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APPENDIX A

In the United States Court of Appeals
For the Seventh Circuit

No. 23-3286

LANLAN LI,
Plaintiff-Appellant,

v.

FRESENIUS KABI USA, LLC,
Defendant-Appellee.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
No. 1:20-cv-07110 — **Mary M. Rowland**, *Judge*.

ARGUED MAY 30, 2024 —
DECIDED AUGUST 5, 2024

Before ST. EVE, KIRSCH, and KOLAR, *Circuit Judges*.

KOLAR, *Circuit Judge*. In 2019, Plaintiff-Appellant Lanlan Li developed back pain and eye strain. These conditions required her to take various types of leave from her position as a scientist at Defendant-Appellee Fresenius Kabi USA, LLC, a pharmaceutical company. However, her back injury persisted past the expiration of her leave and she could not return to her position with or without work

restrictions. As a result, Fresenius terminated her employment. Li subsequently sued the company for discrimination and now appeals from a grant of summary judgment and the dismissal of her national origin and age discrimination claims for failure to exhaust her administrative remedies. Because Li did not raise a dispute of material fact as to any of her claims, summary judgment was appropriate. Accordingly, we affirm.

I. Background

Lanlan Li is a 51-year-old woman of Chinese descent. In 2016, Li began working on a project for regulatory approval of a drug. This project involved conducting cell-based assay experiments and drafting a report for the Food and Drug Administration. Because Fresenius intended to submit the report to a regulatory agency, Li needed to adhere to certain standards and protocols in her testing and reporting. Li—then a senior scientist—hoped for a promotion soon, and her supervisor told her that a successful report would help convince leadership to promote her.

By all accounts, Li worked many hours, including overtime, on the report. She submitted the report on May 29, 2019—nearly a month before the deadline—and took a vacation until June 24, 2019. While she was on vacation, Fresenius awarded her a $1,000 bonus in appreciation of her hard work. When supervisors reviewed the report, though, they realized that it did not meet industry standards and Fresenius had to significantly modify the report before submitting it. Thereafter, Li's supervisor did not

recommend her for promotion.

On July 24, 2019, Li began experiencing back pain and eye strain. She submitted physician-recommended work restrictions to Fresenius's human resources department, including a recommendation that she refrain from sitting for seven to eight hours a day. Following the initial submission, Li provided an additional recommendation that she abstain from bench work—which requires sitting and bending over—until her back pain improved. Fresenius told Li that it could accommodate a restriction of no bench work, but that it could not guarantee eight hours of work each day. Accordingly, Fresenius helped Li apply for short-term disability benefits and protected unpaid medical leave. Because Fresenius did not have enough work for her absent bench work, Li worked part-time after receiving short-term disability benefits.

In November 2019, Li filed a Charge of Discrimination with the Equal Employment Opportunity Commission alleging disability discrimination and retaliation. She later filed charges alleging age and national origin discrimination. She also submitted these claims to the Illinois Department of Human Rights, which acknowledged receipt of the communication on December 26, 2019.

By March 2020, Li had nearly exhausted her short-term disability leave, leading her benefits provider to reach out about transitioning to long-term disability. Fresenius also told Li that she needed to return to her position, which required bench work, by April 23, 2020, and that she would be terminated if she

was unable to do so. Fresenius granted Li an extension to April 30, 2020, so she could follow up with medical providers. On April 30, 2020—the day Li was required to return to work—the benefits provider denied her application for long-term disability. Fresenius again allowed Li to extend her leave until May 21, 2020. By May 26, 2020, Li remained unable to return to work with or without restrictions, and Fresenius terminated her employment.

On December 1, 2020, Li filed suit against Fresenius, asserting claims of disability discrimination, retaliation, and failure to accommodate in violation of the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq., and the Illinois Human Rights Act, 775 ILCS 5/1-101 et seq.; national origin discrimination and retaliation in violation of Title VII, 42 U.S.C. § 2000(e) et seq.; and the Illinois Human Rights Act, and age discrimination in violation of the Age Discrimination in Employment Act, 29 U.S.C. § 621 et seq. In late 2022, Fresenius moved for summary judgment on all claims, both on the merits and on exhaustion grounds.

The district court granted the motion, finding that Li had failed to exhaust her administrative remedies for her age and national origin claims and holding that her disability and retaliation claims failed on the merits. In finding that Li had not exhausted some of her claims, the district judge noted that Li had not included a right-to-sue letter from either the Equal Employment Opportunity Commission or the Illinois Department of Human Rights. The district court accordingly entered judgment in favor of Fresenius on

Li's disability claims and dismissed her age and national origin claims without prejudice.

Li subsequently moved for reconsideration, asking the court to rethink failure to exhaust her national origin claim (but not her age discrimination claim) and to reverse its grant of summary judgment on her disability claims. In support of her motion, Li attached the right-to-sue letters for her various claims, including her national origin and age claims. The district court denied the motion. First, it explained that the right-to-sue letters should have been included in the original summary judgment record. Next, it held that Li had failed to demonstrate that she was entitled to reconsideration under the governing legal standard. Following the denial of reconsideration, Li appealed.

II. Analysis

We review a district court's grant of summary judgment de novo, viewing all evidence and drawing all reasonable inferences in favor of the non-moving party. *Bruno v. Wells-Armstrong*, 93 F.4th 1049, 1053 (7th Cir. 2024). We may affirm on "any ground supported by the record as long as it was adequately addressed in the district court and the losing party had an opportunity to contest it." *EEOC v. Wal-Mart Stores E., LP*, 46 F.4th 587, 593 (7th Cir. 2022) (citation omitted).

One way for plaintiff prove discrimination is through the burden-shifting framework in *McDonnell-Douglas Corp. v. Green*, 411 U.S. 792 (1973), under which "a plaintiff must show that he is a member of a

protected class, who was meeting the defendant's legitimate expectations, that he suffered an adverse employment action, and that similarly situated employees who were not members of his protected class were treated more favorably." *Singmuongthong v. Bowen*, 77 F.4th 503, 507 (7th Cir. 2023) (citing *Tyburski v. City of Chicago*, 964 F.3d 590, 598 (7th Cir. 2020)). Once those elements are met, the defendant bears the burden to "set forth a legitimate, nondiscriminatory reason for the adverse employment action." *Id.* at 507–08 (internal citation omitted). If the defendant meets his burden, the plaintiff must submit evidence that the employer's explanation is pretextual. *Id.* at 508.

This method is one way—but not necessarily the only way—to evaluate a discrimination claim. "Although there are many tests and rubrics for viewing discrimination claims, it is important to recall that, at the end of the day, they are all merely convenient ways to organize our thoughts as we answer the only question that matters: when looking at the evidence as a whole, whether the evidence would permit a reasonable factfinder to conclude that the plaintiff's race, ethnicity, sex, religion, or other proscribed factor caused the discharge or other adverse employment action." *Ortiz v. Werner Enters. Inc.*, 834 F.3d 760, 765 (7th Cir. 2016).

A. Disability Claims

Li claims that Fresenius discriminated against her based on her disability at least two times, first when it did not promote her and again when it

terminated her employment. As to the latter claim, at bottom, Li believes that her termination was a result of Fresenius's initial failure to accommodate her (i.e., by failing to promote her).

The Americans with Disabilities Act proscribes discrimination against a "*qualified individual* on the basis of disability." 42 U.S.C. § 12112(a) (emphasis added). A failure to accommodate claim under the Act relies in part on the same statutory language and therefore also requires that an individual is "qualified." *See E.E.O.C. v. Sears, Roebuck & Co.*, 417 F.3d 789, 797 (7th Cir. 2005); 42 U.S.C. § 12112(b)(5)(A).

There is no dispute that Li had a disability. Instead, the parties dispute, and we must answer, whether she was "qualified" under the Act. This means Li must be able to "perform the essential functions" of her job "with or without reasonable accommodation."[1] *McAllister v. Innovation Ventures, LLC*, 983 F.3d 963, 967 (7th Cir. 2020) (quoting 42 U.S.C. § 1211(8)). "An inability to do the job's essential tasks means that one is not 'qualified'; it does not mean that the employer must excuse the inability." *Byrne v. Avon Prods., Inc.*, 328 F.3d 379, 381 (7th Cir. 2003). The employee "bears the initial burden of establishing that she was a

[1] Because disability discrimination claims under the Illinois Human Rights Act are analyzed under a framework that is "practically indistinguishable" from the federal disability discrimination analysis, we focus on the federal disability claims. *Tate v. Dart*, 51 F.4th 789, 794 (7th Cir. 2022).

qualified individual who could perform the essential functions of her position," after which she "must show that her employer was aware of her disability but failed to afford her a reasonable accommodation." *Taylor-Novotny v. Health All. Med. Plans, Inc.*, 772 F.3d 478, 493 (7th Cir. 2014) (citations omitted).

Thus, the determination of whether Li was a qualified individual depends on whether she could perform the essential functions of her job after the onset of her disability with or without a reasonable accommodation. Li could not perform bench work, and bench work was an essential function of her job. So, we agree with the district court that Li was not a qualified individual within the meaning of the Act.

Li does not dispute that she could not perform bench work because of her disability. Instead, she disputes that bench work—as opposed to "lab work"—was an essential function of her job. But the record amply demonstrates that it was. Fresenius's employees testified that bench work was a required function of Li's position and the internal job description for senior scientist listed bench work as an essential function. We recognize that the employer's judgment of whether a job function is essential is not necessarily controlling, but here, Li presented no admissible evidence to raise a genuine dispute of material fact as to any of Fresenius's assertions. *Miller v. Ill. Dept. of Transp.*, 643 F.3d 190, 197–98 (7th Cir. 2011).

Li insists that she has raised a material dispute of fact, arguing that her response to Fresenius's Rule

56.1 statement contradicts Fresenius's evidence regarding whether bench work was an essential job function. But a response to a Rule 56.1 statement is not, on its own, admissible evidence, and Li cites no additional evidence. *See* Fed. R. Civ. P. 56(c)(1) (discussing how a party asserting that a fact cannot be or is genuinely disputed must cite to record materials or show that the materials cited do not establish a dispute). It is not our job—nor that of the district court—to "scour the record in search of a genuine issue of triable fact." *Brasic v. Heinemann's Inc.*, 121 F.3d 281, 285 (7th Cir. 1997).

Accordingly, the record contains no dispute of material fact on this point: Li could not perform an essential function of her job, and therefore was not a qualified individual under the Act. Her claims under the Act, both the discrimination and failure to accommodate claim, therefore fail.

Even if Li was a qualified individual (and she is not), her claims would also fail for additional reasons. For instance, Li argues that Fresenius's decision not to promote her demonstrates disability discrimination because, had she been promoted, she would not have been required to perform any bench work. But Li makes this argument by pointing to the fact that the individual that Fresenius promoted instead of her had the same disability, back pain, which itself calls into question her discrimination claim. *See Conley v. Village of Bedford Park*, 215 F.3d 703, 711 (7th Cir. 2000) (to survive summary judgment on a failure to promote claim, a plaintiff must present direct or indirect evidence linking "the lack of promotion with

the disability"). And in any event, Fresenius presented uncontradicted evidence that it did not promote Li because of her poor performance. Furthermore, this poor performance occurred prior to the onset of Li's disability, so attempts to argue that these work problems were pretext for discrimination fall flat. Thus, a reasonable jury could not find that Li's non-promotion was discriminatory, even if she was a qualified individual.

As best we can tell, Li's remaining argument on her disability claims boils down to the assertion that she should have been accommodated through a promotion, and that her failure to be promoted led to her termination. But a promotion is not a reasonable accommodation. *Malabarba v. Chicago Trib. Co.*, 149 F.3d 690, 700 (7th Cir. 1998). Indeed, we have previously stated that "the Act does not [] require employers to promote employees to accommodate them." *Brown v. Milwaukee Bd. of Sch. Directors*, 855 F.3d 818, 820–21 (7th Cir. 2017). And, in any event, the record demonstrates that Fresenius provided accommodations for Li's disability in her position as senior scientist for as long as it was able. It allowed her to abstain from bench work and permitted her to take additional breaks, not work overtime, and abstain from lifting items over five pounds. Fresenius continued to allow Li to work part-time for seven months before it requested that she return to her full duties, including bench work, an essential function of her job. While Li might have wanted different accommodations (including the promotion, or permanent relief from bench work), "[a]n employer is not obligated to provide an employee the

accommodation he requests or prefers, the employer need only provide some reasonable accommodation." *Malabarba*, 149 F.3d at 699.

In sum, the district court did not err in granting summary judgment to Fresenius on all of Li's disability claims.

B. Age Discrimination

Li also claims that Fresenius discriminated against her based on her age when it did not promote her and instead promoted a younger employee. We disagree.

The Age Discrimination in Employment Act, 29 U.S.C. § 621 et seq., proscribes discrimination with "respect to [] compensation, terms, conditions, or privileges of employment" based on age. 29 U.S.C. § 623(a)(1). Li needed to present evidence that she was both qualified for the promotion and that the promotion "was granted to a person outside the protected class who is similarly or less qualified than [her]." *Jordan v. City of Gary, Ind.*, 396 F.3d 825, 833 (7th Cir. 2005). At bottom, Li "must prove that age was the 'but for' cause of the employer's adverse decision." *Gross v. FBL Fin. Servs., Inc.*, 557 U.S. 167, 176 (2009).

Li did not present evidence that could establish a dispute of material fact as to whether she was qualified for the promotion and whether the promoted individual was similarly situated. Fresenius offered no evidence that Li's work, specifically on the drug-

approval report, was unsatisfactory. This alone could be disqualifying for the promotion. But to succeed on her claim, Li must "demonstrate that [the promoted individual] occupied the same job level and engaged in similar past misconduct, but as a result of this misconduct … was treated differently (*i.e.*, more favorably) for no legitimate reason." *Jordan*, 396 F.3d at 834. And Li only presented evidence demonstrating that the promoted individual was under the age of 40 and had less work experience than her. As discussed above, Li did not rebut Fresenius's evidence of unsatisfactory work product. Nor did she present any evidence indicating the promoted individual had a similar history of poor work product. Accordingly, Li failed to make out a prima facie case of age discrimination, and summary judgment was appropriate on this claim.[2] *See Jordan*, 396 F.3d at 834.

C. Retaliation Claims

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[2] Because exhaustion is not required for age discrimination claims, Li's claim should have been dismissed with prejudice. The district court dismissed Li's age discrimination claim without prejudice for failure to exhaust her administrative remedies. An age discrimination claim, however, does not require administrative exhaustion, and a plaintiff need not receive a right-to-sue letter before filing in federal court. *Compare* 29 U.S.C. § 626 ("No civil action may be commenced by an individual under this section until 60 days after a charge alleging unlawful discrimination has been filed…") *with* 42 U.S.C. § 2000e-5(f)(1) (indicating that the Commission "shall so notify the person aggrieved" if the charge is dismissed or the Commission has not filed a civil action within 180 days, and "within ninety days *after the giving of such notice* a civil action may be brought").

Li also challenges the district court's grant of summary judgment to Fresenius on her retaliation claim. If we believe Li's account, she was terminated in retaliation for filing charges with the Equal Employment Opportunity Commission. Li, however, has not presented sufficient evidence to establish a dispute of material fact as to her retaliation claim.

An employee bringing a retaliation claim against an employer must present evidence of "(1) a statutorily protected activity; (2) a materially adverse action taken by the employer; and (3) a causal connection between the two." *Abebe v. Health & Hosp. Corp. of Marion County*, 35 F.4th 601, 607 (7th Cir. 2022) (quotation omitted). The first prong is clearly met, as filing charges of discrimination qualifies as a protected activity. Smith v. Lafayette Bank & Trust Co., 674 F.3d 674 F.3d 655, 658 (7th Cir. 2012). So, too, is the second: Li was terminated after filing the charge. Li falters at the third, though, because she failed to establish any causal nexus between the filing of the charge and her termination.

To survive summary judgment, Li must show that "the record contain[s] sufficient evidence for a reasonable fact-finder to conclude that retaliatory motive caused the materially adverse action." *Lesiv v. Ill. Cent. R.R. Co.*, 39 F.4th 903, 911 (7th Cir. 2022). But Li presented no evidence evincing any retaliatory intent on the part of Fresenius other than the temporal proximity between her filing of the charges and her termination. Li's complaints to the Commission started in November 2019, and Fresenius terminated her a few months later in May 2020. While

temporal proximity can sometimes be sufficient to raise an inference of retaliation, the "general rule" is that "temporal proximity between an employee's protected activity and an adverse employment action is rarely sufficient to show that the former caused the latter" without additional facts. *Coleman v. Donahoe*, 667 F.3d 835, 860 (7th Cir. 2012). Here, the only evidence Li put forth to demonstrate retaliatory intent is a loose temporal proximity between the filing of a Commission charge and her termination. This is not enough, and the district court properly granted summary judgment in favor of Fresenius on Li's retaliation claim.[3]

D. National Origin Claims

Finally, Li asserts that she properly exhausted her national origin discrimination claim. But Li's claim fails regardless of whether she exhausted because she presented no evidence from which a jury could conclude that Fresenius discriminated against her on this basis.[4]

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[3] And, to the extent that Li argues that she was retaliated against for requesting accommodations, it is undisputed that her work quality issues preceded any request for an accommodation. It is obvious that retaliation cannot predate any protected action by an employee. *See, e.g.*, *Smith*, 674 F.3d at 658 (no retaliation claim possible when termination occurred before protected activity).

[4] According to Li, she submitted a charge to the Commission, and this was sufficient to exhaust her remedies. But a plaintiff exhausts her remedies "by filing charges with the

Li contends that the promotion of another individual who was outside of her protected class indicates that Fresenius engaged in national origin discrimination. *See Naficy v. Ill. Dept. of Hum. Servs.*, 697 F.3d 504, 511 (7th Cir. 2012) (one element of a prima facie case is that "similarly situated employees outside of the protected class were treated more favorably"). But Li did not present any evidence indicating that the promoted individual was like her in all material respects. The crux of Li's national origin discrimination claim is that the individual Fresenius promoted instead of her is of Indian descent, while Li is of Chinese descent. But "[a] similarly situated employee is one who is comparable to plaintiff in all *material* respects[.]" *Perez v. Illinois*, 488 F.3d 773, 776 (7th Cir. 2007) (emphasis original) (internal quotation marks omitted). As discussed above, Li presented no evidence that the promoted individual had a similar history of poor work performance—a material attribute. Accordingly, while the individual Li identified is outside of her protected class, she is not

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EEOC *and receiving a right to sue letter*." *Chaidez v. Ford Motor Co.*, 937 F.3d 998, 1004 (7th Cir. 2019) (emphasis added). Li did not supply a right-to-sue letter for her national origin claims and filing a charge only starts the administrative process: it does not end(or exhaust) it. *See Bibbs v. Sheriff of Cook County,* 618 Fed. App'x 847, 852 n.1 (7th Cir. 2014); *Schnelbaecher v. Baskin Clothing Co.*, 887 F.2d 124, 128– 29 (7th Cir. 1989) ("[F]iling an EEOC charge and receiving a right-to-sue letter is still a prerequisite to suit ... [C]laimants are not permitted to bypass the administrative process."). Accordingly, the district court properly found that Li did not exhaust the claim. *See Teal v. Potter,* 559 F.3d 687, 693 (7th Cir. 2009) (dismissal without prejudice appropriate when exhaustion is not met).

similarly situated. Thus, because Li identifies no other similarly situated individuals, her national origin discrimination claim must fail.[5] Summary judgment is therefore appropriate.

III. Conclusion

For the foregoing reasons, the judgment of the district court is AFFIRMED.

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[5] Fresenius suggests that we should dismiss the appeal for failure to abide by the procedural rules, including Circuit Rule 30 and Federal Rule of Appellate Procedure 28. Because we resolve this case on the merits, we need not address this alleged failure.

APPENDIX B

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

LANLAN LI,
Plaintiff,
v.

FRESENIUS KABI USA, LLC,
Defendants.

Case No. 20-cv-07110
Judge Mary M. Rowland

ORDER

In this case Plaintiff Lanlan Li claimed that her former employer, Fresenius, fired her because of her disability, national origin, and age and in retaliation for complaining about Fresenius's failure to accommodate her. This Court previously granted Defendant's motion for summary judgment on all of Li's claims. Li has filed a motion to reconsider (Dkt. 90) this Court's May 15, 2023 opinion (Dkt. 88, "Summary Judgment Opinion"). For reasons stated herein, Li's reconsideration motion [90] is denied.

I. Background

In its Summary Judgment Opinion, the Court agreed with Fresenius that Plaintiff failed to exhaust

her administrative remedies for her national origin and age discrimination claims. And as for her disability discrimination claims, Plaintiff did not raise a genuine issue of material fact precluding summary judgment in favor of Fresenius. The Court dismissed without prejudice Plaintiff's claims based on age and national origin (Counts III, IV, IX, X). The Court dismissed with prejudice her remaining claims (Counts I, II, V, VI, VII, VIII, XI, and XII).

In her reconsideration motion, Plaintiff asks the Court to vacate its Summary Judgment Opinion, however Plaintiff only makes arguments about her disability, national origin, and retaliation claims.

II. Standard

It is well-established that motions for reconsideration "serve a limited function." *Caisse Nationale de Credit Agricole v. CBI Indus., Inc.*, 90 F.3d 1264, 1269 (7th Cir. 1996) (citation and quotation omitted). The party moving for reconsideration must establish a manifest error of law or fact or present newly discovered evidence. *Vesely v. Armslist LLC*, 762 F.3d 661, 666 (7th Cir. 2014); *Patrick v. City of Chicago*, 103 F. Supp. 3d 907, 911–12 (N.D. Ill. 2015). The moving party thus "bears a heavy burden." *Finnsugar Bioproducts, Inc. v. Amalgamated Sugar Co., LLC*, 244 F. Supp. 2d 890, 891 (N.D. Ill. 2002). "A manifest error is not demonstrated by the disappointment of the losing party. It is the wholesale disregard, misapplication, or failure to recognize controlling precedent." *Oto v. Metro. Life Ins. Co.*, 224 F.3d 601, 606 (7th Cir. 2000) (internal citations and

quotations omitted); *see also Caisse Nationale*, 90 F.3d at 1270 (the moving party may not use a motion to reconsider to "rehash[] previously rejected arguments or argu[e] matters that could have been heard during the pendency of the previous motion").

III. Analysis

In her motion, Plaintiff argues that her disability and retaliation claims should be allowed to proceed. She also asserts that an EEOC right to sue notice shows that Plaintiff's national origin claims should be reinstated.

A. National Origin Claims

The Court begins with Plaintiff's argument about her national origin claims. Plaintiff's counsel says he "first received a copy of this notice of right to sue from the EEOC on June 12, 2023, after requesting a copy of the document." [90 at 10]. "With this document showing exhaustion," he argues that this Court should reinstate the national origin claims. *Id.* In the original summary judgment briefing, Plaintiff argued only that she "did what was needed on her end to exhaust," and attached an email from one EEOC employee to another. [76]. No right to sue notice was attached (nor was any right to sue notice in the record before the Court at all). Plaintiff does not explain why she could not obtain a copy of this document earlier in the lawsuit, which she filed in 2020, or at least by the time of summary judgment briefing.

As this Court explained before, it was not the

Court's job to scour the record to find relevant documents, or to presume, without documentation from Plaintiff, that she had exhausted her administrative remedies. These "matters that could have been heard during the pendency of the previous motion", are inappropriate for a motion to reconsider. *Caisse Nationale*, 90 F.3d at 1270. Plaintiff fails to cite any authority that the Court should reconsider under these circumstances. Indeed a motion to reconsider "performs a valuable function where the Court has patently misunderstood a party, or has made a decision outside the adversarial issues presented to the Court by the parties, or has made an error not of reasoning but of apprehension." *Bank of Waunakee v. Rochester Cheese Sales, Inc.*, 906 F.2d 1185, 1191 (7th Cir. 1990) (cleaned up). That is not what happened here.

Therefore the Court denies Plaintiff's request to reconsider its order regarding her national origin claims.

B. Disability and Retaliation Claims

Plaintiff also asks the Court to reconsider its ruling about her disability and retaliation claims.

For her disability claim, Plaintiff argues there was a material question of fact about whether lab work was part of being a Senior Scientist. With regard to Defendant's Statement of Material Fact #30, Plaintiff argues that Defendant had the burden of proof and the Court should have accepted her denial of this fact and assertion that her "understanding does not correlate

lab work and bench work meaning the exact same thing." [90 at 7]. In addition to the fact that Plaintiff does not address the other reasons for this Court's finding that her disability claim did not survive summary judgment, as explained before, Plaintiff did not cite any Local Rule 56.1-compliant evidence to dispute Defendant's asserted fact. *See Rozumalski v. W.F. Baird & Assocs., Ltd.*, 937 F.3d 919, 925 (7th Cir. 2019)

For her Title VII retaliation claim, Plaintiff had to show that: "(1) she engaged in statutorily protected expression; (2) she suffered an adverse action by her employer; and (3) there is a causal link between her protected expression and the adverse action." *Scaife v. U.S. Dep't of Veterans Affs.*, 49 F.4th 1109, 1118 (7th Cir. 2022). She had to show retaliatory intent played a role in the adverse action. *See Huff v. Buttigieg*, 42 F.4th 638, 645 (7th Cir. 2022). This Court found that Plaintiff failed to provide evidence of causation to survive summary judgment on her retaliation claim. Plaintiff now broadly argues that "[t]he causal chain of events in this case would [] allow for a causal link to occur from any of the broader range of adverse actions that occurred between November of 2019 and May of 2020." [90 at 9]. This does not demonstrate error in this Court's opinion. Plaintiff also did not address this Court's finding that she failed to fully comply with Local Rule 56.1.

In sum, Plaintiff's motion disagrees with this Court's original decision but does not demonstrate this Court erred in its decision. Considering Plaintiff's "heavy burden," *Patrick*, 103 F. Supp. 3d at 912, and

the fact that the decision whether to grant a motion to reconsider is in the Court's discretion, *Darvosh v. Lewis*, 2015 WL 5445411, at *3 (N.D. Ill. Sept. 11, 2015), reconsideration is not warranted here.

IV. Conclusion

For the stated reasons, Plaintiff's Motion to Reconsider [90] is denied.

E N T E R:

Dated: October 25, 2023

/s/
MARY M. ROWLAND
United States District Judge

APPENDIX C

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

LANLAN LI,
Plaintiff,

v.

FRESENIUS KABI USA, LLC,
Defendant.

Case No. 20-cv-07110
Judge Mary M. Rowland

MEMORANDUM OPINION AND ORDER

Defendant Fresenius Kabi USA, LLC, a pharmaceutical company, terminated Plaintiff Lanlan Li in May 2020. Li had worked for Fresenius as a Senior Scientist since 2014. Li claims that Fresenius fired her because of her disability, national origin, and age and in retaliation for complaining about Fresenius's failure to accommodate her. Li brings a twelve-count complaint for discrimination and retaliation. Defendant moves for summary judgment on all of Li's claims. [64]. For the reasons explained below, this Court grants Defendant's motion.

SUMMARY JUDGMENT STANDARD

Summary judgment is proper 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); *see also Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). A genuine dispute as to any 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). The substantive law controls which facts are material. *Id*. After a "properly supported motion for summary judgment is made, the adverse party 'must set forth specific facts showing that there is a genuine issue for trial.'" *Id*. at 250 (quoting Fed. R. Civ. P. 56(e)).

The Court "consider[s] all of the evidence in the record in the light most favorable to the non-moving party, and [ ] draw[s] all reasonable inferences from that evidence in favor of the party opposing summary judgment." *Logan v. City of Chicago*, 4 F.4th 529, 536 (7th Cir. 2021) (quotation omitted). The Court "must refrain from making credibility determinations or weighing evidence." *Viamedia, Inc. v. Comcast Corp.*, 951 F.3d 429, 467 (7th Cir. 2020) (citing *Anderson*, 477 U.S. at 255). In ruling on summary judgment, the Court gives the non-moving party "the benefit of reasonable inferences from the evidence, but not speculative inferences in [its] favor." *White v. City of Chicago*, 829 F.3d 837, 841 (7th Cir. 2016) (internal citations omitted). "The controlling question is whether a reasonable trier of fact could find in favor of the non-moving party on the evidence submitted in support of and opposition to the motion for summary judgment." *Id.*

BACKGROUND[1]

The Court initially addresses Fresenius's argument that Li failed to comply with Local Rule 56.1 (Dkt. 80). The Seventh Circuit has "consistently upheld district judges' discretion to require strict compliance with Local Rule 56.1." *Kreg Therapeutics, Inc. v. VitalGo, Inc.*, 919 F.3d 405, 414 (7th Cir. 2019) (quotation omitted). A district court can strictly enforce this local rule "by accepting the movant's version of facts as undisputed if the non-movant has failed to respond in the form required." *Zuppardi v. Wal-Mart Stores, Inc.*, 770 F.3d 644, 648 (7th Cir. 2014). The Court agrees that Li failed to fully comply with the Local Rule 56.1 and will address particular local rule violations in its analysis below. With this, the Court turns to the undisputed facts.

I. Plaintiff's Employment

In November 2014, Li began working for Fresenius as a Senior Scientist in the Department of Analytical Development. DSOF ¶ 9. Li is over 40 years of age and of Chinese descent. *Id.* ¶ 11. In 2016, Li was asked to perform a cell-based assay involving vasopressin. *Id.* ¶ 14. Fresenius intended to submit the final report to the U.S. Food and Drug Administration (FDA) for approval and therefore required Li to adhere

[1] The Court takes these background facts from Defendant's statement of facts (DSOF) [66] and Li's response to Defendant's statement of facts [78]. Li did not submit a separate statement of additional facts.

to certain standards and protocols on testing and reporting. *Id.* ¶ 15. The deadline for submission of Li's report on the "Vasopressin Project" to Fresenius Regulatory Affairs was June 24, 2019. *Id.* ¶ 16. Li submitted her Vasopressin Project report on May 29, 2019. *Id.* ¶ 18. Li was on vacation from June 3, 2019 to June 23, 2019. *Id.* ¶ 19.[2]

On June 8, 2019, because of her hard work, Manager Kurt Weber awarded Li a monetary bonus. *Id.* ¶ 20. However Li's report was not able to be submitted to the FDA in the form that Li submitted to her supervisors. *Id.* ¶ 21.[3] Subsequently, Mr. Weber did not recommend Li for promotion to Department Supervisor, Jagdish Lande. *Id.* ¶ 22.[4]

On July 24, 2019, Li reported to Jinsong Liu that she was having back pain and eye strain and that she believed it to be from working long hours in the

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[2] Li says the start date of her vacation was May 30, 2019 [78 at 6] although the Court finds this date difference immaterial to the issues in the case.

[3] Li disputes DSOF ¶ 21 but does not dispute this portion of the statement that her report was not submitted to the FDA in the form she submitted it to her employer.

[4] Li's response to defendant's statements admitting the statement along with a qualification such as "the email speaks for itself" or followed by argument without any explanation of whether Li disputes in part the statement (Dkt. 78 at 6-7) are non-responsive under Local Rule 56.1. *See e.g. Arias v. CITGO Petroleum Corp.*, No. 17-CV-08897, 2019 WL 4735391, at *2 (N.D. Ill. Sept. 27, 2019).

lab. *Id*. ¶ 23. Mr. Liu reported this to Mr. Lande and on July 24, 2019, Mr. Lande and Mr. Weber met with Li to discuss her health concerns. *Id*. ¶ 24. On August 1, 2019, Li sent Human Resources Manager Birgit Patrick a copy of her work restrictions from a doctor's visit on July 31, 2019; these restrictions included no lifting over 5 pounds and to avoid sitting 7-8 hours. *Id*. ¶ 26.

On August 13, 2019, Ms. Patrick contacted Benefits Analyst Kristina Fuller to assist Li in filing for leave under the Family and Medical Leave Act and Short-Term Disability benefits. *Id*. ¶ 32. Li did not provide medical documentation to UNUM and her short-term disability claim was denied in November 2019. *Id*. ¶ 34. Li then provided UNUM with the required documentation and on December 19, 2019, was approved for Short-Term Disability benefits beginning September 26, 2019. *Id*. ¶ 35. On March 11, 2020, UNUM sent Li and Fresenius a letter about transitioning Li to Long Term Disability Benefits. *Id*. ¶ 38. On March 23, 2020, Fresenius informed Li that she had exhausted her Short-Term Disability Leave and that should she be unable to return to work by April 23, 2020, she would be terminated from payroll. *Id*. ¶ 39.

On April 21, 2020, Andrew Davis, Senior Human Resources Manager, sent an email to Li explaining that should she still be unable to perform her job duties, she would either need to transition to Long Term Disability or be terminated from payroll. *Id*. ¶ 41. Further, Fresenius would extend her time to return to work to April 30, 2020 given her follow-up

doctor's appointment to determine if she was able to return to work. *Id*. By April 23, 2020, Li's Long Term Disability Benefits had not yet been approved by UNUM. *Id*. ¶ 42. On April 30, 2020, UNUM notified Li and Fresenius that Li's Long Term Disability benefits had been denied. *Id*. ¶ 42.

II. Plaintiff's Termination

After Li's Long Term Disability benefits were denied, Fresenius granted Li another extension until May 21, 2020 to return to work, either with or without restrictions. DSOF ¶¶ 43–44. By May 26, 2020, Li remained unable to return to work and Fresenius terminated her employment. *Id*. ¶ 45.

Li alleges that Fresenius discriminated against her due to her disability, race/national origin, and age, and she also alleges failure to accommodate her disability and retaliation under both state and federal law. *Id*. ¶ 8.

III. The IDHR and EEOC

On or about November 20, 2019, Li filed a Charge of Discrimination with the Equal Employment Opportunity Commission (EEOC) alleging discrimination based on her disability and retaliation. DSOF ¶ 36.[5] According to Li, she "filed claims with the

[5] The Charge Fresenius references in this asserted fact and attaches as Exhibit R is signed October 9, 2020 and says it was received by the EEOC on that date. This 2020 Charge refers

IDHR [Illinois Department of Human Rights], which she sent to the EEOC to review." [76 at 9]. Li identifies the following charge numbers for her three charges: EEOC charge number 440-2020-01046, IDHR number 2020CA1223, and EEOC number 440-2021-00176. *Id*. Fresenius does not dispute that Li filed these charges, but argues that Li did not exhaust her administrative remedies for her national origin and age claims.

ANALYSIS

In Li's amended complaint, she brings claims for disability discrimination under the ADA (Count I) and under the IHRA (Count II), national origin discrimination under Title VII and IHRA (Counts III and IV), retaliation in violation of the ADA (Count V), retaliation in violation of the IHRA (Count VI), failure to accommodate under the ADA and IHRA (Counts VII and VIII), age discrimination under the ADEA and IHRA (Counts IX and X), and retaliation in violation of Title VII and the IHRA (Count XI and XII). [3]. Fresenius moves for summary judgment on all the claims.

The Court agrees with Fresenius that Li failed to exhaust her administrative remedies for her national origin and age discrimination claims. As for Li's disability discrimination claims, assuming they are properly before this Court, Li does not raise a genuine issue of material fact precluding summary

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to the earlier EEOC charge, number 440-2020-01046, that Li filed in 2019.

judgment in favor of Fresenius.

I. Failure to Exhaust

Fresenius argues that Li's claims of national origin and age discrimination are time-barred because she failed to exhaust her administrative remedies for those claims. [65 at 12, 17]. Li does not dispute that her EEOC charges did not contain claims of national origin or age discrimination. [76]. Still, Li argues, she "filed claims with the IDHR," based on national origin and age, "which she sent to the EEOC to review." *Id.* at 9. She maintains that "[a] right to sue letter was requested, and the [EEOC] combined the charges," and thus "all claims were sent in for the appropriate investigatory period." *Id.*

The summary judgment record shows that the 2019 EEOC charge (-01046) was filed first, then the 2019 IDHR Charge (-1223) and finally the second EEOC charge in 2020 (-00176). (Dkt. 66, Exh. R; Dkt. 76-3). However, there is no right-to-sue letter from the EEOC nor any final report from the IDHR in this record.[6]

The purpose of the EEOC's exhaustion

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[6] Although it is not the Court's job to "scour the record" on summary judgment (*see Castelino v. Rose-Hulman Inst. of Tech.*, 999 F.3d 1031, 1040 (7th Cir. 2021)), the Court also reviewed prior pleadings in the case and has not located any right-to-sue letter from either the IDHR or EEOC, despite Li's reference to the right-to-sue letter in both her original and amended complaints.

requirement is to ensure an employer receives "prompt notice" of the claim (see *Nat'l R.R. Passenger Corp. v. Morgan*, 536 U.S. 101, 121 (2002)), and to provide the EEOC an opportunity to investigate complaints and help the parties settle the dispute. *Moore v. Vital Prod., Inc.*, 641 F.3d 253, 257 (7th Cir. 2011) (citations omitted). Similarly the IHRA and Illinois Human Rights Commission's rules "establish comprehensive administrative procedures governing the disposition of alleged civil rights actions." *Anderson v. Centers for New Horizons, Inc.*, 891 F. Supp. 2d 956, 961 (N.D. Ill. 2012) (cleaned up); *see also Burton v. Chicago Transit Auth.*, No. 17 C 8508, 2019 WL 1932585, at *2 (N.D. Ill. May 1, 2019) ("Plaintiffs alleging discrimination under [these] statutes must first present their claims in a charge to the EEOC or IDHR before taking them to court.").

Li does not dispute that administrative exhaustion is required in this case but maintains that she "did what was needed on her end to exhaust." (Dkt. 76 at 9). The document Li attaches, an email from one EEOC employee to another about "processing a request for a Notice of Right to Sue" (Dkt. 76-4) does not constitute a right-to-sue. And in April 2021, Li's attorney expressly asked the EEOC to "advise *if* a right was issued *as we did not receive it*." *Id.* (emphasis added).

In addition, Li does not cite any authority to support the proposition that sending an IDHR charge to the "EEOC to review" and "request[ing]" a right to sue letter constitutes exhaustion before either the IDHR or EEOC. *See e.g. Vroman v. Round Lake Area*

Sch.-Dist., No. 15 C 2013, 2015 WL 7273108, at *2 (N.D. Ill. Nov. 18, 2015) (rejecting argument that when plaintiff "transferred" her IDHR charges to the EEOC that constituted exhaustion); *Baranowska v. Intertek Testing Servs. NA, Inc.*, No. 19 C 6844, 2020 WL 1701860, at *3 (N.D. Ill. Apr. 8, 2020) (EEOC right-to-sue letter is not a substitute for a report from the IDHR); *Smith v. City of Chicago*, No. 18 C 8075, 2021 WL 463235, at *5 (N.D. Ill. Feb. 9, 2021), aff'd sub nom. 2022 WL 205414 (7th Cir. Jan. 24, 2022) (explaining that "[e]ven if [plaintiff] timely *filed* his charge, he did not properly *exhaust* his administrative remedies."). Accordingly Li's national origin and age claims are dismissed without prejudice. *See McHale v. McDonough*, 41 F.4th 866, 872 (7th Cir. 2022).

As to Li's disability discrimination claims, the record similarly lacks a right-to-sue letter for those claims. *See e.g. Burton,* 2019 WL 1932585 (exhaustion required for ADA claims). However, Fresenius did not argue that her disability claims are timebarred. For completeness, the Court addresses the merits of those claims.

II. Disability Claims

The ADA prohibits discrimination against a "qualified individual on the basis of disability." 42 U.S.C. § 12112(a) "[T]o be "qualified" under the ADA, an individual must be able to "perform the essential functions" of her job "with or without reasonable accommodation." *McAllister v. Innovation Ventures, LLC*, 983 F.3d 963, 971 (7th Cir. 2020) (quoting 42 U.S.C. § 12111(8)). An employer must make

reasonable accommodations that allow a qualified individual to perform the essential functions of her job. *Miller v. Illinois Dep't of Transp.*, 643 F.3d 190, 197 (7th Cir. 2011). Under *Ortiz v. Werner Enterprises, Inc.*, the Court asks "whether the evidence would permit a reasonable factfinder to conclude that the plaintiff's [membership in a protected class] . . . caused the discharge or other adverse employment action" at issue. 834 F.3d 760, 765 (7th Cir. 2016). *See also Lewis v. Ind. Wesleyan Univ.*, 36 F.4th 755, 759 (7th Cir. 2022) (courts assess the evidence as a whole).

Fresenius does not dispute that Li had a disability. Li was diagnosed with spondylolisthesis, which causes back pain (Dkt. 76-1). Li argues that she was not promoted and later terminated because of her disability. Fresenius contends that she was not promoted due to her work product. And Fresenius asserts that Li was terminated after nine months of Fresenius accommodating her disability and only after she exhausted her time for disability leave, until Li could no longer return and perform the essential functions of her job.

The parties dispute whether performing lab work is an essential function of a Senior Scientist (Li's position). Department Supervisor Mr. Lande testified that it is a requirement for senior scientist to be able to perform bench work as part of their job duties. (DSOF ¶ 30; Dkt. 66, Exh. F). Li's only response to this was that her "understanding does not correlate lab work and bench work meaning the exact same thing." (Dkt. 78 ¶ 30). This is argument, not a factual assertion supported by admissible evidence.

Li also contends that Fresenius "allowed other individuals to work from home and even allowed [her] to undertake tasks other than bench work." (Dkt. 76 at 6). First, the fact that Li received an accommodation does not automatically mean that performing bench work was not an essential function of her position. *See Tate v. Dart*, 51 F.4th 789, 800 (7th Cir. 2022). For the other employees, Li relies on her own deposition testimony stating that they also had back issues and did not do bench work or were allowed to work at home. (Dkt. 76-1, Exh. A). Li does not specify whether her former colleagues received accomodations, nor does she explain why this demonstrates that bench work is not an essential function of a Senior Scientist. In addition, in response to Fresenius's explanation that she was not promoted because of the results of her report on the Vasopressin Project, Li contends that she was being considered for a promotion and that she received a bonus. But this does not defeat summary judgment because these events occurred *before* Fresenius decided not to submit her report to the FDA. DSOF ¶¶ 17, 20. This also occurred prior to Fresenius's knowledge of her disability. On this record, Li has not shown she was a "qualified individual" under the ADA.

Further, as to Li's termination, as Fresenius points out (Dkt. 65 at 10), under Seventh Circuit law, "[i]nability to work for a multi-month period removes a person from the class protected by the ADA." *Byrne v. Avon Prod., Inc.*, 328 F.3d 379, 381 (7th Cir. 2003). Fresenius argues that it could not "continue to hold [Li's] job open indefinitely when she remained unable to perform the essential functions of her job for over

nine months." (Dkt. 65 at 16). In *Gross v. Peoples Gas Light & Coke Co.*, for example, the court held that plaintiff's "undisputed inability to work at the time of his termination meant that he did not meet the ADA's definition of a qualified person with a disability." No. 17-CV-3214, 2022 WL 4599369, at *16 (N.D. Ill. Sept. 30, 2022). Li did not respond to this argument, waiving any response. *Cooper v. Retrieval- Masters Creditors Bureau, Inc.,* 42 F.4th 675, 688 (7th Cir. 2022); *see also Castelino*, 999 F.3d at 1040 ("In considering a motion for summary judgment, the court is not obligated to assume the truth of a nonmovant's conclusory allegations on faith or to scour the record to unearth material factual disputes.") (cleaned up).[7]

Li therefore has not raised a genuine issue of material fact to survive summary judgment on her claims of discrimination based on her disability and failure to accommodate. *See Rozumalski v. W.F. Baird & Assocs., Ltd.*, 937 F.3d 919, 925 (7th Cir. 2019) (party opposing a summary judgment motion must inform the court "of the reasons, legal or factual, why summary judgment should not be entered").

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[7] As for Li's argument about the interactive process, generally a claim for a break-down in the interactive process is not an independent basis for liability. *See McAllister*, 983 F.3d at 972. In certain circumstances such as where an employer unreasonably delays in providing an accommodation for an employee's known disability, this can amount to a failure to accommodate. *See McCray v. Wilkie*, 966 F.3d 616, 621 (7th Cir. 2020). But Li's broad assertion that her employer offered her "only some of the accommodations it offered to other individuals" (Dkt. 78 at 12) is undeveloped and does not support her claim.

III. Retaliation Claims

The Court next assesses whether Li raises a triable issue on her retaliation claims. To survive summary judgment on this claim, a plaintiff must present evidence of: (1) a statutorily protected activity; (2) a materially adverse action taken by the employer; and (3) a causal connection between the two. *Abebe v. Health & Hosp. Corp. of Marion Cnty.,* 35 F.4th 601, 607 (7th Cir. 2022). The Court asks: Does the record contain sufficient evidence to permit a reasonable fact-finder to conclude that retaliatory motive caused the materially adverse action? *Lesiv v. Ill. Cent. R.R. Co.*, 39 F.4th 903, 911 (7th Cir. 2022).

For the causation element, Li must show that the defendant would not have taken the adverse action but for plaintiff's protected activity. *Greengrass v. Int'l Monetary Sys. Ltd.*, 776 F.3d 481, 486 (7th Cir. 2015). The parties agree that Li filed her first EEOC charge in November 2019. Li was terminated in May 2020. Fresenius argues that these events were six months apart, and the record lacks evidence of a causal connection between them. *Tyburski v. City of Chicago*, 964 F.3d 590, 597 (7th Cir. 2020) (moving party may succeed by showing an absence of evidence to support non-moving party's claims). Li says that Fresenius was frustrated with her work one month after her first request for accommodation, and as she "began her EEOC process, talks of termination began from her supervisor." (Dkt. 76 at 12). But these arguments lack specifics and are unsupported by evidence, let alone a Local Rule 56.1-compliant fact. Li does not offer any evidence to establish the requisite causal connection.

See Scaife v. U.S. Dep't of Veterans Affs., 49 F.4th 1109, 1118 (7th Cir. 2022); *Rozumalski*, 937 F.3d at 925.

A reasonable factfinder could not return a verdict in Li's favor on her retaliation claim. Fresenius is entitled to judgment as a matter of law on this basis as well.

CONCLUSION

For the reasons explained, this Court grants Defendant's motion for summary judgment [64] and directs the Clerk to enter judgment in Defendant's favor. Plaintiff's claims based on age and national origin (Counts III, IV, IX, X) are dismissed without prejudice. Her remaining claims (Counts I, II, V, VI, VII, VIII, XI, and XII) are dismissed with prejudice. Civil case terminated.

E N T E R:

Dated: May 15, 2023

/s/
MARY M. ROWLAND
United States District Judge

APPENDIX D

EEOC Form 161-B (11/2020)

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

NOTICE OF RIGHT TO SUE (ISSUED ON REQUEST)

To: Lanlan Li
c/o Carla D. Aikens, Esq.
Carla D. Aikens Law Firm, PC
Ford Building, 615 Griswold Street, Suite 709
Detroit, MI 48226

From: Chicago District Office
230 S. Dearborn
Suite 1866
Chicago, IL 60604

□ On behalf of person(s) aggrieved whose identity is CONFIDENTIAL (29 CFR §1601.7(a))

EEOC Charge No.
21B-2020-00473

EEOC Representative
Daniel Lim, State & Local Coordinator

Telephone No.
(312) 872-9669

(See also the additional information enclosed with this form.)

NOTICE TO THE PERSON AGGRIEVED:

Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act (ADA), or the Genetic Information Nondiscrimination Act (GINA): This is your Notice of Right to Sue, issued under Title VII, the ADA or GINA based on the above-numbered charge. It has been issued at your request. Your lawsuit under Title VII, the ADA or GINA must be filed in a federal or state court **WITHIN 90 DAYS** of your receipt of this notice; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)

☒ More than 180 days have passed since the filing of this charge.

☐ Less than 180 days have passed since the filing of this charge, but I have determined that it is unlikely that the EEOC will be able to complete its administrative processing within 180 days from the filing of this charge.

☒ The EEOC is terminating its processing of this charge.

☐ The EEOC will continue to process this charge.

Age Discrimination in Employment Act (ADEA): You may sue under the ADEA at any time from 60 days after the charge was filed until 90 days after you

receive notice that we have completed action on the charge. In this regard, the paragraph marked below applies to your case:

☒ The EEOC is closing your case. Therefore, your lawsuit under the ADEA must be filed in federal or state court **WITHIN 90 DAYS** of your receipt of this Notice. Otherwise, your right to sue based on the above-numbered charge will be lost.

☐ The EEOC is continuing its handling of your ADEA case. However, if 60 days have passed since the filing of the charge, you may file suit in federal or state court under the ADEA at this time.

Equal Pay Act (EPA): You already have the right to sue under the EPA (filing an EEOC charge is not required.) EPA suits must be brought in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that backpay due for any violations that occurred **more than 2 years (3 years)** before you file suit may not be collectible.

If you file suit, based on this charge, please send a copy of your court complaint to this office.

On behalf of the Commission

Julianne Bowman/jwa
Julianne Bowman,
District Director

4/12/2021
(Date Issued)

Enclosures(s)

cc:
FRESENIUS KABI PHARMACEUTICALS
HOLDING, LLC
c/o Chief Executive Officer
8045 Lamon Avenue, Suite #300
Skokie, IL 60077

APPENDIX E

EEOC Form 161 (11/16)

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

NOTICE OF RIGHT TO SUE (ISSUED ON REQUEST)

To: Lanlan Li
1931 Trevino Terrace
Vernon Hills, IL 60061

From: Chicago District Office
230 S. Dearborn
Suite 1866
Chicago, IL 60604

□ On behalf of person(s) aggrieved whose identity is CONFIDENTIAL (29 CFR §1601.7(a))

EEOC Charge No.
440-2021-00176

EEOC Representative
Alison Fisher,
Investigator

Telephone No.
(312) 872-9654

THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:

☐ The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.

☐ Your allegations did not involve a disability as defined by the Americans With Disabilities Act.

☐ The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.

☐ Your charge was not timely filed with EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge

☒ The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.

☐ The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.

☐ Other (briefly state)

- NOTICE OF SUIT RIGHTS -
(See the additional information attached
to this form.)

Title VII, the Americans with Disabilities Act, the Genetic Information Nondiscrimination Act, or the Age Discrimination in Employment Act: This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit must be filed **WITHIN 90 DAYS** of your receipt of this notice; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)

Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that backpay due for any violations that occurred **more than 2 years (3 years)** before you file suit may not be collectible.

On behalf of the Commission

Julianne Bowman/ti
Julianne Bowman,
District Director

10/28/2020
(Date Mailed)

Enclosures(s)

cc: Fresenius Kabi USA
c/o Steapnie Cantrell
Schueler, Dallavo & Casieri

233 SOUTH WACKER DRIVE, Suite 5230
Chicago, IL 60606

APPENDIX F

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

September 4, 2024

Before

AMY J. ST. EVE, *Circuit Judge*
THOMAS L. KIRSCH II, *Circuit Judge*
JOSHUA P. KOLAR, *Circuit Judge*

No. 23-3286

LANLAN LI,
Plaintiff-Appellant,

v.

FRESENIUS KABI USA, LLC,
Defendant-Appellee.

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

No. 1:20-CV-07110

Mary M. Rowland,
Judge.

O R D E R

Plaintiff-appellant filed a petition for rehearing and rehearing *en banc* on August 19, 2024. No judge in regular active service has requested a vote on the petition for rehearing *en banc*, and all members of the original panel have voted to deny panel rehearing. The petition for rehearing and rehearing *en banc* is therefore DENIED.