NONPRECEDENTIAL DISPOSITION
To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Submitted February 8, 2024*
Decided February 9, 2024

Before

FRANK H. EASTERBROOK, *Circuit Judge*

MICHAEL B. BRENNAN, *Circuit Judge*

CANDACE JACKSON-AKIWUMI, *Circuit Judge*

No. 23-1973

KENNETH DEL SIGNORE,
Plaintiff-Appellant,

v.

NOKIA OF AMERICA CORPORATION, et al.,
Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

No. 20 C 4019

Jorge Alonso,
Judge.

ORDER

Kenneth Del Signore sued Nokia of America Corporation and numerous managers including Christy Gliori, alleging that they retaliated against him and terminated his employment in violation of several whistleblower-protection statutes. The district court dismissed some of Del Signore's claims and quashed a discovery

* We have agreed to decide the case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

Appendix A

request directed at Gliori's husband. The court later granted the defendants' motion for summary judgment and then denied Del Signore's motion to alter or amend the judgment. Del Signore appeals these decisions, and we affirm.

While working for Nokia as an engineer, Del Signore began to suspect that Verizon Communications, a company for which Nokia manufactured certain technology, was overstating the performance of its wireless network. He eventually proposed a project to measure network performance more accurately. Although he initially received positive feedback, he came to believe that Nokia stopped supporting, then canceled, the project.

Suffering from work-related stress, Del Signore took time off. Gliori, a case manager in the human resources department, recommended that Del Signore seek psychiatric treatment to establish that he was temporarily unable to perform his essential job functions, as required by Nokia's short-term disability policy. Del Signore visited Kara Mulligan, a physician's assistant with a psychiatric specialty, and he obtained the necessary support for a fixed period of leave.

During his time off, Del Signore filed two internal ethics complaints with Nokia and a whistleblower complaint with the federal Occupational Safety and Health Administration (OSHA). In these complaints, he alleged that Nokia and Verizon were colluding to inflate the measurements of the performance of Verizon's wireless network. This, he said, caused them to overbill a fund established by the federal government to promote universal access to telecommunications services. (An administrative law judge would later find in favor of Nokia in the administrative action initiated by Del Signore's OSHA complaint.)

As part of its disability policy, Nokia required that Del Signore provide medical documentation showing either that he was fit to return to work at the end of his initial period of leave or that he was improving enough to warrant a continued—but finite—leave of absence. Del Signore was warned that if he failed to submit evidence before his leave expired, his employment would be terminated. Del Signore did not submit anything, so Gliori contacted his medical provider, Mulligan. Gliori took contemporaneous notes of their conversation and recorded that Mulligan described Del Signore as "psychotic and delusional" and unable to return to work in his current state. Mulligan later submitted an assessment to Nokia in which she stated that Del Signore was currently unfit for work and that she did not know how long his issues would persist. Gliori then scheduled an independent medical examination for Del Signore and offered him a leave of absence while the results were pending, but he stated that he

would not attend the examination. Nokia terminated Del Signore's employment after his initial period of short-term disability leave expired.

Del Signore sued Nokia and Gliori, among others, in federal court. Del Signore alleged that Nokia retaliated against him for his whistleblowing activity in violation of the False Claims Act, 31 U.S.C. § 3730(h); the Illinois False Claims Act, 740 ILCS 175/4(g); the Sarbanes–Oxley Act, 18 U.S.C. § 1514A; and the Illinois Whistleblower Act, 740 ILCS 174/15. He also asserted a claim under the Illinois Whistleblower Act against Gliori individually. As relevant to this appeal, the district court granted Nokia's and Gliori's motions to dismiss (1) a retaliation claim against Nokia under the Consumer Financial Protection Act because neither Nokia nor Del Signore was covered by the relevant provision of the Act; and (2) whistleblower retaliation claims against Gliori under the federal False Claims Act and the Illinois False Claims Act because individuals cannot be liable under either statute.

After discovery—during which the district court granted Gliori's motion to quash a discovery request directed at her husband—Nokia and Gliori moved for summary judgment. The court granted their motion. The court determined that many of the actions that Del Signore gave as examples of materially adverse employment actions did not qualify, and no evidence suggested that Del Signore's whistleblowing activity caused, or contributed to, the decision to terminate his employment. Instead, the undisputed evidence showed that Nokia fired Del Signore because he failed to provide required information or cooperate with Nokia's attempts to discern his ability to return to work before the end of his allotted leave.

Within 28 days of the court's summary judgment ruling, Del Signore moved to alter or amend the judgment under Rule 59(e) of the Federal Rules of Civil Procedure. He argued that the district court failed to consider evidence contradicting Gliori's notes about her conversation with Mulligan. The court denied the motion because the accuracy or credibility of Gliori's notes was immaterial: the evidence was undisputed that Nokia fired De Signore because he failed to comply with the leave policy by demonstrating eligibility for more leave before the original period expired.

On appeal, Del Signore challenges the dismissal of certain claims, the denial of his discovery request, the entry of summary judgment in favor of the defendants, and the denial of his Rule 59(e) motion. The appellees assert that we have jurisdiction to review only the district court's summary judgment order because Del Signore did not identify any other rulings in his notice of appeal. But a notice of appeal need not designate specific orders that merge into the judgment. *See* FED. R. APP. P. 3(c)(4);

see Walton v. Bayer Corp., 643 F.3d 994, 997–98 (7th Cir. 2011) (interlocutory orders merge into final judgment). And Del Signore filed a timely notice of appeal within 30 days of the denial of his timely Rule 59(e) motion, so he did not need to file an amended notice of appeal to challenge the post-judgment order. *See* FED. R. APP. P. 4(a)(4)(B)(ii).

Del Signore's challenges to the dismissal of some of his claims are unpersuasive. First, he argues that the district court erred in dismissing his claims of retaliation under the Consumer Financial Protection Act. *See* 12 U.S.C. § 5567(a). But Del Signore does not meaningfully engage with the court's reasoning or try to establish that he is a covered employee under 12 U.S.C. § 5567(b). He therefore gives us no reason to reject the district court's conclusion that he is not. *See Webster v. CDI Ind., LLC*, 917 F.3d 574, 578 (7th Cir. 2019) (appellant who does not address rulings and reasoning of district court forfeits what arguments he might have).

Second, Del Signore challenges the dismissal of his retaliation claim against Gliori under the False Claims Act and argues that we should hold that the statute provides for individual liability. But this court "give[s] effect to the clear meaning of statutes as written," *Star Athletica, L.L.C. v. Varsity Brands, Inc.*, 580 U.S. 405, 414 (2017) (citing *Estate of Cowart v. Nicklos Drilling Co.*, 505 U.S. 469, 476 (1992)), and Del Signore does not explain how the language of 31 U.S.C. § 3730(h) creates personal liability for a manager involved in an allegedly retaliatory discharge.[1]

Third, to the extent that Del Signore contends that he should have been permitted to obtain discovery from Gliori's husband about what Gliori might have said about his complaints, his leave, or his termination, he again fails to develop, and thus forfeits, his argument. *See Webster*, 917 F.3d at 578. Even so, we see no possible abuse of discretion in the district court prohibiting this discovery.

Del Signore next argues that summary judgment was unwarranted because a reasonable jury could find that Nokia fired him for his whistleblowing activity, but he introduced no evidence of causation beyond his own speculation. We review the

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[1]The district court relied on *United States ex rel. Sibley v. A Plus Physicians Billing Serv., Inc.*, No. 13 C 7733, 2015 WL 4978686 (N.D. Ill. Aug. 20, 2015) and two subsequent decisions by our sister circuits that reached the same conclusion. *See United States ex rel. Strubbe v. Crawford Cty. Mem'l Hosp.*, 915 F.3d 1158, 1167 (8th Cir. 2019); *Howell v. Town of Ball*, 827 F.3d 515, 529–30 (5th Cir. 2016). Without a more developed argument from Del Signore, we need not address the matter further.

decision on summary judgment de novo and examine the record in the light most favorable to Del Signore, drawing reasonable inferences in his favor. *See Donaldson v. Johnson & Johnson*, 37 F.4th 400, 405 (7th Cir. 2022).

In challenging the conclusion that he failed to produce evidence connecting his whistleblowing activity to his discharge, Del Signore now asserts that Nokia would have declared him unfit to return to work and then terminated his employment even if he had completed the examination. By this, perhaps he means to argue that the reason for firing him was pretextual and that the requested examination was a fig leaf for an unlawful motive. But Del Signore's failure to proceed with the examination means he cannot prove this theory. Having skipped the exam, Del Signore must rely on speculative inferences unsupported by admissible evidence, which are insufficient to defeat a motion for summary judgment. *Johnson v. Advoc. Health & Hosps. Corp.*, 892 F.3d 887, 894 (7th Cir. 2018).

Indeed, as the district court explained, there is undisputed evidence that cuts against the suggestion of pretext: Nokia referred other employees on leave to independent medical examinations and terminated other employees for failing to submit medical documentation of their fitness to return to work after disability leave. And Nokia and Gliori had no evidence that Del Signore was fit to return to work: Del Signore's own medical provider submitted an assessment stating that he was unfit indefinitely, and Del Signore provided Nokia with no other information.

As for Del Signore's argument that Nokia had to show by clear and convincing evidence that it would have taken the same adverse actions absent his whistleblowing activity, as required by the anti-retaliation provision of the Sarbanes–Oxley Act, he confuses the order of operations. *See Verfuerth v. Orion Energy Sys., Inc.*, 879 F.3d 789, 793 (7th Cir. 2018). The burden of proof shifts to the employer if an employee establishes a prima facie case. *Id.* Del Signore never did so because he lacked evidence that his whistleblowing activity was a contributing factor to an adverse employment action.

Finally, in challenging the denial of his post-judgment motion, Del Signore does not demonstrate error in the district court's decision, which we review for an abuse of discretion. *Cincinnati Life Ins. Co. v. Beyrer*, 722 F.3d 939, 955 (7th Cir. 2013). A motion under Rule 59(e) must introduce new evidence or demonstrate a manifest error of law or fact. *Id.* at 954–55. Here, Del Signore contends that the court had failed to consider Mulligan's medical notes, which he says contradict Gliori's report about her conversation with Mulligan. But this evidence does not create a material dispute of fact. Whether or not Gliori's notes were accurate, Mulligan later told Nokia in writing that

Del Signore was not fit for duty, and he submitted no evidence to the contrary. The district court could have discarded all evidence of Del Signore's unfitness, and yet he still would have violated the policy by failing to provide Nokia with information justifying further disability leave before the original period expired. Del Signore's motion therefore did not refer to any evidence that his whistleblowing activity was a contributing factor in Nokia's termination of his employment.

AFFIRMED

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

KENNETH W. DEL SIGNORE,	)	
	)	
Plaintiff,	)	
	)	
	)	
	)	**No. 20 C 4019**
v.	)	
	)	**Judge Jorge Alonso**
NOKIA OF AMERICA CORPORATION, CHRISTY GLIORI, and MANAGERS JOHN DOE 1-50,	)	
	)	
Defendant.	)	

MEMORANDUM OPINION & ORDER

In this whistleblower retaliation case, plaintiff, Kenneth W. Del Signore, claims that his former employer, Nokia of America Corporation ("Nokia"), terminated him and subjected him to other retaliatory treatment for alleging that Nokia was colluding to fraudulently overbill a federal subsidy fund. Defendants, Nokia and one of its employees, Christy Gliori, move for summary judgment, contending that plaintiff has not adduced sufficient evidence to support his retaliation claims. For the following reasons, the Court grants the motion.

I. Local Rule 56.1

Northern District of Illinois Local Rule 56.1 ("LR 56.1") requires a party moving for summary judgment to file and serve a "statement of material facts," N.D. Ill. LR 56.1(a)(2), consisting of concise numbered paragraphs, "supported by citation to . . . specific evidentiary material," N.D. Ill. LR 56.1(d). The party opposing the motion for summary judgment is required to file and serve a response, consisting of numbered paragraphs corresponding to each paragraph of the statement of material facts. N.D. Ill. LR. 56.1(b)(2), (e)(1). To the extent the opposing party

Appendix B

disputes any of the movant's asserted material facts, the response must "cite specific evidentiary material that controverts the fact and must concisely explain how the cited material controverts the asserted fact." N.D. Ill. LR. 56.1(e)(3). "Asserted facts may be deemed admitted if not controverted with specific citations to evidentiary material." *Id.* Additionally, if the opposing party "wishes to assert facts not set forth in the LR 56.1(a)(2) statement or the LR 56.1(b)(2) response," the opposing party may file a "statement of additional material facts" in the same form as the movant's LR 56.1(a)(2) statement of material facts, LR 56.1(b)(3), and the movant may respond in the same manner prescribed for the opposing party's LR 56.1(b)(2) response, *see* LR 56.1(c)(2).

District courts are entitled to "require strict compliance with local summary-judgment rules." *McCurry v. Kenco Logistics Services, LLC*, 942 F.3d 783, 790 (7th Cir. 2019). Where one party supports a fact with admissible evidence and the other party fails to controvert the fact with citation to admissible evidence, the Court deems the fact undisputed. *See Lipinski v. Castaneda*, 830 F. App'x 770, 771 (7th Cir. 2020) (affirming district court's decision deeming moving party's facts admitted under Local Rule 56.1 where non-moving party's response purported to "disput[e] several facts," but "cited no supporting evidence and did not offer facts of [its] own to show a genuine dispute"); *Curtis v. Costco Wholesale Corp.*, 807 F.3d 215, 218-19 (7th Cir. 2015); *Ammons v. Aramark Uniform Servs., Inc.*, 368 F.3d 809, 817-18 (7th Cir. 2004) ("[W]here a non-moving party denies a factual allegation by the party moving for summary judgment, that denial must include a specific reference to the affidavit or other part of the record that supports such a denial.").

In his Local Rule 56.1(b)(2) response, plaintiff sometimes purports to deny facts asserted by defendant without controverting them with citation to admissible evidence. Instead, he either cites evidence that does not controvert the cited fact or cites no evidence at all. (*See, e.g.*, Pl.'s LR

56.1 Resp. ¶¶ 35-36.) Accordingly, the Court deems such facts admitted to the extent they are supported by citation to record evidence.

Additionally, plaintiff purports to dispute certain facts by objecting based on "hearsay" or because he lacks "personal knowledge." (*See, e.g.*, *id.* ¶¶ 38-39, 48, 52.) First, the hearsay objections lack merit because they are made in response to evidence that defendants offer for its effect on the listener or other proper, non-hearsay purposes, rather than the truth of the matter asserted. And in any case, at the summary judgment stage evidence need only be admissible in substance rather than form, *see Cairel v. Alderden*, 821 F.3d 823, 830 (7th Cir. 2016), and even if there are any hearsay problems here, defendants are likely to be able to cure these problems at trial. As for plaintiff's lack-of-personal-knowledge objections, these are not appropriate at the summary judgment stage, where the parties have to go beyond the pleadings and cite evidence. It was plaintiff's responsibility to take discovery to develop evidence material to his claims, so his lack of personal knowledge of whether an asserted material fact is true does not suffice to genuinely dispute the fact for purposes of the present motion for summary judgment. If it were otherwise, parties could survive summary judgment by making general denials, but, as the Court has explained above, such denials do not suffice.

II. Background

The following facts are taken from the parties' Local Rule 56.1 statements and responses. Unless otherwise noted, these facts are either undisputed or presented from the point of view of plaintiff, the non-moving party.

Plaintiff worked for Nokia as a Lab Infrastructure Engineer. Nokia makes equipment that Verizon Communications, Inc., a large telecommunications company, uses in its cell phone networks. As early as 2009, plaintiff noticed an anomaly in the performance of Verizon's wireless

network, which resulted in an excess of roaming operations. Verizon relied on smartphone-based measurement systems developed by a third-party company known as RootMetrics, but plaintiff observed that, due to a flaw in its testing methodology, RootMetrics inflated the performance of Verizon's network to show more activity than on other large telecommunications networks. In the fall of 2017, plaintiff proposed to create an improved smartphone measurement system for the Nokia Incubator program, which supports the development of new business ideas from within the company. Plaintiff was initially told that his idea had the potential to be lucrative for Nokia and that it had been tentatively approved for funding in January 2018. However, at a February 2018 meeting, he sensed that some of the Nokia personnel who had initially supported the project now seemed skeptical of it, with at least one person suggesting that the project's business plan needed more work. After a few months without any progress, plaintiff perceived that no one else at Nokia was interested in actively pursuing the project any longer, and he came to believe that the project had been canceled.

Upset by this turn of events and suffering from "work-related stress," plaintiff decided to take short-term disability leave in May 2018. (Pl.'s Resp. to Defs.' Local Rule 56.1 Stmt ¶ 7, ECF No. 217) (hereafter, "Pl.'s LR 56.1 Resp."). On May 8, 2018, he reached out to Nokia Disability Advocate Christy Gliori for advice on how to proceed. Gliori advised plaintiff to seek treatment from a psychiatrist so he could establish that he was unable to perform his essential job functions, as Nokia's short-term disability policy required. (*Id.* ¶ 3; Def.'s LR 56.1 Stmt. Ex. 2, Aug. 26, 2022 Gliori Decl., Ex. C, NOKIA_000093, ECF No. 209-5 at 123). Plaintiff sought psychiatric care from Conventions Psychiatry and Counseling, where he was treated by Kara Mulligan, PA-C.[1]

[1] Ms. Mulligan is sometimes identified in the record as a nurse practitioner, which is apparently

On May 16, 2018, plaintiff filed an internal ethics complaint, in which he explained that he had been involved in developing a "new device application that would provide better and more detailed analytics on UE/user performance" than RootMetrics, but the project had been "delayed and/or unofficially cancelled" for "unknown reasons," after six months of development. (Def.'s LR 56.1 Stmt. Ex. 1, Pl.'s 1st Dep. Ex. 4 at 2, ECF No. 209-3 at 109.) Plaintiff stated that the abrupt, unexplained delay or tacit cancellation left him with "suspicions . . . that there might be collusion between Nokia and a carrier service provider" such as Verizon, to whatever extent both companies were benefiting from the inflated measurements performed by RootMetrics under the status quo. (*Id.*, *see* Pl.'s LR 56.1 Resp. ¶ 14.)

As the summer of 2018 wore on, plaintiff came to believe that Nokia was not only hoping to hide the truth about RootMetrics's mismeasurements but that it was profiting from confusion about mismeasurements of telecommunications activity on Verizon's network by using the inflated activity to overbill the Universal Service Fund ("USF"). The USF is a fund established by the federal government to promote universal access to telecommunications services, particularly in remote or rural areas.[2] Plaintiff sent several emails to Nokia employees about these issues. Gliori contacted plaintiff to advise him that his ethics complaint was closed[3] and he should stop sending these emails, as Nokia's short-term disability benefits were available only to employees who were unable to perform their job duties, and performing work-related activity such as sending emails

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incorrect. The biographical information posted on her employer's website identifies her as a physician's assistant. https://www.conventionspc.com/providers/kara-mulligan/. The Court assumes that the distinction makes no difference for purposes of this case.

[2] https://www.fcc.gov/general/universal-service.

[3] Shortly after the filing of plaintiff's internal ethics complaint, Nokia's Ethics & Compliance Business Integrity Group launched an internal investigation into the matter, and the investigators concluded that the allegations lacked merit.

about work issues could jeopardize his status as disabled for purposes of those benefits..[4] Plaintiff's email and electronic badge access were disabled in September 2018, after he had sent a number of emails and made an in-person visit to the Nokia office, all while still on short-term disability leave.

On September 16, 2018, plaintiff filed a second internal ethics complaint, in which he set forth his theory that Nokia and Verizon are colluding to exploit inaccurate network performance measurements in order to overbill the USF. Nokia assigned Joe Alesia, an in-house lawyer for the company, to investigate the complaint. Alesia spoke with individuals who investigated plaintiff's previous complaint, and he reviewed the record of that investigation. He found that the first investigation was thorough, he identified no avenues for further investigation, and he concluded that the complaint lacked merit.

On September 26, 2018, plaintiff filed a whistleblower complaint with the Occupational Safety and Health Administration ("OSHA")..[5] Following the dismissal of that complaint, he filed an administrative action with the Department of Labor.

Nokia's short-term disability policy required plaintiff, prior to the expiration of his benefits on November 11, 2018, to return medical documentation showing either that he was fit to return to work or that he was improving enough to warrant a disability leave of absence while his recovery continued. Otherwise, he risked terminated. In September 2018, Gliori sought an update on plaintiff's medical status from Mulligan. In a September 18, 2018 phone call, Mulligan told Gliori

[4] Plaintiff does not recall Gliori offering this rationale, but he does not deny that she contacted him to advise him to stop sending emails.

[5] "Congress has assigned whistleblower protection largely to the Department of Labor (DOL), which administers some 20 United States Code incorporated whistleblower protection provisions." *Lawson v. FMR LLC*, 571 U.S. 429, 435 (2014). "The Secretary [of Labor] has delegated investigatory and initial adjudicatory responsibility over claims under a number of these provisions," including those of the Sarbanes-Oxley Act, to OSHA. *Id.* (citing 78 Fed. Reg. 3918 (2013)).

that plaintiff was suffering from serious mental health issues that made him "psychotic and delusional," he was not taking the medication she recommended for him, and he was not fit to work in the condition he was in at his last appointment on August 23, 2018. (Def.'s LR 56.1 Stmt. Ex. 2, Aug. 26, 2022 Gliori Decl., Ex. A, Jan. 13, 2020 Gliori Decl. Ex. 2, ECF No. 209-5 at 60.) Gliori memorialized this conversation by summarizing it in Nokia's "QHS" system, a database Nokia used to maintain notes on the status of employees out on disability leave.

On October 18, 2018, Gliori sent plaintiff a letter to inform him that she had received no medical documentation to establish that he was fit to return to work or might benefit from a disability leave of absence. The letter warned plaintiff that his short-term disability benefits would expire and he would be terminated from the company on November 11, 2018, if Nokia did not receive information from a medical provider to indicate that plaintiff was fit to return to work or might be soon.

On October 26, 2018, Mulligan submitted a "Return to Work Assessment" form to Nokia. Mulligan opined that plaintiff was not fit to return to work due to "ongoing emotional distress" which limited his ability to "focus on tasks," and she did not know how long these restrictions might persist. (Def.'s LR 56.1 Stmt. Ex. 2, Aug. 26, 2022 Gliori Decl., Ex. A, Jan. 13, 2020 Gliori Decl. Ex. 4, ECF No. 209-5 at 84.)

Lacking more specific information on plaintiff's medical condition, Gliori took steps to set up a two-day independent medical evaluation for plaintiff on November 7 and November 13, 2018. Gliori also offered to seek a short disability leave of absence for plaintiff while the results were pending. However, on November 2, 2018, after some back-and-forth, plaintiff confirmed via email that he was not willing to attend the appointments Gliori had set up for him. Plaintiff was terminated on November 12, 2018, following the exhaustion of his short-term disability benefits.

Plaintiff continued to litigate his administrative action after his employment ended, and he believes he was harassed by Nokia during the pendency of the action. He asserts that someone resembling Joe Alesia or Neil Bernstein, plaintiff's former supervisor, sat outside his house in a black car. He believes he received staged calls from recruiters to humiliate him, and that an in-house counsel for Nokia deleted his LinkedIn messages. He accuses Gliori of swearing a false affidavit, which Nokia submitted in the administrative action, about her communication with Mulligan during September 2018. He also accuses defendants' law firm of wrongdoing in this litigation and in threatening to initiate state-court litigation against plaintiff for making frivolous claims against Gliori.

An administrative law judge granted summary judgment for defendant in the administrative action in June 2020. This suit followed. In the operative second amended complaint, plaintiff claims that Nokia retaliated against him for complaining about Nokia's allegedly fraudulent activity, in violation of the anti-retaliation and whistleblower protection provisions of the False Claims Act, 31 U.S.C. § 3730(h); the Illinois False Claims Act, 740 ILCS 175/4(g), the Sarbanes-Oxley Act, 18 U.S.C. § 1514A; and the Illinois Whistleblower Act, 740 ILCS 174/15. He also asserts the Illinois Whistleblower Act claim against Gliori individually. (*See* Sep. 27, 2021 Order at 3, ECF No. 101.)

III. Summary Judgment Standard

"The Court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a); *Wackett v. City of Beaver Dam*, 642 F.3d 578, 581 (7th Cir. 2011). A genuine dispute of material fact exists if "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

"Summary judgment is the proverbial put up or shut up moment in a lawsuit, when a party must show what evidence it has that would convince a trier of fact to accept its version of events." *Beardsall v. CVS Pharmacy, Inc.*, 953 F.3d 969, 973 (7th Cir. 2020) (internal quotation marks omitted). "To defeat a motion for summary judgment, the party opposing it must make a 'showing sufficient to establish the existence of [any challenged] element essential to the party's case, and on which that party will bear the burden of proof at trial.'" *Johnson v. Advoc. Health & Hosps. Corp.*, 892 F.3d 887, 893-94 (7th Cir. 2018) (quoting *Celotex v. Catrett*, 477 U.S. 317, 322 (1986)). The court may not weigh conflicting evidence or make credibility determinations, but the party opposing summary judgment must point to competent evidence that would be admissible at trial to demonstrate a genuine dispute of material fact. *Omnicare, Inc. v. UnitedHealth Grp., Inc.*, 629 F.3d 697, 705 (7th Cir. 2011); *Gunville v. Walker*, 583 F.3d 979, 985 (7th Cir. 2009). The court will enter summary judgment against a party who does not "come forward with evidence that would reasonably permit the finder of fact to find in [its] favor on a material question." *Modrowski v. Pigatto*, 712 F.3d 1166, 1167 (7th Cir. 2013).

In assessing the evidence at summary judgment, the court must consider the facts in the light most favorable to the non-moving party, giving that party "the benefit of all conflicts in the evidence and reasonable inferences that may be drawn from the evidence," regardless of whether it can "vouch for the objective accuracy of all" the evidence the non-moving party puts forward. *Fish v. GreatBanc Tr. Co.*, 749 F.3d 671, 674 (7th Cir. 2014). Even though district courts must view the non-moving party's evidence in this generous light, it does not follow that they are "required to draw every requested inference; they must only draw reasonable ones that are supported by the record." *Omnicare*, 629 F.3d at 704. "Inferences supported only by speculation or conjecture will not suffice." *Johnson*, 892 F.3d at 894.

IV. Substantive Legal Standards

Plaintiff claims that Nokia violated the following federal and state statutes. The whistleblower provision of the Sarbanes-Oxley Act ("SOX") states as follows:

> **(a) Whistleblower Protection for Employees of Publicly Traded Companies.**--No company . . . may discharge, demote, suspend, threaten, harass, or in any other manner discriminate against an employee in the terms and conditions of employment because of any lawful act done by the employee--
> **(1)** to provide information, cause information to be provided, or otherwise assist in an investigation regarding any conduct which the employee reasonably believes constitutes [a violation of certain anti-fraud statutes[6]], when the information or assistance is provided to or the investigation is conducted by--
> **(A)** a Federal regulatory or law enforcement agency;
> **(B)** any Member of Congress or any committee of Congress; or
> **(C)** a person with supervisory authority over the employee (or such other person working for the employer who has the authority to investigate, discover, or terminate misconduct); or
> **(2)** to file, cause to be filed, testify, participate in, or otherwise assist in a proceeding filed or about to be filed (with any knowledge of the employer) relating to an alleged [fraud].

18 U.S.C. § 1514A.

The False Claims Act ("FCA") provides that anyone who "knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval" by the government, or "knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim," is liable to the government for civil penalties and treble damages. 31 U.S.C. § 3729(a)(1)(A) and (B). The Act's retaliation provision provides as follows:

> **(h) Relief from retaliatory actions.--**
> **(1) In general.**--Any employee, contractor, or agent shall be entitled to all relief necessary to make that employee, contractor, or agent whole, if that employee, contractor, or agent is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment

[6] One of the enumerated statutes is the wire fraud statute, 18 U.S.C. § 1343, which plaintiff claims defendant violated by boosting certain network activity in order to inflate Universal Service Fund payments.

> because of lawful acts done by the employee, contractor, agent or associated others in furtherance of an action under this section or other efforts to stop 1 or more violations of this subchapter.

31 U.S.C. § 3730. The pertinent language of the Illinois False Claims Act ("IFCA") is essentially identical. 740 ILCS 175/3(a)(1)(A),(B); 740 ILCS 175/4(g); *see Edwards v. Generations at Riverview, LLC*, No. 120CV01086JESJEH, 2022 WL 992733, at *4 (C.D. Ill. Apr. 1, 2022) (treating retaliation claims under FCA and IFCA claims as identical).

Finally, plaintiff claims that defendants violated the Illinois Whistleblower Act ("IWA"), which provides that "[a]n employer may not retaliate against an employee who discloses information in a court, an administrative hearing, . . . or in any other proceeding, where the employee has reasonable cause to believe that the information discloses a violation of a State or federal law, rule, or regulation." 740 ILCS 174/15(a).

V. Analysis

Although the statutes governing them are not identical, plaintiff's retaliation claims all share the same basic elements. Plaintiff must show that he engaged in activity that was protected by these statutes; he suffered an adverse employment action; and the protected activity caused defendants to take the adverse action. Defendants argue that they are entitled to summary judgment because (a) plaintiff cannot establish that he engaged in any protected activity; (b) most of the actions plaintiff complains of were not materially adverse or otherwise do not satisfy the requirements of the relevant statutory provisions; and (c) plaintiff cannot establish that his protected activity was the cause of any adverse action he suffered.

A. Protected Activity

Defendants argue that, although plaintiff complained that Nokia was engaging in an unlawful and fraudulent business practice by taking advantage of mismeasured network activity,

his complaints do not amount to protected activity because they lacked an objectively reasonable basis. *See Harp v. Charter Commc'ns, Inc.*, 558 F.3d 722, 723 (7th Cir. 2009) (under SOX, a whistleblowing employee's belief in the unlawfulness of his employer's actions "must be objectively reasonable"); *Fanslow v. Chi. Mfg. Ctr., Inc.*, 384 F.3d 469, 479-80 (7th Cir. 2004) (under FCA, employee's whistleblowing is only protected activity if "a reasonable employee in the same or similar circumstances might [also] believe" that the employer is defrauding the government); 740 ILCS 174/15(a) (whistleblowing employee must have "reasonable cause to believe" that employer's actions are unlawful). According to defendants, plaintiff provides no evidence that Nokia was defrauding the government or anyone else other than his own testimony. Defendants argue that plaintiff's own self-serving testimony is not enough to survive summary judgment.

It is true that plaintiff has adduced little or no evidence of Nokia's wrongdoing apart than his own testimony, but that wrongdoing itself is not directly at issue here, and the Court is not convinced that no reasonable juror could possibly find that plaintiff reasonably believed that Nokia's actions were unlawful. At all relevant times plaintiff was a highly educated and well-qualified engineer with long experience in the field. The Court cannot say that a juror who found him credible could not conclude that his theory was at least objectively reasonable. Although plaintiff has not submitted much evidence to substantiate his theory of Nokia's wrongdoing, the issue of the objective reasonableness of the theory is not appropriate for resolution at summary judgment on the present record.

B. Materially Adverse Action

Defendant argues that plaintiff complains of numerous adverse actions that cannot support his claims because they fall outside the relevant time frame, they did not result in material harm,

there is no evidence they actually occurred, or they were not connected to the terms and conditions of plaintiff's employment.

First, as the Court has already explained in its rulings on defendants' motions to dismiss (*see* Jan. 27, 2021 Order at 7-8, ECF No. 36; Sep. 27, 2021 Order at 3, ECF No. 101), the earliest whistleblowing activity that qualifies for protection under any of the statutes plaintiff has invoked occurred in May 2018, when plaintiff filed his first internal ethics complaint. And the earliest activity that qualifies for protection under the IWA, which protects the "disclos[ure]" of information in a "court," a "hearing," or "other proceeding," did not occur until September 2018, when plaintiff filed his OSHA complaint. Adverse actions that predate protected activity cannot logically be the result of the protected activity, so, to the extent plaintiff addresses incidents that occurred prior to the filing of his first ethics complaint in May 2018, the Court considers them only as background evidence, not as adverse actions that might form an element of his retaliation claims.

Second, the Court agrees with defendants that actionable retaliation does not consist of just any adverse action that may have made plaintiff uncomfortable; the employer's allegedly retaliatory action has to be "materially adverse," which means harmful enough to have "dissuaded a reasonable worker" from engaging in protected activity. *Burlington Northern & Santa Fe Ry. Co. v. White*, 548 U.S. 53, 68 (2006) (internal quotation marks omitted). This standard—developed in the context of Title VII retaliation, but often applied under other retaliation and whistleblowing statutes as well—requires courts to "separate significant from trivial harms," as complaining of an employer's unlawful activity does not entitle employees to protection against the "petty slights and annoyances that often take place at work." *Id.*; *see Lewis v. Wilkie*, 909 F.3d 858, 867-68 (7th Cir. 2018) (citing *Poullard v. McDonald*, 829 F.3d 844, 856-57 (7th Cir. 2016)) (adverse action must

"produce a material injury or harm" in order to be actionable); *Lam v. Springs Window Fashions, LLC*, 37 F.4th 431, 438 (7th Cir. 2022) (applying *Burlington Northern* to FCA retaliation claim and holding that "generic descriptions of hostility are insufficient" to establish that plaintiff was "harassed"); *Halliburton, Inc. v. Admin. Rev. Bd.*, 771 F.3d 254, 260 (5th Cir. 2014) (applying *Burlington Northern* standard to SOX retaliation claim). Under these principles, actions such as staking out plaintiff's house in a black car, staging calls from recruiters, and deleting LinkedIn messages, even if proved, are not materially adverse and therefore insufficient to sustain plaintiff's retaliation claims. Even actions such as cutting off plaintiff's email and badge access during disability leave, warning plaintiff not to perform work activities while on leave, and Gliori's swearing an allegedly false affidavit seem to have resulted in no "material injury or harm" and therefore do not meet the standard for materially adverse actions. Actions such as these, if proved, might serve as "relevant evidence of retaliatory intent behind a more concrete adverse action," *Poullard*, 829 F.3d at 857, but they cannot sustain a retaliation claim on their own.

In his supplemental response brief (ECF No. 231),[7] plaintiff makes much of the affidavit sworn by Gliori and submitted by Nokia in the administrative action. Although the brief is fuzzy on the details, plaintiff appears to believe that Gliori made inconsistent or incorrect statements about her September 18, 2018 phone call with Mulligan and whether the QHS record of the call was redacted before it was submitted in the administrative action. But plaintiff has adduced no admissible evidence other than his own speculation to suggest that anything in the affidavit was false. Of course, plaintiff may disagree with some of the facts in the affidavit or in the QHS records,

[7] Plaintiff was represented by counsel when the present motion for summary judgment was filed, but he and his counsel differed over how to respond to the motion. Counsel filed a response brief on plaintiff's behalf, then withdrew from the case. The Court granted plaintiff leave to file a supplemental pro se response brief to assert certain arguments his counsel had declined to raise, particularly as to the Gliori affidavit.

but it does not follow that Gliori was lying, as opposed to attempting to faithfully represent what she believed to be true and record what she had been told by Mulligan. Plaintiff has pointed to no admissible evidence that might establish any deceptive intent. And the Court reiterates that, even if there was anything deceptive in Gliori's conduct, the Court fails to see how it is meant to have harmed plaintiff. Plaintiff's claim that defendants obtained his medical records without authorization is similarly unsupported by the undisputed evidence.

Additionally, unlike Title VII's retaliation provision, the retaliation provisions of SOX and the FCA prohibit only discrimination "in the terms and conditions of employment." Defendants argue that any actions that post-date his termination and are unconnected to his employment or future employment prospects are beyond the scope of these provisions. The Court agrees that post-termination actions that are "unrelated to the plaintiff's employment," do not "impinge[] on [his] future employment prospects," and otherwise lack any "nexus to employment" do not satisfy the retaliation provisions at issue in this case. *See Veprinsky v. Fluor Daniel, Inc.*, 87 F.3d 881, 891 (7th Cir. 1996). To whatever extent plaintiff challenges certain of defendants' post-termination actions, such as Gliori's submitting the affidavit, defendants' counsel's submitting a motion to dismiss at an unexpected time, and defendants' warnings that plaintiff's continued attempts to assert frivolous claims against Gliori might result in state-court litigation, these post-termination actions lack any demonstrated connection to the terms and conditions of plaintiff's employment. Again, plaintiff focuses particularly on the Gliori affidavit and its representation of the September 18, 2018 conversation between Gliori and Mulligan, but that conversation was immaterial to plaintiff's termination or any other decision related to the terms and conditions of plaintiff's employment, as the Court will discuss further below.

The only alleged actions that arguably meet the standard for material adversity are the disabling of plaintiff's email and badge access (if the Court assumes that plaintiff was harmed by it), his referral for an independent medical examination, and his termination. Therefore, the Court proceeds to consider whether there is sufficient evidence to prove that plaintiff's protected activity may have caused defendants to take any of these actions.

C. Causation

The causation standards applicable to plaintiff's claims vary. The SOX statute sets forth the most expansive standard, which requires only that an employee demonstrate that "the protected activity was a contributing factor in the unfavorable action," although the employer may still avoid liability if clear and convincing evidence shows that it "'would have taken the same unfavorable personnel action'" even in the absence of the protected activity. *Harp*, 558 F.3d at 723 (quoting *Allen v. Admin. Rev. Bd.*, 514 F.3d 468, 475-76 (5th Cir. 2008)); *cf. Principe v. Vill. of Melrose Park*, No. 20 CV 1545, 2022 WL 488937, at *13 (N.D. Ill. Feb. 17, 2022) (applying Title VII standard to IWA claim and asking, "'Does the record contain sufficient evidence to permit a reasonable fact finder to conclude that retaliatory motive caused the discharge?'") (quoting *Igasaki v. Ill. Dep't of Fin. & Pro. Regul.*, 988 F.3d 948, 959 (7th Cir. 2021)); *Burke v. Amedisys, Inc.*, No. 17-CV-9232, 2022 WL 3226797, at *14 (N.D. Ill. Aug. 10, 2022) (applying a motivating-factor standard to FCA claim based on *Fanslow*, 384 F.3d at 485, but recognizing that the Seventh Circuit has suggested in more recent cases that a but-for standard may be more appropriate to the statutory language) (citing *Heath v. Indianapolis Fire Dep't*, 889 F.3d 872, 874 (7th Cir. 2018)). The Court agrees with defendants that even under the expansive SOX standard, plaintiff lacks sufficient evidence to demonstrate that his protected activity caused his employer's adverse action

against him, and the undisputed facts show that defendants would have taken the same action even in the absence of the protected activity.

Plaintiff has not raised any genuine dispute about the following facts. Plaintiff took short-term disability leave, meaning that he was disabled in the sense that he was unable to perform his essential job functions. However, he continued to send emails about his ethics complaints against his employer while out on leave. Plaintiff's continued contacts with Nokia personnel while out on leave were the reason his email and badge access were disabled, as these contacts were not consistent with Nokia's short-term disability policy. Nokia has shut off email and badge access of other individuals who appeared to be working and ignored directions to stop while out on disability leave..[8] Defendants required plaintiff to provide medical evidence that he was no longer disabled, *i.e.*, he had regained his ability to perform his job functions, before he was allowed to return to work. Neither plaintiff nor any medical provider who treated him submitted any medical documentation to defendants to demonstrate that plaintiff was fit and able to return to work or making progress in that regard..[9] In the absence of any such medical documentation, with plaintiff's short-term disability benefits nearing their expiration date, defendants took steps to obtain it on their own by scheduling an independent medical examination for plaintiff. Mulligan returned a

[8] Plaintiff purports to dispute this fact by citing the example of Brett Behrens, another Nokia employee who, plaintiff contends, was allowed access to his laptop while on leave. But plaintiff has not adduced evidence that Mr. Behrens was believed to be performing work while on leave, so there is no reasonable inference to be drawn from his case. See *Nwoke v. Univ. of Chicago Med. Ctr.*, No. 16 C 9153, 2020 WL 1233829, at *14 (N.D. Ill. Mar. 13, 2020) ("In this case, the comparisons plaintiff makes between herself and [certain co-workers] are not useful because 'she has not come forward with evidence that [they] shared a comparable set of failings' with her.") (quoting *Faas v. Sears, Roebuck & Co.*, 532 F.3d 633, 642 (7th Cir. 2008).

[9] Plaintiff purports to dispute this fact by stating that he "did return documentation stating an estimated return to work date" and citing "Plt.' Ex. P." (Pl.'s LR 56.1 Resp. ¶ 50.) But the Court did not find an Exhibit P attached to plaintiff's LR 56.1 response—his exhibits go from Exhibit O (ECF No. 217-14) to Exhibit Q (ECF No. 217-15)—and the Court has not found any other evidence to suggest that plaintiff submitted any such documentation to defendants.

form indicating that her medical opinion was that plaintiff was not fit to return to work and she did not know when he might be. This development highlighted the need for an independent medical examination, but plaintiff refused to attend. Having no evidence that plaintiff was fit to return to work and with plaintiff refusing to cooperate in their efforts to obtain such evidence, Nokia terminated plaintiff. Nokia has set up independent medical examinations for other employees in similar circumstances, and it has terminated other employees for failing to submit any medical documentation of their fitness to return to work following disability leave.

Plaintiff argues that defendant's explanations for its behavior in the above-described events are pretextual. He cites Gliori's admission to plaintiff in an email that independent medical examinations were required only on a "case-by-case" basis, not in every case, and he argues that it is "unclear from the record what exactly were the grounds in this matter" for the independent examination. (Pl.'s Mem. in Opp'n at 8), ECF No. 218.) According to plaintiff, the facts Gliori recorded in the QHS system based on her conversations with Mulligan were inaccurate and therefore an inadequate basis for an independent medical examination or termination. (*Id.*)

But the facts Gliori recorded in the QHS system about her September 2018 conversation with Mulligan were ultimately immaterial to any of the alleged adverse actions. Based on the undisputed facts, it is not "unclear" what the "grounds" were for plaintiff's independent medical examination and termination: defendants had no evidence that plaintiff was fit to return to work or might be in the foreseeable future, and plaintiff did not supply any such evidence or cooperate with their efforts to obtain it.

An employee can demonstrate that the reason for his termination was pretextual by adducing evidence to show that it is "factually baseless" or "insufficient to motivate" the employer's action. *Tibbs v. Admin. Office of the Ill. Courts*, 860 F.3d 502, 506 (7th Cir. 2017)

(internal quotations marks omitted). Based on such evidence, the "employer's explanation for discharging a worker may sometimes be fishy enough to support an inference that the reason must be discriminatory." *Id.* (internal quotations marks omitted). But plaintiff has not come forward with any such evidence here, so there is nothing "fishy" enough about defendants' actions to permit a reasonable juror to infer, in the absence of other evidence casting doubt on them, that the real reason for them was retaliation. *See id.*; *Harden v. Marion Cnty. Sheriff's Dep't*, 799 F.3d 857, 864–65 (7th Cir. 2015); *see also Tibbs*, 860 F.3d at 507 (reasoning that there was no evidence to indicate that the employer's reasons for termination were pretextual rather than honestly believed, particularly after employee "declined to participate in the . . . process"); *Overly v. KeyBank Nat. Ass'n*, 662 F.3d 856, 863 (7th Cir. 2011) (mere speculation that defendant took improper action was insufficient to overcome defendant's reasonable explanation supported by evidence at summary judgment) (citing *Omnicare*, 629 F.3d at 704).

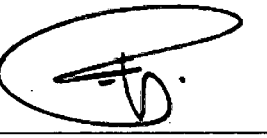
In his counseled response brief, plaintiff focuses on two additional adverse actions: the cancellation of his smartphone network measurement project and the decision by Nokia's long-term disability insurance carrier, MetLife, to deny plaintiff's claim for long-term disability benefits. The Court has already explained that adverse actions taking place prior to plaintiff's protected activity cannot have been caused by the protected activity, and the cancellation of plaintiff's project, if it occurred at all, occurred prior to plaintiff's protected activity in May 2018. Indeed, it was the subject of plaintiff's internal ethics complaint, so it can hardly have been caused by plaintiff's filing the internal ethics complaint. As for the long-term disability decision, plaintiff has not provided any reason why the Court should attribute this decision to defendants, rather than to MetLife, much less adduced any evidence that would permit the Court to do so.

Even viewing all the evidence in the light most favorable to plaintiff, no reasonable juror could find in plaintiff's favor. The Court grants summary judgment for defendants.

CONCLUSION

For the foregoing reasons, defendants' motion for summary judgment [207] is granted. Civil case terminated.

SO ORDERED. **ENTERED: May 5, 2023**



HON. JORGE ALONSO
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE Northern District of Illinois – CM/ECF LIVE, Ver 6.3.3
Eastern Division

Kenneth Del Signore

Plaintiff,

v.

Case No.: 1:20–cv–04019
Honorable Jorge L. Alonso

North America Corporation, et al.

Defendant.

NOTIFICATION OF DOCKET ENTRY

This docket entry was made by the Clerk on Tuesday, February 15, 2022:

MINUTE entry before the Honorable Young B. Kim: Defendant Christi Gliori's motion for protective order and/or to quash Plaintiff's "Subpoena for Written Deposition" directed to Stephen Gliori [159] is granted. The "Subpoena for Written Deposition" is quashed. First, although Plaintiff timely filed a response to the motion, (R. 170), he fails to address Defendant's arguments. Second, Plaintiff has failed to meet his Rule 45(d)(1) obligation to "take reasonable steps to avoid imposing undue burden" on a person subject to the subpoena. Defendant avers in her motion that Respondent Stephen Gliori is her husband and that he has no firsthand knowledge about this matter. Plaintiff in his response does not explain why he must subpoena and seek answers from Defendant's husband. Also, a review of the subject "Subpoena for Written Deposition," (R. 139), shows that Plaintiff does not accept Defendant's answers that Kara Mulligan had conversations with Defendant and that Mulligan shared with Defendant her professional opinions on Plaintiff's mental health. There is no rule that Plaintiff must accept Defendant's representations. But, Plaintiff is not entitled to harass Defendant's husband for information when there is no basis showing that Defendant discussed employee health information with her husband or that Defendant discussed Plaintiff's situation with her husband. If Plaintiff wishes to verify Defendant's interrogatory responses, he may seek answers from Mulligan, a witness who does possess first–hand knowledge about this matter. As such, Plaintiff's "Subpoena for Written Deposition" fails to comply with Rule 45(d)(1). Plaintiff's "Subpoena for Written Deposition" also fails to comply with Rule 31, as correctly pointed out by Defendant in her motion. Plaintiff is warned that his complaint against Defendants does not grant him carte blanche to turn–over every stone he pleases, and that he may be assessed monetary sanctions if he abuses his right to engage in discovery moving forward. Mailed notice (ec)

ATTENTION: This notice is being sent pursuant to Rule 77(d) of the Federal Rules of Civil Procedure or Rule 49(c) of the Federal Rules of Criminal Procedure. It was generated by CM/ECF, the automated docketing system used to maintain the civil and

Appendix C

criminal dockets of this District. If a minute order or other document is enclosed, please refer to it for additional information.

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IN THE UNITED STATES DISTRICT COURT FOR THE

NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

KENNETH W. DEL SIGNORE, Plaintiff, v. NOKIA OF AMERICA CORPORATION, CHRISTI GLIORI an individual;	CASE NO.: 1:20-CV-04019 Judge Jorge L. Alonso Magistrate Judge Young B. Kim Plaintiff's Motion for Reconsideration on Motion for Summary Judgment Ruling

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Plaintiffs Motion for Reconsideration on Ruling for Summary Judgement

The Court has ruled (Doc# 236, p. 14.2):

"But plaintiff has adduced no admissible evidence other than his own speculation to suggest that anything in the affidavit was false."

The Plaintiff takes this to imply that the clinical records of Kara Mulligan (Plaintiff's LR56.3, Doc#217 ex. L) and the statements of Kara Mulligan introduced by the Plaintiff in his Motion for Leave to file a Motion for Summary Judgement (Doc#228 , attachments A and B) are not properly in the record under the rules of evidence and are therefore not admissible at trial.

The Plaintiff thus requests that the Court declare these records admissible, under the prerogative that the Courts have in cases involving pro se Plaintiffs (Merritt v. Faulkner,

Appendix d

IN THE UNITED STATES DISTRICT COURT FOR THE

NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

697 F. 2d 761 - Court of Appeals, 7th Circuit 1983, " Under *Haines pro se* pleadings are to be liberally construed. Merritt's motion should have been treated under Fed.R. Civ.P. 39(b).[7] Rule 39(b) grants wide discretion to the federal courts... "

Haines v. Kerner, 404 U.S. 519, 520, 92 S.Ct. 594, 596, 30 L.Ed.2d 652, 654 (1972).)

The Plaintiff believes he incorrectly exchanged the clinical records of Kara Mulligan with the Defendants by sending a hyperlink to the documents in the initial set of Demand documents (Doc#178, Interrogatory #11) . I did not know that the records had to be actually printed out in the exchanged discovery documents. I had made my former Attorney aware of this detail after she began representing me. She later told me that the clinical records had been filed in the Defendant's LR56.1 filing and I therefore did not think there was any defect in my exchanged discovery.

The Plaintiff contends that, in practice, the fact that the clinical records were exchanged as a hyperlink only, and not by actually printing out the records in the exchanged Admissions, is a distinction without a difference, because the Defendants were fully capable following the link to the documents and are fully aware of the continents of the documents. The Defendant's were also in possession of the Kara Mulligan's clinical records (Doc#228, attachment A) from the previous Dept. of Labor trial.

The Plaintiff also filed the records from the three office visits that preceded Defendant Gliori's Sept 18, 2018 telephone log to the Docket as exhibits to a deposition (Doc# 139, Attachment A). The Defendant's then moved to quash the docket entry (Doc# 159) and the Court ruled as such (Doc# 171). The Plaintiff contends it is within this Court's prerogative to un-quash Attachment A in (Doc# 139) for the purpose of making the records admissible at trial.

Regarding the statement of Kara Mulligan, where she directly contradicts statements attributed to her in Defendant Gliori's log (Doc#228, attachment B), the Plaintiff included this set of questions in his exchanged discovery, prior to Kara Mulligan responding to the questions (Doc# 178, Interrogatory #4, footnote 1). I then obtained answers to the questions from Kara Mulligan during discovery, before my former Attorney began representing me, and then subsequently shared these answers with my previous Attorney. The Plaintiff then implored his former Attorney to include this document in her LR 56.3 filing, but she did not. I cannot explain why my attorney would not include such a piece of evidence in her LR 56 filing.

The Plaintiff then introduced Kara Mulligan's statements and certification in his motion for leave to file a Motion for Summary Judgement (Doc#228, attachments B and C). I believed at this time that the evidence was properly in the record based on my filing it in

the Docket. I was not aware that there were any further requirements to make the evidence admissible.

The Plaintiff thus requests the Court reconsider its Ruling (Doc #236) and rule that the clinical records of Kara Mulligan and her associated statements are admissible evidence and to deny the Defendant's Motion for Summary Judgment.

The Court could un-quash Attachment A of (Doc# 139) to put the clinical records properly in the record, or rule that the records are admissible as exchanged in Discovery (Doc#178, Interrogatory #11). As to the two statements of Kara Mulligan, the Plaintiff requests the Court to allow them into the record as admissible evidence based on the existing filing (Doc#228, attachments B and C), or to grant the Plaintiff leave to file an amended LR 56 filing.

Respectfully submitted

Ken Del Signore, Pro Se

IN THE UNITED STATES DISTRICT COURT FOR THE

NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

KENNETH W. DEL SIGNORE, Plaintiff, v. NOKIA OF AMERICA CORPORATION, Christi Gliori Defendants.	CASE NO.: 1:20-CV-04019 Judge Jorge L. Alonso Magistrate Judge Young B. Kim Certificate of Service

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Plaintiff's Certificate of Service

I certify that on Dec 9th, I electronically filed a copy of the foregoing Motion

with the Clerk of the Court using the CM/ECF system, which will automatically serve the same, and also served a copy of the foregoing via email on the Defendant's Counsel Rachel Kaercher (rkaercher@littler.com).

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

KENNETH W. DEL SIGNORE,	)	
	)	
Plaintiff,	)	
	)	
	)	
	)	**No. 20 C 4019**
v.	)	
	)	**Judge Jorge Alonso**
NOKIA OF AMERICA CORPORATION, CHRISTI GLIORI, and MANAGERS JOHN DOE 1-50,	)	
	)	
Defendants.	)	

ORDER

Plaintiff's motion for reconsideration [238] is denied. This case remains closed.

STATEMENT

The Court recently granted summary judgment for the defendants in this whistleblower case. Plaintiff has filed a motion for reconsideration, arguing that the fact that the Court found plaintiff to have "adduced no admissible evidence other than his own speculation to suggest that anything in [defendant Gliori's] affidavit was false" must mean that the Court did not consider certain documents attached to his Local Rule 56.1 Statement (ECF No. 217, *see* ECF No. 217-12) and to a November 28, 2022 motion to reconsider the Court's decision barring plaintiff from filing a late cross-motion for summary judgment (ECF No. 228). Based on these documents, plaintiff contends, there is a genuine factual dispute over the question of whether defendant Gliori lied in the affidavit she swore and submitted in plaintiff's administrative action in 2020.

Timely motions to reconsider under Federal Rule of Civil Procedure 59(e) allow a court to alter or amend a judgment if the moving party can demonstrate a "manifest error of law or fact or present newly discovered evidence." *Vesely v. Armslist LLC*, 762 F.3d 661, 666 (7th Cir. 2014). The Rule, however, is not meant to give parties a second bite at the apple, i.e., to make the same arguments again. *Vesely*, 762 F.3d at 666 ("a Rule 59(e) motion is not to be used to 'rehash' previously rejected arguments.").

Regarding the documents plaintiff now cites that were attached to his Local Rule 56.1 Statement and can be found on the docket as Exhibit L to plaintiff's Local Rule 56.1 Statement, ECF No. 217-12, the Court did not place any great weight on them because plaintiff never cited Exhibit L in the Statement, except on the immaterial question of whether plaintiff paced the floor at his appointment. (Pl.'s LR 56.1 Stmt. ¶ 38, ECF No. 217.) As for the evidence plaintiff cites that was attached to his November motion to reconsider, the Court did not rely on this evidence at

Appendix E

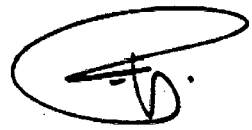
all because it was neither attached to the Local Rule 56.1 Statement nor cited therein. In considering a motion for summary judgment, the Court relies on the parties' Local Rule 56.1 Statements because the Court cannot possibly scour the entire record for factual disputes, and, even if it could, to do so on its own, without allowing the parties to lead the way by making specific citations to key evidence, would unfairly deprive the parties of the opportunity to demonstrate or dispel apparent factual disputes by responding to the other side's evidence. *See Torres v. Alltown Bus Services, Inc.*, Case No. 05 C 2435, 2008 WL 4542959 at *1 n.1 (N.D. Ill. Apr. 28, 2011) ("To consider facts not included in a statement of facts would be unfair to the other party, because it would rob the other party of the opportunity to show such facts were controverted."), *aff'd* 323 F. App'x 474, 475 (7th Cir. 2009).

Plaintiff argues that he is entitled to leeway as a *pro se* litigant. This is true, as a general matter, but it is no help to plaintiff here. Even if the Court were to give full consideration to the evidence plaintiff relies on in his present motion to reconsider, it would not be enough to change the Court's summary judgment decision. Plaintiff fixates on the truth of what transpired during the September 2018 phone call between his medical provider, Kara Mulligan, and defendant Gliori, but, as the Court explained in its May 5, 2023 Opinion, the details of this conversation are immaterial. Regardless of what exactly the participants said during this phone call, the undisputed facts show that, when plaintiff's short-term disability leave expired in November 2018, defendants lacked medical evidence showing that plaintiff was fit to return to work or might be in the foreseeable future, and plaintiff did not supply any such evidence or cooperate in defendants' efforts to obtain it. (*See* May 5, 2023 Mem. Op. & Order at 18, ECF No. 236.) Therefore, there remains no evidence creating a genuine dispute of material fact on the question of whether plaintiff's protected activity caused defendants to take any of the materially adverse actions he complains of, and the undisputed facts show that defendants would have taken the same actions even in the absence of plaintiff's protected activity. (*See id.* at 15-19.) Regarding Gliori's post-termination action of submitting, in the administrative action in 2020, the affidavit describing the events that had led to plaintiff's termination, the Court explained that submitting the affidavit was not an actionable adverse action by itself (*id.* at 14), as it did not cause any material injury or harm, and the Court sees no basis for retreating from that conclusion, even considering the evidence plaintiff now cites.

The core difficulty for plaintiff in this line of argument is that, even if the Court accepts that there is some conflict between what Gliori said about the September 2018 conversation with Mulligan and what Mulligan actually said during that conversation, it does not create a genuine dispute of *material* fact because, in the end, nothing turns on Gliori's credibility. Again, the details of the September 2018 conversation between Mulligan and Gliori, whatever they were, cannot change the undisputed fact that defendants lacked the medical evidence they needed to return plaintiff to work, so his termination was inevitable, and it follows that whatever Gliori might have said in 2020 that related to the same events in 2018 also could not have changed the course of events. The Court finds no manifest error in its decision to grant summary judgment. Plaintiff has not come forward with evidence that shows any genuine dispute of material fact, as the evidence is not "such that a reasonable jury could return a verdict" for plaintiff. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). Plaintiff's motion for reconsideration is denied. This case remains closed.

SO ORDERED.

ENTERED: May 17, 2023



HON. JORGE ALONSO
United States District Judge

Additional material from this filing is available in the Clerk's Office.