

NO.

**IN THE SUPREME COURT OF THE UNITED  
STATES**

YOUNG H. KIM,

*Petitioner,*

-v-

HOSPIRA, INCORPORATED,

*Respondent.*

**On Petition for a Writ of Certiorari to the  
United States Court of Appeals for the Fifth  
Circuit**

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**Petition for Writ of Certiorari**

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## Questions Presented

Whether the standard for review of discrimination claims on summary judgment set forth in this Court's decision in *Adickes v. S. H. Kress & Co.*, 398 U.S. 144 (1970), i.e., that the Seventh Amendment does not permit "substituting trial by affidavit and the sterile bareness of summary judgment" remains the standard in employment discrimination litigation.

Whether petitioner was denied his Seventh Amendment right to a jury trial.

Whether petitioner established a prima facie case of discrimination and that Hospira's reasons for his terminations were pretextual.

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**Petition for a Writ of Certiorari**

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Petitioner, Young H. Kim, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit in this case.

**Decisions Below**

The decision and order of the United States District Court for the Western District of Texas

granting summary judgment is not officially reported and may be found in the Appendix.

The decision of the United States Court of Appeals for the Fifth Circuit has not yet been reported in the Federal Appendix and may be found in the Appendix.

### **Jurisdiction**

This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1). The decision of the Fifth Circuit was filed on January 12, 2018. The petition is timely.

### **Relevant Constitutional Provision**

U.S. Const., Amend VII:

"In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law."

### **Statement of the Case**

Petitioner, a sixty-nine year old Korean-American, was an employee of Respondent Hospira, Inc. ("Hospira"), a pharmaceutical and medical device company, as a Production Operator involved in the production of plastic IV fluid bags. He began his employment in 1999. His employment was terminated in May 2015, after he allegedly failed to discover a number of defective bags over a four month period.

Petitioner, alleging that the real reasons for his termination were his age and national origin, and that he was being blamed for the mistake of others, then brought this action against Hospira under the Age Discrimination in Employment Act (ADEA) and Title VII of the Civil Rights Act of 1964.

Hospira filed a motion for summary judgment, contending that Petitioner lacked evidence to establish a prima facie case of discrimination and that he also lacked evidence suggesting that Hospira's reasons for his terminations were pretextual. The district court granted summary judgment for Hospira, finding that Petitioner had failed to establish a prima facie case for either form of discrimination. The Fifth Circuit (Jolly, Owen, and Haynes, CJJ.) affirmed in an unreported per curiam opinion.

REASONS WHY CERTIORARI SHOULD BE  
GRANTED

**The Circuit Courts Have Said that the Standard for Summary Adjudication in Civil Rights Actions Set Forth in *Adickes v. S. H. Kress & Co.*, 398 U.S. 144 (1970) Has Been Superseded. This Court Should Use this Case to Reaffirm the Standard**

In *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 157 (1970), this Court held that on a motion for summary judgment the moving party has the burden of showing the absence of a genuine issue as to any material fact, "and for these purposes the material it lodged must be viewed in the light most favorable to the opposing party." Justice Black went on to say, in his concurring opinion, "The right to confront, cross-examine and impeach adverse witnesses is one of the most fundamental rights sought to be preserved by the Seventh Amendment provision for jury trials in civil cases. The advantages of trial before a live jury with live witnesses, and all the possibilities of considering the human factors, should not be eliminated by substituting trial by affidavit and the sterile bareness of summary judgment." *Id.* at 176.

Many lower courts have viewed the *Adickes* holding that a movant must "disprove" an essential

element of the non-movant's case, as "superseded in pertinent part by *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986)." *Edwards v. Princess Cruise Lines, Ltd.*, 471 F. Supp. 2d 1027, 1029-1030 (N.D. Cal. 2007). That this is a common misinterpretation of the decisions is amply demonstrated in the thorough opinion in *Clark v. Coats & Clark, Inc.*, 929 F.2d 604 (11th Cir.1991), as well as the numerous commentators who view the two decisions as inconsistent. See, e.g., Samuel Issacharoff & George Loewenstein, Second Thoughts About Summary Judgment, 100 Yale L.J. 73, 81 (1990) ("Celotex represents a retreat from the Adickes standard for summary judgment with regard to the burden of production that would be required of a movant for summary judgment."); Melissa L. Nelken, One Step Forward, Two Steps Back: Summary Judgment after Celotex, 40 Hastings L.J. 53, 65 & n.60 (1988) ("[Celotex] marks a substantial break with precedent regarding the initial burden on a party moving for summary judgment . . . [Celotex and Adickes] cannot be squared in terms of the initial burden placed on the moving party."); John E. Kennedy, Federal Summary Judgment: Reconciling Celotex v. Catrett with Adickes v. Kress and the Evidentiary Problem Under Rule 56, 6 Rev. Litig. 227, 247 (1987) (reconciling Celotex and Adickes as to the moving party's burden is "perverse because it

rests upon an interpretation of the Rule rewarding [defendant] Celotex for remaining silent and punishing [defendant] Kress for attempting to satisfy a burden it did not have."'). This case demonstrates the need to dispel this misconception and reaffirm the *Adickes* standard.

Under *Adickes*, if a moving party fails to carry its initial burden of production, the nonmoving party has no obligation to produce anything, even if the nonmoving party would have the ultimate burden of persuasion at trial. 398 U.S. at 160 (1970). In such a case, the nonmoving party may defeat the motion for summary judgment without producing anything. See *Clark v. Coats & Clark, Inc.*, 929 F.2d at 607. If, however, a moving party carries its burden of production, the nonmoving party must produce evidence to support its claim or defense or the nonmoving party will suffer summary judgment.

Moreover, in the Second Circuit, where the non-moving party is proceeding pro se, that Court instructs that district courts must interpret that party's supporting papers liberally, that is, interpret them "to raise the strongest arguments that they suggest." *Burgos v. Hopkins*, 14 F.3d 787, 790 (2d Cir.1994). That Court has also said that more caution should be exercised in affirming the grant of summary judgment in a discrimination case because "smoking gun" evidence of

discriminatory intent is rare and most often must be inferred. See *Holtz v. Rockefeller & Co.*, 258 F.3d 62, 69 (2d Cir.2001). Indeed, the Second Circuit “has repeatedly emphasized the need for caution about granting summary judgment to an employer in a discrimination case where . . . the merits turn on a dispute as to the employer's intent.” *Gorzynski v. JetBlue Airways Corp.*, 596 F.3d 93, 101 (2d Cir. 2010).

Under the *McDonnell Douglas* burden-shifting framework, a plaintiff establishes a prima facie case of age discrimination, by establishing that: (1) he was a member of a protected class; (2) he was qualified for the position held; (3) he was discharged; and (4) he was replaced by someone outside of the protected class. See e.g. *Geiger v. Tower Auto.*, 579 F.3d 614, 626 (6th Cir. 2009). If the plaintiff establishes his prima facie burden, the burden of production shifts to the employer to articulate a legitimate nondiscriminatory reason for the adverse employment action; if the employer meets this burden, the burden of production shifts back to the plaintiff to show that the employer's explanation was a mere pretext for intentional age discrimination. See e.g. *Allen v. Highlands Hosp. Corp.*, 545 F.3d 387, 394 (6th Cir. 2008).

Similarly, “To state a prima facie case of discriminatory discharge under Title VII, a plaintiff

must allege that: (1) he falls within a protected group; (2) he held a position for which he was qualified; (3) he was discharged; and (4) the discharge occurred after circumstances giving rise to an inference of discrimination. A plaintiff may demonstrate circumstances giving rise to an inference of discrimination by alleging that he was treated less favorably than similarly situated employees of other races or national origins.” *Brown v. Daikin Am. Inc.*, 756 F.3d 219, 229 (2d Cir. 2014).

Petitioner did claim that he was replaced with a younger worker. Thus, he may be to establish a logical connection between his age, ethnic background, and Hospira’s discriminatory actions to demonstrate that he was treated less favorably than similarly situated members of the opposing class. Further, he was replaced with workers who were not Korean. Petitioner further claimed that others engaged in similar work without being cited for deficient treatment, and that he was disciplined more severely than younger workers for similar infractions, and therefore that he was dismissed from his job because of discrimination.

In addition, Petitioner contended that Hospira did not follow their stated human resource policy standards in reference to his employment and termination. The “open-door” policy stated by

Hospira suggests that there is a protocol to engaging in open discussions about work practices and challenges in the workplace. Although Petitioner sought out assistance for unfounded claims that he had caused defects in his work product, there was no human resource investigation completed in accordance with Hospira's stated policy, and further attempts to move the investigation to higher-level management were dismissed by Hospira.

In short, the conflicting submissions to the district court created a question of fact for trial and could not, consistent with *Adickes* be determination on a motion for summary judgment.

#### **Conclusion**

For these reasons, certiorari should be granted to clarify the standards for summary adjudication in employment discrimination cases.

Respectfully submitted,

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A1

YOUNG H. KIM, Plaintiff-Appellant,  
v.  
HOSPIRA, INCORPORATED, Defendant-Appellee.

No. 17-50562

**UNITED STATES COURT OF APPEALS FOR  
THE FIFTH CIRCUIT**

January 12, 2018

**Summary Calendar**

Appeal from the United States District Court for  
the Western District of Texas  
USDC No. 1:15-CV-1088

Before JOLLY, OWEN, and HAYNES, Circuit  
Judges.

**PER CURIAM:\***

Young H. Kim was terminated from his  
employment at Hospira, Inc. (Hospira). Kim sued  
Hospira for age- and national origin-based  
discrimination under the Age Discrimination in  
Employment Act (ADEA) and Title VII of the Civil  
Rights Act of 1964. The district court granted

Hospira's motion for summary judgment on both claims. We affirm.

I

Young Kim is a Korean-American who was employed as a Production Operator at Hospira, a pharmaceutical and medical device company, from 1999 until his termination in 2015. While at Hospira, Kim was involved in the production of plastic IV fluid bags. After he allegedly failed to discover a number of defective bags over a four month period, Hospira terminated Kim's employment. He was 69 years old at the time of termination.

Kim then brought this suit against Hospira, alleging unlawful age- and national origin-based discrimination under the ADEA and Title VII, respectively. The district court granted summary judgment for Hospira, finding that Kim had failed to establish a prima facie case for either form of discrimination. This appeal followed.

II

We review a district court's grant of summary judgment de novo.<sup>1</sup> "Summary judgment is required when 'the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of

law."2 "Where the non-movant bears the burden of proof at trial, 'the movant may merely point to the absence of evidence and thereby shift to the non-movant the burden of demonstrating . . . that there is an issue of material fact warranting trial.'"3 The non-movant must then "go beyond the pleadings and . . . designate 'specific facts showing that there is a genuine issue for trial.'"4 Mere "allegations or affidavit or deposition testimony setting forth ultimate or conclusory facts and conclusions of law are insufficient to defeat a motion for summary judgment."5 We "view[] the evidence in the light most favorable to the nonmoving party."6

### III

The district court properly granted summary judgment on Kim's ADEA claim. Where, as here, an age discrimination claim relies on circumstantial evidence, the plaintiff has the initial burden to establish a prima facie case of discrimination.<sup>7</sup> To meet this burden, Kim must show: "(1) he was discharged; (2) he was qualified for the position; (3) he was within the protected class at the time of discharge; and (4) he was either i) replaced by someone outside the protected class, ii) replaced by someone younger, or iii) otherwise discharged because of his age."8 Kim may show that he was "otherwise discharged because of his age" by

establishing that a comparable employee benefited from disparate treatment under "nearly identical" circumstances<sup>9</sup>—that is, the two employees "held the same job or responsibilities, shared the same supervisor . . . and have essentially comparable violation histories."<sup>10</sup>

Kim failed to make a prima facie case of age discrimination. In his opposition to summary judgment in the district court, Kim did not allege that he was replaced by a younger employee or someone outside his protected class. He now claims that he was replaced by a younger worker but provides no evidence to support this assertion. Such a bare allegation is insufficient to meet the summary judgment burden.<sup>11</sup> He has also failed to provide evidence of employees with similar violation histories being treated differently than him. He has not established the fourth prong of a prima facie age discrimination claim.<sup>12</sup> The district court correctly granted summary judgment in favor of Hospira on this claim.

#### IV

The district court also properly granted summary judgment on Kim's Title VII claim. Kim is required to make a prima facie showing of national origin discrimination by alleging that he was: "(1) a member of a protected class; (2)

qualified for the position held; (3) subject to an adverse employment action; and (4) treated differently from others similarly situated."13 Much like in his ADEA claim, Kim must show that a comparable employee was treated differently under "nearly identical" circumstances.14 Because he was unable to establish that any comparable employees had similar disciplinary records, Kim failed to meet the fourth prong of the prima facie standard for national origin discrimination. Summary judgment for Hospira was appropriate on this claim as well.

\* \* \*

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

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Footnotes:

\*. Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

1. See, e.g., *BP Oil Int'l., Ltd. v. Empresa Estatal Petroleos de Ecuador*, 332 F.3d 333, 336 (5th Cir. 2003).

2. Trent v. Wade, 776 F.3d 368, 376 (5th Cir. 2015) (quoting FED. R. CIV. P. 56(a)).

3. Nola Spice Designs, LLC v. Haydel Enters., Inc., 783 F.3d 527, 536 (5th Cir. 2015) (quoting Transamerica Ins. Co. v. Avenell, 66 F.3d 715, 718-19 (5th Cir. 1995) (per curiam)).

4. Celotex Corp. v. Catrett, 477 U.S. 317, 324 (1986) (quoting FED. R. CIV. P. 56(e)).

5. Clark v. Am.'s Favorite Chicken Co., 110 F.3d 295, 297 (5th Cir. 1997) (citing Duffy v. Leading Edge Prods., Inc., 44 F.3d 308, 312 (5th Cir. 1995)).

6. Connors v. Graves, 538 F.3d 373, 376 (5th Cir. 2008).

7. Machinchick v. PB Power, Inc., 398 F.3d 345, 350 (5th Cir. 2005) (citing McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973)).

8. Id. (quoting Rachid v. Jack in the Box, Inc., 376 F.3d 305, 309 (5th Cir. 2004)).

9. Berquist v. Wash. Mut. Bank, 500 F.3d 344, 353 (5th Cir. 2007) (quoting Perez v. Tex. Dep't of

Criminal Justice, Inst'l Div., 395 F.3d 206, 213 (5th Cir. 2004)).

10. Lee v. Kan. City S. Ry. Co., 574 F.3d 253, 260 (5th Cir. 2009) (citing Little v. Republic Ref. Co., Ltd., 924 F.2d 93, 97 (5th Cir. 1991) (dismissing an ADEA claim)).

11. See Clark v. Am.'s Favorite Chicken Co., 110 F.3d 295, 297 (5th Cir. 1997).

12. See Lee, 574 F.3d at 260.

13. Abarca v. Metro. Transit Auth., 404 F.3d 938, 941 (5th Cir. 2005) (per curiam).

14. Lee, 574 F.3d at 260.

A8

YOUNG H. KIM, Plaintiff,  
v.  
HOSPIRA, INC., Defendant.

1:15-CV-1088-RP

UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF TEXAS AUSTIN  
DIVISION

May 30, 2017

ORDER

Before the Court in the above-styled cause is Defendant Hospira, Inc.'s Motion for Summary Judgment, (Dkt. 21), and Plaintiff Young H. Kim's response thereto. (Dkt. 23).<sup>1</sup> Having considered the parties' submissions, the factual record, and the relevant law, the Court finds that the motion should be granted.

BACKGROUND

This case involves alleged age and national-origin discrimination in employment. Plaintiff was an employee of Defendant Hospira, Inc. ("Hospira") until his employment was terminated in May 2015. Plaintiff is Korean-American and was sixty-nine years old at

the time of his termination. Though not entirely clear, Plaintiff's principal allegations appear to be that he was wrongly blamed for mistakes made by someone else at his work. Management at Hospira then allegedly gave him a "final written warning" for the errors despite insufficiently investigating who committed them. On two later occasions, Plaintiff was sent home early by managers after they again accused him of making mistakes. On the second such occasion, he was instructed not to return to work until requested by Hospira. It appears he was not asked to return to work before his employment was terminated on or around May 15, 2015. Plaintiff alleges that the real reasons for his termination were his age and national origin, in violation of federal law prohibiting age and national-origin discrimination in employment.<sup>2</sup>

Hospira filed its motion for summary judgment on May 4, 2017. It argues that Plaintiff lacks evidence to establish a prima facie case of discrimination and that he also lacks evidence suggesting that Hospira's reasons for his terminations were pretextual. Plaintiff responded on May 17, 2017, generally denying certain arguments put forth by Hospira. Plaintiff attached no evidence to his filing.

#### LEGAL STANDARD

Summary judgment is appropriate under Rule 56 of the Federal Rules of Civil Procedure only "if the movant shows there is no genuine dispute as to any material fact and that the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). A dispute is genuine only if the evidence is such that a reasonable jury could return a verdict for the nonmoving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 254 (1986). "A fact issue is 'material' if its resolution could affect the outcome of the action." *Poole v. City of Shreveport*, 691 F.3d 624, 627 (5th Cir. 2012).

The party moving for summary judgment bears the initial burden of "informing the district court of the basis for its motion, and identifying those portions of [the record] which it believes demonstrate the absence of a genuine issue of material fact." *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). "[T]he moving party may [also] meet its burden by simply pointing to an absence of evidence to support the nonmoving party's case." *Boudreaux v. Swift Transp. Co.*, 402 F.3d 536, 544 (5th Cir. 2005). The burden then shifts to the nonmoving party to establish the existence of a genuine issue for trial. *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 585-87

(1986); *Wise v. E.I. Dupont de Nemours & Co.*, 58 F.3d 193, 195 (5th Cir. 1995). After the non-movant has been given the opportunity to raise a genuine factual issue, if no reasonable juror could find for the non-movant, summary judgment will be granted. *Miss. River Basin Alliance v. Westphal*, 230 F.3d 170, 175 (5th Cir. 2000). The court will view the summary judgment evidence in the light most favorable to the non-movant. *Rosado v. Deters*, 5 F.3d 119, 123 (5th Cir. 1993).

#### DISCUSSION

In cases like the present one, where a plaintiff relies on circumstantial evidence to substantiate an employment discrimination claim, courts employ the burden-shifting framework set out in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973). *Sandstad v. CB Richard Ellis, Inc.*, 309 F.3d 893, 896 (5th Cir. 2002). Under this framework, the plaintiff bears the initial burden of establishing a prima facie case of discrimination. *Machinchick v. PB Power, Inc.*, 389 F.3d 345, 350 (5th Cir. 2005). The elements of the plaintiff's prima facie case may vary depending on the circumstances. *Reed v. Neopost USA, Inc.*, 701 F.3d 434, 439 (5th Cir. 2012). Once the plaintiff makes this initial showing, the burden of production shifts to the employer to show that it had a legitimate and non-discriminatory reason for the adverse

employment action. *Id.* The burden then shifts back to the plaintiff to make an ultimate showing of discrimination by establishing either (1) that the employer's stated reason was a pretext for discrimination, or (2) that the employer's reason, while true, was only one reason for the adverse action, with discrimination remaining a "motivating factor." *Black v. Pan Am. Labs., L.L.C.*, 646 F.3d 254, 259 (5th Cir. 2011).

Hospira argues that Plaintiff has no evidence to establish a *prima facie* case of discrimination or that its legitimate, non-discriminatory reason for terminating Plaintiff's employment was pretextual. The Court will consider each of Plaintiff's two claims in turn.

#### 1. Age Discrimination

To make a *prima facie* showing of discrimination in violation of the Age Discrimination in Employment Act, 29 U.S.C. § 621 et seq., the plaintiff must show: (1) that he was discharged; (2) he was qualified for the position at issue; (3) he was within the protected class at the time of discharge; and (4) he was either (i) replaced by someone outside the protected class; (ii) replaced by someone younger, or (iii) otherwise discharged because of his age. *Machinchick*, 398 F.3d at 350.

Hospira asserts that Plaintiff has no evidence to substantiate the fourth element. Plaintiff has not alleged—or provided evidence to substantiate—that he was replaced by someone younger or otherwise outside the protected class. In fact, he has suggested that he is unaware of Hospira's hiring practices after his termination. (See Kim Dep., Dkt. 21-2, at 135:20-23). Additionally, Hospira points to portions of Plaintiff's deposition in which he asserts that he was treated less favorably than younger coworkers but disclaims knowledge of whether their disciplinary histories were similar to his own. (See *id.* at 88:9-89:19). Plaintiff did not respond to this point in Hospira's motion for summary judgment. His response only asserts that he made no mistakes and that Hospira's management failed to follow its own policies prior to his termination.

A plaintiff may establish the fourth element of his *prima facie* case of age discrimination by showing disparate treatment. *Berquist v. Wash. Mut. Bank*, 500 F.3d 344, 353 (5th Cir. 2007). However, to do so, the plaintiff must present a comparator employee that is similarly situated to him. *Hoffman v. Baylor Health Care Sys.*, 597 F. App'x 231, 235 (5th Cir. 2015). This generally requires the plaintiff to show that the disparate treatment of the comparator employee happened under "nearly identical" circumstances. *Berquist*,

500 F.3d at 353. "The employment actions being compared will be deemed to have been taken under nearly identical circumstances when the employees being compared held the same job or responsibilities, shared the same supervisor . . . and have essentially comparable violation histories." *Lee v. Kan. City S. Ry. Co.*, 574 F.3d 253, 260 (5th Cir. 2009).

Plaintiff has offered three employees as comparators: George Griggs, Binh Mach, and Trung Pharm-Dang. Plaintiff believes that these employees are younger than he is—in their forties or fifties—and he asserts that only he was sent home or terminated for the mistakes at issue. However, though the record suggests that these individuals had similar responsibilities and supervisors, Plaintiff admittedly lacks evidence that any of these employees had a substantially similar disciplinary history. (Kim Dep., Dkt 21-2, at 89:11-19). Without such evidence, the Court cannot conclude that these other employees were similarly situated to Plaintiff and therefore the alleged disparate treatment is not probative of a discriminatory motive. *Hoffman*, 597 F. App'x at 235.

Because Plaintiff has put forward no evidence beyond his allegations to establish that he was

replaced by a younger employee or was otherwise terminated because of his age, as evidenced by disparate treatment, he has not carried his burden of establishing a prima facie case of discrimination. Accordingly, Hospira is entitled to summary judgment on Plaintiff's age discrimination claim.

## 2. National Origin Discrimination

In order to establish a prima facie case of national-origin discrimination in violation of Title VII of the Civil Rights Act, 42 U.S.C. § 2000e et seq., a plaintiff must show that he was (1) a member of a protected class; (2) qualified for the position he held; (3) subjected to an adverse employment action; and (4) treated differently from others who were similarly situated. *Abarca v. Metro. Transit Auth.*, 404 F.3d 938, 941 (5th Cir. 2005).

As to this claim, Plaintiff relies on the same allegations that support his age discrimination claim and Hospira attacks Plaintiff's claim on the same basis. More specifically, Plaintiff does not allege that he was replaced by a non-Korean employee but instead asserts that Griggs, Mach, and Pharm-Dang—each believed to be non-Korean—were treated more favorably than he was. Hospira, on the other hand, again argues that

Plaintiff has not established that these other employees are sufficiently similar to Plaintiff to be valid comparators. The showing required here is the same as for Plaintiff's age discrimination claim—Plaintiff must demonstrate that the employment actions were taken under "nearly identical" circumstances. See *Lee*, 574 F.3d at 259. As stated above, since Plaintiff has disclaimed possession of any evidence of the other employees' disciplinary histories, he cannot establish that he and the other employees are similarly situated so as to permit the Court to infer discriminatory animus. See *Hoffman*, 597 F. App'x at 235.

Because Plaintiff has premised his Title VII claim on disparate treatment but has not put forth adequate comparators, his claim fails as a matter of law. Hospira is therefore entitled to summary judgment on this claim.

#### CONCLUSION

For the foregoing reasons, the Court GRANTS Defendant's Motion for Summary Judgment. (Dkt. 21).

IT IS THEREFORE ORDERED that Plaintiff's claims are hereby DISMISSED WITH PREJUDICE.

A17

SIGNED on May 30, 2017.

/s/ \_\_\_\_\_  
ROBERT PITMAN  
UNITED STATES DISTRICT JUDGE

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Footnotes:

1. Although Plaintiff styled his response as a "Motion for Summary Judgement and Brief in Support," he indicates that his submission is "[i]n Response to Defendant's Motion for Summary Judgement and Brief in Support." (Dkt. 23, at 1). As Plaintiff's filing does not request any relief and was filed after the deadline for dispositive motions, the Court views it exclusively only as a response to Plaintiff's motion.

2. Although Plaintiff checked a box indicating that the Hospira agents had harassed him, his allegations in this respect are limited to the adverse employment actions taken against them. Accordingly, the Court views the allegations as supporting Plaintiff's age and national-origin discrimination claims rather than as raising a distinct claim.