

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 25-20297
Summary Calendar

[DATE STAMP]
United States Court of Appeals
Fifth Circuit
FILED
April 14, 2026
Lyle W. Cayce
Clerk

Babu K. Thomas,
Plaintiff—Appellant,

versus

David Steiner, U.S. Postmaster; Todd Wallace
Blanche, *Acting U.S. Attorney General*; John G.E.
Marck, *United States Attorney for the Southern
District of Texas,*
Defendants—Appellees.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:22-CV-3157

Before Jones, Richman, and Southwick, *Circuit
Judges.*

Per Curiam:*

Babu K. Thomas appeals from the district court's grant of summary judgment to his former employer on claims of age, race, and disability discrimination, retaliation, and hostile workplace environment, as well as the court's denial of his motion for reconsideration and assessment of bill of costs against him. We affirm.

I

Babu K. Thomas is an Asian-American man born in 1963. He began working for the United States Postal Service (USPS) in 2000. As early as 2007, USPS began documenting problems with his work performance. In 2010, Thomas was given a medical accommodation limiting his workday to 8 hours. However, he did not abide by the conditions of the accommodation. In June of 2014, Thomas instituted an investigation with USPS Equal Employment Opportunity ("EEO") alleging retaliation and a hostile work environment based on race, national origin, age, and disability.

Thomas stopped going to work after August 13, 2014. On September 6, 2014, USPS notified Thomas he failed to keep his supervisor informed of his status and failed to provide documentation to support his inability to work. On January 24, 2015, Thomas was informed he had been placed on Leave Without Pay status since

* This opinion is not designated for publication. See 5th Cir. R. 47.5.

August 13. Thomas sent several letters to USPS representatives between 2014 and 2017 asking to discuss reasonable accommodations and his claims of harassment and hostile work environment, but none include supporting medical documentation.

On November 1, 2017, Thomas was ordered to “provide acceptable evidence of [his] inability to report [for work] from August 2014 to present” or be declared absent without leave and possibly terminated. USPS conducted an investigative interview with Thomas on January 12, 2018, at which Thomas declined to provide any documentation of his need to be absent from work. Thomas was terminated effective March 23, 2018.

Thomas filed a charge with the EEO on April 20, 2018 asserting discrimination, harassment, and retaliation based on race, age, and disability beginning in December 2017. The EEOC issued a notice of right to sue letter on June 18, 2022. Thomas filed suit in federal district court on September 15, 2022.

Following discovery, the defendants moved for summary judgment on September 12, 2024. On October 18, 2024, Thomas filed a motion to compel alleging that the defendants had not complied with discovery requests. The district court ordered the defendants to supplement discovery by November 14, 2024. On February 7, 2025, Thomas filed another motion to compel.

The magistrate judge issued a report and recommendation recommending the defendants’ motion for summary judgment be granted in full on

February 12, 2025. The magistrate denied Thomas's motion to compel on March 4, 2025. The district court then adopted the report and recommendation on March 14, 2025 and dismissed Thomas's claims with prejudice. The court also awarded costs in favor of defendants. Thomas objected to this, but the court overruled his objection. Thomas also filed a motion for reconsideration, which the court denied. He timely appealed.

II

We begin with Thomas's challenge to the district court's denial of his motion to compel discovery. "Discovery rulings are 'committed to the sound discretion of the trial court' and will not be reversed on appeal unless 'arbitrary or clearly unreasonable.'"¹

The district court denied Thomas's motion because the court "conclude[d] that Defendant complied with the Court's [previous] Order compelling them to supplement their discovery responses" and that Thomas's motion "was filed belatedly and months after the [] deadline and without conferring with Defendant as required by Local Rule 7.1(D)." Thomas maintains he "filed timely before the motion deadlines" and that "Defendant did not produce the documents that the Court ordered them to produce."

¹ *McCreary v. Richardson*, 738 F.3d 651, 654 (5th Cir. 2013) (quoting *Williamson v. USDA*, 815 F.2d 368, 373, 382 (5th Cir. 1987)).

The district court did not abuse its discretion in denying Thomas's motion to compel. The supplemental discovery deadline was set as November 14, 2024. Thomas's motion was filed on February 7, 2025. "A district court has discretion to deny as untimely a motion filed after the discovery deadline."² Its decision to do so was therefore not "arbitrary or clearly unreasonable."³

Thomas's further argument that summary judgment was improper because he "did not have a full opportunity to conduct discovery" as "[t]he Court had not yet ruled on [his] motion to compel" is without merit. The magistrate judge ruled on his motion to compel on March 4, 2025. The district court did not adopt the magistrate's report and recommendation on the motion for summary judgment until March 14, 2025. By that time, the magistrate had already found the defendants complied with its previous discovery orders and that Thomas's motion to compel was untimely.

III

Thomas challenges the district court's grant of summary judgment to the defendants. "We review the

² *Brand Servs., L.L.C. v. Irex Corp.*, 909 F.3d 151, 156 (5th Cir. 2018).

³ *McCreary*, 738 F.3d at 654 (quoting *Williamson*, 815 F.2d 382).

district court's grant of summary judgment *de novo*.”⁴ Summary judgment is proper “if the movant shows that there is no genuine dispute as to any material fact.”⁵ In response to the movant, the summary judgment standard “requires the nonmoving party to go beyond the pleadings and by her own affidavits, or by the ‘depositions, answers to interrogatories, and admissions on file,’ designate ‘specific facts showing that there is a genuine issue for trial.’”⁶

A

First, we consider Thomas's claim of disability discrimination. The Rehabilitation Act provides the exclusive remedy for federal employees alleging disability discrimination in the workplace.⁷ “To qualify for relief under the Rehabilitation Act, a plaintiff must prove that (1) he is an ‘individual with a disability’; (2) who is ‘otherwise qualified’; (3) who worked for a ‘program or activity receiving Federal financial assistance’; and (4) that he was discriminated against ‘solely by reason of her or his disability.’”⁸ “An

⁴ *Morris v. Covan World Wide Moving, Inc.*, 144 F.3d 377, 380 (5th Cir. 1998).

⁵ Fed. R. Civ. P. 56(a).

⁶ *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986).

⁷ *Dark v. Potter*, 293 F. App'x 254, 258 (5th Cir. 2008).

⁸ *Hileman v. City of Dallas*, 115 F.3d 352, 353 (5th Cir. 1997) (quoting 29 U.S.C. § 794(a)).

individual with a disability is any person who (1) has a physical or mental impairment which 'substantially limits one or more of such person's major life activities'; (2) has a 'record' of such an impairment; or (3) is 'regarded' as having such an impairment."⁹ Major life activities include "caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working."¹⁰

Thomas alleges a diagnosis of diabetes in 2005 and depression in 2009 as the basis for disabilities. In one of the letters Thomas submitted as summary judgment evidence, he wrote: "I told you I am a type-2 diabetic during our conversations at work and while you were riding with me. I have been on an 8hr day restriction for long time. I had to use an umbrella in the sun at NBUs and sometimes check my blood sugar if I feel weak and use the bathroom if needed and such." This is the extent of the record evidence establishing the impacts of Thomas's diagnoses. However, this is insufficient to create a genuine issue of material fact as to whether Thomas is "[a]n individual with a disability" because it does not demonstrate that his physical or mental impairment "substantially limits one or more of [his] major life activities."¹¹ Indeed, Thomas continued to work for years after these diagnoses.

⁹ *Id.* (quoting 29 U.S.C. § 706(8)(B)).

¹⁰ *Dutcher v. Ingalls Shipbuilding*, 53 F.3d 723, 726 (5th Cir. 1995).

¹¹ *Hileman*, 115 F.3d at 353.

Because Thomas fails to show a genuine dispute of material fact as to whether he is an individual with a disability, summary judgment was proper on his disability discrimination and failure to accommodate claims.

B

With regard to Thomas's race discrimination claim, to establish a prima facie case of racial discrimination, a plaintiff must show he "1) is a member of a protected class; 2) was qualified for h[is] position; 3) was subjected to an adverse employment action; and 4) was replaced by someone outside the protected class, or that other similarly situated persons were treated more favorably."¹² "Employees are similarly situated when they (1) 'held the same job or responsibilities,' (2) 'shared the same supervisor or had their employment status determined by the same person,' and (3) 'have essentially comparable violation histories.'"¹³

Thomas proffers five comparators. For the first two, Thomas points to a USPS pre-complaint counseling information form in the record that he completed. The form names one comparator as a "female, European-American" who "was given special

¹² *Septimus v. Univ. of Hous.*, 399 F.3d 601, 609 (5th Cir. 2005).

¹³ *West v. City of Hous.*, 960 F.3d 736, 740 (5th Cir. 2020) (quoting *Lee v. Kan. City S. Ry. Co.*, 574 F.3d 253, 260 (5th Cir. 2009)).

accommodations, no harassments" and "was awarded [Thomas's] adjusted route by supervisor." It names the second as a "male, European-American" who "was provided accommodation to work only half of the route for a long period of time for a medical condition. He was away from carrier craft for over 10 y[ea]rs but allowed to bid on route (my adjusted route) at the same time I was denied opportunity to bid open routes." This evidence is insufficient to create a genuine issue of material fact as to whether these employees are similarly situated. Thomas points to no evidence that suggests these employees "shared the same supervisor or had their employment status determined by the same person" and offers nothing regarding these employee's "violation histories."¹⁴ As for Thomas's three other proffered comparators, Thomas points to no record evidence whatsoever. Thomas therefore does not show a genuine issue of material fact as to whether they are similarly situated.

Because Thomas does not point to any record evidence creating a genuine issue of material fact as to whether his proffered comparators are "similarly situated persons [who] were treated more favorably" and does not argue he was "replaced by someone outside the protected class," he did not raise a genuine issue of material fact as to the fourth element of his prima facie case of racial discrimination.¹⁵ Summary judgment was therefore proper on his race

¹⁴ West, 960 F.3d at 740 (quoting *Lee*, 574 F.3d at 260).

¹⁵ *Septimus*, 399 F.3d at 609.

discrimination claim.

C

As to Thomas's age discrimination claim, "[t]o establish h[is] prima facie case of age discrimination, [Thomas] must show that (1) [he] was discharged, (2) [he] was qualified for the position, (3) [he] was within the protected class when [he] was discharged, and (4) [he] was 'either i) replaced by someone outside the protected class, ii) replaced by someone younger, or iii) otherwise discharged because of h[is] age.'"¹⁶

Thomas alleges "his carrier route was given to much younger part-time and casual employees." However, Thomas does not point to any competent summary judgment evidence demonstrating he was replaced by younger employees or even identifying who those employees were.¹⁷ Indeed, Thomas admits he "did not get their names and other information" during discovery. Thomas therefore has not shown a genuine issue of material fact as to the fourth element of his prima facie case. Summary judgment was proper on

¹⁶ *Allen v. U.S. Postal Serv.*, 63 F.4th 292, 301 (5th Cir. 2023) (quoting *Jackson v. Cal-W. Packaging Corp.*, 602 F.3d 374, 378 (5th Cir. 2010)).

¹⁷ *See Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986) ("Rule 56(e) permits a proper summary judgment motion to be opposed by any of the kinds of evidentiary materials listed in Rule 56(c), except the mere pleadings themselves, and it is from this list that one would normally expect the nonmoving party to make the showing to which we have referred.")

his age discrimination claim.

D

“To present a *prima facie* case of retaliation under either Title VII or § 1981, a plaintiff must show that: (1) he engaged in an activity protected by Title VII; (2) he was subjected to an adverse employment action; and (3) a causal link exists between the protected activity and the adverse employment action.”¹⁸ “If [the plaintiff] successfully establishes her *prima facie* case, the burden then shifts to the [defendant] to state a legitimate non-retaliatory reason for its action. . . . [The plaintiff] must [then] show that the [defendant]’s stated reason is actually a pretext for retaliation.”¹⁹ “The proper standard of proof on the causation element of a Title VII retaliation claim is that the adverse employment action taken against the plaintiff would not have occurred ‘but for’ her protected conduct.”²⁰

Thomas argues record evidence showing his EEO complaints, congressional complaints, and reasonable accommodation requests, among others, are protected activity for which he was fired in retaliation. Assuming without deciding that Thomas has created a genuine

¹⁸ *Davis v. Dall. Area Rapid Transit*, 383 F.3d 309, 319 (5th Cir. 2004).

¹⁹ *Septimus v. Univ. of Hous.*, 399 F.3d 601, 610 (5th Cir. 2005).

²⁰ *Id.* at 608.

issue of material fact with respect to each element of his prima facie case, USPS has articulated a legitimate non-retaliatory reason for the employment action—that is, that Thomas was absent from work for three years and continually failed to provide the necessary requested medical information to justify his absence. As we have previously held, “an employee’s failure to show up for work is a legitimate reason for firing her.”²¹

Thomas does not respond to USPS’s non-retaliatory reason, arguing instead that “the defendant presents no non-discriminatory reasons for termination of [his] employment.” Thomas therefore does not create a genuine issue of material fact as to whether the adverse employment action taken against him would have occurred but-for his protected conduct. Summary judgment was accordingly proper on this claim as well.

E

We now turn to Thomas’s harassment and hostile work environment claim. To establish a hostile work environment claim based on race, age, or disability, a plaintiff must show: (1) he belongs to a protected group; (2) he was subjected to unwelcome harassment; (3) the harassment complained of was based on race, age, or disability; (4) the harassment complained of

²¹ *Amedee v. Shell Chem., L.P.*, 953 F.3d 831, 835 (5th Cir. 2020) (quoting *Trautman v. Time Warner Cable Tex., L.L.C.*, 756 F. App’x 421, 428 (5th Cir. 2018)).

affected a term, condition, or privilege of employment;
(5) the employer knew or should have known of the harassment in question and failed to take prompt remedial action.²²

Thomas points to a coworker's EEO investigative affidavit filed on March 8, 2013, a complaint Thomas wrote on a USPS routing slip to the postmaster detailing an incident of bullying by coworkers and a supervisor dated June 17, 2014, and several letters Thomas wrote between 2014 and 2017. However, Thomas' last day of work was August 13, 2014. All the incidents of harassment reflected in the record necessarily occurred on or before that date. But the EEO only accepted Thomas's hostile work environment and discriminatory harassment claim insofar as it related to harassment and bullying "[b]eginning on or about December of 2017." Thomas cannot point to any record evidence demonstrating harassment from 2017 onwards. Summary judgment was therefore proper on this claim.

IV

Finally, Thomas argues "USPS management terminated [him] from his employment without just cause" and there was an "unfair and improper grievance arbitration process." However, Thomas did

²² See *Ramsey v. Henderson*, 286 F.3d 264, 268 (5th Cir. 2002) (race); *Thompson v. Microsoft Corp.*, 2 F.4th 460, 471 (5th Cir. 2021) (disability); *Dediol v. Best Chevrolet, Inc.*, 655 F.3d 435, 441 (5th Cir. 2011) (age).

not plead that his termination was improper aside from his prior discrimination and retaliation claims in his underlying administrative complaint, nor in his complaint in federal district court. Nor did he plead a claim about the arbitration process in the district court. We will not consider claims raised for the first time on appeal.²³

V

Thomas asserts that “[t]he memorandum and recommendation contain several factual errors.”²⁴ Because “[w]e give *pro se* briefs a liberal construction,”²⁵ we construe this argument to be an appeal of the denial of Thomas’s motion for reconsideration. “[W]e review a district court’s decision on a Rule 59 motion to reconsider for abuse of discretion.”²⁶

“A motion to alter or amend the judgment under Rule 59(e) ‘must clearly establish either a manifest error of law or fact or must present newly discovered evidence’ and ‘cannot be used to raise arguments which could, and should, have been made before the

²³ See *Leverette v. Louisville Ladder Co.*, 183 F.3d 339, 342 (5th Cir. 1999).

²⁴ Thomas Br. at 35.

²⁵ *Brown v. Sudduth*, 675 F.3d 472, 477 (5th Cir. 2012).

²⁶ *In re La. Crawfish Producers*, 852 F.3d 456, 462 (5th Cir. 2017).

judgment issued.”²⁷ In denying Thomas’s motion, the district court noted his “[m]otion establishes only that [he] disagrees with the Court’s ruling.” We agree. Because Thomas failed to establish a manifest error of law or fact or present newly discovered evidence, the district court did not abuse its discretion in denying his motion for reconsideration.

VI

Finally, Thomas argues the district court erred in granting a bill of costs in favor of the defendants. Federal Rule of Civil Procedure 54(d)(1) states “costs—other than attorney’s fees—should be allowed to the prevailing party.”²⁸ This rule “contains a strong presumption that the prevailing party will be awarded costs.”²⁹ “Only when a clear abuse of discretion is shown can an award of cost be overturned.”³⁰

Thomas argues the district court’s grant of deposition-related costs to the defendants was an abuse of discretion because his deposition was not used in the defendant’s motion for summary judgment. However, we have previously held that “[a] deposition

²⁷ *Schiller v. Physicians Res. Grp. Inc.*, 342 F.3d 563, 567 (5th Cir. 2003) (quoting *Rosenzweig v. Azurix Corp.*, 332 F.3d 854, 863-64 (5th Cir. 2003)).

²⁸ Fed. R. Civ. P. 54(d)(1).

²⁹ *Pacheco v. Mineta*, 448 F.3d 783, 793 (5th Cir. 2006).

³⁰ *Id.*

or deposition copy 'need not be introduced into evidence . . . in order to be 'necessarily obtained for use in the case.'"³¹ "Whether a deposition or copy was necessarily obtained for use in the case is a factual determination within the district court's discretion, and '[w]e accord the district court great latitude in this determination.'"³² The district court found the deposition of Thomas "was clearly obtained for use in this case even though Defendant did not cite the deposition in its summary judgment briefing." Thomas presents no compelling reason to disturb the district court's factual determination. The district court did not abuse its discretion in granting the bill of costs.

* * *

For the foregoing reasons, we AFFIRM the district court's grant of summary judgment to the defendants, denial of Thomas's motion for reconsideration, and assessment of bill of costs.

³¹ *United States ex rel. Long v. GSDMidea City, L.L.C.*, 807 F.3d 125, 130 (5th Cir. 2015) (quoting *Fogleman v. ARAMCO*, 920 F.2d 278, 285-86 (5th Cir. 1991)).

³² *Id.* (alteration in original) (quoting *Fogleman*, 920 F.2d at 286).

United States Court of Appeals
FIFTH CIRCUIT
OFFICE OF THE CLERK
[Letterhead]

April 14, 2026

**MEMORANDUM TO COUNSEL OR PARTIES
LISTED BELOW**

Regarding: Fifth Circuit Statement on Petitions for
Rehearing or Rehearing En Banc

No. 25-20297 Thomas v. Steiner
USDC No. 4:22-CV-3157

Enclosed is a copy of the court's decision. The court has entered judgment under Fed. R. App. P. 36. (However, the opinion may yet contain typographical or printing errors which are subject to correction.)

Fed. R. App. P. 39 through 41, and Fed. R. App. P. 39, 40, and 41 govern costs, rehearings, and mandates. **Fed. R. App. P. 40 require you to attach to your petition for panel rehearing or rehearing en banc an unmarked copy of the court's opinion or order.** Please read carefully the Internal Operating Procedures (IOP's) following Fed. R. App. P. 40 for a discussion of when a rehearing may be appropriate, the legal standards applied and sanctions which may be imposed if you make a nonmeritorious petition for rehearing en banc.

Direct Criminal Appeals. Fed. R. App. P. 41 provides

that a motion for a stay of mandate under Fed. R. App. P. 41 will not be granted simply upon request. The petition must set forth good cause for a stay or clearly demonstrate that a substantial question will be presented to the Supreme Court. Otherwise, this court may deny the motion and issue the mandate immediately.

Pro Se Cases. If you were unsuccessful in the district court and/or on appeal, and are considering filing a petition for *certiorari* in the United States Supreme Court, you do not need to file a motion for stay of mandate under Fed. R. App. P. 41. The issuance of the mandate does not affect the time, or your right, to file with the Supreme Court.

Court Appointed Counsel. Court appointed counsel is responsible for filing petition(s) for rehearing(s) (panel and/or en banc) and writ(s) of *certiorari* to the U.S. Supreme Court, unless relieved of your obligation by court order. If it is your intention to file a motion to withdraw as counsel, you should notify your client promptly, ***and advise them of the time limits for filing for rehearing and certiorari.*** Additionally, you **MUST** confirm that this information was given to your client, within the body of your motion to withdraw as counsel.

The judgment entered provides that Appellant pay to Appellees the costs on appeal. A bill of cost form is available on the court's website www.ca5.uscourts.gov.

Sincerely,

LYLE W. CAYCE, Clerk

By: /s/
Sean Hannan, Deputy Clerk
504-310-7702

Enclosure(s)

Ms. Natasha Ann Alexander
Mr. Babu K. Thomas
Ms. Ariel Nicole Wiley

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 25-20297
Summary Calendar

[DATE STAMP]

United States Court of Appeals
Fifth Circuit

FILED

April 14, 2026

Lyle W. Cayce

Clerk

Babu K. Thomas,
Plaintiff—Appellant,

versus

David Steiner, U.S. Postmaster; Todd Wallace
Blanche, *Acting U.S. Attorney General*; John G.E.
Marck, *United States Attorney for the Southern District
of Texas,*

Defendants—Appellees.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:22-CV-3157

JUDGMENT

Before JONES, RICHMAN, and SOUTHWICK, *Circuit Judges*.

This cause was considered on the record on appeal and the briefs on file.

IT IS ORDERED and ADJUDGED that the district court's grant of summary judgment to the defendants, denial of Thomas' s motion for reconsideration, and assessment of bill of costs are AFFIRMED.

IT IS FURTHER ORDERED that Appellant pay to Appellees the costs on appeal to be taxed by the Clerk of this Court.

The judgment or mandate of this court shall issue 7 days after the time to file a petition for rehearing expires, or 7 days after entry of an order denying a timely petition for panel rehearing, petition for rehearing en bane, or motion for stay of mandate, whichever is later. See FED. R. APP. P. 41(B). The court may shorten or extend the time by order. See 5TH CIR. R. 41 I.O.P.

APPENDIX C

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

[DATE STAMP]
United States District Court
Southern District of Texas
ENTERED
May 20, 2025
Nathan Ochsner, Clerk

BABU THOMAS,
Plaintiff,

V.

LOUIS DEJOY, POSTMASTER GENERAL UNITED
STATES POSTAL SERVICE,
Defendant.

CIVIL ACTION NO.4:22cv3157

**ORDER ADOPTING MAGISTRATE JUDGE'S
MEMORANDUM AND RECOMMENDATION**

Having reviewed the Magistrate Judge's Memorandum and Recommendation dated May 1, 2025 (Dkt. 73) and the objections thereto (Dkt. 74), the court is of the opinion that said Memorandum and Recommendation should be adopted by this court.

It is therefore ORDERED that the Magistrate Judge's Memorandum and Recommendation is hereby ADOPTED by this court.

It is further ORDERED that Plaintiff Babu Thomas' Objections to the Bill of Costs (Dkt. 70) are OVERRULED and the Motion for Post-Judgment Relief and Reconsideration (Dkt. 69) are DENIED.

SIGNED at Houston, Texas this 20th day of May, 2025.

/s/
SIM LAKE
SENIOR UNITED STATES DISTRICT JUDGE

APPENDIX D

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

[DATE STAMP]

United States District Court
Southern District of Texas

ENTERED

May 01, 2025

Nathan Ochsner, Clerk

BABU THOMAS,
Plaintiff,

V.

LOUIS DEJOY, POSTMASTER GENERAL UNITED
STATES POSTAL SERVICE,
Defendant.

CIVIL ACTION NO.4:22cv3157

MEMORANDUM AND RECOMMENDATION

Before the Court are Plaintiff's Motion for Post-Judgment Relief and Reconsideration (ECF 69) and Plaintiff's Opposition to Defendant's Bill of Costs (ECF

70).¹ The Court recommends that the Motion be denied and the objections be overruled.

I. Procedural Background

Plaintiff, proceeding pro se, filed a Complaint for Employment Discrimination on September 15, 2022 alleging race, age, and disability discrimination and retaliation by his former employer, the United States Postal Service (USPS). ECF 1. After ruling on a motion to dismiss (ECF 13; ECF 19), granting leave to file an amended Complaint (ECF 18), ordering mediation (ECF 37; ECF 43), and conducting at least one discovery conference (ECF 46; ECF 49), the Court issued a Memorandum and Recommendation on February 12, 2025 recommending that Defendant's Motion for Summary Judgment be granted and Plaintiff's claims be dismissed with prejudice. ECF 54. Plaintiff filed Objections. ECF 56. The District Judge reviewed the Memorandum and Recommendation and Objections and adopted the recommendations in full. ECF 64. On March 14, 2025, the Court entered a Final Judgment dismissing Plaintiff's claims with prejudice and taxing costs against Plaintiff. ECF 65.

II. Defendant's Bill of Costs

In accordance with Local Rule of the Southern District of Texas 54.2, Defendant filed a Bill of Costs

¹ The District Judge referred this case to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(A) and (B), the Cost and Delay Reduction Plan under the Civil Justice Reform Act, and Federal Rule of Civil Procedure 72. ECF 7.

on March 21, 2025, less than fourteen days after entry of judgment. ECF 68. Plaintiff did not object to the Bill of Costs within 7 days of filing as required by Rule 54.2. Therefore, on April 7, 2025, the Clerk taxed costs in the amount of \$1,367.00. Plaintiff filed objections to the Bill of Costs only after they were taxed, on April 11, 2025. ECF 70. Plaintiff's objections are not only late but are without merit because Defendant sought costs only for Plaintiff's deposition. ECF 68. The Fifth Circuit has clearly ruled that it is not necessary for a deposition to have been entered into evidence to be deemed "necessarily obtained for use in the case." *U.S. ex rel. Long v. GSDM Idea City, L.L.C.*, 807 F.3d 125, 130 (5th Cir. 2015). The district court has discretion to make a factual determination whether a deposition was necessarily obtained for use in the case. *Id.* Plaintiff's deposition was clearly obtained for use in this case even though Defendant did not cite the deposition in its summary judgment briefing. The Court therefore recommends that Plaintiff's objections to the taxation of costs be overruled.

III. Plaintiff's Motion for Post-Judgment Relief and Reconsideration

On March 28, 2025, 14 days after entry of the Final Judgment, Plaintiff filed his Motion for Post-Judgment Relief and Reconsideration. ECF 69. Because the Motion was filed less than 28 days after entry of judgment, the Court considers it as a Motion to Alter or Amend a Judgment pursuant to Federal Rule of Civil Procedure 59(e). *See St. Paul Mercury Ins. Co. v. Fair Grounds Corp.*, 123 F.3d 336, 339 (5th Cir. 1997) (construing motion to reconsider a dismissal

order as a motion to alter or amend a judgment under Rule 59(e)); *Garza v. Allied Prop. and Cas. Ins. Co.*, Civil Action No. SA:16-cv-926, 2017 WL 8181015 *1 (W.D. Tex. Nov. 28, 2017) (citations omitted) (holding that a motion to reconsider a dispositive ruling filed within 21 days of judgment is considered under Rule 59(e)). A rule 59(e) motion calls into question the correctness of a judgment. *Templet v. Hydrochem, Inc.*, 367 F.3d 473, 478 (5th Cir. 2004).

Under Rule 59(e), amending a judgment is appropriate when (1) there has been a change in intervening law; (2) the movant presents newly discovered evidence that was previously unavailable; or (3) it is necessary to correct a manifest error of law or fact. *Garza*, 2017 WL 8181015 at *1. It is not a proper vehicle for rehashing arguments. *Id.* “Reconsideration of a judgment after its entry is an extraordinary remedy that should be used sparingly.” *Budri v. FirstFleet, Inc.*, 860 F. App’x 306, 308 (5th Cir. 2021) (quoting *Templet*, 367 F.3d at 479). A Rule 59(e) motion “must clearly establish either a manifest error of law or fact or must present newly discovered evidence and cannot be used to raise arguments which could, and should, have been made before the judgment issued.” *Schiller v. Physicians Res. Group, Inc.*, 342 F.3d 563, 567 (5th Cir. 2003) (citations omitted).

Plaintiff fails to meet his burden to show a manifest error of law or fact or to present newly discovered evidence. *See* ECF 69; ECF 72. Plaintiff’s Motion establishes only that Plaintiff disagrees with the Court’s ruling. Plaintiff was afforded a full and fair

opportunity to brief the issues on summary judgment and to object to the Court's Memorandum and Recommendation. ECF 42; ECF 47; ECF 51; ECF 53; ECF 56. Therefore, the Court recommends that Plaintiff's Motion for Post-Judgment Relief and Reconsideration be denied.

IV. Conclusion and Recommendations

For the reasons discussed above the Court RECOMMENDS that Plaintiff's objections to the Bill of Costs be OVERRULED and Plaintiff's Motion for Post- Judgment Relief and Reconsideration be DENIED.

The Clerk of the Court shall send copies of the memorandum and recommendation to the respective parties, who will then have fourteen days to file written objections, pursuant to 28 U.S.C. § 636(b)(1)(C). Failure to file written objections within the time period provided will bar an aggrieved party from attacking the factual findings and legal conclusions on appeal. *Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1428-29 (5th Cir. 1996) (en banc), superseded by statute on other grounds.

Signed on May 01, 2025, at Houston, Texas.

/s/

ChristinaA. Bryan
United States Magistrate Judge

APPENDIX E

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

[DATE STAMP]

United States District Court
Southern District of Texas

ENTERED

February 12, 2025

Nathan Ochsner, Clerk

BABU K. THOMAS,
Plaintiff,

v. CIVIL ACTION NO. 4:22-CV-3157

LOUIS DEJOY, POSTMASTER GENERAL,
UNITED STATES POSTAL SERVICE,
Defendant.

MEMORANDUM AND RECOMMENDATION

Plaintiff, proceeding pro se, filed a Complaint for Employment Discrimination alleging race, age, and disability discrimination and retaliation by his former employer, the United States Postal Service (USPS). ECF 1. The case is before the Court on Defendant's Motion for Summary Judgment, which has been fully

briefed and is ripe for determination.¹ See ECF 39; ECF 47. The Court recommends that Defendant's Motion for Summary Judgment be GRANTED.

I. Background

Plaintiff, an Asian-American man born in 1963, began working for the USPS in 2000 and was terminated in February 2018. The history of Plaintiff's disputes with USPS go back to at least 2007, when USPS began documenting problems with Plaintiff's work performance. See ECF 39-3; ECF 47 at 4. Plaintiff's USPS employment history includes Plaintiff's July 2010 request for a medical accommodation and subsequent failure to abide by the conditions of the accommodation. ECF 39-3 at 16-17. It also includes multiple EEO investigations, including one instituted in June 2014 which Plaintiff alleges he was unable to pursue due to health issues. ECF 47 at 10; ECF 47-2 at 8-12.

The events pertinent to this case began on August 13, 2014, the last day Plaintiff went to work. On September 6, 2014, USPS sent Plaintiff a letter stating that he had been absent since August 13, 2014, failed to keep his supervisor informed of his status, and failed to provide documentation to support his inability to work. ECF 39-4 at 2. A January 24, 2015 letter

¹ The District Judge referred this case to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(A) and (B), the Cost and Delay Reduction Plan under the Civil Justice Reform Act, and Federal Rule of Civil Procedure 72. ECF 7.

notified Plaintiff that he was on Leave Without Pay (LWOP) status and had been since August 13, 2014. ECF 47-1 at 14. An August 7, 2015 letter notified Plaintiff that his health and insurance benefits were terminated because he had been on LWOP status for 365 days. *Id.* at 15. The record includes several letters from Plaintiff to USPS representatives between 2014 and 2017 asking to discuss reasonable accommodations and other things, but none specify exactly what accommodation he needs to return to work and none include any supporting documentation. ECF 47-3 at 2-12.

Plaintiff had been absent from work on LWOP status for over three years when, on November 1, 2017, he was ordered to “provide acceptable evidence of your inability to report [for work] from August 2014 to present” by November 10, 2017 or be declared AWOL and possibly terminated. *Id.* at 3. USPS conducted an investigative interview with Plaintiff on January 12, 2018, at which he declined to provide any documentation of his need to be absent from work beginning in August 2014. ECF 39-1. USPS notified Plaintiff by letter dated February 6, 2018 that his employment was terminated effective March 23, 2018, pending the results of a grievance procedure if he chose to file one. *Id.*

Plaintiff filed a charge with the Equal Employment Opportunity Commission (EEOC) on April 20, 2018 asserting discrimination, harassment, and retaliation based on race, age, and disability based on USPS’s conduct beginning in December 2017. ECF 39-2. Plaintiff initiated this case on September 15,

2022 and, with leave of Court, filed an Amended Complaint on July 6, 2023. The Amended Complaint alleges discrimination on the basis of race, age, and disability as well as retaliation. ECF 18 at 2. Plaintiff alleges he sought reasonable accommodations due to his disabilities “several times” but USPS “refused to address his request and placed him under Leave without Pay for over three years and terminated him.” *Id.* at 3. According to Plaintiff, he wanted to return to work and the USPS would not let him. ECF 47 at 14. According to USPS, Plaintiff never submitted required documentation to support his absence from work after August 13, 2024.

II. Summary Judgment Standards

Summary judgment is appropriate if no genuine issues of material fact exist, and the moving party is entitled to judgment as a matter of law. FED. R. CIV. P. 56(a). The party moving for summary judgment has the initial burden to prove there are no genuine issues of material fact for trial. *Provident Life & Accident Ins. Co. v. Goel*, 274 F.3d 984, 991 (5th Cir. 2001). Dispute about a material fact is “genuine” if the evidence could lead a reasonable jury to find for the nonmoving party. *Hyatt v. Thomas*, 843 F.3d 172, 177 (5th Cir. 2016). “An issue is material if its resolution could affect the outcome of the action.” *Terrebonne Parish Sch. Bd. v. Columbia Gulf Transmission Co.*, 290 F.3d 303, 310 (5th Cir. 2002). If the moving party meets its initial burden, the nonmoving party must go beyond the pleadings and must present evidence such as affidavits, depositions, answers to interrogatories, and admissions on file to show “specific facts showing that

there is a genuine issue for trial.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986).

The court construes the evidence in the light most favorable to the nonmoving party and draws all reasonable inferences in that party’s favor. *R.L. Inv. Prop., LLC v. Hamm*, 715 F.3d 145, 149 (5th Cir. 2013). In ruling on a motion for summary judgment the Court does not “weigh evidence, assess credibility, or determine the most reasonable inference to be drawn from the evidence.” *Honore v. Douglas*, 833 F.2d 565, 567 (5th Cir. 1987). However, “[c]onclus[ory] allegations and denials, speculation, improbable inferences, unsubstantiated assertions, and legalistic argumentation do not adequately substitute for specific facts showing a genuine issue for trial.” *U.S. ex rel. Farmer v. City of Houston*, 523 F.3d 333, 337 (5th Cir. 2008) (citation omitted).

III. Analysis

Defendant moves to dismiss all of Plaintiff’s claims. The dispositive issues as to each claim are addressed below.²

A. Disability Discrimination

1. Legal Standards

² The Court has reviewed and considered all arguments and issues raised by the parties, whether or not explicitly addressed herein.

The Rehabilitation Act provides the exclusive remedy for federal employees alleging disability discrimination in the workplace. 29 U.S.C. § 790; *Dark v. Potter*, 293 F. App'x 254, 258 (5th Cir. 2008). To establish disability discrimination under the Rehabilitation Act, Plaintiff must show that: (1) he has a disability; (2) he was qualified for his position; and (3) he suffered an adverse employment action on account of his disability. *E.E.O.C. v. LHC Grp., Inc.*, 773 F.3d 688, 695 (5th Cir. 2014) (citing *Zenor v. El Paso Healthcare Sys., Ltd.*, 176 F.3d 847, 853 (5th Cir. 1999)). The Rehabilitation Act and the ADA share the same definition of "disability": "[a] physical or mental impairment that substantially limits one or more of the major life activities of such individual[.]" 29 C.F.R. § 1630.2(g); *See Coleman v. Kijakazi*, No. 21-10399, 2023 WL 2660167, at *4 (5th Cir. Mar. 28, 2023) (noting that ADA standards apply to the Rehabilitation Act, citing 29 U.S.C. § 794(d)). Major life activities include things such as "caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working." *See Dutcher v. Ingalls Shipbuilding*, 53 F.3d 723, 726 (5th Cir. 1995) (citing 29 C.F.R. § 1630.2, which sets out a non-exclusive list of major life activities).

To establish a case of disability discrimination based on the USPS's failure to make reasonable accommodations, Plaintiff must show: "(1) he is a qualified individual with a disability; (2) the disability and its consequential limitations were known by the covered entity; and (3) the entity failed to make reasonable accommodations." *Smith v. Harris Cnty., Texas*, 956 F.3d 311, 317 (5th Cir. 2020). The

Rehabilitation Act provides a right to a *reasonable accommodation*, not to the employee's preferred accommodation. *Griffin v. United Parcel Serv., Inc.*, 661 F.3d 216, 224 (5th Cir. 2011) (discussing ADA, quoting *E.E.O.C. v. Agro Distrib.*, 555 F.3d 462, 471 (5th Cir.2009)).

2. Analysis

Defendant contends that Plaintiff has no evidence that he is disabled within the meaning of the Rehabilitation Act or that he was qualified for his position, and that Plaintiff failed to engage in the reasonable accommodation process. ECF 39 at 15-18.

a. Plaintiff has failed to create a genuine issue of material fact as to his disabled status.

Plaintiff's Amended Complaint alleges that Plaintiff was diagnosed with Diabetes Mellitus in 2005 and with Severe Major Depression in 2009. ECF 18 at 9. However, it is undisputed that he continued to work after those diagnoses. *See, e.g.*, ECF 39-1 at 2 (stating Plaintiff was AWOL from his carrier assignment since September 1, 2014); ECF 47-2 at 8 (complaining of a hostile work environment in 2014). Plaintiff's Amended Complaint conclusorily alleges that diabetes "is a medical condition that affects the endocrine function that substantially limits his many major life activities" (ECF 18 at 3), but Plaintiff has presented no evidence showing that diabetes or depression limit his major life activities. *See* ECF 47. Plaintiff's allegations in his Amended Complaint do not constitute evidence

that will defeat a motion for summary judgment. *Celotex Corp.*, 477 U.S. at 324 (holding the nonmoving party must go beyond the pleadings and must present evidence such as affidavits, depositions, answers to interrogatories, and admissions on file to show "specific facts showing that there is a genuine issue for trial."). Further, a diagnosis of a condition is not evidence of a disability within the meaning of the Rehabilitation Act. See *Dupre v. Harris Cnty. Hosp. Dist.*, 8 F. Supp. 2d 908, 917 (S.D. Tex. 1998) (stating "physical impairment, standing alone, is not necessarily a disability as contemplated by the ADA," citing *Dutcher*, 53 F.3d at 726). In determining whether an impairment is a qualifying disability, the Court considers "(1) the nature and severity of the impairment; (2) its duration or expected duration; and (3) its permanent or expected permanent or long-term impact." *Id.* There is no medical documentation or other evidence in the record, as an exhibit to Plaintiff's Amended Complaint (ECF 18) or to Plaintiff's Summary Judgment Response (ECF 47), that supports a finding that his diabetes or depression substantially limited a major life activity.

Plaintiff's allegations that USPS representatives intentionally destroyed his records to avoid providing him reasonable accommodation present nothing more than "speculation, improbable inferences, [and] unsubstantiated assertions" that "do not adequately substitute for specific facts showing a genuine issue for trial." *U.S. ex rel. Farmer v. City of Houston*, 523 F.3d 333, 337 (5th Cir. 2008) (citation omitted). Therefore, Plaintiff fails to create a genuine issue of material fact on the first element of a claim under the

Rehabilitation Act, i.e., that he is a person with a disability. For this reason, Defendant is entitled to summary judgment on all of Plaintiff's Rehabilitation Act claims.

b. Plaintiff has failed to create to a genuine issue of material fact on his failure to accommodate claim.

Plaintiff's failure to prove his status as disabled under the Rehabilitation Act is dispositive of his discrimination and failure to accommodate claims. In addition or in the alternative, Plaintiff's failure to accommodate claim fails because he did not engage in the interactive process with the USPS regarding an appropriate accommodation. It is the employee's responsibility to inform his employer of his disability and request an accommodation. *Griffin*, 661 F.3d at 224 (citing *E.E.O.C. v. Chevron Phillips Chem. Co.*, 570 F.3d 606, 621 (5th Cir.2009)). When a qualified employee with a disability requests a reasonable accommodation, "the employer and employee should engage in flexible, interactive discussions to determine the appropriate accommodation." *Id.* (citing *E.E.O.C. v. Agro Distrib.*, 555 F.3d 462, 471 (5th Cir.2009)). However, if the employee is responsible for the breakdown of the "informal interactive process" an employer cannot be found to have violated the law. *Id.* (citing *Loulseged v. Akzo Nobel Inc.*, 178 F.3d 731, 736 (5th Cir.1999)).

Plaintiff argues that he submitted medical documentation and requested accommodation for his

disability in 2014, 2015, 2016, and 2017, but USPS refused to consider his requests for accommodations. ECF 47 at 10-11. Plaintiff's position is not supported by the record. The record reflects that Plaintiff's supervisor approved Plaintiff's 2010 request to be restricted to working 8 hours per day. ECF 39-3 at 16. However, Plaintiff routinely requested overtime because he did not complete his route in the allotted 8 hours. *Id.* There is no evidence in the record that Plaintiff, at any time after his initial 2010 request, submitted medical documentation to support making his accommodation permanent or requesting new accommodations. *See* 39-1 at 2; 39-3 at 19-21; ECF 39-4 at 2; ECF 39-5 at 2-5; ECF 47-1 at 2-12 (Plaintiff letters with no attached documentation); ECF 47-3 at 19-20 (Plaintiff Grievance stating he submitted medical documentation to Artis Hughes in 2014 and 2015, but not attaching copies and stating that his previous submissions were lost or destroyed); ECF 47-4 at 14-15 (2017 statements from Hughes and Eris Rodriguez stating they received no documentation from Plaintiff during their tenure). In any event, all of the accommodation request letters referenced by Plaintiff were sent after he had been absent without authorization and placed on LWOP status. There is no evidence in the record that Plaintiff submitted medical documentation to excuse his total absence from work after August 13, 2024. Defendant's Motion for Summary Judgment on Plaintiff's Rehabilitation Act claims should be granted for this reason.

B. Race Discrimination

1. Legal Standards

Plaintiff's Title VII race discrimination case is analyzed under the familiar *McDonnell-Douglas* burden-shifting framework. See *Rahman v. Exxon Mobil Corp.*, 56 F.4th 1041, 1044 (5th Cir. 2023) (absent direct evidence, discrimination claims must satisfy the *McDonnell-Douglas* burden-shifting framework). Under this framework, Plaintiff must produce evidence on each of the following elements of a prima facie case of race discrimination: that Plaintiff "(1) is a member of a protected group; (2) was qualified for the position at issue; (3) was discharged or suffered some adverse employment action by the employer; and (4) was replaced by someone outside his protected group or was treated less favorably than other similarly situated employees outside the protected group." *Id.* at 1044–45 (citing *Morris v. Town of Indep.*, 827 F.3d 396, 400-01 (5th Cir. 2016)). The Fifth Circuit interprets the fourth element narrowly, holding that other employees are similarly situated only when they "(1) held the same job or responsibilities, (2) shared the same supervisor or had their employment status determined by the same person, and (3) have essentially comparable violation histories." *West v. City of Houston, Texas*, 960 F.3d 736, 740 (5th Cir. 2020) (citation omitted).

2. Analysis

Plaintiff alleges that he is Asian-American but was perceived by some at work as Iranian-Muslim. ECF 47 at 17. Assuming the veracity of this allegation, Plaintiff satisfied the requirement to show he is a member of a protected class. Nonetheless, his race discrimination claim fails because he has presented no

evidence to create a genuine issue of fact on the fourth element of the claim. Plaintiff names five comparators in his Response that he alleges are not his race and who were treated more favorably. *Id.* However, at this stage of the case Plaintiff cannot rely on mere allegations. Two of the named comparators, Dianne Bratton and Charles Mayes, are identified on an EEO document, presumably prepared by Plaintiff, stamped "Received March 20, 2018." ECF 47-2 at 7. But that document only identifies the individual's gender and race and alleges they received some sort of accommodation. *Id.* Plaintiff has presented no evidence regarding the named comparators' jobs, responsibilities, supervisors, or violation histories. Therefore, Defendant is entitled to summary judgment on Plaintiff's race discrimination claim.

C. Age Discrimination

1. Legal Standards

In order to plead a prima facie case of age discrimination, Plaintiff must plead that (1) he was discharged, (2) he was qualified for the position, (3) he was within the protected class when he was discharged, 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. *Allen v. United States Postal Serv.*, 63 F.4th 292, 301 (5th Cir. 2023); *see also Berquist v. Washington Mut. Bank*, 500 F.3d 344, 349 (5th Cir. 2007) (setting forth same elements). The protected class under the Age Discrimination in Employment Act includes individuals at least 40 years old. 29 U.S.C. §§

631(a), 633a(a).

2. Analysis

Plaintiff alleges he was 55 years old at the time of his termination. ECF 47 at 17. Assuming the veracity of this allegation, Plaintiff was within the class protected by the Age Discrimination in Employment Act. Nonetheless, his age discrimination claim fails because he has presented no evidence to create a genuine issue of fact on the fourth element of his age discrimination claim. Plaintiff makes the unsupported allegation that “his carrier route was given to much younger part-time and casual employees,” *id.*, but he has presented no evidence to support this conclusory allegation. Defendant is entitled to summary judgment on Plaintiff’s age discrimination claim.

D. Retaliation

1. Legal Standards

The elements of a *prima facie* case for retaliation under anti-discrimination statutes are that Plaintiff: (1) engaged in a protected activity; (2) was subjected to an adverse employment action; and (3) a causal link exists between the protected activity and the adverse employment action. *See Davis v. Dallas Area Rapid Transit*, 383 F.3d 309, 319 (5th Cir. 2004) (stating elements of retaliation under Title VII and § 1981); *Lyons v. Katy Indep. Sch. Dist.*, 964 F.3d 298, 304 (5th Cir. 2020) (stating elements of retaliation under ADA); *Heggemeier v. Caldwell Cty., Texas*, 826 F.3d 861, 869 (5th Cir. 2016) (stating elements under ADEA). In the

retaliation context, an adverse employment action is one that is "harmful to the point that [it] could well dissuade a reasonable worker from making or supporting a charge of discrimination." *See Porter v. Houma Terrebonne Hous. Auth. Bd. of Comm'rs*, 810 F.3d 940, 945–46 (5th Cir. 2015) (noting that that adverse employment action standard for retaliation claims is less demanding than an ultimate employment decision standard for discrimination claims) (quoting *Burlington N. & Santa Fe Ry. Co. v. White*, 548 U.S. 53, 57 (2006)). To meet his ultimate burden on the causation element, Plaintiff must prove "that the adverse employment action taken against the plaintiff would not have occurred 'but for' h[is] protected conduct." *Septimus v. Univ. of Houston*, 399 F.3d 601, 608 (5th Cir. 2005).

2. Analysis

Plaintiff contends that he engaged in the protected activities of filing "EEOC complaints, NLRB charges, Union Grievances and actions, OSHA reporting safety violations, Congressional Complaints, Whistle blower reports and Reasonable Accommodation Requests." ECF 47 at 21. All of this alleged protected activity took place long before his termination in 2018. *See* ECF 47-1 at 2-12 (EEO Investigation Reports of claims filed November 1, 2010, July 20, 2011, October 3, 2012, October 7, 2013, and June 21, 2014). There is no evidence in the record from which a jury could reasonably infer a causal connection between his protected activity and his termination that shows but for his protected activity Plaintiff would not have been terminated. Therefore,

Defendant's is entitled to summary judgment on Plaintiff's retaliation claims.

E. Hostile Work Environment

1. Legal Standards

A successful claim for a hostile work environment based on race, age, or disability requires proof that Plaintiff: (1) belongs to a protected group; (2) was subjected to unwelcome harassment; (3) the harassment complained of was based on race, age, or disability; (4) the harassment complained of affected a term, condition, or privilege of employment; (5) the employer knew or should have known of the harassment in question and failed to take prompt remedial action. *See Ramsey v. Henderson*, 286 F.3d 264, 268 (5th Cir. 2002) (stating the elements of a hostile work environment claim based on race); *Thompson v. Microsoft Corp.*, 2 F.4th 460, 471 (5th Cir. 2021) (stating the elements of a hostile work environment claim under the ADA); *Dediol v. Best Chevrolet, Inc.*, 655 F.3d 435, 441 (5th Cir. 2011) (recognizing a claim under the ADEA for age-based hostile work environment with substantially the same elements as above). To be actionable, alleged harassment must go beyond "simple teasing, offhand comments, and isolated incidents." *Johnson v. Halstead*, 916 F.3d 410, 418 (5th Cir. 2019) (citing *Faragher v. City of Boca Raton*, 524 U.S. 775, 788 (1998)).

2. Analysis

Plaintiff alleges that he was subjected to a hostile work environment based on his race, age, disability, and in retaliation for reporting behavior in the workplace. ECF 47 at 22. Plaintiff was instructed in the Court's Memorandum and Recommendation granting his leave to replead his claims "that he must be able to plead and prove harassment that is 'sufficiently pervasive or severe to alter the conditions of employment and create an abusive working environment.' *Thompson v. Microsoft Corp.*, 2 F.4th 460, 471 (5th Cir. 2021)." ECF 13 at 13. Plaintiff was further cautioned that "he must be able to allege with factual support that the alleged harassment was due to his membership in a protected group, and that his employer knew about the harassment and did nothing to stop it." *Id.* Plaintiff's Summary Judgment Response lists several incidents without identifying the date of the incident or the perpetrators. ECF 47 at 23-24. As evidence of harassment, and his employer's knowledge of harassment, Plaintiff cites letters he wrote to Artis Hughes, Eric Rodriguez, and Yul Muluson in 2014. *Id.*; ECF 47-4 at 2-6. Assuming Plaintiff was harassed, none of his evidence indicates the harassment was because of his race, age, or disability or due to prior protected activity. Further, Plaintiff has presented no evidence of the specific dates on which the alleged harassment occurred that would satisfy the frequency component of severe or pervasive harassment standards. Further, Plaintiff has presented no evidence that supports a finding of severe or pervasive harassment under Fifth Circuit Standards because it did not "after a term or condition of his employment." Moreover, even if Plaintiff suffered severe or pervasive harassment based on his race, age, disability, or

protected activity, all of the identified harassment occurred prior to August 13, 2014. It is undisputed that August 13, 2014 is the last day Plaintiff was at work. Plaintiff was not terminated until 2018 and the 2018 EEO Complaint underlying this case alleged only harassment from December 2017 forward. Plaintiff has presented no evidence of actionable harassment and Defendant's Motion to Summary Judgment on his hostile work environment claim should be granted.

IV. Conclusion and Recommendation

For the reasons set forth above, the Court recommends that Defendant's Motion for Summary Judgment be GRANTED and Plaintiff's claims be DISMISSED WITH PREJUDICE.

The Clerk of the Court shall send copies of the memorandum and recommendation to the respective parties, who will then have fourteen days to file written objections, pursuant to 28 U.S.C. § 636(b)(1)(C). Failure to file written objections within the time period provided will bar an aggrieved party from attacking the factual findings and legal conclusions on appeal. *Douglas v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1428-29 (5th Cir. 1996) (en banc), superseded by statute on other grounds.

Signed on February 12, 2025, at Houston, Texas.

/s/

Christina A. Bryan
United States Magistrate Judge

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