APPENDIX

No. 24-1767

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETER GUMM,
Plaintiff-Appellant

FILED
March 18, 2025
Kelly L. Stephens, Clerk

v.

AK STEEL CORPORATION,
Defendant-Appellee
_____/

Before: THAPAR, BUSH, and MURPHY, Circuit Judges.

BUSH, Circuit Judge. After an internal investigation uncovered significant evidence of inappropriate workplace conduct, AK Steel Corporation terminated Peter Gumm's employment. Gumm then brought this suit, claiming AK Steel retaliated against him because he opposed racial discrimination. The district court granted summary judgment in favor of AK Steel. We **AFFIRM.**

I.

A.

In 2015, AK Steel hired Gumm as a manager at its factory in Dearborn, Michigan. Two years later, the company promoted Gumm to

another managerial position, where he supervised lower-level managers and hourly employees.

Gumm's troubles began in late 2018 or early 2019. After a town hall meeting, several employees approached LaDale Combs, one of Gumm's supervisors, and complained about Gumm's conduct. They claimed Gumm struggled to communicate well and treated employees unfairly. Soon thereafter, a union representative requested a meeting with Combs to discuss complaints against Gumm lodged by hourly employees. The complaints included unfair work assignments, lack of communication, and favoritism. Employee complaints continued throughout 2019. In annual surveys, workers criticized Gumm's management style and treatment of coworkers. One supervisor later recalled conducting numerous informal discussions with Gumm that were triggered by "constant complaints" about the way Gumm treated subordinates and other supervisors. Gibbons Deposition, R. 34–3, PageID 386.

By summer, the barrage of complaints led Gumm's direct supervisor, Jason Dearth, to hold a formal meeting to discuss Gumm's workplace conduct. When met with renewed concerns about his behavior, Gumm raised accusations of his own. He complained that AK Steel recently hired two new white supervisors instead of a black female employee, whom Gumm viewed as the most qualified candidate. Gumm also complained about the "bad" "optics" created by AK Steel's rehiring of one white employee who was

previously terminated for being intoxicated at work. Gumm Deposition, R. 34–2, PageID 345. Two black employees were terminated for the same conduct but were not rehired at the same time, though they were reemployed later.

After Gumm's complaints about AK Steel's employment practices, the complaints about his own workplace behavior continued. In early November 2019, one of AK Steel's executives initiated another investigation into Gumm's conduct after one of Gumm's subordinates explained in an exit interview that he was leaving because of Gumm's abusive tactics. The subordinate detailed Gumm's hostile management style and said Gumm often called employees "dumb" and "stupid." Nowitzke Exit Interview, R. 34–11, PageID 717. In response, AK Steel issued a written reprimand to Gumm regarding his "disrespectful treatment" of other employees. Nov. 2019 Reprimand, R. 34–12, PageID 719. The reprimand noted Gumm's behavior had been documented in numerous yearly employee surveys, exit interviews, and verbal complaints. And it warned that any future inappropriate behavior would not be tolerated and could "result in further discipline up to and including termination of [Gumm's] employment." *Id.*

Matters did not end there. In late November 2019, an anonymous caller lodged a complaint against Gumm on the company's ethics and compliance hotline. The caller accused Gumm of creating a hostile work environment by belittling employees and referring to them by

several derogatory terms. The complaint also asserted that Gumm "does not like African American employees," that he "would like to keep all supervisors Caucasian," and that, in light of Gumm's comments, the caller felt they "would never be able to become a supervisor due to the color of [their] skin." Hotline Compl., R. 34–14, PageID 724.

In response to the hotline complaint, AK Steel launched a month-long investigation into Gumm's workplace conduct. Although "[t]he investigation did not corroborate the specific allegations brought forth in the complaint," it did unearth additional "evidence of unprofessional and disrespectful" workplace conduct by Gumm. *Id.* at 723. Hourly workers did not report untoward behavior when the company interviewed them during the investigation. But four out of the five shift managers who reported to Gumm raised serious concerns. The shift managers reported numerous instances of Gumm making racist, sexist, demeaning, and abusive comments to subordinates. Though Gumm contested the allegations, he later stated that he had no reason to believe any of the shift managers would lie to AK Steel's internal investigators. Nor did he claim knowledge of any unethical conduct that took place during the investigation. In January 2020, citing the results of the internal investigation, AK Steel terminated Gumm's employment.

B.

Following his termination, Gumm filed this

lawsuit, bringing four employment discrimination claims against AK Steel. First, he claims that AK Steel sought to punish him for reporting racial discrimination by instituting its investigation into his workplace behavior. Gumm claims the investigation created a hostile work environment in violation of both Title VII of the Civil Rights Act and Michigan's Elliott-Larsen Civil Rights Act (ELCRA). Second, he claims AK Steel terminated his employment in violation of Title VII and the ELCRA because of his opposition to racial discrimination.

Following discovery, the district court granted AK Steel's motion for summary judgment. As to the claims surrounding the investigation, the district court held that Gumm failed to demonstrate that the investigation amounted to the severe or pervasive harassment required for a retaliatory hostile work environment claim. Nor, in the court's view, did Gumm identify sufficient evidence for a jury to conclude the investigation was causally connected to his purported opposition to racial discrimination months earlier.

Gumm's claims stemming from his termination fared no better. He did not dispute that AK Steel carried its burden to provide legitimate, nondiscriminatory reasons for his termination— that it terminated Gumm for being abrasive to fellow employees and making derogatory comments about women and employees of color. And, in the court's view, Gumm did not identify sufficient evidence from which a reasonable juror could conclude those

reasons were pretextual.

II.

In his timely appeal, Gumm maintains the district court erred in granting summary judgment in favor of AK Steel on all of his claims. We review the district court's grant of summary judgment de novo, *Hyman v. Lewis*, 27 F.4th 1233, 1237 (6th Cir. 2022), and will affirm if "there is no genuine dispute as to any material fact" and AK Steel is entitled to judgment as a matter of law, Fed. R. Civ. P. 56(a). In undertaking our review, we view the facts in the light most favorable to Gumm and draw all reasonable inferences in his favor. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986).

III.

Title VII makes it unlawful "for an employer to discriminate against any of his employees . . . because he has opposed" racial discrimination in employment. 42 U.S.C. § 2000e– 3(a).[1] As relevant here, an employer can discriminate against an employee because of his opposition to discrimination in two basic ways.

---

[1]We need not separately analyze Gumm's ELCRA claims because, at least as to the elements we discuss below, "the ELCRA analysis is identical to the Title VII analysis." *Wasek v. Arrow Energy Servs., Inc.*, 682 F.3d 463, 472 (6th Cir. 2012). That means AK Steel is entitled to summary judgment on Gumm's state-law claims for the same reasons it is entitled to summary judgment on the Title VII claims.

First, the employer can discriminate by taking a traditional adverse employment action, like termination. Second, the employer can discriminate by subjecting an employee to severe or pervasive harassment. *See Morris v. Oldham Cnty. Fiscal Ct.*, 201 F.3d 784, 792 (6th Cir. 2000).

Gumm pursues claims under both theories. As an initial matter, he maintains that his termination constituted discrimination in violation of § 2000e–3(a). He also claims AK Steel subjected him to the internal investigation (which ultimately led to the termination of his employment) because he opposed racial discrimination. That investigation, Gumm argues, was so unreasonable that it constituted severe and pervasive harassment. We address each argument in turn.

A.

Start with Gumm's termination claims, which follow the familiar *McDonnell Douglas* framework. Gumm must first prove that 1) he opposed racial discrimination, 2) AK Steel was aware of his opposition, 3) AK Steel terminated his employment, and 4) there was a causal connection between his opposition to discrimination and the termination. *Morris*, 201 F.3d at 792.

If Gumm carries his initial burden, then AK Steel must articulate some legitimate, nondiscriminatory reason for its termination decision. *Id.* at 792–93. If it does, then Gumm

must create at least a genuine dispute that AK Steel's proffered reasons were pretextual. *Id.* at 793. We agree with the district court that, even assuming Gumm establishes his prima facie case, he lacks evidence sufficient to create a jury issue on pretext.

Gumm must point to sufficient evidence from which a reasonable juror could conclude that the employer's proffered reasons were not the real reasons for the termination. *See Chen v. Dow Chem. Co.*, 580 F.3d 394, 400 n.4 (6th Cir. 2009). We have held that a plaintiff can carry that burden by showing "1) that the proffered reasons had no basis in fact, 2) that the proffered reasons did not actually motivate the employer's action, or 3) that they were insufficient to motivate the employer's action." *Romans v. Mich. Dep't of Hum. Servs.*, 668 F.3d 826, 839 (6th Cir. 2012) (citation omitted). None is present here.

As an initial matter, not even Gumm suggests that the behavior reported to AK Steel by his coworkers is insufficient to motivate a termination. In fact, the reports of racist and sexist comments arguably compelled AK Steel to take significant action to avoid its own Title VII liability. *See Jackson v. Quanex Corp.*, 191 F.3d 647, 659, 662–66 (6th Cir. 1999).

Nor is there a genuine dispute that AK Steel's proffered reasons lacked a basis in fact. The record is filled with complaints about Gumm's treatment of fellow employees, complaints that span an extended period. Although Gumm takes issue with certain aspects of the investigation into his conduct, he

admitted that he had no reason to believe that the persons reporting his behavior had reason to lie. And as the district court correctly concluded, Gumm certainly cannot show that AK Steel did not reasonably believe that there was some truth underlying the wave of allegations from multiple sources across an extended period of time. *See Tingle v. Arbors at Hilliard*, 692 F.3d 523, 530–31 (6th Cir. 2012); *Michael v. Caterpillar Fin. Servs. Corp.*, 496 F.3d 584, 598–600 (6th Cir. 2007).

Nor has Gumm created a genuine dispute that the proffered reasons did not actually motivate the termination. He points to the temporal proximity between his complaints about AK Steel's employment decisions and his termination. But we have long held that temporal proximity alone cannot establish pretext, unless the plaintiff also points to other, independent evidence. *Briggs v. Univ. of Cincinnati*, 11 F.4th 498, 516 (6th Cir. 2021); *Skrjanc v. Great Lakes Power Serv. Co.*, 272 F.3d 309, 317 (6th Cir. 2001). And Gumm points to no such evidence here. He claims to have been "a high-performing employee with no prior negative evaluations until he began reporting discrimination." Opening Br. at 15. But the very same performance evaluations he relies upon also note his "harsh" and "abrasive" treatment of coworkers. Performance Evaluation, R. 34–8, PageID 568–69. In addition, Gumm points out that AK Steel did not corroborate the specific allegation raised in the November 2019 hotline complaint. But it is undisputed that the

investigation of that complaint uncovered numerous reports from supervisors of other inappropriate behavior by Gumm, which were consistent with numerous complaints that preceded the anonymous complaint.

All told, Gumm fails to identify evidence from which a reasonable juror could conclude that his abrasive treatment of fellow employees and derogatory comments about women and employees of color were not the real reasons for his termination. So, the district court correctly concluded AK Steel was entitled to summary judgment on Gumm's retaliatory termination claims.

B.

His retaliatory hostile work environment claims fare no better. Those claims also track the *McDonnell Douglas* framework and require Gumm to first establish that 1) he opposed racial discrimination, 2) AK Steel was aware of his opposition, 3) AK Steel's investigation constituted severe or pervasive harassment that would dissuade a reasonable worker from opposing racial discrimination, and 4) there was a causal connection between his opposition and the investigation. *See Morris*, 201 F.3d at 792. Like the termination claims, the burden then shifts to AK Steel to articulate some legitimate, nondiscriminatory reason for its investigation, before then shifting back to Gumm to demonstrate that AK Steel's proffered reasons were pretextual. *Id.* at 792–93.

The district court correctly concluded that

Gumm's hostile work environment claims fail at the prima facie stage. Recall that the only action Gumm claims created a hostile work environment is AK Steel's investigation into his alleged misconduct. But he identifies nothing unusual about the investigation that would rise to the level of severe or pervasive harassment. *Cf. Khamati v. Sec'y of Dep't of the Treasury*, 557 F. App'x 434, 443 (6th Cir. 2014). Indeed, as we've explained, Title VII may have *required* AK Steel to investigate Gumm's workplace conduct after it received numerous complaints about his workplace conduct. *See Jackson*, 191 F.3d at 659, 662–66. That is because employers have an affirmative duty to prevent or remedy discrimination on the basis of race or sex in the workplace. *Faragher v. City of Boca Raton*, 524 U.S. 775, 806– 08 (1998). In such circumstances, no reasonable juror could conclude that AK Steel's investigation into workplace discrimination created severe or pervasive harassment that would reasonably deter an employee from opposing racial discrimination.

Gumm's arguments to the contrary are unconvincing. As an initial matter, he appears to suggest that *any* investigation into his reported misconduct would constitute severe or pervasive harassment because it was based on "unsubstantiated" allegations. Opening Br. at 21. But even viewing the facts in the light most favorable to Gumm, AK Steel's initial investigation into his misconduct was conducted after multiple complaints from various sources. Nor could a reasonable juror find AK Steel's

reaction to the November 2019 hotline complaint to objectively constitute severe or pervasive harassment. While the hotline complaint was anonymous, it was consistent with prior complaints about Gumm's misconduct that AK Steel previously felt compelled to address. Finally, Gumm claims severe or pervasive harassment could be inferred from the fact that prior complaints about his behavior were never communicated to him. But his supervisors testified to conducting numerous informal discussions with him, all of which were triggered by "constant complaints" about the way he treated subordinates and other supervisors. Gibbons Deposition, R. 34–3, PageID 386. And Gumm points to no specific evidence in the record rebutting those representations. *See* Fed. R. Civ. P. 56(c)(1)(A). Given Gumm's failure to identify sufficient evidence to establish an essential element of his claims, the district court correctly granted summary judgment to AK Steel on the hostile work environment claims.

IV.

For these reasons, we affirm the district court's judgment.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

PETER GUMM,
Plaintiff,

Case No. 21-cv-12441
Hon. Shalina D. Kumar
Mag. Elizabeth A. Stafford

v.

AK STEEL
CORPORATION,
Defendant.
_____/

OPINION AND ORDER DENYING PLAINTIFF'S MOTION FOR RECONSIDERATION (ECT NO. 48)

I. INTRODUCTION

Plaintiff Peter Gumm moves for reconsideration of this Court's order granting defendant AK Steel Corp.'s motion for summary judgment (ECF No. 45). ECF No. 48. For the reasons set forth below, Gumm's motion is **DENIED**.

II. BACKGROUND

Gumm brought this action against AK Steel, his former employer, alleging retaliation and hostile work environment under Title VII of the Civil Rights Act of 1964 (Title VII), 42 U.S.C. § 2000e *et seq*., and Michigan's Elliot-Larsen Civil Rights Act (ELCRA), M.C.L. § 37.2101 *et*

seq.

In granting AK Steel's motion for summary judgment, the Court dismissed Gumm's ELCRA claims as time barred. ECF No. 45, PageID.1339-42. It also dismissed Gumm's Title VII retaliation claim because he failed to provide evidence that could lead a reasonable jury to believe AK Steel's proffered non-retaliatory reason for terminating him— that he used abusive and offensive language with his employees—was mere pretext. *Id*. at PageID.1348-58. Finally, the order dismissed Gumm's hostile work environment claim because reasonable investigations of credible allegations of employee wrongdoing does not create an actionable hostile work environment and Gumm offered no evidence that AK Steel's investigation of complaints against him was conducted unethically or in bad faith. *Id*. at PageID.1358-64.

In the motion now before the Court, Gumm asks the Court to reconsider its ruling, arguing that it made a mistake because genuine issues of material fact exist as to whether AK Steel's proffered non- retaliatory reason for terminating Gumm was pretext and whether it created a hostile work environment by investigating him. ECF No. 48.

III. DISCUSSION

A. Standard of Review

Gumm cites Eastern District of Michigan Local Rule 7.1(h) as the procedural rule under which he seeks relief, however, motions for reconsideration of a Court's final ruling, such as the order granting AK Steel's motion for summary judgment here, are governed by Federal Rule of Civil Procedure 59(e) or 60(b). Motions to alter or amend judgment pursuant to Rule 59(e) may be granted only if there is a clear error of law, newly discovered evidence, an intervening change in controlling law, or to prevent manifest injustice. *GenCorp, Inc. v. Am. Int'l Underwriters*, 178 F.3d 804, 834 (6th Cir. 1999). "Rule 59(e) permits a court to alter or amend a judgment, but it may not be used to relitigate old matters, or to raise arguments or present evidence that could have been raised prior to the entry of judgment." *Exxon Shipping Co. v. Baker*, 554 U.S. 471, 485 n.5 (2008) (quoting 11C Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 2810.1 (2d ed. 1995)); *see also Mich. Flyer LLC v. Wayne Cnty. Airport Auth.*, 860 F.3d 425, 431 (6th Cir. 2017) ("A motion under Rule 59(e) is not an opportunity to re-argue a case." (quoting *Sault Ste. Marie Tribe of Chippewa Indians v. Engler*, 146 F.3d 367, 374 (6th Cir. 1998)). "A motion to alter or reconsider a judgment is an extraordinary remedy and should be granted sparingly because of the interests in finality and

conservation of scarce judicial resources." *In re J & M Salupo Dev. Co.*, 388 B.R. 795, 805 (B.A.P. 6th Cir. 2008) (quoting *Am. Textile Mfrs. Inst., Inc. v. Limited Inc.*, 179 F.R.D. 541, 547 (S.D. Ohio 1998)).

Rule 60(b) allows a court to relieve a party from a final judgment, order, or proceeding for the following reasons:

> (1) mistake, inadvertence, surprise,
> (2) or excusable neglect;
> (3) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
> (4) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
> (5) the judgment is void;
> (6) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
> (7) any other reason that justifies relief.

Fed. R. Civ. P. 60(b). The residual clause in Rule 60(b)(6) affords relief "only in *exceptional* circumstances" not otherwise addressed by the rule's first five clauses. *Tanner v. Yukins*, 776

F.3d 434, 443 (6th Cir. 2015) (emphasis added) (quoting *Olle v. Henry & Wright Corp.*, 910 F.2d 357, 365 (6th Cir. 1990)); *see also McDowell v. Dynamics Corp. of Am.*, 931 F.2d 380, 383 (6th Cir. 1991) (citing *Hopper v. Euclid Manor Nursing Home, Inc.*, 867 F.2d 291, 294 (6th Cir. 1989)). Rule 60(b)(6) is properly invoked only in "unusual and extreme situations where principles of equity mandate relief." *Tanner*, 776 F.3d at 443 (quoting *Olle*, 910 F.2d at 365) (emphasis removed).

Like Rule 59(e), "relief under Rule 60(b) is 'circumscribed by public policy favoring finality of judgments and termination of litigation.'" *Blue Diamond Coal Co. v. Trs. of UMWA Combined Ben. Fund*, 249 F.3d 519, 524 (6th Cir. 2001) (quoting *Waifersong Ltd., Inc. v. Classic Music Vending*, 976 F.2d 290, 292 (6th Cir. 1992)). Also, like Rule 59(e), Rule 60(b) does not provide a vehicle to rehash arguments previously made and rejected. "A Rule 60(b) motion must be denied if . . . it is merely an attempt to relitigate the case." *Long v. Morgan*, 56 Fed. App'x 257, 258 (6th Cir. 2003) (citing *Mastini v. Am. Tel. & Tel. Co.*, 369 F.2d 378, 379 (2d Cir. 1966)). The party seeking relief under Rule 59(e) or Rule 60(b) bears the burden of establishing the grounds for such relief by clear and convincing evidence. *Info-Hold, Inc. v. Sound Merch., Inc.*, 538 F.3d 448, 454 (6th Cir. 2008); *In re J & M Salup Dev. Co.*, 388 B.R. at 805.

B. Application

Gumm's motion for reconsideration not only advances the very arguments rejected by the Court but, in fact, regurgitates them verbatim. For example, Gumm argues in the motion for reconsideration that, contrary to the Court's finding, he supplied compelling evidence that AK Steel's actions constituted pretext for retaliation because:

> (1) Plaintiff was a great employee for years until he reported instances of discrimination; (2) Defendant manufactured a suspension after-the-fact that it did not even bother to try to document properly and has no idea when he was actually suspended (3) there was never an investigation done when Plaintiff voiced his concerns with how the company was not promoting qualified African American employees, while a "thorough" investigation was done into claims of racism against him – including taking hourly workers off the "shop floor" to do interviews with multiple members of management; (4) though Defendant found that none of the claims of Plaintiff being racist were substantiated, Defendant decided to fire him because of five interviews conducted with supervisors under Plaintiff a week before his termination, without ever telling him that these alleged comments were made until the

> day he was terminated, and never including him in the investigation which the Court found formed the basis for his termination, making it clear that whatever investigation was done that led to his termination was a sham; and (5) there was a lack of contemporaneous criticism of Plaintiff's performance; as evidenced when Plaintiff's 2018 Annual Statement came out March 22, 2019, employee surveys came out January 2019, and Plaintiff was still receiving high regards and remarks from Defendant on his annual assessment; he had no issues at all until he complained.

ECF No. 48, PageID.1395-96. The identical language appears in Gumm's response brief in opposition to AK Steel's motion for summary judgment. Compare id. to ECF No. 38, PageID.797-98. This replicated argument does not warrant reconsideration of the Court's order.

Gumm's arguments that the Court erred in not finding a genuine issue of material fact relating to his hostile work environment claim likewise repeat those he advanced in his response brief. Gumm's motion for reconsideration lists irregularities with AK Steel's investigation of the complaints against him—such as an unsubstantiated three-day suspension over a safety issue which Gumm claims he never received and a delay between the alleged employee complaints about him and AK Steel's

investigation—to suggest that the investigation was groundless and undertaken to create a hostile work environment. ECF No. 48, PageID.1399. But the Court rejected these same arguments when Gumm made them in response to AK Steel's motion for summary judgment.

The Court dispatched any issue over the contested three-day suspension by noting that Gumm acknowledged in his deposition testimony that he received a suspension for a safety violation. See ECF No. 45, PageID.1333, n.2. Moreover, that suspension was not relevant to Gumm's claims because it was not a reason for termination proffered by AK Steel, nor did it prompt the further investigation that resulted in Gumm's termination for using abusive and profane language with employees. *See id.*

The Court also rejected Gumm's argument repeated here that employee complaints were merely a pretext for AK Steel's retaliatory investigation as evidenced by its delay in investigating the complaints against him until he engaged in protected activity. The Court found instead that the record contained ample evidence of AK Steel management contemporaneously criticizing Gumm for his conduct based on employee complaints. *Id*. at PageID.1354-55. As discussed, Rule 59(e) and Rule 60(b) do not provide a vehicle to rehash arguments previously made and rejected and thus Gumm's reiterated arguments do not merit reconsideration.

IV. CONCLUSION

For these reasons, Gumm's motion for reconsideration (ECF No. 48) is **DENIED**.

s/Shalina D. Kumar

SHALINA D. KUMAR
United States District Judge

Dated: September 11, 2024

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

PETER GUMM,
Plaintiff,

Case No. 21-cv-12441
Hon. Shalina D. Kumar
Mag. Elizabeth A. Stafford

v.

AK STEEL
CORPORATION,
Defendant.
_____/

OPINION AND ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT (ECF NO. 34)

I. INTRODUCTION

Plaintiff Peter Gumm sues defendant AK Steel Corp.,[1] his former employer, alleging retaliation and retaliatory hostile work environment under Title VII of the Civil Rights Act of 1964 (Title VII), 42 U.S.C. § 2000e *et seq*., and Michigan's Elliot-Larsen Civil Rights Act (ELCRA), M.C.L. § 37.2101 *et seq*. ECF No. 1. AK Steel filed a motion for summary judgment, and the motion is fully briefed. ECF Nos. 34, 38, 40. The Court held a hearing on the motion on September 21, 2023. The matter is now ready for determination. For the reasons set forth below, the Court **GRANTS** AK

[1] AK Steel Corp. was acquired by Cleveland-Cliffs Inc. and renamed Cleveland-Cliffs Steel Corp. after Gumm's termination.

Steel's motion.

II. FACTS

AK Steel is a steel manufacturer that produces carbon, stainless, and electrical steel products in multiple facilities throughout Indiana, Michigan, Ohio, and Pennsylvania. ECF No. 39-6. In April 2015, AK Steel hired Gumm as a shift manager at its Dearborn Works facility, which specializes in the melting, casting, and finishing of carbon steels. ECF Nos. 39-1, 39-6. In connection with his hiring, Gumm submitted a signed application for salaried employment which included an agreement "that any action, suit, or charge against [AK Steel] arising out of my employment or termination of employment, including . . . claims arising under State or Federal Civil Rights statutes, must be brought within 180 days of the event giving rise to the claims or be forever barred." ECF No. 34-4.

Gumm worked as a shift manager from 2015 to 2017, and, along with three other shift managers, reported to the section manager. ECF No. 34-2, PageID.335-37. In 2017, AK Steel promoted Gumm to section manager of the Hot Strip Mill Logistics Department. *Id*. Four shift managers and a day manager, as well as hourly employees, reported to Gumm as section manager. *Id*. Gumm received multiple pay raises and bonuses from 2015 through 2018. ECF Nos. 39-2, 39-3, 39-4.

AK Steel assessed Gumm's performance as section manager in a 2018 Annual Assessment, which was issued to Gumm in March 2019. ECF No. 34-8. The assessment rated Gumm's proficiency as "4-Above Expectations" for "Achieving Results" and

"3-Successful" for "Working with Others." ECF No. 34-8, PageID.567-68. This assessment noted that Gumm "needs to continue to work on how he interacts with other salary and hourly employees. He can be harsh and more empathetic to others." *Id.* Elsewhere, the assessment noted that Gumm "can be abrasive to others at times." *Id.* at PageID.569.

Beginning in 2018, the newly promoted department manager of the Hot Mill Strip, LaDale Combs, held "town hall" meetings to update the hourly employees on the department's status and allow them the opportunity to share their ideas and concerns with management. ECF No. 34-6, PageID.468-70. At the conclusion of one such meeting, several employees approached Combs with complaints about Gumm's interactions with them. *Id.* In early 2019, a union representative approached Combs to request a meeting with some of the Hot Mill Strip employees who were complaining specifically about Gumm. *Id.* at PageID.461. Also in early 2019, Combs received the confidential results of annual employee surveys which contained complaints about Gumm's management style, communications, and unfair treatment of his employees. *Id.* at PageID.466-67.

Like Combs, other managers received complaints about Gumm. Annette Gibbons, AK Steel's manager of human resources and labor relations, testified that her office fielded constant complaints about Gumm and how he treated employees. ECF No. 34-3, PageID.385-87. She further recounted her own interactions showcasing Gumm's malice toward employees: "I remember clearly he was . . . talking about how he made a

supervisor cry I remember turning around and saying, 'What?' And he happily repeated that he made a supervisor cry. And I said, "Pete, that is not something you should be proud of." *Id*. at PageID.385. Gibbons also testified that Gumm was so disrespectful to a union representative during a meeting she attended with them that she asked the union representative to step out while she reprimanded Gumm for his conduct. *Id*. at 384.

In the summer of 2019, Combs, Gibbons, and Gumm's direct supervisor, Jason Dearth, met with Gumm to discuss the complaints they had been receiving about Gumm's communications with his co-workers and employees. *Id*. at 383-84; ECF No. 34-6, PageID.474. According to Gibbons, the purpose of the meeting was to alert Gumm to the complaints about him and to "the general perception that he treated employees poorly." ECF No. 34-3, PageID.384. "We wanted him to understand that it was important that he corrected this behavior." *Id*.

Also during that summer, Gumm raised concerns over the hiring of white shift managers instead of Black employees who were more qualified. ECF No. 34-2, PageID.340-41. Gumm complained to Dearth that two new white supervisors had been hired without his input while he was on vacation. *Id*. at PageID.341. Gumm also expressed concern to Combs because he believed Jacquetta Mosley, a Black female employee, was the most qualified candidate in the facility for a new position and he wanted her to have the opportunity to interview for it. *Id*. at PageID.342. According to Gumm, Combs refused to consider Mosely for the position, claiming that the male workers did not like Mosley because

she complained about one of them earlier. *Id.*

Gumm testified that he initially raised his concerns and complaints over minority hiring to Dearth and Combs, separately, in their respective offices with no one else present. *Id.* He never put his concerns or complaints in writing. *Id.*

Gumm raised other complaints related to perceived discrimination that summer. Earlier that year, AK Steel terminated three of Gumm's employees for being intoxicated while operating heavy machinery. *Id.* at PageID.344. Over the summer, it rehired one of those three employees—the only white individual terminated on those grounds. *Id.* Gumm testified that he met with Joe Skubic, the human resources manager, Combs, Dearth, and possibly Gibbons to voice his objection to the rehiring of the white employee. *Id.* at PageID.344-45. He raised his concern over the optics of rehiring the white employee and not the two Black employees who were terminated on the same grounds. *Id.* at PageID.345. He testified that his employees believed him to have decided to rehire the white hourly employee and not the Black employees and that "the optics were terrible." *Id.* Gumm further testified that he would not have brought any of the three terminated employees back because they committed a serious violation of policy by operating heavy equipment while intoxicated. *Id.* Gumm also acknowledged at his deposition that the terminated Black employees were, in fact, rehired later. *Id.* at PageID.344.

In the months after Gumm voiced his concerns and complaints over hiring and rehiring practices, AK Steel disciplined Gumm twice. First, as a result

of a September 25, 2019 safety violation, Gumm received a three- day unpaid suspension.[2] ECF No. 34-13.

Second, and more relevant to this matter, Gumm received a reprimand for failing to treat employees respectfully. ECF No. 34-12. The reprimand references an investigation that uncovered negative feedback regarding his treatment of employees from yearly employee surveys and exit interviews, as well as verbal complaints. *Id*.

AK Steel's vice president of carbon steel operations, Brian Bishop, testified that he became aware of increasing complaints about Gumm's lack of professionalism and problematic interactions with his peers and subordinates sometime during late 2018 or early 2019. ECF No. 34-10, PageID.683, 685. He testified that he initiated the investigation, which culminated in the November 2019 reprimand, after reviewing exit interviews from employees who left AK Steel. *Id*. Specifically, after reviewing one exit interview where a shift manager working under Gumm cited Gumm's abusive tactics as a reason for ending his employment with AK Steel, Bishop concluded that the complaints about Gumm required action. *Id*. at PageID.685, 687.

Gumm testified that during the meeting about his reprimand and suspension, he asked for evidence to support the accusations in the reprimand, but none was provided. ECF No. 34-2, PageID.340. He also

---

[2] Gumm argues in opposition to AK Steel's motion that it manufactured this suspension as part of its investigation of him, but he testified at deposition that he was indeed suspended for a safety violation. ECF No. 34-2, PageID.339. Gumm also acknowledged the safety violation was captured on video. *Id*.

testified that he reiterated his complaints about discriminatory hiring practices. *Id*. at PageID.342.

Later in November 2019, AK Steel's ethics hotline received an anonymous complaint accusing Gumm of creating a hostile work environment by being disrespectful to and name-calling employees. ECF No. 34-14, PageID.724. The anonymous caller recounted hearing Gumm say that he wanted all white supervisors and did not like Black employees. *Id*. The caller reported feeling that he or she could never be promoted because of the color of his/her skin. *Id*. As part of AK Steel's investigation of this anonymous complaint, Skubic asked Gibbons to interview hourly employees working under Gumm. ECF No. 34-3, PageID.389. The hourly employees interviewed did not report being subject to discrimination. *Id*.

Skubic, in turn, interviewed all five of the white salaried shift managers who reported directly to Gumm. ECF No. 34-9, PageID.589-90. The midnight shift manager had little contact with Gumm and reported no complaints about Gumm. *Id.* at PageID.614; ECF No. 34-16.

The remaining four managers reported disrespectful and offensive conduct by Gumm. Carl Thomas reported hearing Gumm use profane and abusive language toward employees. ECF Nos. 34-9, PageID.614, 34-16, 34-17. Cheryl Hoffman reported hearing Gumm make racist comments, specifically that Gumm stated that an employee was "stupid because he is Black" and that Gumm "needs a Black supervisor because he has been called racist." ECF No. 34-9, PageID.615; ECF Nos. 34-16, 34-17. Hoffman also reported hearing Gumm make sexist

statements, calling women "ignorant" and "crybaby bitches," and referred to a particular female employee as the c-word. ECF No. 34-9, PageID.615-16; ECF Nos. 34-16, 34-17. Similarly, Curtis Penix reported that Gumm regularly made derogatory remarks about Black and female employees. ECF No. 34-9, PageID.618; ECF Nos. 34-16, 34-17. Penix corroborated that Gumm called female employees the c-word. ECF No. 34-9, PageID.618; ECF Nos. 34- 16, 34-17. Larry Kaitner reported hearing Gumm belittle coworkers as "stupid" and make fun of female coworkers for crying. ECF No. 34-9, PageID.616-17; ECF Nos. 34-16, 34-17. Kaitner also reported that Gumm destroyed the morale of the logistics department and that he tried to avoid him. ECF No. 34-9, PageID.617; ECF Nos. 34-16, 34-17.

After completing the shift manager interviews, AK Steel terminated Gumm on January 10, 2020. ECF No. 34-19. More than 180 days later, on August 5, 2020, Gumm filed a charge with the Equal Employment Opportunity Commission (EEOC) alleging retaliation by AK Steel. ECF No. 34-18. This action followed in October 2021. ECF No. 1.

III. ANALYSIS

A. Standard of Review

If a party moves for summary judgment, it will be granted "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). "A party asserting that a fact cannot be or is genuinely disputed must support the assertion by: (A) citing to particular parts of materials in the record . . . ; or (B) showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact." Fed. R. Civ. P. 56(c)(1).

The standard for determining whether summary judgment is appropriate is "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." *State Farm Fire & Cas. Co. v. McGowan*, 421 F.3d 433, 436 (6th Cir. 2005) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 251-52 (1986)). Furthermore, the evidence and all reasonable inferences must be construed in the light most favorable to the non-moving party. *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986).

Where the movant establishes a lack of a genuine issue of material fact, the burden of demonstrating the existence of such an issue shifts to the non-moving party to come forward with "specific facts showing that there is a genuine issue for trial." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986). That is, the party opposing a motion for summary judgment must make an affirmative showing with proper evidence and must "designate specific facts in affidavits, depositions, or other factual material showing 'evidence on which the jury could reasonably find for the plaintiff.'" *Brown v. Scott*, 329 F. Supp. 2d

905, 910 (E.D. Mich. 2004) (quoting *Anderson*, 477 U.S. at 252). To fulfill this burden, the non-moving party need only demonstrate the minimal standard that a jury could ostensibly find in his favor. *Anderson*, 477 U.S. at 248; *McLean v. 988011 Ontario, Ltd.*, 224 F.3d 797, 800 (6th Cir. 2000). Mere allegations or denials in the non-movant's pleadings will not satisfy this burden, nor will a mere scintilla of evidence supporting the non-moving party. *Anderson*, 477 U.S. at 248, 251.

The court's role is limited to determining whether there is a genuine dispute about a material fact, that is, if the evidence in the case "is such that a reasonable jury could return a verdict for the nonmoving party." *Id.* at 248. Such a determination requires that the court "view the evidence presented through the prism of the substantive evidentiary burden" applicable to the case. *Id.* at 254. Hence, if plaintiffs must ultimately prove their case at trial by a preponderance of the evidence, then on a motion for summary judgment, the court must determine whether a jury could reasonably find that the plaintiffs' factual contentions are true by a preponderance of the evidence. *See id.* at 252-53. Finally, if the nonmoving party fails to make a sufficient showing on an essential element of its case with respect to which it has the burden of proof, the movant is entitled to summary judgment. *Celotex*, 477 U.S. at 323.

The court must construe Rule 56 with due regard not only for the rights of those "asserting claims and defenses that are adequately based in fact to have those claims and defenses tried to a jury," but also for the rights of those "opposing such claims and

defenses to demonstrate in the manner provided by the Rule, prior to trial, that the claims and defenses have no factual basis." *Id.* at 327.

B. ELCRA Claims

AK Steel argues that Gumm's ELCRA claims are contractually time- barred by Gumm's application for salaried employment.[33] In submitting that application, AK Steel maintains that Gumm agreed to commence any legal action against it within 180 days of the date giving rise to the claims. ECF No. 34, PageID.312. AK Steel terminated Gumm's employment on January 10, 2020, but Gumm did not file his EEOC charge until August 5, 2020, more than 180 days from his termination. ECF No. 34-18.

AK Steel cites *Clark v. DaimlerChrysler Corp.* to support its argument that a six-month limitation period contained in an employment application is enforceable against claims of discrimination and other employment claims. 706 N.W.2d 471, 474 (Mich. Ct. App. 2005). Gumm does not contest the general enforceability of such shortened period of limitation. Rather, he argues that the provision should not be enforced against him because he had no knowledge that he was forgoing his right to file a lawsuit within thetime permitted by Michigan law and that this lack of knowledge creates a genuine issue of material fact as to the validity of his purported agreement to the

---

[3] AK Steel acknowledges that the contractually-shortened limitation period is not enforceable against Gumm's Title VII claims. *See Logan v. MGM Grand Detroit Casino*, 939 F.3d 824 (2019).

shortened window in which to bring an action.

Gumm's argument is devoid of merit. "[O]ne who signs a contract will not be heard to say, when enforcement is sought, that he did not read it, or that he supposed it was different in its terms." *Wilkie v Auto-Owners Ins. Co.*, 664 N.W.2d 776, 786 (Mich. 2003) (quotation marks and citation omitted); *see also French v. MidMichigan Med. Ctr.-Gladwin*, 2023 WL 2618981, at *4 (Mich. Ct. App. Mar. 23, 2023) (rejecting same argument advanced here).

Gumm, relying on *McMillon v. Kalamazoo*, argues that whether a plaintiff should be bound by a contractually-shortened limitations period with his employer presents a genuine issue of material fact precluding summary judgment. 983 N.W.2d 79, 80 (Mich. 2023). In *McMillon*, the Michigan Supreme Court ruled that summary disposition was inappropriate because a genuine issue of material fact existed as to whether the parties mutually agreed to a shortened limitations period, but it did so under facts readily distinguishable from those here. *See id.*

The shortened limitations period at issue in *McMillon* appeared in an employment application the plaintiff executed in March 2004 for a position as a public safety officer for the defendant. *Id.* The plaintiff was not hired for that position, but more than a year later the defendant interviewed and hired plaintiff for that position. *Id.* Critically, the plaintiff did not fill out a new employment application. *Id.* None of the paperwork the plaintiff filled out for the later position shortened the period of limitations for bringing a lawsuit. *Id.* The *McMillon* court found that the defendant rejected plaintiff's 2004 application containing the shortened limitations period. *Id.*

"Whether plaintiff had notice that defendant intended to reuse her prior application materials or that plaintiff intended or agreed to be bound by the initial contractual application process remain genuine issues of material fact." *Id*. at 81.

Here, Gumm was hired in connection with the employment application he signed in 2015. ECF No. 34-4. The application contains an agreement to the shortened 180-day limit for bringing a claim against AK Steel and a waiver of any longer limitations period. *Id*. There is no question here that AK Steel would rely upon and enforce the agreements contained within Gumm's application because he was hired based on that application. Accordingly, the shortened limitations period applies, and Gumm's ELCRA claims are barred.[4]

C. Title VII Claims

1. Retaliation

Title VII and ELCRA prohibit an employer from retaliating against employees for opposing practices unlawful under those statutes. 42 U.S.C. § 2000e-3(a); M.C.L. 37.2701(a). Courts analyze retaliation claims under the same framework for both the federal and state statutes. *Rogers v. Henry Ford Health Sys.*, 897 F.3d 763, 775 (6th Cir. 2018). Plaintiffs may establish Title VII or ELCRA violations through either direct or circumstantial

---

[4] Even if Gumm's ELCRA claims were not barred by the contractually- shortened limitation period, they would be subject to the same analysis as his Title VII claims. *See infra* Section III.C.

evidence. *Id.* at 771 (citing *Upshaw v. Ford Motor Co.*, 576 F.3d 576, 584 (6th Cir. 2009)). Courts apply the familiar *McDonnell Douglas* burden-shifting framework to retaliation environment claims such as the one here, which are based on circumstantial evidence. *Id.*; *see generally McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802-05 (1973). Under this burden-shifting framework, Gumm first must establish a prima facie case of retaliation. *See Rogers,* 897 F.3d at 772 (citing *Upshaw*, 576 F.3d at 584). If he does so, AK Steel must articulate "a legitimate, nondiscriminatory [or nonretaliatory] reason" for terminating his employment. *Id.* The onus then falls to Gumm to produce evidence sufficient for a jury to find that the proffered reason was pretextual. *Id.*

a. *Prima Facie* Case

To establish a *prima facie* case of retaliation, Gumm must show that (1) he engaged in protected activity; (2) his exercise of the protected activity was known by the defendant; "(3) thereafter, the defendant took an action that was materially adverse to the plaintiff; and (4) a causal connection existed between the protected activity and the materially adverse action." *Id.* at 775 (quoting *Laster v. City of Kalamazoo*, 746 F.3d 714, 730 (6th Cir. 2014)) (internal quotation marks omitted). Gumm's burden to establish a prima facie case is "minimal;" he must only supply "some credible evidence that enables the court to deduce that there is a causal connection between the protected activity and the retaliatory action." *Upshaw*, 576 F.3d at 588 (citing *EEOC v. Avery Dennison Corp.*, 104 F.3d 858, 861 (6th Cir. 1997)).

Gumm asserts that his attempts to protect employees against AK Steel's discriminatory practices were protected activity and that AK Steel knew of his protected activity because he directly confronted his superiors about it. *See* ECF Nos. 1, 38. Gumm contends that AK Steel took a materially adverse action by terminating him shortly after he spoke up about the discriminatory practices, sufficiently satisfying the causal element of a prima facie retaliation claim. ECF No. 38, PageID.795-96.

AK Steel disputes that Gumm's complaints about the failure to hire Black candidates as supervisors or reinstate disciplined Black employees constitute protected activity, and thus Gumm cannot establish the first element of a prima facie case of retaliation. The Court disagrees.

Title VII prohibits retaliation against employees who opposed practices that are discriminatory under Title VII. *See* 42 U.S.C. § 2000e-3(a). The Supreme Court has held that the term "oppose" should be interpreted based on its ordinary meaning: "to resist or antagonize; to contend against; to confront; resist; withstand." *Crawford v. Metro. Gov't of Nashville & Davidson Cnty.*, 555 U.S. 271, 276 (2009) (cleaned up). "Examples of opposition activity protected under Title VII include 'complaining to anyone (management, unions, other employees, or newspapers) about allegedly unlawful practices; [and] refusing to obey an order because the worker thinks it is unlawful under Title VII.'" *Jackson v. Genesee Cnty. Rd. Commn.*, 999 F.3d 333, 344–45 (6th Cir. 2021) (quoting *Niswander v. Cincinnati Ins. Co.*, 529 F.3d 714, 721 (6th Cir. 2008)); *see also Crawford*, 555 U.S. at 276 ("When an employee

communicates to her employer a belief that the employer has engaged in . . . a form of employment discrimination, that communication virtually always constitutes the employee's opposition to the activity." (internal quotation marks and emphasis omitted)). Although a plaintiff's allegations of protected activity do not need to "be lodged with absolute formality, clarity, or precision," he must allege more than a "vague charge of discrimination." *Yazdian v. ConMed Endoscopic Techs., Inc.*, 793 F.3d 634, 645 (6th Cir. 2015) (quoting *Stevens v. St. Elizabeth Med. Ctr., Inc.*, 533 F. App'x 624, 631 (6th Cir. 2013) and *Booker v. Brown & Williamson Tobacco Co., Inc.*, 879 F.2d 1304, 1313 (6th Cir. 1989)). "For a plaintiff to demonstrate a qualifying 'protected activity,' he must show that he took an 'overt stand against suspected illegal discriminatory action.'" *Khalaf v. Ford Motor Co.*, 973 F.3d 469, 489 (6th Cir. 2020) (quoting *Blizzard v. Marion Tech. Coll.*, 698 F.3d 275, 288 (6th Cir. 2012)).

As AK Steel notes in its brief, in summer 2019, Gumm complained to Dearth, his direct supervisor, that two white supervisors had been hired instead of any of the four Black employees who, in Gumm's opinion, were more qualified. Gumm specifically challenged the timing of the hires—that is, while he was on vacation—because "I was probably the most outspoken person there and I would have voiced my concern." ECF No. 34, PageID.320 (citing ECF No. 34-2, PageID.343). Gumm also complained to Combs, his previous supervisor who was later elevated to General Manager of the Dearborn Works facility, about the failure to interview a Black female employee, whom Gumm believed to be "the most qualified person in the building." *Id.* (citing ECF No.

34-2, PageID.342). Finally, Gumm complained that, although three employees had been terminated for similar drug and alcohol offenses, only the one white employee had been reinstated. *Id.* at PageID.321 (citing ECF No. 34-2, PageID.345). As to this complaint, Gumm testified that he was concerned about the optics:

> the optics were terrible, the employees were upset about it and they were all asking me why I would do that. Because it was my area, they assumed that I'm the one who brought him back and I told him [sic] I didn't. I wouldn't have brought any of the three of them back, not a single one. They . . . operated heavy equipment while they were intoxicated . . . .

ECF No. 34-2, PageID.345.

Gumm's testimony makes clear that he primarily objected to the appearance of discrimination. Further, the thrust of Gumm's concern was not that the company was discriminating against the Black terminated employees by not reinstating them as well as the white employee, but that none of the employees should have been reinstated because they all had been appropriately terminated. *Id.* Gumm's complaint about the selective reinstatement was a challenge of the "correctness of a decision made by his employer" rather than an assertion of discrimination, and thus does not constitute protected activity for the purposes of establishing a prima facie case of retaliation. *See*

Khalaf, 973 F.3d at 490; *see also Booker*, 879 F.2d at 1313.

However, when viewed in a light most favorable to Gumm, a reasonable juror could conclude that Gumm engaged in protected activity by complaining to his supervisors about their failure to interview, hire, or promote qualified Black employees for supervisory positions. Gumm testified that he believed there was discrimination in the filling of two supervisory roles with white candidates less qualified than Black candidates: "I told them that we had individuals who were qualified and interested in positions and why wouldn't we offer it to them I asked him why we didn't interview internal candidates that were black that were more qualified. ECF No. 34-2, PageID.342-43. Gumm likewise contested Comb's refusal to interview a qualified Black woman for an opening position. *Id*.

"Magic words are not required, but protected opposition must at least alert an employer to the employee's reasonable belief that unlawful discrimination is at issue." *Haydar v. Amazon Corporate, LLC*, 2021 WL 4206279, at *6 (6th Cir. Sept. 16, 2021) (quoting *Brown v. United Parcel Serv., Inc.*, 406 F. App'x 837, 840 (5th Cir. 2010)). A reasonable juror could conclude that Gumm's expressed opposition to hiring what he perceived as less-qualified white candidates over Black candidates, who were not interviewed but had superior qualifications, was sufficient to put AK Steel on notice of Gumm's complaints of racial discrimination. *See id*.

Accordingly, Gumm's challenges to AK Steel's hiring decisions could be viewed as opposition to

discrimination and protected activity under Title VII (and ELCRA). AK Steel is thus not entitled to summary judgment based on Gumm's failure to establish a prima facie case of retaliation.[5]

b. Pretext

The parties do not dispute that AK Steel carried its burden by providing a nondiscriminatory reason for Gumm's termination, namely that it terminated him for making derogatory comments about women and employees of color. The burden thus shifts back to Gumm to show that the cited offensive conduct was only a pretext to conceal that his termination was retaliation. *See Jackson*, 999 F.3d at 350-51. Gumm establishes pretext if he shows that AK Steel's stated reason for terminating him (1) had no basis in fact, (2) did not actually motivate its decision, or (3) was insufficient to motivate its decision. *See id.* at 351 (citing *Chen v. Dow Chem. Co.*, 580 F.3d 394, 400 (6th Cir. 2009)). Notwithstanding this seemingly formalistic approach, "[p]retext is a commonsense inquiry: did the employer fire the employee for the stated reason or not? This requires a court to ask whether the plaintiff has produced evidence that casts doubt on the employer's explanation, and, if so, how strong it is." *Chen*, at 400 n.4. To overcome a motion for summary judgment, a plaintiff must "produce sufficient evidence from which a jury could reasonably reject [a defendant's] explanation of why [the employer] fired [him]." *Id.* at 400.

---

[5] AK Steel does not contest any other element of Gumm's prima facie case for retaliation. ECF No. 34, PageID.319-22.

AK Steel argues that, even if Gumm denies making the offensive comments attributed to him during its investigation, it held an honest belief in its nonretaliatory reason for firing him. Indeed, "[i]f an employer has an 'honest belief' in a nondiscriminatory basis upon which it has made its employment decision, . . . then the employee will not be able to establish pretext." *Tingle v. Arbors at Hilliard*, 692 F.3d 523, 530-31 (6th Cir. 2012). To invoke the honest belief rule, "[a]n employer's pre-termination investigation need not be perfect," rather the key inquiry is whether the employer made a reasonably informed and considered decision before taking an adverse employment action. *Loyd v. St. Joseph Mercy Oakland*, 766 F.3d 580, 590-91 (6th Cir. 2014).

Gumm argues that the investigation AK Steel conducted into his allegedly offensive conduct was so inadequate that it invalidates any honest belief protection. Specifically, Gumm argues that the investigation into his conduct was shoddy because Gumm "was a great employee for years until he reported instances of discrimination," AK Steel manufactured a suspension of Gumm as part of its investigation, AK Steel never investigated his concerns about discriminatory hiring practices, he was fired despite the claims of racism against him not being substantiated, and the investigation did not include him. ECF No. 38, PageID.797-98.

The Court notes that, for the most part, these cataloged grievances do not attack the sufficiency of AK Steel's investigation into Gumm's conduct.[6] Even

[6] Gumm's cited quarrels with the investigation seem to be more of an assault on AK Steel's proffered reason for termination, i.e.,

so, the Court finds no merit in Gumm's assertion that the investigation was lacking.

AK Steel initiated the investigation that led to Gumm's termination after its vice president of carbon steel operations, Brian Bishop, reviewed an exit interview, where a departing supervisor identified Gumm's abrasive and disrespectful management style as one of the supervisor's reasons for leaving his employment with AK Steel[7] and after AK Steel received an anonymous hotline complaint accusing Gumm of creating a hostile work environment by belittling employees and making racist comments. ECF Nos. 34-11, 34-14. That investigation included interviews with various hourly and salary employees, as well as with Gumm, despite his claim that the investigation did not include him. ECF Nos. 34-14, 34-15. The hourly employees AK Steel interviewed denied experiencing any racist or discriminatory treatment from Gumm, but four of the five shift managers working directly under Gumm corroborated his use of abusive and offensive profanity when speaking to employees and

---

that it had no basis in fact, did not actually motivate the decision, or was insufficient to motivate the decision. Nevertheless, because Gumm did not develop such an argument, he is deemed to have waived it. *See McPhereson v. Kelsey*, 125 F.3d 989, 995-96 (6th Cir. 1997) ("Issues adverted to in a perfunctory manner, unaccompanied by some effort at developed argumentation, are deemed waived. It is not sufficient for a party to mention a possible argument in the most skeletal way, leaving the court to put flesh on its bones.").

[7] AK Steel formally reprimanded Gumm in connection with its investigation of the departing supervisor's complaints of Gumm's disrespectful conduct. ECF No. 34-12. The warning specifically noted that further inappropriate conduct may result in termination of employment. *Id*.

derogatory comments toward Black and female employees. ECF Nos. 34-14, 34-16, 34-17. AK Steel concluded the investigation, finding that it "did not corroborate the specific allegations brought forth in the [hotline] complaint" but did "find evidence of unprofessional and disrespectful actions" by Gumm. ECF No. 34-14.

As noted above, an employer does not need to show its investigation "left no stone unturned." *Smith v. Chrysler Corp.*, 155 F.3d 799, 807 (6th Cir. 1998). Importantly, Gumm's challenges of the investigation do not rebut the conclusion AK Steel reached—that he behaved in an unprofessional and offensive manner toward employees. Gumm does not dispute that AK Steel's investigation included corroborated reports of Gumm using highly offensive language in talking to and about women and Black employees, and using profane and abusive language toward employees generally. ECF Nos. 34-11, 34-16, 34-17. Gumm testified at deposition that he had no reason to believe any of the interviewed shift managers reporting to him would lie as part of the investigation. ECF No. 34-2, PageID.347. He also testified that he had no knowledge of any unethical conduct taking place during the investigation. *Id.* at PageID.346.

Moreover, courts routinely hold that a belief based on particularized facts derived from investigations, including co-worker statements, overcomes claims of pretext. *See, e.g.*, *Romans v. Mich. Dep't of Hum. Svcs.*, 668 F.3d 826, 839 (6th Cir. 2012*); Owhor v. St. John Health-Providence Hosp.*, 503 F. App'x 307, 311 (6th Cir. 2012); *Wright v. Murray Guard Inc.*, 455 F.3d 702, 708 (6th Cir. 2006);

Sublett v. Masonic Homes of Ky., 2022 WL 2798998, at *5 (6th Cir. July 18, 2022). In sum, AK Steel's investigation, which yielded particularized and unrebutted evidence of Gumm's misconduct from statements of multiple coworkers, provided ample basis for AK Steel's honest belief in its nonretaliatory reason for firing him.

Finally, the Court need not address the honest belief rule to reject Gumm's assertions of pretext. The honest belief rule becomes relevant only if the plaintiff shows that the defendant's "proffered reason was a mistake, foolish, trivial, or baseless." *See Hendershott v. St. Luke's Hosp.*, 2020 WL 6256869, at *2 (6th Cir. Aug. 25, 2020) (citing *Loyd*, 766 F.3d at 590-91). Here, Gumm does not show that AK Steel's proffered reason for firing him—that he used profane, offensive, and abusive language toward his employees—was a mistake, foolish, trivial, or baseless.

Statements made by shift managers that Gumm used profane and abusive language toward employees, made racist and misogynistic comments (including referring to female employees with the most vulgar of derogatory terms), and belittled coworkers by calling them stupid and making fun of them for crying show that AK Steel's proffered reason for terminating him was not foolish or trivial, as this conduct could have created liability issues for it. *See id.* Nor could AK Steel's proffered reason for terminating Gumm be shown to be a mistake or baseless, given Gumm's testimony that he had no reason to believe that these shift managers lied during the investigation. *See id.* Without evidence that AK Steel's proffered reason for terminating

Gumm was a mistake, foolish, trivial, or baseless, neither the honest belief rule nor the associated scrutiny of the employer's pretermination investigation comes into play. *See id.*

Gumm also argues that AK Steel's lack of contemporaneous criticism of his performance, his receipt of an annual bonus and a raise, and the suspicious timing of his termination make the requisite showing of pretext to defeat summary judgment. ECF No. 38, PageID.798. The Court disagrees.

Contrary to Gumm's assertion, AK Steel management criticized his ability to work with others both formally and informally before Gumm's protected activity in the summer of 2019. Gumm's 2018 Annual Assessment, completed some ten months before the investigation which led to his termination and several months before the protected activity, reflected that Gumm "needs to continue to work on how he interacts with other salary and hourly employees. He can be harsh and needs to be more empathetic to others." ECF No. 34-8, PageID.568. The same assessment concludes that Gumm's management style requires "some polishing . . . as he can be abrasive to others at times." *Id.* at PageID.569.

Additionally, Gibbons, AK Steel's human resources and labor relations manager, testified at deposition that her department received persistent complaints about Gumm's interactions with co-workers and subordinates and that Gumm received regular if not constant admonishments over his disrespectful communications with employees. ECF No. 34-3, PageID.383-86. Gumm's assertion of a lack of contemporaneous criticism is specious and cannot

support his claim of pretext.

Gumm, citing *Cicero v. Borg-Warner Automotive, Inc.*, argues that evidence of his qualifications and continued receipt of bonuses and raises could allow a fact finder to determine AK Steel's "proffered reason either had no basis in fact or that it was insufficient to motivate the discharge decision." 280 F.3d 579, 589 (6th Cir. 2002). Gumm's reliance on *Cicero* is misplaced. In *Cicero*, the employer cited the plaintiff's poor work performance as its reason for firing him. *Id*. at 588. But the plaintiff in *Cicero* presented evidence of receiving a full bonus when others with poor performance received only half a bonus. *Id*. at 590-91. He also showed that he received a raise based on merit and that he was specifically listed in a critical employee retention plan memo as a key member of management staff whom the company wanted to retain. *Id*. The evidence in *Cicero* showed that the defendant-employer praised the plaintiff's work, awarded him performance-based bonuses and raises, and never complained about his performance until after it fired him. *Id*. at 591-92. The court deemed such evidence adequate to create a triable question of fact over whether the proffered reason for termination was indeed pretext for discrimination. *Id*. at 593.

In contrast here, AK Steel's proffered reason for terminating Gumm was not his lack of proficiency or failure to achieve results in his position, but rather his use of abusive and offensive language with his employees. The same annual assessment praising Gumm's achieved results also criticized his abrasive interactions with other employees. ECF No. 34-8. Gumm's receipt of high marks for other aspects of his

performance, and even a bonus and a raise, does not negate the criticism supporting AK Steel's reason for termination. That Gumm was proficient in his duties and achieved results is in no way inconsistent with the proffered reason for his termination—that he used abusive and offensive language with employees—and thus the evidence of his skills and accomplishments provides no support for his claim of pretext. *See Hendershott*, 2020 WL 6256869, at *4.

Finally, Gumm broadly alludes to the suspicious timing of his termination as indicative of pretext. "Issues adverted to in a perfunctory manner, unaccompanied by some effort at developed argumentation, are deemed waived. It is not sufficient for a party to mention a possible argument in the most skeletal way, leaving the court to put flesh on its bones." *McPhereson v. Kelsey*, 125 F.3d 989, 995-96 (6th Cir. 1997) (cleaned up). Nevertheless, even if Gumm did not waive this argument, the timing of Gumm's termination does not support his claim of pretext.

First, plaintiffs cannot rest solely on temporal proximity to establish pretext. *Wyatt v. Nissan North Am., Inc.*, 999 F.3d 400, 421 (6th Cir. 2021). Suspicious timing is a strong indicator of pretext only when accompanied by some other, independent evidence, which as previously discussed, Gumm does not provide. *See id*.

Second, the roughly six months between Gumm's protected activity and his termination is too attenuated to be availing evidence of pretext. *See, e.g.*, *id*. (one week between protected activity and adverse employment action deemed suspiciously proximate timing to support claim of pretext); *Lacy v.*

Marketplace Acquisitions, LLC, 2023 WL 4831400, at *12 (E.D. Mich. July 27, 2023) (same); *Amos v. McNairy Cty.*, 622 F. App'x 529, 538-40 (6th Cir. 2015) (adverse employment action one day after EEOC investigation created genuine issue of material fact on issue of pretext); *LeMarbe v. Village of Milford*, 2021 WL 4972946, at *15 (E.D. Mich. Oct. 26, 2021) (24 to 48 hours between protected activity and adverse employment action indicator of pretext). Indeed, the complaints from a resigning supervisor, the ensuing reprimand, and the anonymous caller which prompted the investigation and, ultimately, gave rise to the proffered reason for Gumm's termination, all occurred in the intervening months between the protected activity and the termination.

In all, Gumm fails to provide evidence that could lead a reasonable jury to believe AK Steel's proffered non-retaliatory reason for terminating him was mere pretext. Summary judgment in favor of AK Steel on Gumm's retaliation claim is thus appropriate.

3. Hostile Work Environment

Gumm also asserts a claim for retaliatory hostile work environment. ECF No. 1, PageID.3. AK Steel argues that Gumm failed to exhaust his administrative remedies for this claim because he did not raise hostile work environment in the complaint filed with the EEOC. *See* ECF No. 34-18. Gumm counters that the EEOC Charge of Discrimination form contains no check box to indicate a complaint of hostile work environment and that he preserved his claim for retaliatory hostile work environment

because that claim could reasonably be expected to grow from the narrative of his complaint contained within the EEOC charge.

Absent a plaintiff's express claim of hostile work environment within an EEOC charge, that "charge may only exhaust administrative remedies for a hostile-work-environment claim if such a claim was reasonably related to or could have grown out of the factual allegations in the charge." *Russ v. Memphis Light Gas & Water Div.*, 720 F. App'x 229, 238 (6th Cir. 2017) (citing *Younis v. Pinnacle Airlines, Inc.*, 610 F.3d 359, 362 (6th Cir. 2010)). For a hostile work environment claim to be reasonably related to or grow out of an employee's charge, the charge must allege more than an isolated discrete act of discrimination or retaliation. *Id*. An employer's discriminatory or retaliatory conduct must be pervasive to establish a claim of hostile work environment. *Id*. Accordingly, "allegations in an EEOC charge of only an isolated and discrete act . . . are insufficient to provide notice of—and thus to exhaust administrative remedies for—such a claim." *Id*.

Here, Gumm did not check the box on the EEOC Charge of Discrimination form indicating that his complaint was for a continuing action. ECF No. 34-18. He also indicates that the complained-of retaliation took place on a single date, January 10, 2020, the date of termination. *Id*. Retaliation that is not identified as continuing and that is alleged to have started and ended on the same date is the definition of an isolated and discrete act.

Further, nothing in the narrative portion of the charge suggests ongoing retaliatory conduct. To the

contrary, Gumm's statement, "Following my complaints on January 10, 2020, I was terminated[,]" reinforces the charge's other indications that it complains of an isolated and discrete act. The Court thus finds that Gumm's EEOC charge did not provide adequate notice of a retaliatory hostile work environment claim and thus did not exhaust the administrative remedies for this claim.

Even if Gumm's EEOC charge satisfied the administrative exhaustion requirements for a retaliatory hostile work environment claim, that claim fails on the merits. Retaliatory hostile work environment is a type of retaliation claim. *Khamati v. Sec'y of Dep't of Treasury*, 557 F. App'x 434, 443 (6th Cir. 2014) (citing *Morris v. Oldham Cnty. Fiscal Ct.*, 201 F.3d 784, 792 (6th Cir. 2000)). Prima facie elements of a retaliatory hostile work environment claim are thus "a modified version of those four elements recognized in a typical retaliation claim: 1) the plaintiff engaged in a protected activity; 2) the defendant knew this; 3) the defendant subjected the plaintiff to severe or pervasive retaliatory harassment; and 4) the protected activity is causally connected to the harassment." *Id*. As discussed above, Gumm has satisfied elements one and two of a prima facie retaliatory hostile work environment claim.

The element at issue in Gumm's claim, "the touchstone of any hostile work environment claim, . . . is whether 'the workplace is permeated with . . . intimidation, ridicule, and insult' that is 'sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment.'" *Id*. (quoting *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 21 (1993)). Courts consider "the

frequency of the [retaliatory] conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance." *Harris*, 510 U.S. at 23.

Gumm contends that, after he complained of AK Steel's discriminatory practices, it "created a false narrative" that it received multiple complaints of his using racist slurs or that he was racist. ECF No. 1, PageID.3. He alleges that as he complained of issues with AK Steel's hiring and promoting methods, his treatment at work worsened. *Id*. Finally, he asserts that instead of investigating his repeated complaints about discrimination, AK Steel initiated an investigation of him for use of racial slurs. *Id*.

Gumm presents no evidence to support his allegation that AK Steel engineered or was aware of a smear campaign against Gumm. Instead, the record reflects that AK Steel received an anonymous report from an employee alleging that he or she heard Gumm make a racist comment. ECF No. 34-14. This report prompted AK Steel to initiate an investigation, which resulted in at least two employees corroborating Gumm's use of racist language. ECF No. 34-16, PageID.730, 732. Gumm himself testified that he had no reason to believe any of the interviewed employees would lie as part of the investigation. ECF No. 34-2, PageID.347.

An employer's reasonable investigation of credible allegations of employee wrongdoing does not create an actionable hostile work environment. *See Khamati*, 557 F. App'x at 443. In *Khamati*, the defendant- employer instituted an investigation of plaintiff-employee's work following reports of

improper case closures. *Id.* at 436. That the employer investigation led to a formal investigation, which in turn could have given rise to criminal charges against the plaintiff, did not transform the employer's investigation into "actionable conduct." *Id.* at 443. The court found that the initiation of an investigation into the plaintiff was natural and reasonable given employee reports that plaintiff instructed them to prematurely close cases. *Id.* at 436, 443. Although the plaintiff "may have felt threatened, hostile work environments must be objectively so." *Id.* at 443 (citing *Barrett v. Whirlpool Corp.*, 556 F.3d 502, 514 (6th Cir. 2009)).

Likewise, AK Steel's investigation of the complaints of racism against Gumm was prudent, if not essential, under the circumstances. *See Faragher v. City of Boca Raton*, 524 U.S. 775, 806-08 (recognizing employers' affirmative obligation to prevent Title VII violations). Given the reasonableness of AK Steel's investigation, and that Gumm himself does not believe the investigation was conducted unethically or deceitfully, Gumm's subjective belief that he was being unfairly accused or ridiculed is not sufficient to substantiate a hostile work environment claim. *See Khamati*, 557 F. App'x at 443-44.

Additionally, courts may only "consider the attributes of the work environment that arise from the plaintiff's . . . performance of protected activities." *Id.* at 444 (citing *Williams v. CSX Trans. Co., Inc.*, 643 F.3d 502, 511 (6th Cir. 2011)). Failure to provide "any persuasive proof beyond mere speculation of a causal connection between . . . protected activities and . . . work atmosphere" justifies summary

judgment dismissal of a retaliatory hostile work environment claim. *Id*. Because Gumm provides no evidence beyond his own speculation that AK Steel's investigation or its findings were connected to his protected activity several months prior, summary judgment in favor of AK Steel on the retaliatory hostile work environment claim is warranted.

IV. CONCLUSION

For the reasons set forth in this opinion, the Court **GRANTS** AK Steel's motion for summary judgment (ECF No. 34).

IT IS SO
ORDERED.

s/Shalina D. Kumar
SHALINA D. KUMAR
United States District Judge

Dated:
September 26,
2023

No. 24-1767

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETER GUMM,
Plaintiff-Appellant

FILED
April 17, 2025
Kelly L. Stephens, Clerk

v.

AK STEEL CORPORATION,
Defendant-Appellee

_____/

BEFORE: THAPAR, BUSH, and MURPHY, Circuit Judges.

The court received a petition for rehearing en banc. The original panel has reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. The petition then was circulated to the full court.* No judge has requested a vote on the suggestion for rehearing en banc.

Therefore, the petition is denied.

ENTERED BY ORDER OF THE COURT

Kelly L. Stephens, Clerk

*Judge Davis is recused in this case.

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

PETER GUMM,
Plaintiff,

Case No. 21-cv-12441
Hon. Shalina D. Kumar
Mag. Elizabeth A. Stafford

v.

AK STEEL
CORPORATION,
Defendant.
_____/

PLAINTIFF'S MOTION FOR RECONSIDERATION OF THIS COURT'S ORDER GRANTING DEFENDANT'S MOTION FOR SUMMER JUDGMENT

NOW COMES PLAINTIFF, Peter Gumm, by and through his attorneys, CARLA D AIKENS P.L.C., and for his Motion for Reconsideration of the Court's Order Granting Defendant's Motion for Summary Judgment, states as follows:

1. Plaintiff filed this action seeking redress for violations of his civil rights, as Defendant retaliated against him for reporting issues related to Defendant's pervasive racial discrimination that caused no African Americans to be put into management in his department,

despite his efforts to do the same, and further created a hostile work environment.

2. Upon Defendant's filing of its Motion for Summary Judgment (ECF No. 34), this Court dismissed Plaintiff's claims (ECF No. 45).
3. On review of this Court's Opinion and Order, Plaintiff believes that this Court committed error in not giving any credit to Plaintiff's testimony nor viewing the facts in a light most favorable to him, and respectfully requests that this Court reconsider its ruling which dismissed his claims without a jury trial.
4. Plaintiff respectfully requests that this Court grant his Motion for Reconsideration

Dated: October 24, 2023

Respectfully Submitted,

/s/ Carla D. Aikens

Carla D. Aikens
(P69530) Carla D. Aikens P.L.C. *Attorneys for Plaintiff*
615 Griswold St., Ste 709
Detroit, MI 48226
Tel: (844) 835-2993
Fax: (877) 454-1680

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

PETER GUMM,
Plaintiff,

Case No. 21-cv-12441
Hon. Shalina D. Kumar
Mag. Elizabeth A. Stafford

v.

AK STEEL
CORPORATION,
Defendant.
_____/

PLAINTIFF'S BRIEF IN SUPPORT OF ITS MOTION FOR RECONSIDERATION OF THIS COURT'S ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

Table of Contents

INDEX OF AUTHORITIES

Cases

Rules

QUESTION PRESENTED

Should this Court grant Plaintiff's Motion for Reconsideration because this Court's September 26, 2023 Order contains a palpable defect that misled the Court and correction of the defect would result in a different disposition of the case?

Plaintiff would answer: YES
Defendant would answer: NO

INTRODUCTION

On August 5, 2020, Plaintiff Peter Gumm filed a charge with the EEOC against his prior employer and Defendant AK Steel Corp. The allegations consisted of retaliation for opposing discrimination based on race, in violation of Title VII of the Civil Rights Act of 1964, as amended. Plaintiff filed his complaint against Defendant on October 15, 2021, raising claims of retaliation and hostile workplace, because Plaintiff was fired after complaining of Defendant's racially discriminatory hiring and promotion practices. Defendant filed a Motion for Summary Judgment on February 18, 2022, arguing that (1) Plaintiff's ELCRA claims are time- barred, (2) Plaintiff failed to exhaust is administrative remedies, (3) Plaintiff cannot establish a prima facie case of hostile work environment, (4) Plaintiff did not engage in protected activity, (5) Defendant had a legitimate, non-discriminatory reason for its actions, and (6) Defendant could not establish pretext.

This court granted Defendant's Motion on September 26, 2023, agreeing that: (1) Plaintiff's ELCRA claims are time-barred; (2) Plaintiff failed to provide evidence that could lead a reasonable jury to believe AK Steel's proffered non-retaliatory reason for terminating him was mere pretext; and (3) Plaintiff failed to provide evidence beyond his own speculation that Defendant's investigation

or its findings were connected to his protected activity several months prior.

For the reasons stated below, Plaintiff respectfully requests that this Honorable Court grant his Motion for Reconsideration and allow this case to proceed on the merits.

LEGAL STANDARD

The Federal Rules of Civil Procedures provide that 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). A material fact is disputable only when "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).

Motions for reconsideration are governed by Local Rule 7.1, which provides:

> (3) Grounds. Generally, and without restricting the court's discretion, the court will not grant motions for rehearing or reconsideration that merely present the same issues ruled upon by the court, either expressly or by reasonable

> implication. The movant must not only demonstrate a palpable defect by which the court and the parties and other persons entitled to be heard on the motion have been misled but also show that correcting the defect will result in a different disposition of the case.

See E.D. Mich. L.R. 7.1(h)(3). Pursuant to Local Rule 7.1(h), parties may, on motion, seek reconsideration after entry of a judgment order. A party seeking reconsideration "must not only demonstrate a palpable defect by which the court and the parties have been misled but also show that correcting the defect will result in a different disposition of the case." *Graham v. Cty. of Washtenaw*, 358 F.3d 377, 385 (6th Cir. 2004). A "palpable defect" is one which is "obvious, clear, unmistakable, manifest, or plain." *Fleck v. Titan Tire Corp.*, 177 F. Supp.2d 605, 624 (E.D. Mich. 2001)). This Court's rules state that a motion to alter or amend a judgment must be filed no later than 28 days after the entry of the judgment Fed. R. Civ P. 59(e). Plaintiff respectfully requests that this court reconsider its order granting summary judgment to Defendant.

ARGUMENT

A. THERE IS A GENUINE ISSUE OF MATERIAL FACT AS TO WHETHER DEFENDANT'S PROFFERED NON-RETALIATORY REASON FOR TERMINATING PLAINTIFF WAS MERELY PRETEXT

"To establish a prima facie case of unlawful retaliation under the Civil Rights Act, a plaintiff must show (1) that he engaged in a protected activity; (2) that this was known by the defendant;
(3) that the defendant took an employment action adverse to the plaintiff; and (4) that there was a causal connection between the protected activity and the adverse employment action." *Rymal v Baergen*, 262 Mich App 274, 300; 686 NW2d 241 (2004).

Here, Plaintiff presents his prima facie case by showing:

(1) he engaged in protected activity;

(2) The employer knew of that activity,

(3) the employer took adverse action against Plaintiff, and

(4) there was a causal connection between the protected activity and

the adverse action.

In its Order, finding that Plaintiff had made out a prima facie case, this Court asserted that Plaintiff had not offered any argument about how Defendant's actions were pretext for discrimination. However, in his response, ECF No. 38, PageID.780-789, Plaintiff submitted evidence that Defendant's actions constituted pretext because: (1) Plaintiff was a great employee for years until he reported instances of discrimination; (2) Defendant manufactured a suspension after-the-fact that it did not even bother to try to document properly and has no idea when he was actually suspended; (3) there was never an investigation done when Plaintiff voiced his concerns with how the company was not promoting qualified African American employees, while a "thorough" investigation was done into claims of racism against him – including taking hourly workers off the "shop floor" to do interviews with multiple members of management; (4) though Defendant found that none of the claims of Plaintiff being racist were substantiated, Defendant decided to fire him because of five interviews conducted with supervisors under Plaintiff a week before his termination, without ever telling him that these alleged comments were made until the day he was terminated, and never including him in the investigation which the Court found formed the basis for his termination, making it clear that whatever investigation was done that led to his termination was a sham; and

(5) there was a lack of contemporaneous criticism of Plaintiff's performance; as evidenced when Plaintiff's 2018 Annual Statement came out March 22, 2019, employee surveys came out January 2019, and Plaintiff was still receiving high regards and remarks from Defendant on his annual assessment; he had no issues at all until he complained.

But perhaps the greatest proof of pretext is that Plaintiff never met the individual that Defendant claims complained of him enough to leave the company. Defendant provided documents to Plaintiff just before it filed its motion for summary judgment, well after the more than a dozen depositions were taken in this matter, showing that someone had "anonymously" reported that Plaintiff and Nowitzke had not worn protective equipment, when Nowitzke is not even in the video and is found nowhere in Joe Skubic's (head of HR) notes on the situation. (ECF No. 38, PageID.782). Further, the exit interview of Nowitzke's purported comments was all supplied by the head of HR, Joe Skubic. (ECF No. 38, PageID.781-82).

Plaintiff protested to his supervisory agents about how Defendant only seemed to promote Caucasian employees to supervisory roles. Instead of addressing Plaintiff's issues, Defendant, through its agents, created a false narrative that Defendant had received numerous calls from employees complaining about Plaintiff's use of racial slurs and/or that Plaintiff was racist. As Plaintiff began

reporting more issues, he noticed that his treatment at work worsened. In October of 2019, instead of any investigation into Plaintiff's complaint, Defendant opened an investigation into Plaintiff's use of racial slurs. After the investigation was concluded, the main investigator, the human resources manager, Joseph Skubic, stated to Plaintiff that he had no proof that Plaintiff was racist; however, he also informed Plaintiff that he thought he was a liability. (ECF No. 38, PageID.785)

Despite the lack of evidence, Plaintiff's vehement denial, and the human resources manager admitting that there was no evidence that Plaintiff had done or said anything racist, on January 10, 2020, Plaintiff was terminated from a position he held for over five years. Plaintiff expressed his concerns directly with Defendant about their discriminatory practices; immediately thereafter, Defendant ultimately working up a plan to ensure that Plaintiff was terminated for going against the grain.

It is clear that Defendant's explanation for its adverse employment actions are based on material misrepresentations of the facts and surrounding circumstances of this case. It should not be so extraordinarily difficult for a plaintiff to get to a jury when he has presented sufficient evidence of pretext for his employer's actions. A jury should decide whose reasoning is believable. Therefore, because this Court's order granting summary judgment contains

palpable defects in relying on Defendant's version of facts as true – even and especially where it has no evidence beyond testimony from interested individuals – rather than Plaintiff's, it should be reconsidered.

B. THERE IS A GENUINE ISSUE OF MATERIAL FACT AS TO AS TO PLAINTIFF'S CLAIM OF A HOSTILE WORKPLACE ENVIRONMENT

To establish a prima facie case of hostile environment, a plaintiff must demonstrate that the employee belonged to a protected group, the employee was subjected to communication or conduct on the basis of being in the protected group, the employee was subjected to unwelcome conduct or communication, the unwelcome conduct was intended to or in fact did substantially interfere with the employee's employment or created an intimidating, hostile, or offensive work environment; and respondeat superior. *Quinto v Cross & Peters Co*, 451 Mich 358, 368; 547 NW2d 314 (1996), quoting *Radtke v Everett*, 442 Mich 368, 382-383; 501 NW2d 155 (1993).

The test for whether a hostile work environment existed is "whether a reasonable person, in the totality of circumstances, would have perceived the conduct at issue as substantially interfering with the plaintiff's employment or having the purpose or effect of creating an intimidating, hostile, or offensive

employment environment." *Radtke*, supra at 394. Further, although generally, a single incident will not create a hostile work environment, a single "extremely traumatic experience" may satisfy the statutory requirement of a complaint for hostile work environment. *Id*. at 394-395.

Here, Plaintiff presents his prima facie case by showing:

> (1) he belonged to a protected group (2) was subjected to communication or conduct on the basis of being in a protected class, (3) was subjected to unwelcome conduct or communication, and (4) the unwelcome conduct was intended to or in fact did substantially interfere with the employee's employment or created an intimidating, hostile, or offensive work environment

In its Order, this Court asserted that

Plaintiff failed to provide evidence beyond his own "speculation" that: (1) Defendant's investigation or its findings were connected to his protected activity several months prior, and (2) that Defendant engineered or was aware of a smear campaign against him. However, Plaintiff testified that he spoke up about the mistreatment and discriminatory practices against African American employees, and as a result Plaintiff was subjected to investigations based on false narratives and ultimately termination. Plaintiff's testimony is sufficient to establish a genuine issue of fact. *See Harris v. J.B. Robinson Jewelers*, 627 F.3d 235, 239 (6th Cir.2010); *Keller v. Miri Microsystems LLC*, 771 F.3d 799, 816 (6th Cir. 2015).

Even if this Court does not consider Plaintiff's testimony sufficient to establish a genuine issue of fact, undoubtedly the following would be deemed sufficient[1]:

- Defendant's 'investigation' yielded results in which Plaintiff was alleged to be pictured with Evan Nowitzke. Plaintiff declared that Nowitzke is not in the pictures. (Ex. P, Gumm Declaration, , ¶ 2); (Ex. Q, Investigative Report and Photographs)
- Defendant claims Plaintiff was suspended for 3 days. Plaintiff disputes this and Defendant

[1] All references are to exhibits in Plaintiff's response to Defendant's motion for summary judgment. (ECF No. 38).

has absolutely no record of such suspension. (Ex. P)

- Dearth testified that he merely counseled Plaintiff regarding not wearing PPE and that was the end of the issue. (Ex. G, Dearth Deposition at 50:4-52:1)
- Defendant claims that it had been getting disturbing complaints about Plaintiff during town hall meetings from late 2018 to early 2019 and annual 2018 employee surveys, but Plaintiff was never disciplined for these allegations, nor did Defendant even bother to mention them to him. (*See, e.g.,* Ex. O, Skubic Deposition at 81:1-16)
- Plaintiff was never informed by anyone that he had been suspended at any time that he worked for Defendant. (Ex. P, Gumm Declaration, ¶ 7)

Relying on the aforementioned facts, it is clear that Defendant created an environment that made it so any individual who reported or spoke out against Defendant's discriminatory practices had an unworkable work environment. Plaintiff was and has been branded as racist when he was the one opposing racism by the company. It should not be so extraordinarily difficult for a plaintiff to get to a jury when he has presented sufficient evidence of hostile

workplace environment from his employer. A jury should decide whose reasoning is believable. Therefore, because this Court's order granting summary judgment contains palpable defects in relying on Defendant's version of facts as true, rather than Plaintiff's, it should be reconsidered.

C. CORRECTING THE PALPABLE ERROR SHOULD RESULT IN A DIFFERENT DISPOSITION OF THE CASE

Plaintiff urges this court to reconsider its Order and analyze the facts of this matter in a light most favorable to Plaintiff, the non-moving party. While Defendant merely states a legitimate, nondiscriminatory reason for its adverse employment action, it is evident that there is at minimum a question of fact surrounding the circumstances that contributed to Defendant's decisions. If nothing else, a reasonable jury could differ on whether Defendant's proffered reasons for terminating Plaintiff were pretextual or legitimate and whether Plaintiff was subject to a hostile workplace environment.

It was only after Plaintiff pushed back on Defendant's unfair hiring practices that Defendant began to search for reasons to fire him. The comment may have come several months before his termination, but Defendant started the process of termination shortly after he complained. The timing of the alleged complaint regarding Plaintiff and the lack of

discipline conducted suggests that it was more than mere coincidence. When taking Plaintiff's allegations as true, a reasonable jury could conclude that Defendant's actions against Plaintiff were pretextual and that Plaintiff was subjected to a hostile workplace environment. For these reasons, Plaintiff respectfully requests that this Honorable Court reconsider its Order granting Defendant's Motion for Summary Judgment.

CONCLUSION

Wherefore, for the foregoing reasons, Plaintiff prays that this Honorable Court grants Plaintiff's Motion for Reconsideration of the Court's Order granting Defendant's motion for summary judgment, and grant Plaintiff any other relief that this Court deems equitable and just.

Dated: October 24, 2023

Respectfully Submitted,
/s/ Carla D. Aikens
Carla D. Aikens (P69530)
Carla D. Aikens P.L.C.
Attorneys for Plaintiff
615 Griswold St., Ste 709
Detroit, MI 48226
Tel: (844) 835-2993
Fax: (877) 454-1680

CERTIFICATE OF SERVICE

On the date below, the undersigned certifies that a copy of the foregoing instrument was attempted to be served upon all interested parties in the captioned matter via the Court's e- service system at the email addresses provided by said parties to the Court. However, the e-filing system was down for several hours on October 24, 2023, per the attached screenshot attached as **Exhibit A**. Accordingly, the undersigned is e-filing this on October 25, 2023, as directed by the Court clerk.

Dated: October 25, 2023 Respectfully Submitted,

/s/ Carla D. Aikens
Carla D. Aikens (P69530)
Carla D. Aikens P.L.C.
Attorneys for Plaintiff
615 Griswold St., Ste 709
Detroit, MI 48226
Tel: (844) 835-2993
Fax: (877) 454-1680

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

PETER GUMM,
Plaintiff,

Case No. 21-cv-12441
Hon. Shalina D. Kumar
Mag. Elizabeth A. Stafford

v.

AK STEEL
CORPORATION,
Defendant.
_____/

PLAINTIFF PETER GUMM'S RESPONSE IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

COMES NOW PLAINTIFF, PETER GUMM, by and through his attorneys, CARLA D. AIKENS, P.L.C., and for his Response in Opposition to Defendant's Motion for Summary Judgment, presents the attached brief.

Oral argument is requested.

Respectfully Submitted,

Dated: March 31, 2023

CARLA D. AIKENS, P.L.C.
/s/ *LaTasha Brownlee*
Carla D. Aikens (P69530)
LaTasha Brownlee (P84359)
615 Griswold St., Ste. 709
Detroit, MI 48226
Tel:(844) 835-2993

TABLE OF CONTENTS

I. PLAINTIFF'S CONCISE STATEMENT OF ISSUES PRESENTED

Are Plaintiff's Elliott-Larsen Civil Rights Act claims barred by the contractual limitations period?
Plaintiff answers: "No."

Defendant would answer: "Yes."

Are Plaintiff's claims for retaliatory hostile work environment barred for failure to exhaust administrative remedies?
Plaintiff answers: "No."

Defendant would answer: "Yes."

Can Plaintiff maintain a claim for retaliatory hostile work environment?

Plaintiff answers: "Yes." Defendant would answer: "No."
Can Plaintiff Peter Gumm maintain a claim for retaliation?

Plaintiff answers: "Yes."

Defendant would answer: "No."

TABLE OF AUTHORITIES

Cases

II. COUNTERSTATEMENT OF FACTS[1]

A. Peter Gumm Was Successful and His Manager, Jason Dearth, Liked Him.

Plaintiff is a white male who was hired by Defendant as a supervisor on April 27, 2015. (Defendant's Motion, ECF No. 34, pg. 9 ¶ 1). Plaintiff was making $4,833.33 a month when he started. (Ex. A, Gumm 2015 Offer Letter); (Defendant's Motion, ECF No. 34, p. 10). In 2017, Plaintiff was promoted to the role of manager of the hot mill and given another raise, then Plaintiff was given yet another raise in 2018, making $7,163.18 and a $14,067.78 bonus on February 23, 2018. (Ex. K, Gumm 1.31.18. Paystub). Plaintiff received a $2,329.85 monthly salary increase from 2015 to 2018. (Ex. A, Gumm 2015 Offer Letter); (Defendant's Motion, ECF No. 34, p. 10); (Ex. B, Gumm 1.31.18. Paystub).

Defendant continued to increase Plaintiff's pay and give him bonuses despite the alleged negative allegations being discussed at the "town hall meetings" and despite his 2018 Annual Assessment. (Ex. C, Gumm 1.01.2019 Pay Stub); (Defendant Motion, ECF No. 34; pg. 11 ¶ 6); (Ex. D, 2.1.19 Gumm Bonus); (Ex. E, Gumm 2018 Annual Assessment). Defendant's Position Statement to the EEOC acknowledged that Plaintiff's work ethic was

---

[1] As Defendant's statement of facts was 12 pages of numbered paragraphs, and it is not required in this district to either state the facts in that manner or to respond to them by paragraph, Plaintiff has chosen not to take away half of his argument and instead presents his own statement of facts.

rewarded. (Ex. F, AK Steel EEOC Position Statement, pg. 2). Jason Dearth, Plaintiff's manager, evaluated Plaintiff in the 2018 Annual Assessment which covered a time frame of January 1, 2018 to December 31, 2018, on March 22, 2019 – less than ten months before he was terminated. Under the "achieving results" section of the assessment, Dearth rated Plaintiff successful and stated that Gumm "makes optimum use of limited resources"; "Works to exceed existing standards of quality of work."; "**Accepts full responsibility when things go wrong**."; and noted that "Pete does very well at achieving results… His biggest challenge is to get his team to do the same." (Ex. E, Gumm 2018 Annual Assessment). Under the "working with others" portion of the assessment, Dearth rated Plaintiff above expectations, stating Plaintiff "[a]cts with **honesty and integrity**"; and "Demonstrates active listening." (*Id.*) (emphasis added).

Yet when Dearth was deposed on November 7, 2022, he never even mentioned that he evaluated Plaintiff for the 2018 Annual Assessment performance, despite being asked about annual performance evaluations. (Ex. G, Jason Dearth Deposition, at 82:22-25; 83:1-7). On the other hand, Dearth did testify that he was not made aware of the allegations against Plaintiff until after the 2018 employee survey had come out. He claimed that he had a meeting with LaDale Combs, Defendant's general manager, Joe Skubic, the head of human resources for the salaried workers, and Plaintiff about the survey results, sometime from January to May of 2019. (*Id.* at 20:17-19; 30:6-10). However, the 2018 employee surveys had been produced by

January 2019; Plaintiff's 2018 Annual Assessment was produced after the 2018 employee surveys, and Plaintiff received high remarks in the assessment; despite the alleged negative results of the survey. (Defendant's Motion, ECF No. 34; pg. 12; p. 10); (Ex. E, Peter Gumm 2018 Annual Assessment). Even in the year prior to his termination, Defendant believed that Plaintiff was successful at his job, and he was well-regarded by Defendant. (Ex. E, Peter Gumm 2018 Annual Assessment). Importantly, Dearth never mentioned what from the survey results was alleged to be problematic.

B. Defendant's Discrimination Against African American Employees.

Defendant has a history of issues involving race as to its treatment of African American employees, which included differences in promotion rates and holding them to a different standard than white employees – all of which persisted during the time that Plaintiff worked for Defendant. (Ex. H, Eric Williams Right to Sue Letter);(Ex. I, Osama Williams EEOC Charge of Discrimination). Jason Dearth also confirmed that he was not aware of a single African American employee who had been promoted to (salaried) supervisor roles. (Ex. G, Dearth Deposition at 44:1-7). To wit, Plaintiff and Dearth had firsthand knowledge of the situation involving terminated employee Eric Williams, wherein Williams had been threatened by his supervisor, David Klein, who told Williams, "I'm going to get you fired, n****!" and Williams eventually was, in fact, terminated a few

months after the comment was made.[2] Williams v. AK Steel, Order, Case No. 2:18-cv-11485-DPH-EAS, ECF No. 27, filed 05/31/20, PageID.651. This conduct by Klein also included Klein throwing scissors at a different Black employee. *Id.* at 652. Klein admitted he was aware of comments regarding his own racial impropriety. *Id.* at 651. Though Defendant denies through its agents that Klein was fired for his conduct, Plaintiff stated in a declaration filed in Williams' case that he knew of Klein's racist tendencies, that Defendant treated Black employees differently and held them to a different standard, and that he was fired as a result of speaking up about Defendant's racist tendencies. *Id.* at Exhibit 2 to Motion for Reconsideration, Gumm Declaration, ECF No. 29-2, PageID.717-18, filed 06/29/20. Of note, the *Williams* case involved Plaintiff's manager, Jason Dearth, who wrote an email concerned because the company was using a video that "skipped" to state that Williams had not done his job properly and deserved to be terminated:

> Don/Jeff
>
> I have to have video from the Eric Williams case that does not jump around or skip. The current video does this and it is not acceptable to show the arbitrator as it can show doubt to what

[2] Though Defendant prevailed on a motion for summary judgment, Defendant disputed the basis for Williams' termination being connected to the comment but could not credibly dispute that the incident occurred. Plaintiff filed an appeal which is still pending as of this filing.

he was doing.

Id. at Exhibit L to Plaintiff's Response to Defendant's Motion for Summary Judgment, ECF No. 25-5, PageID.621, filed 05/06/19 (attached here as Exhibit J). Despite this admission from Dearth, Defendant used the video in Williams' discrimination case to support that he did not properly do his job. Id. at Order, ECF No. 27, PageID.65-56, filed 05/31/20. Further, at her deposition, Defendant's corporate representative, Annette Gibbons, detailed all of the EEOC claims on the basis of race that had been brought against the company at only the Dearborn location, from 2015 through 2021. (Ex. K, 30(b)(6) Deposition at 73:18-86:20). Thus, it was known to the company, through the two lawsuits filed by undersigned counsel and the many EEOC investigations, that there was a problem with racial discrimination against African American workers at Defendant's business.

C. Plaintiff Complains of Discrimination in the Summer of 2019

In the summer of 2019, Defendant hired a white employee, Evan Nowitzke, for the position for which Plaintiff had attempted to hire qualified African-American employees. Plaintiff had been involved in the hiring process for this position, but none of the qualified African American employees were hired. Ex. L, Peter Gumm Deposition at 40:11-25-41:2). This caused concern amongst the employees because Defendant was hiring only white supervisors when Black associates were more

qualified and should have placed in those roles. (*Id.*). Nowitzke was an outside hire for the Operation shift manager position. (Ex. M, AK Steel Employee Flame Resistant Garment Enrollment form). Nowitzke had no prior experience being a manager, (Ex. N, Nowitzke Resume), yet he was hired to be manager over Black employees who at least had experience working for Defendant and who were recommended by Plaintiff.

When he returned from vacation, Plaintiff complained to Dearth and LaDale Combs, who is also African American, about Nowitzke being hired without his input over qualified African- American employees. (Ex. L, Gumm Dep. 40:11-41:6). Instead of addressing Plaintiff's issues, Defendant, through its agents, created a false narrative that Defendant had received "numerous calls" from employees complaining about Plaintiff's alleged use of racial slurs and/or that Plaintiff was racist. (Ex. K, 30b6 Deposition at 43:23-25; 44:1-10)[3].

In August of 2019, Plaintiff again complained to LaDale Combs that, after he had recommended three employees for termination – an African American male, an African American woman, and a white male – for misconduct, Defendant was only bringing back the white male. (Ex. K, Gumm Deposition at 57:23-61:18).

---

[3] Annette Gibbons first testified as a fact witness and then when Plaintiff moved to compel the corporate representative deposition, Defendant indicated that it would not be Gibbons, even though she had attended all of the over a dozen depositions taken in the case; however, Gibbons was indeed presented as its corporate representative and sat for deposition again as to that designation.

D. Concerted Effort to Terminate Gumm.

Plaintiff's inability to keep quiet about racial discrimination was not well-received by Defendant. For four years, Plaintiff received promotions and glowing reviews, which all changed after his complaints. The first sign that the "fix" was in to remove Plaintiff came when Defendant claimed that Evan Nowitzke left the company because of Plaintiff, as purported to have been told to Skubic during Nowitzke's exit interview, though Skubic could recall no details about the same. (Ex. O, Skubic Deposition at 220:20-222:17). Importantly, Nowitzke was hired while Plaintiff was on vacation, and Plaintiff has never met Nowitzke. (Ex. P, Gumm Declaration, ¶1).[4] Despite this, and only supplied two months ago after Plaintiff filed a motion to compel, Defendant's ethics complaint regarding the personal protective equipment ("PPE") situation that it failed to produce while discovery was open clearly states that Evan Nowitzke was present on the same day with Plaintiff. However, based upon Plaintiff's knowledge of the individuals who went with him in the car to the area, and who are pictured in the still photographs Defendant produced for the first time in January 2023, Plaintiff affirmatively states that none of them could be Nowitzke because the individuals he rode in the car with and who who are depicted in the photographs are all known to Plaintiff. (Ex. P, Gumm Declaration, , ¶ 2); (Ex. Q,

[4] This is not unusual, because at least one other supervisor in the same department told Skubic he had only spoken to Plaintiff "ten times" since he was hired. (Ex. O, Skubic Deposition at 169:19- 170:4).

Investigative Report and Photographs). What appears to be Skubic's notes on the situation also do not mention Nowitzke by name. (Ex. R, Skubic Notes). Further, Defendant produced Nowitzke's employment file – again after the close of discovery – and nothing about this incident appears in his file.[5] This investigative response – which should have been produced while discovery was ongoing so that Plaintiff could discuss it with any of the many witnesses deposed in this matter –nowhere indicates that Plaintiff was ever suspended due to this issue. Rather, it states that Plaintiff's manager would be made aware of the situation and would address the violations accordingly. (Ex. P)

As noted above, Plaintiff's manager at the time was Jason Dearth. Tellingly, when Dearth was asked if he had ever seen Plaintiff and Nowitke interact, he did not bring up the PPE incident at all – even though Defendant purports that Dearth suspended Plaintiff for this incident. He stated that the only interaction he could call was a 5-minte interaction where he alleges he had seen them interacting in the slab yard. (Ex. G, Dearth Deposition at 25:10-25). Interestingly, Dearth testified that Plaintiff and Nowitzke did not work together long, only during the latter's training period, because Nowitzke worked the night shift. (*Id.* at 26:2-16). However, a review of Nowitzke's "swipes" show that he never worked the night shift. (Ex. R, Nowitzke Door "Swipes"). Further, Plaintiff

[5] Plaintiff has not attached the entire file due to the protective order in place but can produce the same for inspection, or would request that Defendant stipulate to the same.

and Nowitzke did not work in the same area. (Ex. P, Gumm Declaration, ¶ 3)

Dearth's testimony was also confused regarding the timing of the surveys that he claimed were discussed with Plaintiff when he met with Plaintiff at the end of 2019. Dearth claimed that Plaintiff's survey results were discussed as if it were a recent "follow-up" item, (Ex. G, Dearth Deposition at 36:5-12), but the survey results for 2018 had come out nearly 11 months prior and the results for 2019 would not come out until the following January 22, 2020 – twelve days after Gumm was fired. (Ex. O, Skubic Dep. at. 218:11-12).

Dearth was also confused about when he met with Plaintiff about his alleged issues. He stated that he met with Plaintiff in the summer of 2019 after he had received ethics hotline complaints, (Ex. G, Dearth Deposition at 38:11-29:17), but those complaints, according to Defendant's documents and what it told the EEOC, did not occur until November of 2019. Dearth also stated that Plaintiff actually touched the coil in the PPE video – and made up a lot of details about Plaintiff touching the coil that contradict the documentation and photographs Defendant provided regarding this incident. (*Id.* at 40:24-42:7); (*see* Ex. Q). Dearth's deposition is most notable, however, for what he did not mention, which is any time that he ever suspended Plaintiff. No form of the word "suspend" appears in his transcript. Instead, when questioned about the PPE/coil incident, and in accordance with the investigative response document Defendant provided from Skubic (Ex. Q), and consistent with Plaintiff's recollection of what occurred, Dearth testified that

he merely counseled Plaintiff regarding not wearing PPE and that was the end of the issue. (Ex. G, Dearth Deposition at 50:4-52:1). He even stated that he was counseling Plaintiff about the PPE to keep him from getting in trouble with HR/Skubic. (*Id.* at 56:17-57:5).

However, when questioned, Skubic stated that the first discipline he recalled Plaintiff receiving was because he did not wear protective gear in coil fields. (Ex. O, Skubic Deposition at 69:6-10). Though the incident apparently occurred and was reported in September 2019, Defendant offers no explanation for why Plaintiff was not suspended until November 2019, particularly when the investigation write-up was completed by October 9, 2019. (Ex. Q). Skubic further acknowledged that he had never had an issue with Gumm not wearing protective gear in the past, and Plaintiff had not received any warnings, yet Defendant jumped right to a 3- day suspension because it was a "serious" violation and he was a manager. (*Id.* at 76:9-77:18).

Defendant claims that it had been getting disturbing complaints about Plaintiff during town hall meetings from late 2018 to early 2019 and annual 2018 employee surveys, but Plaintiff was never disciplined for these allegations, nor did Defendant even bother to mention them to him. (*See, e.g.,* Ex. O, Skubic Deposition at 81:1-16). In fact, Defendant did not take disciplinary action against Plaintiff until after Plaintiff began to voice his concern with some of Defendants actions and decisions towards African Americans. (Defendant's Motion, ECF No. 34; pg. 11; p.6);(Ex. H, AK Steel EEOC Position Statement, pg. 2); (Ex. O, Skubic

Deposition at p. 115; 20- 25&116; 1-4); (Ex. P, Peter Gumm Declaration, ¶ 4). No evidence has ever been provided to substantiate the existence of a single town hall meeting (much less one where anyone complained about Plaintiff), despite Defendant claiming that there should have been records of "bussing" employees or email traffic from assistants and Plaintiff requesting the same. (Ex. K, 30(b)(6) Deposition at 19:10-21:16).

In November of 2019, instead of any investigation into Plaintiff's complaints of discrimination in hiring, Defendant opened an investigation into Plaintiff allegedly being racist and showing a preference to white employees, based on an "anonymous" complaint that bears a striking resemblance to comments made only by the woman who replaced Plaintiff, Cheryl Hoffman. *Compare* (Ex. S, Hoffman Declaration) *with* (Ex. T, November 2019 Ethics Complaint). However, when actually questioned by Defendant, Plaintiff stated the names of specific African American employees he had recommended for hire. (Ex. D at 63:3-15). Skubic admitted that no one African American ever substantiated any of his comments, and Defendant did not interview any of the people Plaintiff mentioned to Skubic that he had sought to promote. (Ex. O, Skubic Deposition at 233:10-24).

After the investigation was concluded, the main investigator, the human resources manager, Joseph Skubic, stated to Plaintiff that he had no proof that Plaintiff was racist – a point reflected in Skubic's own write-up on the investigation; however, he also informed Plaintiff that he thought he was a liability. (Ex. P, Gumm Declaration, ¶ 5). To wit,

none of the interviews done with hourly workers yielded any comments about Gumm being racist, and thus Defendant found that the comments by the anonymous caller were not substantiated. (ECF No. 34-14, PageID.723); (Ex. U, Gibbons Dep. at 60:1-16). Further, although Defendant is claiming that the complaint was received in November 2019 about Plaintiff, Skubic stated at his deposition that there was an ethics complaint from December 4, 2019. (Ex. O, Skubic Deposition at pg. 56; 12- 19).

Also in November, Defendant claims that Plaintiff was allegedly "issued a three-day unpaid suspension" for a safety violation that occurred over five weeks prior, on September 25, 2019, and was allegedly observed by an anonymous caller. (Defendant MSJ, ECF No. 34; pg. 15); (Written Suspension, ECF No. 34-13). This anonymous caller allegedly named Plaintiff and Evan Nowitzke for not wearing personal protective equipment ("PPE"). However, as noted, Evan Nowitzke is not in any of the photos. (Ex. V, Investigation into Gumm dated 11.25.19); (Ex. P, Peter Gumm Declaration, ¶ 6). Further, at no time did any witness ever mention that Evan Nowitzke was alleged to have been involved in the PPE incident for which Defendant claims it suspended Plaintiff.

When asked at the 30(b)(6) deposition (that Plaintiff had to compel, *see* ECF No. 26), which was taken after 12 other depositions had been taken by Plaintiff, less than three months ago, Defendant had to admit that it still does not know the dates of his suspension. The witness stated that Plaintiff had dates when his attendance could not be verified for the dates of November 17, 22, and 26, 2019, but

Defendant could not say that he was actually suspended on these dates, and Defendant does not know when Plaintiff was actually suspended. (Ex. K, 30b6 Deposition at 3:19-6:1). Incredulously, the company did not even look into the matter of Plaintiff's dates of suspension until after Plaintiff requested in discovery a log of his door "swipes" into the garage at the facility for the time period in question. (*Id.*). Despite this, Defendant still stated in its EEOC Position statement: "On November 25, 2019 just a few weeks after Mr. Gumm's reprimand and suspension…"). (Ex. F, AK Steel EEOC Position Statement, pg. 4). Obviously, none of the dates provided by the corporate representative are "a few weeks before November 25[th]" and none of Plaintiff's paychecks varied from the beginning of October to the end of December 2019. (Ex. R, Gumm AK Steel Pay Stubs).

Most importantly, however, Plaintiff was never informed by anyone that he had been suspended at any time that he worked for Defendant. (Ex. P, Gumm Declaration, ¶ 7). Defendant also failed to point out that two other management executives were not wearing proper equipment but were not included in the anonymous complaint, and neither of them were ever reprimanded nor written up, despite Skubic acknowledging that that should have occurred. (Ex. P, Gumm Declaration, ¶ 8). Importantly, the write-up done on the equipment situation by Skubic makes no mention of Plaintiff being suspended as part of the outcome of the investigation. (Ex. W, October 9, 2019, Investigation Response).[6] Skubic could not

[6] While Plaintiff was asked about the suspension at his

recall any other manager who had ever been suspended, and he also admitted that the purported suspension did not cause the company to need to "keep an eye on him." (Ex. O, Skubic Deposition at 114:10-12). Skubic further stated that despite the suspension for not wearing proper PPE, his termination was based primarily on comments he was alleged to have said as stated by the supervisors in his area. (*Id.* at 231:15-232:24). He eventually admitted that he was only terminated based on a violation of one policy – the Harassment Policy – thus canceling out the suspension altogether as a factor in his termination. (*Id.* at 51:23-52:19).

On or about January 3, 2020 – a week before Plaintiff was terminated – and after apparently having had no "luck" uncovering evidence to terminate Plaintiff through the hourly worker interviews, Defendant decided to interview all of the supervisors – all of whom are white – who worked

---

deposition, he responded "correct" because he was acknowledging what the document said that Defendant's counsel was showing him at the same time that he was being asked the question. (Ex. P, Gumm Declaration, ¶ 10). It is unclear from the transcript whether Plaintiff was referring to having seen the suspension document or another document, because Exhibit 7 (the suspension document) was only briefly discussed and shown to him. (Ex. D at 37). Counsel for Defendant must have picked up on the fact that its client did not have any information beyond the document to support the suspension, because he was not asked anything further about the meeting suspending him, when or for how long he was suspended or about any of the contents of the document, nor was he given or asked any other details about the discipline. Plaintiff denies that he missed any work though he acknowledges (as Dearth testified) that he was spoken to about the situation. (Ex. P, Gumm Declaration, ¶ 11).

under Plaintiff. (*Id.* at 151:4-153:3). Not surprisingly, the person who had the most to say about Plaintiff is the person who was hired to take his job – Cheryl Hoffman. Notably, Defendant admits that the same day of his termination, January 10, 2020, was the first time Plaintiff was ever informed about these allegations from the supervisors. (*Id.* at 152:17- 153:3). No investigation was done after the interviews with the supervisors. (Ex. O, Skubic Deposition at 117:21-118:16). Plaintiff was replaced by a white female supervisor, Cheryl Hoffman, who was the only supervisor who reported to Skubic that they had firsthand knowledge of Plaintiff making inappropriate comments about women and minorities. (Ex. Q Skubic Deposition at 148:4-7; 163:23-169:18). Skubic admitted that he questioned her because he was "surprised" that she had not reported this before. (*Id.* at 165:10-12; 169:7-11). Additionally, no investigation, report, or any follow-up whatsoever was ever done related to Plaintiff's complaints of discrimination. (Ex. P, Peter Gumm Declaration, ¶ 9). Despite the lack of investigation, lack of evidence, Plaintiff's vehement denial, and the human resources manager admitting that there was no evidence from the initial complaint that Plaintiff had done or said anything racist, on January 10, 2020, Plaintiff was terminated from his job. (Defendant Motion, ECF No. 34 at 9). Defendant's Exhibit R outlined Plaintiff's alleged conduct and it was signed on Defendant's termination date of January 10, 2020, which simply stated "Pete Dismissed" (Skubic Notes from January 10, 2020 Meeting with Gumm, ECF No. 34-19.)

While Plaintiff was allegedly terminated for

said events outlined in Defendant's Exhibit M, the resolution described is not a termination, but instead states "This behavior was addressed in accordance to AK steel's policies and the matter is now considered resolved." The exhibit was dated December 4, 2019 detailing a November 2019 event, but was not signed until January 10, 2020. Just like Exhibit R to Defendant's motion, it did not mention the termination that happened that day. (December 2019 Investigation Response, ECF No. 34-14).

Defendant claimed that Plaintiff's cause for termination was the same alleged complaints of racial slurs by Plaintiff that the investigation found no evidence of; however, Plaintiff believes that Defendant's alleged justification for termination is in fact pretextual. (Ex. L, Peter Gumm's Deposition pg. 40; 11-25).

III. STANDARD OF REVIEW

In deciding a motion for summary judgment, the court should determine whether there is no genuine issue as to any material fact such that the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). The court must consider the record as a whole by reviewing all pleadings, depositions, affidavits and admissions on file. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986). The facts are to be considered in a light most favorable to the non-moving party, and "... all justifiable inferences are to be drawn in his favor." *Schaffer v. A.O. Smith Harvestore Prod.*, 74 F.3d 722, 727 (6th Cir. 1996) (internal citations omitted).

In *Reeves v. Sanderson Plumbing Products, Inc.*, 530 U.S. 133, 151 (2000), the Supreme Court explained the standard that a court must apply when it is reviewing a motion for judgment as a matter of law or a motion for summary judgment:

> In doing so, however, the court must draw all reasonable inferences in favor of the nonmoving party, and it may not make credibility determinations or weigh the evidence. Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge. Thus, although the court should review the record as a whole, it must disregard all evidence favorable to the moving party that the jury is not required to believe. That is, the court should give credence to the evidence favoring the nonmovant as well as that evidence supporting the moving party that is uncontradicted and unimpeached, at least to the extent that that evidence comes from disinterested witnesses.

Id. at 150-51 (citations omitted). The evidence and all reasonable inferences must be construed in the light most favorable to the non-moving party. *Tolan v. Cotton*, 572 U.S. 650, 660 (2014); *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986).

IV. ARGUMENT

A. GUMM'S CLAIMS UNDER ELCRA ARE NOT TIME-BARRED

Though Defendant claims Plaintiff signed an agreement, Plaintiff had no knowledge that he was allegedly foregoing his right to file a lawsuit within the time set forth to do so under Michigan law. (Ex. P, Gumm Declaration, ¶ 12). Thus, there is a genuine issue of material fact as to the validity of this purported agreement. In *McMillon v. City of Kalamazoo*, Case No. 162680 (Mich. Jan. 11, 2023) – a case argued by Plaintiff's counsel's office – the Michigan Supreme Court found that summary disposition was inappropriate where was a genuine issue of material fact existed as to whether Plaintiff should be bound by a contractually-shortened statute of limitations with her employer. Justice Elizabeth Welch wrote a separate concurrence which stated that the Court should have gone even further to rule on whether the practice of shortening a statute of limitations in an employment agreement should even be permitted. *Id.* at slip op. 5. In this case, Defendant's purported six-month shortened statute of limitations argument should not result in dismissal of Plaintiff's state law discrimination claims, as he had no idea he had entered into such an arrangement nor did Defendant even ask him about this at his deposition.

B. HOSTILE WORK ENVIRONMENT CLAIM UNDER TITLE VII

Although Gumm did plainly mention that he was a victim of hostile work environment, the court in *Weigel v. Baptist Hosp. of East Tennessee*, held that:

> Pursuant to this rule, we have recognized that 'where facts related with respect to the charged claim would prompt the EEOC to investigate a different, uncharged claim, the plaintiff is not precluded from bringing suit on that claim.'

302 F.3d 367 (6th Cir.2002). Carving out an exception to the rule general rule that "the judicial complaint must be limited to the scope of the EEOC investigation reasonably expected to grow out of the charge of discrimination" (Defendant's Motion, ECF No. 34, p. 23). Defendant notes the holding of *Jones v. City of Franklin*, but this holding was based on the conclusion "that an EEOC investigation of a hostile work environment could not reasonably be expected to grow out of a charge describing the denials of a promotion and a handicapped parking spaces" *Jones v. City of Franklin*, 309 Fed. App'x 938, 943-44 (6th Cir. 2009). In this case Plaintiff stated in his EEOC Charge of Discrimination;

> "On April1, 2015, I began working for the above named employer. I last held the position of Operations Manager.

> During my employment I **complained internally** about the company **not hiring African American Supervisors**, and **not bringing back African American Employees**. **Following my complaints** on January 10, 2020, I **was terminated** I believe that I have been discharged in retaliation for opposing what I sincerely believe to be discrimination based on race, in violation of Title VII of the Civil Rights Act of 1964, as amended."

(ECF No. 34-18) (emphasis added). First, there is no "box" to check on a charge for the topic of hostile work environment. There is further no bright line rule for what is "sufficient" for purposes of an EEOC charge for the Court to rule as a matter of law, and thus Defendant's motion should be denied since this is its burden to prove. There is no legal support for the contention that Plaintiff's charge which included claims about him complaining of discrimination did not prompt the EEOC to investigate a claim of hostile work environment – which does not even appear on its form – and thus Plaintiff is not precluded from bringing suit on his hostile work environment.

C. PLAINTIFF HAS PRESENTED A QUESTION OF FACT AS TO HIS CLAIM OF A HOSTILE WORKPLACE ENVIRONMENT

A plaintiff establishes a prima facie case of

racial discrimination based upon a hostile work environment by showing that (1) the plaintiff was a member of a protected class; (2) the plaintiff was subjected to unwelcome harassment; (3) the harassment was because of the membership in the protected class; (4) the harassment unreasonably interfered with the plaintiff's work performance by creating an environment that was intimidating, hostile, or offensive; and (5) the employer was liable for the harassing conduct. *Clay v. United Parcel Serv., Inc.*, 501 F.3d 695, 706 (6th Cir.2007).

To satisfy the fourth element, "unreasonable interference," a plaintiff "must present evidence showing that under the 'totality of the circumstances' the harassment was 'sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment.' "Id. at 707 (quoting *Williams v. Gen. Motors Corp.*, 187 F.3d 553, 560, 562 (6th Cir.1999)). Severity and pervasiveness are evaluated according to the totality of the circumstances, considering such factors as "the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance." *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 23, 114 S. Ct. 367, 126 L.Ed.2d 295 (1993).

Plaintiff is a part of the protect group of people who oppose discrimination as outlined by the Supreme Court in *Crawford v. Metro. Gov't off Nashville & Davidson Cnty., Tenn.*, 555 U.S. 271, 276 (2009). In *Crawford*, the court held that "[w]hen an employee communicates to her employer a belief

that the employer has engaged in ... a form of employment discrimination, that communication" virtually always "constitutes the employee's opposition to the activity." *Id*. In this case, Plaintiff complained internally about the company not hiring African American supervisors that he felt should be promoted, and not bringing back African American employees while bringing back white employees that he thought deserved to be terminated. Therefore, Plaintiff became a part of a protected class when he attempted to protect employees' interest against Defendant's discriminatory ways.

Plaintiff was subjected to unwelcome harassment in the form of false complaints being made by Defendant and having his character assailed and "everyone in the steel industry thinks [he's] a racist." (Ex. P, Gumm Deposition at 86:24-25). Defendant fabricated a narrative that Plaintiff is racist; claiming that employees are anonymously making these claims. One of the "anonymous calls" stated that they overheard Pete saying that he would like to keep all supervisors Caucasian, as he does not like African American employees. (ECF No. 34-14). Yet, despite never mentioning it during his deposition or at any time during these proceedings, Plaintiff's wife is African American and they have an adult son who is biracial. (Ex. N, Gumm Declaration). These allegations were particularly harmful under the circumstances, given that Defendant was likely aware of the ramifications of trying to paint Plaintiff in a racist light.

The harassment was due to his protected status because until he spoke up about Defendant's discriminatory acts, he had never been harassed nor

accused of being racist. (Ex. N, Gumm Declaration). Defendant was aware of the protected activity because Plaintiff informed Defendant about their choice to hire two white males instead of hiring black qualified AK Steel employees. Defendant's harassment unreasonably interfered with Plaintiff's work performance by creating an environment that was intimidating, hostile, and offensive, because in the last two months of his five year career, Plaintiff was suddenly written-up and accused of being racist which is very offensive, particularly considering Plaintiff's family dynamics.

Defendant is liable for the harassing conduct because Plaintiff's supervisors' harassment led to him being terminated. In the Supreme Court case of *Vance v. Ball State University*, it was held that if the supervisor's harassment culminates in a tangible employment action such as a significant change in employment status (like firing), the employer is strictly liable. In this case, Plaintiff's colleagues and supervisors fabricated stories that he was racist and misogynist, which resulted in Plaintiff being fired. *Vance v. Ball State Univ*., U.S, 133 S.Ct. 2434, 2443, 186 L.Ed.2d 565 (2013).

It is also important to note that the Sixth Circuit recognizes a retaliatory hostile workplace environment which Plaintiff has pled, and Defendant has not mentioned. *Khamati v. Sec'y of the Dep't of the Treasury*, 557 Fed. Appx. 434, 443 (6th Cir. 2014) (citing M*orris v. Oldham Cnty. Fiscal Court*, 201 F.3d 784, 792 (6th Cir. 2000). As a result, Plaintiff's claims must survive.

D. PLAINTIFF HAS PRESENTED A GENUINE ISSUE OF MATERIAL FACT AS TO HIS RETALIATION CLAIM

"To establish a prima facie claim of retaliation, a plaintiff must show that: (1) she engaged in a protected activity; (2) this exercise of protected rights was known to the defendant; (3) the defendant thereafter took adverse employment action against the plaintiff... ; and (4) there was a causal connection between the protected activity and the adverse employment action. '" *Tuttle v. Metro. Gov't of Nashville*, 474 F.3d 307 at 320 (6th Cir. 2007). To survive the summary judgment stage, these elements do not need to be proven by a preponderance of the evidence. *Singfield v. Akron Metro. Hous. Auth.*, 389 E3d 555, 563 (6th Cir. 2004). In fact, many Sixth Circuit cases note that "the burden of establishing the prima facie retaliation case is easily met." *Id.*

As Former Chief Judge Denise Page Hood explained in *Aboubaker v. County of Washtenaw, et al.*, Case No. 11-13001, Opinion and Order Granting in Part and Denying in Part Defendants' Motion for Summary Judgment (E.D. Mich. Sept. 20, 2013), at slip op. 18:

> Causation can be proven indirectly through circumstantial evidence such as suspicious timing. *Mickey v. Zeidler Tool & Die Co.*, 516 F.3d 516, 523, 525 (6th Cir. 2008). Temporal proximity between an assertion of Title VII rights and a materially adverse action, is

> sufficient to establish the causal connection element of a retaliation claim where an adverse employment action occurs very close in time after an employer learns of a protected activity. *Id.* at 525.

As outlined above, Plaintiff engaged in the protected activity when he attempted to protect employees' interest against Defendant's discriminatory ways by confronting Defendant about its wrong doings. This protected activity was obviously known to Defendant because Plaintiff confronted Defendant. Defendant thereafter took adverse employment action against Plaintiff when it terminated him. The causal connection between the protected activity and the adverse employment action was the fact that Plaintiff had been involved in the hiring process for this position, but none of the qualified African American employees were hired. (Ex. D, Peter Gumm's Deposition at 40:11-25). However, Defendant hired two new white males for the position, one of which was not more qualified for the position than African American employees, and neither of whom had ever worked for Defendant in any capacity. One of the new hires was Evan Nowitzke who later Defendant claims quit because of Plaintiff, even though the two never met. Nowitze's last day was October 31,2019. (ECF No. 34-11). The next day, November 1, 2019, Defendant purportedly began writing up and suspending Plaintiff for conduct that occurred September 25, 20219, which was the first incident of an anonymous caller report against Evan and Plaintiff. Defendant states the

issue was not brought to Plaintiff's attention until November 4, 2019, where Plaintiff was allegedly suspended for three days with no pay. (Written Suspension, ECF No. 34-13). Then on November 4, Plaintiff allegedly received a verbal reprimand for harassment, workplace violence and disrespectful treatment that was cited as the reason a salaried supervisor left. (ECF No. 34-12). The timing is suspicious because Plaintiff had been working for Defendant for almost four years before Nowitzke was hired. Yet, it was not until after Nowitzke – about whose hire Plaintiff had complained – quit soon after he started that Plaintiff was confronted with swirling allegations that he was a racist, had poor communication skills, and treated others unfairly. (Defendant's Motion, ECF No. 34, p. 11).

Further, the December 4, 2019 investigation response from Skubic regarding the complaints of racism is the only formal investigation opened before he was terminated, and according to the document itself, these allegations were not substantiated and the matter was apparently closed without issue. Importantly, there is no investigation document to substantiate the basis for what Defendant claims he was terminated. All of the above, given the other lawsuit and Plaintiff's known proximity to complainants, when countered with the fact that Plaintiff was a very good employee whom Dearth seemed to genuinely like – both less than a year before he was terminated and at the time of his deposition a few months ago – makes clear that Defendant considered Plaintiff to be a liability and fired him in retaliation for speaking up about Defendant's racist policies.

E. PLAINTIFF HAS PROVEN PRETEXT

If a plaintiff successfully presents a prima facie case of discrimination "the defendant has the opportunity to articulate a legitimate, nondiscriminatory reason for its employment decision." *Hazle v. Ford Motor Co.,* 464 Mich. 456, 463 (2001) . If a defendant successfully shows a legitimate cause for terminating a plaintiff, then he must demonstrate the reason for his termination was pretextual; "he must demonstrate that the evidence in the case, when construed in him favor, is 'sufficient to permit a reasonable trier of fact to conclude that discrimination was a motivating factor for the adverse action taken by the employer toward the plaintiff.'" *Id.* at 465 (citing *Lytle v. Malady*, 458 Mich. 153, 176 (1998)).

The Sixth Circuit has found many examples of pretext that are unmistakably present in the case at bar. "[T]he employee must show that a reasonable jury could, based on the failure to conduct a deeper investigation, conclude that the investigation was a sham." *Hendershott v. St. Luke's Hospital*, Case No. 3:16-cv-2009, at *25-26 (N.D. Ohio Jan. 6, 2020). A "shoddy" investigation could be a sufficient showing of pretext. *Id.* The court held "[i]nstead, the employee must show that a reasonable jury could, based on the failure to conduct a deeper investigation, conclude that the investigation was a sham." *Id*. at 17. Considering that, among many other issues: (1) Plaintiff was a great employee for years until he reported instances of discrimination; (2) Defendant manufactured a suspension after-the-fact that it did not even bother to try to document

properly and has no idea when he was actually suspended; (3) there was never an investigation done when Plaintiff voiced his concerns with how the company was not promoting qualified African American employees, while a "thorough" investigation was done into claims of racism against him – including taking hourly workers off the "shop floor" to do interviews with multiple members of management; (3) though Defendant found that none of the claims of Plaintiff being racist were substantiated, Defendant decided to fire him because of five interviews conducted with supervisors under Plaintiff a week before his termination, without ever including him in the investigation, it is clear that whatever investigation was done that led to his termination was a sham.

Another way to inferring pretext in employment discrimination cases was noted in *Cicero v. Borg-Warner Automotive*, 280 F.3d 579 (6th Cir. 2002):

> The evidence of Cicero's qualifications, coupled with a lack of contemporaneous criticism of his performance and Borg-Warner's continued grant of bonuses, could allow a fact finder to find that Borg-Warner's proffered reason either had no basis in fact or that it was insufficient to motivate the discharge decision."

The court held that the district court erred when awarding the defendants' summary judgment motion. *Id.* at 593. Quite similarly to *Cicero*, there

was a lack of contemporaneous criticism of Plaintiff's performance; this was evident when Plaintiff's 2018 Annual Statement came out March 22, 2019, employee surveys came out January 2019, but yet Plaintiff still received high regards and remarks from Defendant on his annual assessment, and had no issues at all until he complained. Also just as in *Cicero,* Plaintiff received a bonus, and he was also given a raise. If Defendant was so appalled by Plaintiff's behavior, it was not reflected in the annual statement and his pay.

Furthermore, Defendant claims that its investigation revealed behavior that warranted termination – that no other manager was fired for – but the investigation was "shoddy" and a lack of contemporaneous criticism of his performance makes the timing of his termination suspicious.

Accordingly, under either the direct or indirect basis of proving discrimination, Plaintiff has surpassed the necessary showing to defeat the summary judgment stage when all factual inferences are made in his favor. Defendant argues that it repeatedly counseled Gumm for his continued disrespectful conduct, but the only "counseling" records that Defendant have produced all happened after Nowitzke was hired, and Plaintiff complained to management about the hiring being discriminatory.

V. CONCLUSION

WHEREFORE, PLAINTIFF, Peter Gumm, respectfully requests that this Honorable Court deny Defendant's Motion for Summary Judgment and

grant Plaintiff any other relief this Honorable Court deems equitable and just.
Respectfully Submitted,

Dated: March 31, 2023 Carla D. Aikens, P.L.C.

/s/ *LaTasha Brownlee*
Carla D. Aikens (P69530)
LaTashaBrownlee (P84359)
615 Griswold St., Ste. 709
Detroit, MI 48226
Tel:(844) 835-2993

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing instrument was served upon all parties to the above cause to each of the attorneys of record herein on March 31, 2023 by:

/s/ Carla D. Aikens