APPENDIX B

UNITED STATES COURT OF APPEALS

FOR THE EIGHTH CIRCUIT

---

No: 24-1239

---

Eddie Mekasha

Plaintiff - Appellant

v.

Christy Chapplear; Daniel Horton; Tyson Fresh Meats, Inc., also known as Tyson Foods, Inc.

Defendants - Appellees

---

Appeal from U.S. District Court for the Southern District of Iowa - Western

(1:22-cv-00016-SHL)

---

JUDGMENT

Before KELLY, GRASZ, and KOBES, Circuit Judges.

This appeal from the United States District Court was submitted on the record of the district court and briefs of the parties.

After consideration, it is hereby ordered and adjudged that the judgment of the district court in this cause is affirmed in accordance with the opinion of this Court.

July 03, 2024

Order Entered in Accordance with Opinion:

Acting Clerk, U.S. Court of Appeals, Eighth Circuit.

---

/s/ Maureen W. Gornik

APPENDIX A
IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF IOWA

WESTERN DIVISION

EDDIE MEKASHA,

Plaintiff,

vs.

TYSON FRESH MEATS, INC.; CHRISTY

CHAPPELEAR; and DANIEL HORTON,

Defendants.

1:22-cv-00016-SHL-HCA

ORDER GRANTING MOTION FOR

SUMMARY JUDGMENT

I. INTRODUCTION.

Plaintiff Eddie Mekasha worked as a Chaplain for Defendant Tyson Fresh Meats, Inc. ("Tyson"), and therefore was expected to adhere to the highest level of moral and ethical conduct. In early June 2021, he was terminated from his job after failing to tell Tyson he had taken two weeks of vacation leave to serve a sentence in the Pottawattamie County Jail. Mekasha alleges that Tyson terminated him because of his race, national origin, skin color, or disability, but the undisputed facts show it was based on his lack of candor, which is a non-discriminatory reason. The Court therefore GRANTS Defendants' Motion for Summary Judgment. II. UNDISPUTED MATERIAL FACTS. Mekasha worked as a Chaplain at Tyson's Council Bluffs, Iowa, facility from

August 2012 to June 2021. (ECF 41-1, 1.) He was born in Ethiopia and identifies as Black or African American. (Id., ¶¶ 2–3.) Mekasha's immediate supervisor was Defendant Christy Chappelear, who was the Human Resources Manager for the Council Bluffs facility at all relevant times. (Id., ¶¶ 4– 5.) The Council Bluffs facility has a diverse workforce, with ten percent of employees selfidentifying as Black or African American, forty-two percent self-identifying as Asian, twenty-four percent self-identifying as Hispanic or Latino, and twenty-one percent self-identifying as White. (Id., 6.) Mekasha started in the role of Chaplain I but was promoted by Chappelear to Chaplain III. (Id., 10.) As Chaplain, Mekasha served as an advocate, caregiver, and case worker for Tyson's workforce, including helping employees who were having family problems or needed community resources for substance abuse or other issues. (Id., 14.) It was important for a Chaplain like Mekasha to be trustworthy and have the respect of the other employees. (Id., ¶¶ 14.f, 14.g.) Chaplains must abide by the highest ethical or moral code of conduct in their duties. (Id., 14.h.) Mekasha agreed that it would be inappropriate to be dishonest with Tyson. (Id., 15.) Tyson had Rules of Conduct for employees. (Id., 16.) The Rules of Conduct contained a non-exclusive list of violations that would subject an employee to disciplinary action. (Id., 17.) The Rules of Conduct also outline Tyson's disciplinary structure, which is designed to be progressive depending on the nature of the misconduct. (Id., 18.) Depending on the seriousness of the violation, discipline might include termination or some lesser penalty. (Id., 19.) In January 2021, Mekasha was arrested in Pottawattamie County, Iowa, for Operating While Intoxicated ("OWI"). (Id., 21.) Mekasha subsequently began outpatient treatment for alcoholism, during which he

told his counselor he had issues with alcohol stemming from posttraumatic stress disorder ("PTSD"). (Id., ¶¶ 22–23.) On February 9, 2021, Mekasha delivered a note to Chappelear from Jessica Failla, a Certified Physician Assistant, stating that he would "benefit from less stressful work." (Id., ¶¶ 24–25; see also ECF 36-2, p. 77.) After Chappelear raised questions about what "less stressful work" meant, Mekasa got a revised note stating that he "would benefit from seeing clients with less complex issues and concerns" for three months. (ECF 41-1, ¶¶ 27–28; see also ECF 36-2, p. 87.) He also asked to work fewer hours, not come to work as early, not stay as late, and drive less distance. (ECF 41-1, 29.) Mekasha never told Chappelear that he suffered from alcoholism or PTSD, although he did tell others about the torture he had experienced before emigrating to the United States. (Id., ¶¶ 30–31.) In any event, Tyson granted his requested accommodations. (Id., ¶¶ 34–35.) In May 2021, Mekasha was sentenced to seven days in the Pottawattamie County Jail for his OWI. (Id., 38.) On May 14, 2021, he submitted a vacation request to Tyson for the period from May 18 to May 30 to allow him to serve the seven-day sentence. (Id., ¶¶ 39–40.) He delivered the request to Chappelear but did not tell her that he would be serving time in jail, nor did she ask. (Id., 41.) Chappelear approved the request for vacation leave. (Id., 42.) On May 19, 2021, Chappelear learned from another Tyson employee that Mekasha was in jail, which she confirmed by reviewing a Pottawattamie County inmate list. (Id., ¶¶ 43–44.) Chappelear informed the Human Resources Director, Gary Denton, of what she had learned. (Id., ¶¶ 45–46.) Denton responded by saying, "We need to part ways with this guy…I will run with this. Stay tune[d]." (Id., 49.) At some point the same week, Chappelear texted Mekasha: "Eddie, just want to make sure you are okay. We had

some [team members] reach out that are concerned that you might be in jail." (Id., 50.) Two days later, Mekasha responded: "Thank you for checking in I will call you on Monday." (Id., 51.) On May 25, 2021, Mekasha texted information to Chappelear showing his participation in therapy, recent relapse with alcohol, and struggles with PTSD. (Id., 57.) He thanked Chappelear for helping him and promised to disclose more information about his "diseases." (Id., 58.) Mekasha returned to work on June 1, 2021, and met with Chappelear and Defendant Daniel Horton. (Id., ¶¶ 52–53.) Mekasha did not report to Horton. (Id., 7; see also ECF 36-2, p. 38.) Instead, Horton, like Mekasha, reported to Chappelear. (ECF 41-1, 9.) Horton did not speak during the meeting on June 1, but Chappelear did. (Id., ¶¶ 54–55.) She told Mekasha he could either resign or be terminated. (Id., 55.) Mekasha decided to resign and delivered a resignation letter to Chappelear later that day. (Id., ¶¶ 60–61; see also ECF 36-2, p. 100.) Mekasha told Chappelear and Horton he did what he did because of his "diseases." (ECF 41-1, 56.) A different Tyson employee, K.S., was in jail at the same time as Mekasha. (Id., 62.) When Mekasha saw K.S. in jail, he asked K.S. not to tell anyone at Tyson that Mekasha was there. (Id., 63.) Mekasha told K.S. this was his second time in jail, "and that he would lose his job if anybody found out about it." (Id.) K.S.'s position was Ergonomics Coordinator, and he did not report to Chappelear. (Id., 69.a.) The Ergonomics Coordinator job description does not require the employee to abide by the highest ethical or moral code of conduct in performing the job duties. (Id.) Unlike Mekasha, K.S. informed his supervisor that he was going to miss work to serve time in jail. (Id.) In addition to K.S., Mekasha identified three other Tyson employees who he alleges were similarly situated to him. (Id., 69.) First, S.K., a Plan

Manager, had possible drinking issues but was not terminated. (Id., 69.b.) S.K. did not report to Chappelear, nor did his job description require adherence to the highest ethical or moral code of conduct. (Id.) Second, B.K., an Operations Manager, had addiction issues. (Id., 69.c.) His job description also did not require adherence to the highest ethical or moral code of conduct. (Id.) Third, J.D., a B shift supervisor, had addiction issues. (Id., 69.d.) His job description likewise did not require adherence to the highest ethical or moral code of conduct. (Id.) Mekasha does not know whether any of S.K., B.K., or J.D. ever spent time in jail while employed with Tyson. (Id., 69.) Mekasha does not have direct evidence of race discrimination. (Id., ¶¶ 70–78.) No one at Tyson ever, for example, made derogatory comments to him or anyone else in his presence about his skin color or being from Ethiopia. (Id., ¶¶ 74–76.) At most, Chappelear merely said he was "unfit" for his job during an unemployment hearing. (Id., 78.) Mekasha therefore rests his discrimination claims on indirect evidence. (Id., ¶¶ 70–78.) In addition to race and disability discrimination, Mekasha alleges that Tyson terminated him for advocating for employee safety during the COVID-19 pandemic. (Id., 64.) He admits, however, that he was eventually permitted to call or contact sick employees. (Id., 65.) He also admits that Tyson eventually obtained protective equipment for employees. (Id., 66.) III. LEGAL STANDARDS AND BACKGROUND. A. Disability, Race, Skin Color, and National Origin Discrimination. Mekasha brings disability, race, skin color, and national origin discrimination claims under the Iowa Civil Rights Act ("ICRA"), Title VII, Section 1981, and the Americans with Disabilities Act ("ADA"), all of which are analyzed under the same framework. See Garcia v. Primary Health Care, Inc., 604 F. Supp. 3d 765, 773 (S.D. Iowa 2022) (ICRA

and ADA); Garang v. Smithfield Farmland Corp., 439 F. Supp. 3d 1073, 1097 (N.D. Iowa 2020) (ICRA, Section 1981, and Title VII). "When there is no direct evidence of discrimination or retaliation, the plaintiff may establish an inference of discrimination or retaliation under the burden-shifting framework provided by McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973)." Anderson v. KAR Glob., 78 F.4th 1031, 1036 (8th Cir. 2023). Under this framework, the plaintiff must first establish a prima facie case. Id. "To establish a prima facie case of [disability] discrimination, a plaintiff must demonstrate that (1) he is a disabled person as defined by the ADA, (2) he is qualified to perform the essential functions of his job with or without reasonable accommodation, and (3) he suffered an adverse employment action because of his disability." Id. (cleaned up, citations omitted). Similarly, to establish a prima facie case for race or national origin discrimination, a plaintiff must establish: (1) he is a member of a protected group; (2) he was qualified for his position (i.e., meeting the legitimate expectations of his employer); (3) he was discharged; and (4) the discharge occurred under circumstances permitting an inference of discrimination. See Beasley v. Warren Unilube, Inc., 933 F.3d 932, 937 (8th Cir. 2019); Schaffhauser v. United Parcel Serv., Inc., 794 F.3d 899, 903 (8th Cir. 2015). "This burden is not onerous." Beasley, 933 F.3d at 937. (internal punctuation omitted). The prima facie elements "merely serve the gatekeeping function of eliminating the most common nondiscriminatory reasons for adverse employment actions." Id. (cleaned up). If a plaintiff establishes a prima facie case of disability, race, skin color, or national origin discrimination, "[t]he burden then shifts to [defendant] to present evidence of a legitimate, nondiscriminatory reason for the adverse action." Winters v. Deere & Co., 63 F.4th 685, 690 (8th Cir. 2023). "The

burden to articulate a nondiscriminatory justification is not onerous, and the explanation need not be demonstrated by a preponderance of the evidence." Torgerson v. City of Rochester, 643 F.3d 1031, 1047 (8th Cir. 2011). "If there is a sufficient reason, the burden shifts back to [plaintiff] to show the proffered reason is pretext for discrimination." Winters, 63 F.4th at 690. Once defendant offers a legitimate, nondiscriminatory reason for the adverse action, a plaintiff may prove pretext in a variety of ways, including by showing the employer "(1) failed to follow its own policies, (2) treated similarly-situated employees in a disparate manner, or (3) shifted its explanation of the employment decision." Nelson v. Lake Elmo Bank, 75 F.4th 932, 938 (8th Cir. 2023). "We have recognized that the showing of pretext necessary to survive summary judgment requires more than merely discrediting an employer's asserted reasoning for terminating an employee." Johnson v. AT & T Corp., 422 F.3d 756, 763 (8th Cir. 2005). A plaintiff "is also required to show that the circumstances permit a reasonable inference to be drawn that the real reason [defendant] terminated him was because of his race." Id. B. Summary Judgment Standard. Summary judgment is appropriate when there is "no genuine dispute as to any material fact" and the moving party "is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). A genuine factual issue exists where the issue "can be resolved only by a finder of fact because [it] may reasonably be resolved in favor of either party." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250 (1986). "On a motion for summary judgment, 'facts must be viewed in the light most favorable to the nonmoving party only if there is a "genuine" dispute as to those facts.'" Ricci v. DeStefano, 557 U.S. 557, 586 (2009) (quoting Scott v. Harris, 550 U.S. 372, 380 (2007)). "Where the record taken as a whole could not lead a rational

trier of fact to find for the nonmoving party, there is no genuine issue for trial." Id. (quoting Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986)). Plaintiff "may not rest upon the mere allegations or denials of his pleading, but . . . must set forth specific facts showing that there is a genuine issue for trial." Anderson, 477 U.S. at 248 (omission in original) (quoting prior version of Fed. R. Civ. P. 56(e)). IV. LEGAL ANALYSIS. A. Mekasha's Disability Discrimination Claim Fails as a Matter of Law. Mekasha admits he has no direct evidence of disability discrimination, and thus the McDonnell Douglas burden shifting framework applies. Tyson does not appear to dispute that alcoholism is a "disability" for purposes of state and federal law such that Mekasha has satisfied the first element of a prima facie case. See Miners v. Cargill Commc'ns, Inc., 113 F.3d 820, 823 (8th Cir. 1997) (recognizing that alcoholism is a disability within the meaning of the ADA). Furthermore, because he reports positive performance prior to his termination and worked for nearly nine years before being terminated, Mekasha has established the second element of a prima facie case; i.e., that he was "qualified to perform the essential functions of his job." Anderson, 78 F.4th at 1036. Finally, the third prima facie element—that Mekasha suffered an adverse employment action because of his disability—is satisfied because Tyson terminated Mekasha within one week of him sending Chappelear information via text message showing that he was in treatment for alcohol issues and PTSD. The burden therefore shifts to Defendants. Defendants have proven as a matter of law: (i) a legitimate, nondiscriminatory reason for the decision to terminate Mekasha; and (ii) that Mekasha has not offered sufficient evidence of pretext to overcome Tyson's nondiscriminatory reason and create an inference of discrimination. The legitimate,

nondiscriminatory reason is that Mekasha did not act with sufficient candor when he asked for vacation time in May 2021 but did not disclose that he would be using it to serve jail time. Defendants have proven through undisputed, contemporaneous evidence—including, especially, emails between Chappelear and Denton dated May 19, 2021—that this lack of candor was indeed the reason for Mekasha's termination. Specifically, Chappelear's email stated: "Eddie [Mekasha] had requested two weeks of vacation. He told me that he needed some R&R time. Now I have [employees] coming to me today to let me know that he is in jail." (ECF 41-1, 48.) Denton responded: "We need to part ways with this guy..." (Id., 49.) As Mekasha's lack of candor is not a discriminatory reason for the employment decision, Defendants are entitled to judgment as a matter of law on Mekasha's claim for disability discrimination. See Mervine v. Plant Eng'g Servs., LLC, 859 F.3d 519, 528 (8th Cir. 2017) (affirming summary judgment where plaintiff "points to nothing in the record suggesting that [the decision-makers] did not honestly believe that he had engaged in the misconduct [for which they terminated him]"). In trying to establish otherwise, Mekasha makes two primary arguments, neither of which is sufficient to survive summary judgment. First, he argues that Tyson does not have a formal policy subjecting a chaplain (or any other employee) to discipline for failure to tell the truth, nor does company policy require employees to explain how they plan to use their vacation leave. This argument fails because the presence or absence of a formal policy is not the relevant issue; instead, the question is whether Tyson genuinely fired him for his perceived lack of candor. See Scarborough v. Fed. Mut. Ins. Co., 996 F.3d 499, 507 (8th Cir. 2021) ("[T]he key question is not whether the stated basis for termination actually occurred, but whether

the defendant believed it to have occurred."). The answer here is clearly "yes" given Chappelear's email to Denton on May 19, 2021—just after she learned that Mekasha was in custody—identifying Mekasha's lack of candor as a major concern, following which Denton said it was time to "part ways" with him. Regardless of whether Tyson had a formal policy requiring honesty with respect to vacation leave, the record conclusively shows that Tyson perceived Mekasha as having failed to act with candor and terminated him for that reason. This is enough to establish as a matter of law that Mekasha was not terminated because of a disability. See McCullough v. Univ. of Ark. for Med. Scis., 559 F.3d 855, 864–65 (8th Cir. 2009) (affirming summary judgment where record showed the employer genuinely terminated the employee for nondiscriminatory reason, not withstanding employer's complaints about deficiencies in the investigation); see also Torlowei v. Target, 401 F.3d 933, 935 (8th Cir. 2005) (affirming summary judgment for employer despite alleged unfairness of decision to fire employee for purportedly minor violation). Second, Mekasha argues that another employee, K.S., was not terminated despite also having used vacation leave to serve time in jail. In other words, Mekasha argues that similarly situated employees were not treated the same as him. This argument fails because K.S. was not a chaplain and therefore not subject to the same moral and ethical expectations as Mekasha. Moreover, unlike Mekasha, K.S. did disclose that he would be using vacation time to serve a jail sentence. K.S. is therefore not as a matter of law "similarly situated" to Mekasha, as employees "are similarly situated only when they are 'similarly situated in all relevant respects' and 'are involved in or accused of the same offense and are disciplined in different ways.'" Carter v. Pulaski Cnty. Special Sch. Dist., 956 F.3d 1055,

1058 (8th Cir. 2020) (quoting Harvey v. Anheuser-Busch, Inc., 38 F.3d 968, 972 (8th Cir. 1994)). It follows that Mekasha cannot survive summary judgment by relying on K.S. as a comparator. See id. (affirming summary judgment for defendant because putative comparator was not "similarly situated in all relevant respects").

B. Mekasha's Race, Skin Color, and National Origin Discrimination Claims Fail as a Matter of Law. Even if Mekasha established a prima facie case of race, skin color, or national origin discrimination, those claims would fail for the same reason as his disability discrimination claim. He simply has not presented sufficient evidence to allow a reasonable juror to conclude he was fired for any reason other than his lack of candor. See Scarborough, 996 F.3d at 507; Mervine, 859 F.3d at 528; McCullough, 559 F.3d at 864–65. The Court also concludes, however, that Mekasha has not established a prima facie case of race, skin color, or national origin discrimination in the first place. It is undisputed that Tyson's facility in Council Bluffs has a diverse workforce, with ten percent of employees self-identifying as Black or African American and another sixty-six percent identifying as Asian, Hispanic, or Latino. (ECF 41-1, 6.) Mekasha worked for Tyson for nearly nine years and was promoted during that same period by one of the very supervisors— Chappelear—that he now accuses of race and national origin discrimination. No one at Tyson ever made derogatory comments to Mekasha or in his presence about his skin color or national origin, nor, with one very limited exception that arose after his termination, does he claim to have been privy to any comments that even arguably suggest racial animus. (The exception was Chappelear's statement during Mekasha's unemployment hearing that he was "unfit" for his job.) In context, this one isolated comment is not enough to establish an inference of

discrimination at the prima facie level. See, e.g., Grant v. City of Blytheville, 841 F.3d 767, 775 (8th Cir. 2016) (holding that employee could not establish prima facie case because he "failed to identify any biased comments made by a decisionmaker that might establish an animus-based inference of discrimination"). Mekasha also has not done enough to establish, at the prima facie level, that similarly situated employees were treated differently than him. As noted above, K.S. is not similarly situated because he: (a) had a different position for which high moral and ethical conduct was not as crucial as the Chaplain position; and (b) was candid with Tyson that he would be using vacation time to serve a jail sentence. S.K., B.K., and J.D. are also not similarly situated because they, too, were not chaplains and therefore not subject to heightened moral and ethical expectations. Moreover, there is no evidence in the record that any of them ever took vacation leave to serve jail time at all, much less that they did so without telling Tyson. See Young v. Builders Steel Co., 754 F.3d 573, 578 (8th Cir. 2014) (holding that plaintiff failed to establish prima facie case because, inter alia, the putative comparators performed different jobs with different expectations). Finally, Mekasha has not established that Tyson violated its own policies in deciding to terminate him. Instead, at most, he has merely shown that Tyson's policies did not explicitly require candor about the use of vacation leave. This is insufficient to give rise to an inference of discrimination in a situation where there is nothing in Tyson's policies that prohibits the company from disciplining employees for lack of candor and Mekasha himself admitted that his Chaplain position required honesty. See id. (affirming entry of summary judgment where employee failed to show deviation from policy). For these reasons, the Court concludes that Mekasha has failed to establish a

prima facie case of race, skin color, or national origin discrimination, nor (if it was necessary to reach the issue) has he offered enough evidence to allow a reasonable juror to conclude that Defendants' legitimate, nondiscriminatory reason was pretext for race, skin color, or national origin discrimination. C. Mekasha's Remaining Theories Fail as a Matter of Law. Mekasha also suggests that he was terminated for engaging in protected activity relating to COVID-19 issues. (ECF 41, p. 11.) He raises this argument in a section of his brief that only lasts two sentences, however, and the Court cannot tell from those two sentences (or the corresponding record citations) the legal basis for his claim or the temporal connection between his protected activity and termination. He therefore has not done enough to create a triable issue. See Segal v. Metro. Council, 29 F.4th 399, 403 (8th Cir. 2022) (to create a genuine issue that survives summary judgment, nonmovant "must substantiate allegations with sufficient probative evidence that would permit a finding in his favor"). To the extent he is raising a retaliation claim, he likewise has not done enough to survive summary judgment. See id. IV. CONCLUSION. The undisputed facts establish as a matter of law that Plaintiff Eddie Mekasha was fired for a legitimate, nondiscriminatory reason. The Court therefore GRANTS Defendants' Motion for Summary Judgment. (ECF 35.) The Clerk of Court is directed to enter judgment for Defendants and terminate the case.

Dated: January 8, 2024 _____ STEPHEN H. LOCHER U.S. DISTRICT JUDGE