker in a staff meeting and (2) not completing an assignment before the end of the workday and when questioned becoming angry. *Id.* at p. 292. He also noted two instances of Ibrahim's failure to complete work on March 6, 2017 and October 30, 2017. *Id.* Finally, he cited to three instances in which Ibrahim failed to follow instructions. The first was regarding his work accomplishments on January 2018. *Id.* at. 293. The other two instances occurred in February 2018 and regarded Ibrahim's completion of an "APD Checklist." *Id.*

After explaining why each of the violations were problematic, Carter advised Ibrahim that he would be recommending another 14-day suspension. *Id.* On July 13, 2018 Saucier, the Regional Supervisor for District Field Operators approved the suspension noting that he was giving Ibrahim one final opportunity to correct his behavior.

4. Length of Suspension

Plaintiff's 14-day suspensions were determined in consultation with the progressive discipline policy enumerated in the Department of Interior Departmental Manual. R. Doc. 68-6, p. 141-169. In this document the Department identifies different offenses and gives suggested discipline ranging from a

reprimand to discharge. The discipline policy recommends a lesser penalty for a first violation, however in Ibrahim's case, the penalty appear to have been stacked to create a longer suspension.

The record illustrates that Ibrahim's 2016 14-day suspension was the first instance official workplace discipline. There is no record of any policy violation resulting in formal discipline prior to 2016. However, after Ibrahim's first suspension it is notable that his evaluation ratings declined, he began receiving informal discipline regarding alleged violations of the leave policy[4], and his work was subject to increased supervision by other engineers in the Well Ops Section. After three years of negative evaluations Ibrahim was terminated in October 2018.

5. Denial of Religious Accommodation

Ibrahim contends that the Defendant discriminated against him because he is Muslim. He alleges that during Ramadan, a thirty (30) day period of fasting and prayer in the Muslim religion, he was penalized for exercising his right to attend congregational prayer on Fridays, a day which Muslims believe was chosen by God as a dedicated day of worship. According to Ibrahim, his employer provided religious accommodation but later penalized him for requesting a religious accommodation to leave work to attend Friday prayers,

The discrimination allegedly was the difference in treatment he received compared to the Christian employees. He does not point to a specific Christian holy period that other employees were granted leave to participate in.

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[4] There is no evidence of the written leave policy in the record.

Ibrahim further contends that he was forced to fly offshore while fasting, to use his lunch break for Muslim Friday's Prayer, and denied "Holidays Time Off" in May 2018. R. Doc. 68-5, p. 83. He contends that because he sought religious accommodation, and used leave time, this fact was used against him when he was suspended in July 2018 for 14 days.

The Defendant contends that it afforded Ibrahim the opportunity to start work one hour early and use that earned comp time with his lunch hour to attend Friday prayers at his Mosque. R. Doc. 68-5, p. 402. The Defendant contends that it approved an adjustment to the religious accommodation on March 23, 2018 due to daylight saving times, which allowed Ibrahim to be absent from work on the first Friday of each pay period from 1:15 p.m. to 2:45 pm. R. Doc. 68-6, p. 74. The Defendant further contends that Ibrahim did not understand the policy and he unilaterally rescinded the arrangement and elected to use annual leave when he wanted to attend Friday services. R. Doc. 68-5, p. 403. The Defendant confirms that in July 2018 one of the reasons for Ibrahim's suspension was the failure to use proper leave procedure.

6. Hostile Environment

Ibrahim alleges that he worked in a hostile environment and that it manifested when his supervisor gave credit for his work to others and rules were not equally applied regarding workplace leave and biweekly flight notification. It further manifested when Ibrahim endured yelling by his supervisor and when his supervisors failed to properly train him. All these instances were used as justification to terminate him.

a. Lack of Credit for Work Performed

Ibrahim contends that from February to April 2018 he failed to receive proper credit for his work, instead credit was given to other employees including Pedro Flores ("Flores"). Ibrahim contends he would complete his work, then Carter would review the work and forward it to Flores who would sign the work, thus taking credit for the work. R. Doc. 68-5, p. 104-07.

The Defendant contends that Ibrahim failed to complete the project he was assigned and then Carter reassigned the project to another Petroleum Engineer, Pedro Flores ("Flores"). R. Doc. 68-2, p. 6-7. The Defendant suggest that Flores was therefore taking credit for his own work.

b. Ignored by Coworkers and Isolation

Plaintiff also contends that during this time he was ignored and isolated from the other engineers in his section. He suggests that his coworkers gave him the cold shoulder, an alleged hostile act.

Regarding his coworkers ignoring and/or isolating him, the defendant contends that Ibrahim was engaging in projection because the coworkers described Ibrahim as uncooperative, unfriendly, and condescending.

c. Workplace Leave Notification

Ibrahim contends that others routinely left the workplace without notifying the supervisor and that when he did the same thing, he was written up. He acknowledges that he was AWOL in some instances but contends the treatment was different for others.

BSEE contends that Ibrahim would leave the workplace without approval ("AWOL") and given direction to correct his behavior he refused. R. Doc. 68-2.

d. Yelled at by Supervisor

On March 14, 2018, Carter according to Ibrahim, came to his cubicle and touched him on the shoulder. R. Doc. 68-5, p. 73-74. Ibrahim contends that Carter confronted him with questions about safety glasses and he refused to respond. Ibrahim further contends that Carter then began yelling at him and rolling up his sleeves in a threatening manner.

Carter denied yelling at Ibrahim and his explanation for the encounter is that he rolled up his sleeves because of the temperature, and not to intimidate. R. Doc. 68-5, p. 331-34.

e. Compliance with Flight Manifest Notice Procedure

The defendant further contends that Ibrahim failed to properly handle the process of getting on the flight manifest for biweekly flights by contacting the inspector in charge and then personally checking in by phone or in person to confirm his availability for the flight in defiance of his supervisor's instruction.

Ibrahim also acknowledged that he would send an email regarding the biweekly flights to get on the manifest rather than confirm that he would be on the flight in person. He alleges that the procedure was "made up" by his supervisor, Carter and then used as a basis to discharge him from Federal Service.

7. Termination

On August 30, 2018, Plaintiff was given a notice of proposed removal prepared by Carter. R. Doc. 68-6, p. 343-54. As reasons to support the proposed removal, Carter pointed to Plaintiff's failure to follow an office procedure within a month of returning to work after a suspension. *Id.*

In addition to considering what Defendant contends was Ibrahim's most recent failure to follow office procedure, the proposed removal also considered his two prior two-week suspensions, and the events that led up to those suspensions including the recording incidents. *Id.* Ibrahim was officially terminated from his position on October 10, 2018 when the proposed removal was approved by Saucier. R. Doc. 68-8, p. 140.

Plaintiff contends that his termination was due to discrimination and retaliation for his past EEO complaints. After Ibrahim's termination he filed his final EEO complaint asserting discrimination related to his termination which was denied. R. Doc. 68-7.

On January 7, 2019, Ibrahim filed a complaint in this Court alleging various claims of discriminatory conduct by the David Bernhardt, Acting Secretary of the Department of the Interior stemming from his employment with the Bureau of Safety and Environmental Enforcement ("BSEE"). R. Doc. 1. Having considered various pretrial motions, the issues have been narrowed to the ones detailed above.

II. The Subject Motion

The defendant filed the subject motion seeking a dismissal of Ibrahim's claims. First the defendant contends that it is entitled to summary judgment on

the disparate treatment claims of Ibrahim based on race, color, national origin, gender, age, and reprisal. The defendant contends that Ibrahim cannot prove pretext in his disparate treatment claim.

Next the defendant seeks dismissal of Ibrahim's hostile work environment claim because there is no evidence that he experienced discriminatory intimidation as a result of any of the protected characteristics. The defendant further contends that Ibrahim cannot show that any discriminatory intimidation was severe or pervasive or that they altered the conditions of employment and created an abusive working environment.

Ibrahim opposed the "Motion to Dismiss". He "strongly opposed and object[ed] to the defendant's motion seeking a dismissal of his claims." R. Doc. 70. Ibrahim contends that the Defendants had previously sought dismissal and this Court addressed in full those repeated attempts by the defendant to "escape himself and exonerate under dismissal of claims." *Id.* While Ibrahim indicates his agreement with the summary judgment, it unclear what he is agreeing to, since he strenuously opposed the granting of the motion. *Id.*

III. Standard of Review

a. 12(b)(6) Motion to Dismiss Standard

Federal Rule of Civil Procedure ("Rule") 12(b)(6) permits a defendant to seek the dismissal of a complaint based on Plaintiff's failure to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6). When considering a motion to dismiss under Rule 12(b)(6) the Court should construe the complaint

in favor of the Plaintiff. Additionally, the Fifth Circuit has established that pro se complaints, like the Plaintiff in this case, "are held to a less stringent standards than formal pleadings drafted by lawyers. *Taylor v. Books A Million, Inc.*, 296 F. 3d 376, 378 (5th Cir. 2002) (citing *Miller v. Stanmore*, 636 F. 2d 986, 988 (5th Cir. 1981)). However, pro se status will not allow conclusory allegations or legal conclusion to survive a motion to dismiss. *See Lowrey v. Texas A &M Univ. Sys.*, 117 F. 3d 242, 247 (5th Cir. 1997).

A defendant making a motion to dismiss must do so before filing an answer or other responsive pleading, and the motion is generally due when the defendant's answer would have been due. *See* Fed. R. Civ. P. 12(b). Defendants may move to dismiss on the following grounds: lack of subject matter jurisdiction (FRCP 12(b)(1)), lack of personal jurisdiction, improper venue, insufficient process, insufficient service of process, failure to state a claim on which relief can be granted, and failure to join the necessary party.

b. Motion for Summary Judgement Standard

Federal Rule of Civil Procedure ("Rule") 56(a) provides that summary judgment is appropriate where "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) (emphasis added). A fact is "material" if resolving that fact in favor of one party could affect the outcome of the suit. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986); *Poole v. City of Shreveport*, 691 F.3d 624, 626-27 (5th Cir. 2012).

Where the moving party bears the burden of proof at trial as the plaintiff, or as a defendant asserting an affirmative defense, that party must support its motion with "credible evidence . . . that would entitle it to directed verdict if not controverted at trial." *Celotex Corp. v. Catrett*, 477 U.S. 317, 331 (1986). In such a case, the moving party must "establish beyond peradventure *all* of the essential elements of the claim or defense to warrant judgment in his favor." *Fontenot v. Upjohn Co.*, 780 F.2d 1190, 1194 (5th Cir. 1986) (emphasis in original); *see also Access Mediquip L.L.C. v. UnitedHealthcare Ins. Co.*, 662 F.3d 376, 378 (5th Cir. 2011). Credible evidence may include depositions, documents, affidavits, stipulations, admissions, interrogatory answers, or other materials. Fed. R. Civ. P. 56(c). Moreover, in evaluating a motion for summary judgment by the party with the underlying burden of proof, the Court considers the substantive evidentiary burden of proof that would apply at the trial on the merits. *Anderson*, 477 U.S. at 252. The moving party's burden is therefore "understandably heavier" where that party is the plaintiff. *S. Snow Mfg. Co. v. Snow Wizard Holdings, Inc.*, 829 F. Supp. 2d 437, 447 (E.D. La. 2011).

Once the moving party has made its showing, the burden shifts to the non-moving party to produce evidence that demonstrates the existence of a genuine issue of fact. *Engstrom v. First Nat. Bank of Eagle Lake*, 47 F.3d 1459, 1462 (5th Cir. 1995) (citing *Celotex*, 477 U.S. at 322-24). All justifiable inferences are to be drawn in the non-moving party's favor. *Anderson*, 477 U.S. at 255. However, "[u]nsubstantiated assertions, improbable inferences, and unsupported speculation are not sufficient to defeat a motion for Summary

Judgment." *Brown v. City of Houston, Tex.*, 337 F.3d 539, 541 (5th Cir. 2003) (internal citations omitted); *see also Eason v. Thaler*, 73 F.3d 1322, 1325 (5th Cir. 1996) (stating that "mere conclusory allegations" are insufficient to defeat a motion for summary judgment). Although the Court may not evaluate evidence on a motion for summary judgment, the Court may make a determination as to the "caliber or quantity" of evidence as part of its determination of whether sufficient evidence exists for the fact-finder to find for the non-moving party. *Anderson*, 477 U.S. at 254.

The summary judgment standard in an employment discrimination matter is premised upon a burden-shifting analysis from *McDonnell-Douglas Corp. v. Green*, 411 U.S. 792 (1973), and its progeny. Thereunder, the Court must first determine if the plaintiff has established a *prima facie* case of discrimination, sufficient to raise an inference of discrimination. *McDonnell-Douglas*, 411 U.S. at 802; *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 510-11 (2002) (finding that in Title VII actions, a *prima facie* standard is used for evidentiary purposes on summary judgment); *Powell v. Rockwell Int'l Corp.*, 788 F.2d 279, 285 (5th Cir. 1986) ("The *McDonnell-Douglas* formula . . . is applicable . . . in a . . . summary judgment situation."); *see also Jackson v. Texas A & M Univ. Sys.*, 975 F. Supp. 943, 947 (S.D. Tex. 1996) (citing *LaPierre v. Benson Nissan, Inc.*, 86 F.3d 444, 448 (5th Cir.1996)).

IV. Analysis

A. Motion to Dismiss

Defendants have filed this motion pursuant to Rule 12(b)(6) which may only be filed before an answer is filed. *See* Fed. R. Civ. P. 12. In this case the answer was filed on January 27, 2020. R. Doc. 52. In contrast the subject motion was filed on August 3, 2021. R. Doc. 68. Therefore, to the degree the defendant asserts that Ibrahim's complaint fails to state a claim for which relief may be granted is untimely and therefore DENIED.

B. Motion for Summary Judgment

a. National Origin, Gender, Race, and Age Discrimination

Defendant contends that there is no direct evidence of intentional discrimination based upon any of the protected status'; race/color, national origin, gender, religion, age, or reprisal for his EEO activity.

Ibrahim essentially submitted his claim based on the record and documents contained in the EEO file. Additionally, he relies upon the evaluations which he suggested were the result of discrimination.

Title VII of the Civil Rights Act of 1964 promises that "[a]ll personnel actions affecting employees . . . shall be made free from any discrimination based on race, color, religion, sex, or national origin." 42 U.S.C. § 2000e-16(a). A separate section of the Act bars employers from "discriminat[ing] against" any employee or job applicant because that individual "has opposed any practice" made unlawful by Title VII or because that individual has "made a charge,

testified, assisted, or participated in any manner in an investigation, proceeding, or hearing" under Title VII. 42 U.S.C. § 2000e-3(a).

1. Age

The defendant contends that while Ibrahim alleges he was subject to discrimination in his employment based upon age, there are no facts in the pleadings that show direct or circumstantial evidence to substantiate his claim. Therefore, the defendant contend that the age discrimination claims should be dismissed.

Ibrahim generally contends that it is illegal for his employer to discriminate against him based upon his age. Ibrahim alleges he was born in 1961 and therefore 57 years old at the time of the alleged discrimination and therefore a member of the protected class. R. Doc. 1.

Under the ADEA, "[i]t shall be unlawful for an employer . . . to discharge any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's age." 29 U.S.C. § 623(a)(1). "When a plaintiff alleges disparate treatment, liability depends on whether the protected trait (under the ADEA, age) actually motivated the employer's decision." *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 141, (2000) (citing *Hazen Paper Co. v. Biggins*, 507 U.S. 604, 610, (1993)). To demonstrate age discrimination a "plaintiff must show that '(1) he was discharged; (2) he was qualified for the position; (3) he was within the protected class at the time of discharge; and (4) he was either i) replaced by someone outside the protected class, ii) replaced by someone younger, or iii) otherwise

discharged because of his age.'" *Palasota v. Haggar Clothing Co.*, 342 F.3d 569, 576 (5th Cir. 2003) (quoting *Bodenheimer v. PPG Indus., Inc.*, 5 F.3d 955, 957 (5th Cir. 1993)). Regardless of how much younger his replacement is, a plaintiff in the protected class may still establish a prima facie case by producing evidence that he was "discharged because of his age." *Palasota*, 342 F.3d at 576.

Ibrahim does not point to an instance where his employment was affected due to his age. R. Doc. 1. Regarding the younger employee he references, there is no evidence of the employee's age or how that persons hire affected Ibrahim's employment other than general fear of a younger person being present in the workplace. *Id.* Further neither of the complaints filed by Ibrahim detail any instance where his age played a role in either the denial of raises or the implementation of suspensions.

A review of the evidence further shows that Ibrahim has not alleged he was replaced or discharged due to the hiring of another employee outside his protected class *i.e.* younger. Without a comparator, Plaintiff cannot establish the prima facie case of age discrimination. *See Alkhawaldeh v. Dow Chemical Co.*, 851 F. 3d 427 (5th Cir. 2017). Subjective belief of discrimination is not sufficient to present a material question of fact. *See Ray v. Tandem Computers, Inc.*, 63 F.3d 429, 434 (5th Cir. 1995); *Nichols v. Lewis Grocer*, 138 F.3d 563, 570-71 (5th Cir. 1998) ("A subjective belief of discrimination, however genuine, cannot be the basis of judicial relief."). Therefore, the Court finds that summary judgment is appropriate and GRANTS defendants motion dismissing the age discrimination claim.

2. Race and Gender

The defendant contends that Ibrahim's claim of race and gender discrimination fail. The defendant contends that there is no evidence in the pleadings or prior testimony suggesting that any employment decision was made because of race and gender.

Ibrahim generally suggests that the pleadings and evidence of record showing low performance evaluations, removal of job duties, denial of within grade pay increase, and suspensions were due to his race and gender. He therefore suggests he is entitled to damages.

Under the *McDonnell Douglas Corp. v. Green* burden-shifting analytical framework described above, plaintiff first must establish a prima facie case. 411 U.S. 792 (1973). To establish a prima facie case based on alleged differential treatment on account of race or gender, a plaintiff must demonstrate that: (1) he belongs to a protected group; (2) he suffered an adverse employment action; and (3) he suffered the adverse action due to his membership in the protected class. *See Ward v. Bechtel Corp.*, 102 F.3d 199, 202 (5th Cir. 1997).

The first prong is met, as the Plaintiff is a black male. The second prong is also met as he suffered multiple adverse actions from suspension to termination. However, Ibrahim's race and gender claims fail at the third prong which requires a showing that his suspensions and termination were due to his membership in a protected group.

Ultimately, the only evidence supporting any of Plaintiff's claims is his subjective, personal beliefs and such beliefs simply are not enough to raise a genuine

issue of material fact. *See Nichols* 138 F.3d 570. ("[A] subjective belief of discrimination, however genuine, [cannot] be the basis of judicial relief.") (quoting *Little v. Republic Refining Co.*, 924 F.2d 93, 95 (5th Cir. 1991)); *Hornsby v. Conoco*, 777 F.2d 243 (5th Cir. 1985) (subjective belief and speculation cannot form the basis for judicial relief); *Elliott v. Group Medical & Surgical Service*, 714 F.2d 556, 567 (5th Cir. 1983) ("a subjective belief of discrimination, however genuine, [may not] be the basis of judicial relief"); *Houser v. Sears, Roebuck & Co.*, 627 F.2d 756 (5th Cir.1980) (holding that generalized testimony by an employee regarding his subjective belief that his discharge was the result of discrimination is insufficient to make an issue for the jury in the face of proof showing an adequate, nondiscriminatory reason for his discharge).

Ibrahim, in his complaint, alleged that Trocquet passed him up for tasks and gave important duties to other men on his team when he was the only Petroleum Engineer with a degree. R. Doc. 1-1. Ibrahim alleged that it was not until a new employee joined who was less experienced, less educated, and underperforming in the job that he started to worry about his situation. *Id.* He does not allege that the employer's actions were motivated by his race or his gender.

Trocquet denied that he engaged in any discrimination either race or gender against Ibrahim. R. Doc. 68-6, p. 71, Sworn Interview of David Trocquet. He testified that Ibrahim was suspended because of his inability to follow directions which is expected of all employees. *Id.* According to Trocquet, Ibrahim also demonstrated an inability to work in the team framework of the Engineering Department and did not put

forth the effort required to be a successful employee. *Id.*

The Court finds that Ibrahim's complaint contradicts the existence of a gender claim since the work that was given to other employees instead of Ibrahim, was given to other men. Ibrahim seemingly had only his subjective beliefs that his employer's decisions were due to either his race or gender. However, that is not enough to state a prima facia case of either race or gender discrimination. Therefore, summary judgment is GRANTED as to Ibrahim's race and gender claims.

3. National Origin

The defendant contends that Ibrahim has failed to present a prima facia case of national origin discrimination. The defendant contends that nowhere on the face of the pleadings or in his prior testimony does he allege the existence of statements or actions by any of his managers evincing such *animi*. They suggest that the claim should therefore be dismissed.

Ibrahim since the beginning, claimed that he was being treated harshly or differently because of his national origin: Sudanese. Although not artfully plead he agreed that the Court should consider the evidence of record from the administrative review because he strongly believed that he was discriminated against. He also pointed to his evaluations as further evidence.

The term 'national origin' on its face refers to the country where a person was born, or, more broadly, the country from which his or her ancestors came. *Espinoza v. Farah Mfg. Co., Inc.* 414 U.S. 86

(1973). So then, as noted by the court in *Roach v. Dresser Indus. Valve & Instrument Division*, "a person's national origin has nothing to do with color, religion or race." 494 F. Supp. 215, 216 (W.D. La. 1980)

National origin is deemed to be inextricably intertwined with an individual's accent. *Fragante v. City & County of Honolulu*, 888 F.2d 591 (9th Cir. 1989), cert. denied, 494 U.S. 1081, (1990). Therefore, an individual who is discriminated against because of the characteristics of his speech has a cause of action pursuant to the prohibition of national origin discrimination in Title VII. *Id.*

As in any discrimination case, a plaintiff complaining of discrimination on the basis of national origin bears the ultimate burden of proving, by a preponderance of the evidence, that his employment was adversely affected by his protected class status. *Surti v. G.D. Searle & Co.*, 935 F. Supp. 980, 984 (N.D. Ill. 1996); *Cicalese v. Univ. of Tex. Medical Branch*, 924 F. 3d 762, 767 (5th Cir. 2019). This burden can be met by presenting direct evidence or, in the absence of direct evidence, a plaintiff may prove his case with indirect or circumstantial evidence. *Id.*

To establish intentional discrimination by circumstantial evidence, an individual must first establish a prima facie case of intentional discrimination due to national origin. *Texas Dep't of Cmty. Affairs v. Burdine*, 101 S. Ct. 1089, 1093 (1981); *McDonnell Douglas*, 411 U.S. 802. In order to establish a prima facie case of intentional discrimination, the plaintiff must show: (1) that the individual is a member of a protected class; (2) that he was qualified for the position; (3) that he was terminated from the position; and (4) that he was replaced by a person outside the protected

group, or that he was discharged because of his national origin. *Winter v. Bank of Am., N.A.*, No. 3:02-CV-1591-L, 2003 WL 23200278, *3, (N.D. Tex. Dec. 12, 2003)

The burden of establishing a prime facie case is not onerous. *Burdine*, 101 S.Ct. at 1094. "To establish a prima facie case, a plaintiff need only make a very minimal showing." *Nichols v. Loral Vought Sys. Corp.*, 81 F.3d 38, 41 (5th Cir. 1996). Once the plaintiff establishes a prima facie case, a presumption of discrimination arises. *Burdine*, 101 S.Ct. at 1094. The burden then shifts to the defendant to articulate a legitimate non-discriminatory reason for its employment decision. *St. Mary's Honor Ctr. v. Hicks*, 509 U.S. 502, 506; *McDonnell Douglas*, 411 U.S. 802. The defendant's burden is one of production, not persuasion.

The facts show that Ibrahim started complaining about his immediate supervisor Carter in August or September 2015. Nevertheless, Carter conducted Ibrahim initial evaluation for the period of October 01, 2014 thru September 30, 2015 in November 2015. This evaluation resulted in Ibrahim being denied a within grade increase in pay. R. Doc. 68-4, p. 385. According to the record, the low assignment in Critical Elements 2 and 3, were the reasons why Ibrahim was denied a within grade increase. R. Doc. 68-4, p. 105-106. These elements related to Ibrahim's failure to finish assignments, not meeting deadlines due to poor management, or which technology he failed to stay informed about.

It is also of note, that Carter rated Ibrahim as "minimally successful" in Critical Element 5. Critical Element 5 measures the employees' correspondence, communication, meetings, and teamwork. Carter con-

cluded that Ibrahim did not communicate effectively and failed to communicate with others as a team player.

Approximately one year later, Carter held a meeting with Ibrahim where he presented Ibrahim with a modified FY15 assessment. This modified assessment added narratives describing the reasoning for the "minimally successful" ratings in Critical Elements 2, 3, and 5. Carter contends that when giving Ibrahim the new evaluation pages, he mistakenly noted that the Critical Element 5 amendment was for the FY16 assessment, instead of correctly identifying it as a part of the FY15 assessment. R. doc. 68-4, p. 8. Ibrahim characterized this as "fraud" and suggested that it is an attempt to hide his intent to discriminate against him due to his national origin. R. Doc. 68-4, p. 115-116.

Notably Ibrahim is Sudanese and his native language is Arabic, but he does speak English. Therefore, due to his national origin, he is in a protected class. The Code of Federal Regulations "defines national origin discrimination broadly as including, but not limited to, the denial of equal employment opportunity because . . . an individual has the physical, cultural or linguistic characteristics of a national origin or group." 29 C.F.R. 1606.1. Tied to Critical Element 5 is Ibrahim's linguistic ability or manner of communicating. Because the evaluation of a person's communication skills is an inherently subjective determination, district courts are encouraged to give such claims a very searching look so as to determine whether a claim that an individual lacked communication skill is not just an attempt to disguise national origin discrimination. *Id.*

Ibrahim was due to receive a within-grade-increase on August 7, 2016. R. Doc. 68-4, p. 105-106. On September 9, 2016, he received a memorandum from Carter explained the reason for the denial of his within grade increase. *Id.* Carter points to Ibrahim's 2015 evaluation where he received a summary rating over minimally successful. *Id.* R. Doc. 68-11, Ibrahim's FY2015 Evaluation. Carter also specifically mentions deficiencies in Critical Elements 2 and 3 where Ibrahim was rated as minimally successful. *Id.* Notably, there is no mention of Critical Element 5, where he received the same minimally successful rating; whether that was to shield any reference to a possible discriminatory motive, is a question for the trier of fact. Therefore, the evidence of record indicates that there is a prima facia case of national origin discrimination and motion seeking dismissal of Ibrahim's national origin claim is DENIED.

4. Retaliation

Ibrahim alleges that because he filed complaints against his supervisor, he was retaliated against. The retaliation manifested in the form of a denial of a within grade increase, suspensions on two occasions, and ultimately led to his termination. Ibrahim contends that he was also retaliated against because he engaged in the protected activity of recording his supervisor to "protect himself" because he felt that "they were out to get him."

The defendant contends that Ibrahim's claim of retaliation fails because he has no direct evidence regarding the claim of retaliation for his EEO activity. The defendant does not mention Ibrahim's claim of reprisal for recording his supervisor. Nevertheless,

the defendant contends that the claim of retaliation should also be dismissed.

Title VII makes it unlawful for an employer to discriminate against any employee in retaliation for either participating in a Title VII proceeding or opposing an employer's discriminatory practices. *See* 42 U.S.C. § 2000e-3(a). "Under Title VII, the plaintiff bears the initial burden of proving a prima facie case of discrimination by raising an inference that the defendant acted with discriminatory intent." *Karpel v. Inova Health System Servs.*, 134 F.3d 1222, 1227 (4th Cir.1998) (citing *Wileman v. Frank*, 979 F.2d 30, 33 (4th Cir.1992)).

Where a plaintiff cannot produce direct evidence of an employer's discriminatory intent, the plaintiff may prove his case with circumstantial evidence under the burden-shifting scheme of proof established in *McDonnell Douglas. McDonnell Douglas Corp*, 411 U.S. 792. In the instant case, Plaintiff has presented no direct evidence of discriminatory intent on the part of defendant. Therefore, plaintiff must rely on the *McDonnell Douglas* framework to establish his cause of action for retaliatory discharge and to survive summary judgment. *See Smith v. First Union Nat'l Bank*, 202 F.3d 234, 248 (4th Cir. 2000) ("The McDonnell Douglas burden-shifting scheme applies in analyzing retaliation claims under Title VII.").

Under *McDonnell Douglas*, the initial burden falls on the plaintiff to demonstrate a prima facie case of retaliatory discharge. *See Beall v. Abbott Labs.*, 130 F.3d 614, 619 (4th Cir. 1997). If the plaintiff satisfies this initial burden, then a presumption of discrimination arises, and the burden shifts to the

employer to produce a legitimate, non-discriminatory reason for its adverse employment action.

In order to establish a prima facie case of retaliation, Plaintiff must prove three elements by a preponderance of the evidence: (1) he engaged in a protected activity; (2) his employer took adverse employment action against him; and (3) a causal connection existed between the protected activity and the adverse employment action. *Causey v. Balog*, 162 F.3d 795, 803 (4th Cir.1998).

The defendant here does not dispute that it took adverse employment action against Ibrahim by terminating his employment at the BSEE. Therefore, the Court finds that Plaintiff has satisfied the second element of his prima facie case. *See Hartsell v. Duplex Products, Inc.*, 123 F.3d 766, 775 (4th Cir.1997) (noting that termination is an adverse employment action).

Protected activities fall into two distinct categories under Title VII's anti-retaliation provision: (1) opposition to an employer's discriminatory employment practices; or (2) participation in an ongoing investigation or proceeding conducted pursuant to Title VII. Under the opposition clause, an employer is prohibited from discriminating against an employee "because he has opposed any practice made an unlawful employment practice by [Title VII.]" 42 U.S.C. § 2000e-3(a). To qualify for protection under the opposition clause, an employee's behavior needs not rise to the level of formal charges of discrimination against his employer. *EEOC v. Rite Way*, 819 F.3d 235, (5th Cir. 2016).

Protected activity under the opposition clause includes "utilizing informal grievance procedures as

well as staging informal protests and voicing one's opinions in order to bring attention to an employer's discriminatory activities." *Laughlin v. Metro. Washington Airports Auth.*, 149 F.3d 253, 259 (4th Cir. 1998) (citing *Armstrong*, 647 F.2d at 448). To determine whether an employee has engaged in legitimate opposition activity, courts traditionally "'balance the purpose of [Title VII] to protect persons engaging reasonably in activities opposing . . . discrimination, against Congress' equally manifest desire not to tie the hands of employers in the objective selection and control of personnel.'" *Armstrong*, 647 F.2d at 448 (quoting *Hochstadt v. Worcester Foundation for Experimental Biology*, 545 F.2d 222, 231 (1st Cir. 1976)).

The employment practice need not actually be unlawful because "opposition clause protection will be accorded 'whenever the opposition is based on a "reasonable belief" that the employer has engaged in an unlawful employment practice.'" *Id.* (emphasis in original) (quoting *EEOC v. Crown Zellerbach Corp.*, 720 F.2d 1008, 1013 (9th Cir. 1983)); *See Whitley v. City of Portland*, 654 F. Supp.2d 1194, (U.S. D.C. Oregon). *See Heller v. Champion International Corp.*, 891 F.2d 432, 433 (2nd Cir. 1989) (where court held secretly recording conversation was not a legitimate basis for termination after employee admitted to recordings when confronted by supervisor.).

After receiving the initial negative performance evaluation, the evidence suggests that Ibrahim felt that the evaluation was retaliatory because shortly before, in August 2015, he had filed a complaint against his manager. Ibrahim thereafter, on December 31, 2015, placed his manager on notice that he intended to record their meetings if he was not allowed to

have a third-party present because he perceived his managers communications to be hostile. R. Doc. 68-4, p. 58. His supervisor Carter responded that, as directed by Mr. Ted Dunn, Employee & Labor Relations Specialist, Ibrahim was not granted permission to record their conversations and that if he did tape the conversation without his knowledge and/or consent, that he may be subject to disciplinary action. *Id.* at p. 59. Ibrahim thereafter advised his supervisor that he would begin recording their conversations despite the warning not to. *Id.* at p. 60.

Ibrahim asserted that he continued recording because he had a legal right to do so and he felt threatened by some communications with his supervisor. Thereafter, Carter cited Ibrahim for recording their conversations on six (6) occasions and used those instances as support for proposing a 14 day without pay suspension for Ibrahim. Carter proposed a 2-day suspension for each of occasion of Ibrahim recording. R. Doc. 68-4, p. 242. This proposed suspension was adopted by Carter's supervisor Saucier in July 2016. R. Doc. 68-4, p. 71.

The issue regarding an employee's right to secretly record managers is an issue which arises more often today since employees carry recording devices in their cellphones to work. In Louisiana, the recording law stipulates that it is a one-party consent state. La. Rev. Stat. Ann 15:1303. Carter seemingly was under the mistaken view that his consent was required. *See* R. Doc. 68-4, p.60. However, in a one-party state, like Louisiana, to record Ibrahim was only required to have consent from one party. As a party to the conversation, Ibrahim's consent to record

the communication was implicit due to his decision to record his meetings with Carter.

The evidence shows that Ibrahim's April 2016 suspension, which was effective in July 2016, was partially based upon Ibrahim's recording conversations on six (6) occasion. The reason offered by Ibrahim for recording his supervisor is because he felt threatened and that the supervisor was hostile to him, which is protected by Title VII. While Carter references an HR representative, when telling Ibrahim not to record, there is no evidence of a written no recording policy in place at BSEE which Ibrahim violated. Further the reviewing official referenced the recordings and refusal to follow the orders by Carter not to record, when approving the fourteen (14) day suspension. Notably, this suspension was the first of more trouble for Ibrahim. The record evidence is sufficient to establish the remaining prongs of a prima facia case of retaliation. Therefore, the request to dismiss the retaliation claim is DENIED.

b. Religion

Plaintiff also raises a claim of discrimination based on his religious belief. Plaintiff's claims related to the alleged religious discrimination are: (1) he was denied religious accommodation for Ramadan, (2) he was denied equal access to earned time for religious activities, and (3) he was forced to fly offshore via helicopter while fasting during Ramadan. R. Doc. 68-7, p. 79.

Ibrahim's complaint is that he was not really allowed to attend Friday service because he was not given compensatory time for the exercise of his faith. Ibrahim contends that since the beginning of his

employment his supervisors had a problem with his request for religious accommodation. R. Doc. 68-5, p. 83-84. He contends that it was held against him if he was even one minute late when returning to work after prayers. *Id.*

Ibrahim states that because of his supervisors holding it against him when he left work for Friday prayers, he shortened his time away from work to only an hour. He contends that this resulted in him working without pay for thirty (30) minutes each Friday. *Id.* He further contends that after April 25, 2018, due to his supervisors questioning him about his accommodation, he began using sick leave on Fridays to attend prayers which was later used against him as grounds for his termination. R. Doc. 68-5, p. 403.

The defendant contends that Ibrahim's religious discrimination claim should be dismissed because BSEE demonstrated that on days he needed to attend Friday prayers, he was allowed to do so. Specifically, the defendant contends that to accommodate his religious request Ibrahim was allowed to start work an hour early and use that time and his lunch break (30 minutes) to attend services at his Mosque and return to work. R. Doc. 68-5, p. 408. The defendant contends that rather than accepting the established policy, Ibrahim decided to rescind the arrangement and chose to use his leave when he wanted to attend Friday Services. *Id.* at 407.

To establish a prima facie case of religious discrimination under Title VII, a plaintiff must show that: (1) a bona fide religious practice conflicts with an employment requirement; (2) that he called the religious practice to his employer's attention; and (3) that the religious practice was the basis for an adverse

employment decision. *Anderson v. U.S.F. Logistics (IMC), Inc.*, 274 F.3d 470, 478 n. 2 (7th Cir. 2001); *Lord Osunfarian Xodus v. Wackenhut Corp.*, 626 F.Supp.2d 861, 864 (N.D.Ill. 2009). *Weber v. Roadway Express, Inc.*, 199 F. 3d 270, 273 (5th Cir. 2000) (citing *Eversley v. Mbank Dallas*, 843 F. 2d 172, 175 (5th Cir. 1988)).

Once a plaintiff has established a prima facie case, an employer can avoid liability by showing that it has offered a reasonable accommodation or by showing that accommodating the belief or practice would impose an undue hardship. *See Ansonia Bd. of Educ. v. Philbrook*, 479 U.S. 60, 68, 107 S.Ct. 367, 93 L.Ed.2d 305 (1986) ("By its very terms the statute directs that any reasonable accommodation by the employer is sufficient to meet its accommodation obligation. . . . Thus, where the employer has already reasonably accommodated the employee's religious needs, the statutory inquiry is at an end.")

Reasonable accommodation, however, is not defined by Title VII. Consequently, the determination of whether an accommodation is reasonable in a particular case must be made in the context of the unique facts and circumstances of that case." *Rodriguez v. City of Chicago*, 156 F.3d 771, 776 n. 7 (7th Cir. 1998); accord *Beadle v. City of Tampa*, 42 F.3d 633, 636 (11th Cir. 1995); *Riselay v. Secretary of Health & Human Servs.*, No. 90-1779, 1991 WL 44319, at *5 (6th Cir. Apr. 2, 1991). The EEOC provides guidance in regarding reasonable accommodation options. *See* 29 C.F.R. § 1605.2(d)(1)(ii), Guidelines on Discrimination Because of Religion. Options to accommodate conflicts between work schedules and religious practices include "creation of a flexible work schedule

for individuals requesting accommodation;" *e.g.*, "flexible arrival and departure times; floating or optional holidays; flexible work breaks; use of lunch time in exchange for early departure; staggered work hours; and permitting an employee to make up time lost due to the observance of religious practices.". *Id.*

To determine whether a proposed accommodation was reasonable or would have imposed an undue hardship, a jury must consider such individualized factors as the nature of the plaintiff's job duties, the nature and strength of the plaintiff's religious beliefs, the nature of the employer's efforts to accommodate her beliefs, and the plaintiff's reaction to the employer's accommodation efforts. *Haliye v. Elestica Corp.*, 2009 WL 1653528 (U.S.D.C. D. Minn. 2009)

In evaluating Ibrahim's religious discrimination claim, the Court notes that first and second prongs are not in dispute. The third prong however, which requires evidence that the plaintiff suffered and adverse employment action for failing to comply with the employment requirement, is not met.

It is undisputed that Carter granted approval for Ibrahim's requested religious accommodation by email on March 23, 2018. R. Doc. 68-5, p. 402.

> The email gives approval for you to adjust your work time on the first Friday of each pay period to allow for religious accommodations. It alludes to the first Friday being your 8 hour work day, however, you are approved to start work at 6 a.m., accumulating religious comp time from 6 a.m. to 7 a.[m]. and using 1 hour religious comp time from 1:45 p.. to 2:45 p.m. to accommodate

> your prayer time. Lunch should be taken from 1:15 p.m. to 1:45 p.m. Also, pay attention to my "QuickTime" coding instructions in the email and let me know if you have questions. Email Lynard Carter, Fri April20, 2018 at 3:57 PM, R. Doc. 68-5, p. 402.

Ibrahim response to Carter's email was as follows:

> First: I am a Muslim but not only Muslim works for BSEE GOMR; I knew what are the prayers times. I don't think you can enforce my prayers time; it's not Authority nor office power, it's religion. Simply: you're opposing whatever I come with. Following your enforced time means you Mr. Carter scheduling your own prayers time. I will not be there. 2nd: Is there is an Agency/BSEE policy gives a supervisor one hour smoke time (Mr. Trocquet); and one hour coffee time from Starbucks in morning then one hour lunch time (Mr. Carter). On the other hand, "Sam" is only approved for only half an hour lunch time from prayers purposes? 3rd For "QuickTime coding instructions "Records will prove if I am getting what you claim. I will not edit my quicktime for something I have not got it. Finally, to comply with your directive I will stop religion request and attendance by this email due to your conditions. Thank you. Email of Suleiman Ibrahim, Mon. April 23, 2018 at 6:45 AM. R. Doc. 68-5, p. 403.

Carter's replied as follows:

> Sam,
>
> I never mandated a specific time for you to exercise your right to participate in religious activities. My understanding, based on your previous discussions, correspondence and requests is on the Friday's you are scheduled to work, you would like to be excused from work darning the period of 1:15 p.m. to 2:45 p.m. to participate in religious activities. On March 23, 2018 I approved your request to be absent from work on the first Friday of each pay period from 1:15 p.m. to 2:45 pm. In accordance with the procedures previously outline. This approval remain in effect and you may continue to be absent from work, if you desire, on the first Friday of each pay period from 1:15 p.m. to 2:45 p.m. Please let me know immediately if I have misunderstood your request and you would like to be excused at a different time to participate in religious activities. Email by Carter, Tue. April 24, 2018 at 7:42 A.M. R. Doc. 68-5, p. 404.

First the Court notes, that Defendant provided a copy of the policy describing the schedule for employees who worked the 5-4/9 Flex work scheduled. R. Doc. 68-6, p. 17. This schedule consists of nine (9) workdays in each two-week pay period; eight (8) of the workdays are 9 hours days and the ninth day is an eight (8) hour day. *Id.* The policy states that employees working this schedule will begin their day no earlier than 7 a.m. on their eight (8) hour day. *Id.* The policy further states that the lunch break for all employees working the 5-4/9 flex schedule is thirty (30) minutes. *Id.* Ibrahim was allowed to begin his eight (8) hour

day at 6 a.m. in order to earn religious compensatory time.

First, the Court notes that using lunch break to attend prayer is a legitimate reasonable accommodation per the EEO guidelines. *See* 29 C.F.R. § 1605.2(d)(1)(ii), Guidelines on Discrimination Because of Religion. Moreover, the plaintiff must make a good faith effort to satisfy his needs through means offered by his employer. *See Brener v. Diagnostic Ctr. Hosp.*, 617 F. 2d 141, 146 (5th Cir. 1982). In this case, Ibrahim refused the accommodation given to him by his employer when he sent an email to Carter stating that he would "never receive religion time request" from him again, this action constitutes a breach of his duty of cooperation. *See also Daniels v. City of Arlington, Tex.*, 246 F. 3d 500, 507 (5th Cir. 2001). (where a police officer refused to respond or rejected reasonable offers at accommodation).

Ibrahim asserts an additional basis for his claim of religious discrimination. Ibrahim contends that he was forced to fly offshore while fasting and was denied time off for holidays. R. Doc. 68-4, p.145. He does not specify the date he was required to fly during fasting or that his employer knew he was fasting or why he could not fly while he was fasting. Ibrahim's subjective belief that his employer knew that when he engaged in his religious practice of fasting, he could not fly is not enough to state a prima facie case of religious discrimination.

Additionally, there is no evidence that Plaintiff requested time off for religious holidays and was refused. As such, Plaintiff has failed to establish the third prong of the prima facie case. Therefore, summary

judgment is appropriate on these claims and defendants motion is GRANTED.

c. Hostile Work Environment

Plaintiff next alleges that he was subject to a hostile work environment from February 2018 through October 2, 2018. Ibrahim's hostile environment claim consists of seven (7) distinct instances. First, the incident on March 14, 2018 when his first-line supervisor entered his cubicle yelling, shouting, and cuffing his long sleeve. R. Doc. 1-2. Second, he claims that the denial of religious accommodations was emblematic of a hostile environment. *Id.* Third, Ibrahim contends that from February 27, 2018 through April 11, 2018, others were given credit for work that he performed. *Id.* Fourth, on April 9, 2018, he was admonished by his first-line supervisor for leaving the office during his lunch time to pick up safety glasses. *Id.* Fifth, beginning on February 1, 2018, he was being ignored and isolated from other engineers. *Id.* Sixth, he claims that his employer failed to adequately train him and then used is lack of skill to terminate him. *Id.* Seventh, he was cited for failing to comply with office leave policy and flight manifest policy as directed by his supervisor because he believed the policy was created and applied only to him.

Defendant contends that summary judgment is appropriate on plaintiff's hostile work environment claim. The defendant contends that when considering each of the allegedly hostile encounters as described by Ibrahim, these encounters, even if hostile, were not sufficiently severe or pervasive to alter the conditions of Ibrahim's employment.

In order to establish a prima face case of a hostile work environment the Plaintiff must show that he: (1) belongs to a protected group, (2) was subjected to unwelcome harassment, (3) the harassment was based on his membership in the protected group, (4) the harassment complained of affected a term, condition or privilege of employment, and (5) the employer knew or should have known of the harassment complained of and failed to take prompt remedial action. *E.E.O.C. v. WC & M Enterprises, Inc.*, 496 F.3d 393, 399 (5th Cir. 2007); *Johnson v. TCB Const. Co., Inc.*, 334 Fed.Appx. 666, 670-71 (5th Cir. 2009). Since Ibrahim is alleging the harassment occurred at the hands of his supervisor, as such, he must only satisfy the first four elements of the prima face case. *Watts v. Kroger Co.*, 170 F.3d 505, 509 (5th Cir. 1999).

For harassment to be sufficiently severe or pervasive to alter the conditions of the victim's employment, the conduct complained of must be both objectively and subjectively offensive. *Harris v. Forklift Systems*, 510 U.S. at 21-22. Thus, not only must the victim perceive the environment as hostile, the conduct must also be such that a reasonable person would find it to be hostile or abusive. *Id.* To determine whether the victim's work environment was objectively offensive, courts consider the totality of the circumstances, including (1) the frequency of the discriminatory conduct; (2) its severity; (3) whether it is physically threatening or humiliating, or merely an offensive utterance; and (4) whether it interferes with an employee's work performance. *Id.* at 23. No single factor is determinative. *Id.* In short, a showing that the employee's job performance suffered is simply a factor to be considered, not a prerequisite. *Mota v.*

Univ. of Tex. Houston Health Sci. Ctr., 261 F.3d 512, 524 n. 33 (5th Cir. 2001). As the Supreme Court stated, "even without regard to . . . tangible effects, the very fact that the discriminatory conduct was so severe or pervasive that it created a work environment abusive to employees because of their race, gender, religion, or national origin offends Title VII's broad rule of workplace equality." *Harris*, 510 U.S. at 22.

Under the totality of the circumstances test, a single incident of harassment, if sufficiently severe, could give rise to a viable Title VII claim, as well as, a continuous pattern of much less severe incidents of harassment. *See Harvill v. Westward Communications L.L.C., 443*, 433 F.3d at 435-36; *El-Hakem v. BJY Inc.*, 415 F.3d 1068, 1073 (9th Cir. 2005) ("'The required level of severity or seriousness varies inversely with the pervasiveness or frequency of the conduct.'") (quoting *Nichols v. Azteca Rest. Enters., Inc.*, 256 F.3d 864, 872 (9th Cir. 2001)); *Cerros v. Steel Techs., Inc.*, 288 F.3d 1040, 1047 (7th Cir. 2002) (stating that severity and pervasiveness are, "to a certain degree, inversely related; a sufficiently severe episode may occur as rarely as once, while a relentless pattern of lesser harassment that extends over a long period of time also violates the statute.") (citation omitted).

The Supreme Court has stated that isolated incidents, if egregious, can alter the terms and conditions of employment. *See Faragher v. City of Boca Raton*, 524 U.S. at 788, 118 S.Ct. 2275; *see also Worth v. Tyer*, 276 F.3d 249, 268 (7th Cir. 2001) ("[W]e have often recognized that even one act of harassment will suffice [to create a hostile work environment] if it is egregious."); *Lockard v. Pizza Hut, Inc.*, 162 F.3d 1062, 1072 (10th Cir. 1998) (holding that a single

incident of physically threatening and humiliating conduct can be sufficient to create a hostile work environment for a sexual harassment claim); *Tomka v. Seiler Corp.*, 66 F.3d 1295, 1305 (2d Cir. 1995), abrogated on other grounds by *Burlington Indus., Inc. v. Ellerth*, 524 U.S. 742, 118 S.Ct. 2257, 141 L.Ed.2d 633 (1998) ("[E]ven a single incident of sexual assault sufficiently alters the conditions of the victim's employment and clearly creates an abusive work environment for the purposes of Title VII liability."). By contrast, under a conjunctive standard, infrequent conduct, even if egregious, would not be actionable because it would not be "pervasive."

Additionally, scrutiny of an employee's work, while it may be an annoyance, does not create a hostile environment. *See Douglas v. St. John the Baptist Parish Library Board of Control,* *3 2021 WL2592920 (E.D. La. June 24, 2021). *See e.g., Martinelli v. Penn Miller Ins. Co.*, 269 Fed.Appx. 226, 228 (3d Cir. 2008) (unpublished) (finding that an employer's scrutiny of an employee's work, "while unpleasant and annoying, did not create . . . [a] hostile work environment. . . . "); *Harrington v. Disney Reg'l Entm't, Inc.*, No. 06-12226, 2007 WL 3036873, at *12 (11th Cir. Oct.19, 2007) (unpublished) (finding no hostile environment when an employer allegedly subjected the employee to unfair discipline); *Harbuck v. Teets*, 152 Fed. Appx. 846, 848 (11th Cir. 2005) (unpublished) (finding no hostile work environment when the employer allegedly subjected the employee to heightened scrutiny); *Robinson v. Paulson*, No. CIV.A. H-06-4083, 2008 WL 4692392, at *18 (S.D. Tex. Oct. 22, 2008).

Pretermitting the issue of whether the complained of action was somehow the result of his protected

status, Ibrahim's claims fail because there is no evidence that these occurrences even if classified as harassing were severe and pervasive. Regarding the first complained of act, while it appears there is a dispute about whether Carter made a threating gesture and raised his voice, this incident alone would not be severe enough to create a hostile environment.

Moreover, four of the six events about which Ibrahim complains were directly related to disagreements with Carter over what constitutes compliance with office policy. The record shows that Carter communicated that the leave policy required Ibrahim to get approval for taking leave and to physically stop by Carter, or the acting supervisor's office, to inform them that he was leaving the office. No evidence showing that this was an official office policy was provided to the Court.

Furthermore, the evidence shows that there was a semantics game occurring between Carter and Ibrahim over requesting leave versus telling Carter he was leaving the office. Additionally, in some instances where Ibrahim did send an email informing or requesting leave, the response was dilatory, but Ibrahim was still disciplined for his alleged insubordination.

The next work-related correction was regarding Ibrahim's stubbornness and refusal to comply with the flight manifest policy which required him to confirm his intent to fly before his required flights. The instruction, from Carter, was for Ibrahim to personally confirm with the flight scheduler that he was on the manifest by physically going to the individual's cubicle to communicate his intent to fly that day. Instead, Ibrahim chose to email the person rather than make the personal visit and as a result

did not get a seat on two flights. While it is not clear that this was a formal policy as distinct from an office practice it would not, either alone or in combination with the prior instances, create a hostile environment.

The other instance complained of by Ibrahim was regarding his failure to complete a work project, which was given to Pedro Flores, another BSEE employee, to complete. Ibrahim does not dispute that he failed to complete the project or that someone else had to finish his work. His only complaint is that he did not receive credit for his incomplete work. This incident either taken singularly or in combination with the other incidents would not be enough to create a hostile environment.

Ibrahim also generally contends that he was poorly trained, but he does not point to any specific instance where his training was lacking. He began working with BSEE in 2013. The record indicates that in 2017, Carter acknowledged that Ibrahim would request training but failed to complete a form so there seemingly was no agreement for him to get any training in 2017. R. Doc. 68.6, p. 118-123, EPAP FY17. This does appear harsh albeit not enough to convert the environment to a hostile one.

The remaining claim involves allegations that his coworkers ignored him and gave him the cold shoulder which made him feel that the workplace was hostile. However, giving an employee the cold shoulder does not create a hostile environment. *Vital v. Nat'l Oilwell Varco, No.* CIV.A. H-12-1357, 2014 WL 4983485, at *42 (S.D.Tex. Sept. 30, 2014) (citing eight federal cases standing for the proposition that the silent treatment is insufficient to establish a hostile work environment).

Finally, Ibrahim contends that he was penalized for using his religious accommodation. The record does show that the final decision to terminate Ibrahim was partly due to his decision to use his leave time in lieu of the proposed religious accommodation. This could be considered hostile because he had the time to use, his employer knew he had leave time, it was directly tied to his seriously held religious beliefs but was used in support of an adverse employment action. While not enough to support his claim of a hostile work environment, this claim will be further addressed in the retaliatory harassment section. Given that Ibrahim's allegations are not sufficiently severe or pervasive to establishes a hostile work environment, summary judgement on this claim is GRANTED.

d. Retaliatory Hostile Environment

Ibrahim also puts forth a retaliatory hostile environment claim. He contends that his employer retaliated against him because he filed various EEOC complaints. He alleges that because of the retaliation he was subjected to higher scrutiny and pressure which ultimately led to his termination.

The defendant contends that Carter's use of harsh language or yelling at a plaintiff from his workspace is "trivial" and cannot support a hostile work environment claim. The defendant further contends that careful monitoring of an employee's job performance, absent any other evidence of prohibited discrimination, does not suffice to support a claim for a retaliatory hostile work environment.

In a claim involving an allegedly retaliatory hostile environment (as opposed to a discriminatory hostile environment), the first and third elements [of a prima

facie case] have a different focus. *Rowe v. Jewell* 88 F. Supp. 3rd 647, (5th Cir. 2015). In the retaliation context, the first element would require proof that the plaintiff had engaged in protected activity, and the third element would require demonstration of a causal connection between the harassment and the protected activity. *Id*

The parties concede that Plaintiff has participated in a protected activity by filing EEO complaints. In April 2016, Carter recommended a fourteen (14) day without pay suspension which was adopted in June 2016. Consequently, Ibrahim filed an EEO complaint regarding the suspension on July 21, 2016. In September 2016, Ibrahim was denied a within grade increase. Doc. 68-4, p. 105-106. Ibrahim contends this was in retaliation for his complaints against his supervisor. However, according to defendant this was due to his minimally successful rating in his FY 2015 and FY 2016 EPAP. *Id.*

Although, the parties have failed to identify in the record the events that occurred in the workplace that created the alleged retaliatory hostile environment after this suspension, the record does show at least three instances beginning in September 2017 where Ibrahim and Carter disagreed and Ibrahim viewed the interaction as harassment.

From September 2017 to October 2017 the record shows three instances of disagreement between Ibrahim and Carter regarding the leave policy. In two of the instances Carter determined that Ibrahim did not follow policy and informed him that his conduct may result in disciplinary actions. The first occurred on September 21, 2017, Ibrahim emailed Carter at 12:35 p.m. to inform he needed to leave the

office at 2:15 p.m. R. Doc. 68-6, p. 158. Carter responded at 4:11 p.m., after Ibrahim had left the office, and informed him the proper procedure would be "to seek approval for leave (annual, sick, credit hours used, or comp time used) in addition to sending an email to me your supervisor. Emails are acceptable means for requesting leave; however, you should receive approval from me or Dave Trocquet before leaving the office except in the case of emergencies." *Id.*

On September 26, 2017, Ibrahim emailed Carter at 6:59 a.m. saying, "Also let you know I will be leaving office at 3:00 p.m. tomorrow the Wednesday Sep 27, 2017." *Id.* at p. 156. Carter responded at 3:05 p.m. the same day to inquire as to why Ibrahim was asking to leave the office. Per Carter's response, Ibrahim responded, "requesting a copy of 'establish office leave procedures' and HR as well. I am on flex schedule; no type of leave other than working hours in the pay-period." *Id.* at p. 155-56. Carter then informed Ibrahim that employees on a flex schedules cannot begin before 6 a.m. and cannot end earlier than 3:30 p.m. (without taking approved leave). *Id.* the sign in/out sheet for this day indicate that Ibrahim left the office at 3 p.m. on September 27, 2017. *Id.* at p. 160. The record does not show that Carter granted approval for Ibrahim leaving the office early, as a result Carter deemed him AWOL for 30 minutes that day. *Id.* at p. 160, p. 154.

The last instance occurred in October 2, 2017, according to the time sign in/out sheet for this day Ibrahim signed in at 5:50 a.m. and again at 6:00 a.m., he signed out at 1 p.m. R. Doc. 68-6, p. 166. Regarding this date, there is no evidence that Ibrahim sent an

email requesting leave or if/how he communicated with Carter regarding his leaving the office. This incident resulted in Carter deeming Ibrahim AWOL for the time he was not in the office. However, Carter later approved Ibrahim's absence as sick leave since the sign in/out sheet indicated that he was sick. Upon changing the designation from AWOL to approved sick leave Carter reminded Ibrahim to request and seek approval before departing the office on any type of leave. R. Doc. 68-6, p. 164.

Also, of note is that the EPAP-FY17 was completed on October 31, 2017. Carter provided Ibrahim with a 2 rating in Critical Elements 1 and 4 and 0's in elements 2, 3, and 5. R. Doc. 68-6, p. 118. In explaining the reason for the 2 rating in element 1, GORA/Strategic Goal Carter wrote that Ibrahim's did not support the following areas: (1) the offshore inspection program in general (2) he did not display a desire to participate in offshore inspection other than to read IADC report to resolve a cementing question and (3) while he would fly offshore once every 2 weeks with the inspection staff he displayed a lack of understanding about the inspection process. *Id.* at p. 119. Carter also wrote that Ibrahim during inspections reviewed IADC reports BOP tests reports which are completed but they required additional review by a senior inspector. *Id.*

As to Element 2 and 4 Carter gave Ibrahim a 0. *Id.* at p. 118. In Element 2, Carter assessed or measured his assistance with district engineering staff, Carter wrote that Ibrahim did not demonstrate the ability to effectively review the WAR's and EOR's as directed by the District Manager. *Id.* at p. 120. His participation in operators' meetings was "limited

at best". *Id.* His reviews have been filled with errors and his proposed written communication to external customers lack clarity and Ibrahim had not demonstrated that he could review permits for preapproval with minimum errors. *Id.* There is no evidence of the errors in his review of the preapproval permit process or errors in written communication to customers. *Id.*

As to Element 4, Carter wrote that Ibrahim did not complete his training request form for FY17 so there was no agreement between him and his supervisor on the appropriate training for that year. *Id.* at p. 122. He noted that Ibrahim was informed on several occasions that he could have 2 to 3 training class per year but even when he was approved for 3 classes, he would continue to request more training despite his work load or the budget. *Id.*

Carter further wrote that during a "certain time" when he asked Ibrahim to provide a report on the status of his work, he failed to demonstrate proficiency in using the technology. *Id.* The record indicated that employees in the Well Ops section used a technology called eWell however there is no indication of how Ibrahim lacked proficiency in using the technology. *Id.*

Regarding Elements 3, and 5 he was given a 0. *Id.* at p. 118. Element 3 was regarding special projects. *Id.* at p. 121. Ibrahim according to Carter was given special projects such the review and organizing the BSEE approval of right safe welding areas but he did not effectively demonstrate the knowledge or ability to perform the assignment without repeated assistance from his supervisor. *Id.* According to Carter, Ibrahim did not effectively demonstrate the knowledge or ability to perform the assignment without assistance from his supervisors. *Id.* He noted that Ibrahim failed

to give approval or denial of the SWA plans. *Id.* Carter also wrote that Ibrahim's performance showed serious deficiencies that require correction. There is however no evidence in the record of the deficiencies. *Id.*

As a result of FY17, it appears that Ibrahim was denied training for failure to submit a form and also each of the instances he was presumably incapable of performing his work which required review and correction by his supervisor, it is unclear whether Carter was the supervisor mentioned in the EPAP.

These events culminated in Ibrahim filing an Administrative Complaint on November 2, 2017 complaining about intimidation by his supervisor. One day before, Carter wrote Ibrahim up for commenting about another employee coming and going as he pleases. Carter accused Ibrahim of lying about the coworker and Ibrahim said that he could point out the truth by referring to the sign-in/sign-out book. R. Doc. 68-6, P. 168. Carter also wrote Ibrahim up for accusing him of lying in the EPAP-17 when he referred to training considerations for FY18. *Id.*

Additionally, Ibrahim complained that from February 2018 through March 14, 2018 his supervisor did not treat him fairly in at least five instances, also related to the office leave policy. First on February 1, 2018, Ibrahim emailed Carter at 9:12 a.m. saying, "I don't feel good; and am SL myself for the rest of the day." R. Doc. 68-6, p. 170. Carter responded at 9:14 a.m. on February 2, 2018, the next day, informing him that he failed to follow the leave procedure but that his sick time was approved. *Id.* at p.168.

Next on March 8, 2018 at 8:44 a.m., Ibrahim emailed Joe Butts, who at this time was acting supervisor, saying, "As acting Supervisor I have waited on you to come in; and by this let you know I am still not feeling good; I will SL myself for the rest of the day." R. Doc. 68-6, p.172. Butts replied at 11:33 a.m., almost three hours later, saying, "You were not waiting on me: you looked me right in the face at 8:30 a.m. when I walked to my cubicle. Don't make it seem like I wasn't here. You had all the opportunity in the world to speak to me but didn't. Instead you told Tom Meyer about your sickness." *Id.* The record does not indicate who Tom Meyers is or his role in the Well Ops section. Furthermore, the record does not indicate whether Ibrahim's leave on this day was approved. The only evidence is that Butts felt that Ibrahim was making a false accusation against him. *Id.* Butts and Ibrahim did not like each other.

On March 14, 2018, Ibrahim submitted an informal complaint. It is also of note that on the same day Ibrahim filed his complaint on March 14, 2018, he asserts that Carter, entered his cubicle without consent and touched him on the shoulder. Also, Ibrahim alleges that while Carter was in his cubicle, he yelled at him while asking questions about his obtaining new safety glasses and rolled up his sleeves in what Ibrahim considered a threatening manner. For his part, Carter denies yelling at Ibrahim and asserts that he rolled up his sleeves because of the temperature. Regarding this complaint, a notice of final interview was issued on March 29, 2018 but not received by certified mail until May 18, 2018.

In between the filing of his informal complaint and the filing of his EEO complaint of discrimination, another interaction between Carter and Ibrahim occurred, that according to Ibrahim was harassing. This incident was regarding Ibrahim's new safety glasses and it arose out of Ibrahim's request to pick up those glasses. After being approved to purchase a new pair of safety glasses, Ibrahim emailed Carter on April 4, 2018 at 1:54 p.m. saying, "I have received a phone call from American Glasses stating my safety glass are ready for pickup. If you don't mind I need to step out to for—15 minutes in order get my new glasses." R. Doc. 68-5, p. 423. On April 5, 2018, the next day, at 6:52 a.m., Carter responded approving Ibrahim's request to get your glasses and informing him to "let me know when you are leaving the work-place." *Id.* at p. 424.

The record does not indicate that Ibrahim informed Carter before leaving, however it does show that Ibrahim left during lunch. When reprimanding Ibrahim for leaving the office, Carter referred specifically to the workplace leave policy. However as mentioned, Ibrahim left during his lunch break and it is also of note that in a previous communication to Ibrahim, Carter told him "you[r] lunch time is your personal time." R Doc. 68-6, p. 14.

On May 22, 2018, Ibrahim formally filed a complaint of discrimination. About two months later, on July 17, 2018, he was suspended for fourteen (14) days. Plaintiff's last complaint was filed on October 30, 2018 and related to his dismissal on October 10, 2018. Given that less than two months after the filing of his second EEO compliant, Plaintiff was suspended,

he has fulfilled the temporal requirement and established the prima facie case.

It is settled that a period of two-and-a-half months, *Garcia*, 938 F.3d at 243, a period of two months, *Jones v. Robinson Prop. Grp., L.P.*, 427 F.3d 987, 995 (5th Cir. 2005), and a period of six-and-a-half weeks, *Porter*, 810 F.3d at 949, are close enough to show a causal connection. The Court therefore finds that the record demonstrates there is sufficient evidence of a prima facie case of retaliatory hostile work environment.

Once the plaintiff has successfully established the prima facie case, the burden shifts to the employer to provide a "legitimate, non-retaliatory reason for the adverse employment action." *Long v. Eastfield Coll.*, 88 F.3d 300, 304-05 (5th Cir. 1996) (citation omitted). If the defendant presents evidence that supports that it acted properly, the fact-finder must decide whether retaliation was the but-for cause for the employer's action. *Id.* at 305.

The defendant's memorandum does not point to any non-discriminatory reason for any of the adverse actions. Rule 56 does not impose upon the district court a duty to sift through the record in search of evidence to support a party's opposition to summary judgment. *See also Skotak v. Tenneco Resins, Inc.*, 953 F.2d 909, 915-16 & n. 7 (5th Cir. 1992). Furthermore, record evidence not specifically referred to by the parties may not be considered by the Court. *Carollo v. ACE Am. Ins. Co.*, No. CV 18-13330-WBV-KWR, 2019 WL 4038602, at *6 (E.D. La. Aug. 27, 2019)

The defendant alludes to harsh language or even yelling at an employee is not enough to constitute a

retaliatory hostile environment. R. Doc. 68-2, p. 22. They further allude to temporary change in duties as not being sufficient to constitute a retaliatory hostile environment. However, they do not point to any specific evidence in the record that Carter's decision to strip Ibrahim of his junior engineer duties were temporary, or when or if they were ever restored. There is additionally no documentary evidence showing that Ibrahim's work was deficient and supporting the change in Ibrahim's work duties.

The defendant also generally points to cases about disciplining an employee consistent with its policies does not constitute a hostile environment. However, their submission is devoid of any record evidence that compliance with policy would militate against a hostile environment finding.

Furthermore, the defendant points specifically to Ibrahim's failure to comply with leave policy as a legitimate nondiscriminatory reason for termination. However nowhere in the 2,065 pages of documents submitted to the Court is the official leave policy of BSEE. Instead defendant submits numerous emails between Carter and Ibrahim where Ibrahim took leave after sending an email to inform his supervisor regardless of whether he received a response/approval. Additionally, in some of these instances, the leave was later approved or there appeared to be a delayed response to Ibrahim's request on the part of his supervisor. As a result, the Court cannot discern whether there was in fact a legitimate violation of policy from the records provided that would constitute a legitimate non-discriminatory reason for the adverse employment actions. The Court therefore DENIES

the defendants request for summary judgment as to the retaliatory hostile environment claim.

V. Conclusion

Accordingly,

IT IS HERBY ORDERED that Defendant's Motion to Dismiss and/or Alternatively for Summary Judgment (R. Doc 68) is GRANTED in part and DENIED in part.

IT IS FURTHER ORDERED that Defendant's Motion to Dismiss is DENIED.

IT IS FURTHER ORDERED that Summary Judgment on Plaintiff's age, race, gender, and religious discrimination claims, and Plaintiff's hostile work environment claim is GRANTED.

IT IS FURTHER ORDERED that Summary Judgment on Plaintiff's national origin, retaliation, and retaliatory hostile work environment is DENIED.

New Orleans, Louisiana, this 3rd day of February 2022.

/s/ Karen Wells Roby
United States Magistrate Judge