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UNPUBLISHEDUNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 24-2128

LESLIE M. ANTHONY,

Plaintiff - Appellant,

v.

UNITED AIRLINES, INC.,

Defendant - Appellee.

Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. Anthony John Trenga, Senior District Judge. (1:24-cv-00494-AJT-LRV)

Submitted: November 3, 2025

Decided: January 6, 2026

Before THACKER and HEYTENS, Circuit Judges, and Gina M. GROH, United States District Judge for the Northern District of West Virginia, sitting by designation.

Affirmed by unpublished per curiam opinion.

ON BRIEF: Carla D. Aikens, CARLA D. AIKENS, P.L.C., Detroit, Michigan, for Appellant. John M. Remy, Felicia K. Marsh, JACKSON LEWIS P.C., Reston, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Leslie Anthony (“Appellant”) is a Black woman in her late fifties who worked as a probationary flight attendant for United Airlines, Inc. (“Appellee”). Appellee terminated Appellant’s employment after Appellant earned three attendance related disciplinary strikes. Appellant then filed suit, alleging that Appellee discriminated against her on the basis of race and age and retaliated against her for reporting that discrimination.

The district court granted summary judgment in favor of Appellee on all claims. On appeal, Appellant challenges only the district court’s dismissal of her retaliation claim. Because we conclude that Appellant fails to make out a prima facie claim of retaliation, we affirm.

I.

Appellant began her employment with Appellee on approximately July 4, 2022. Appellant, like all new United flight attendants, had to undergo a six week training period, followed by a 180 day probationary period. Appellant completed her training and became a probationary flight attendant (“PFA”) in mid-August 2022. Her probationary period was set to end in mid-February 2023.

PFAs are subject to Appellee’s “Developing U Disciplinary Process,” which uses a “Matrix” that applies progressive discipline, known as Interim Evaluations, for infractions. J.A. 485–86; 215.¹ The Matrix essentially imposes a strike system for attendance related

¹ Citations to the “J.A.” refer to the Joint Appendix filed by the parties in this appeal.

issues, with the third strike resulting in termination of employment. For example, PFAs earn strikes for taking sick days, missing flights, or failing to respond to calls. There is no dispute that Appellant took sick days on October 2, 2022, and November 9, 2022, while she was a PFA, and that those sick days resulted in Appellant's first two strikes. There is also no dispute that while Appellant was on the flight attendant "Reserve List," which is an "on call" list, she failed to respond to at least three calls by Appellee's scheduling department on January 17, 2023. As a result, the scheduling department marked Appellant as Unable to Contact ("UTC").

That same day, Appellant alerted her supervisor, Sabrina Yoon, about the UTC via email and explained that she missed the calls because she had taken Tylenol PM around 9 p.m. the night before. Yoon listened to all of the recorded calls and determined -- as Appellant had conceded -- that Appellant was, in fact, unable to be contacted while she was on the Reserve List. The Matrix specifies that a UTC typically results in an Interim Evaluation 2. But, because Appellant was already at an Interim Evaluation 3 (i.e., her second strike) due to her two sick days, the Matrix required "Termination Separation/Release." J.A. 215. As a result, Yoon terminated Appellant's employment on January 29, 2023.

Appellant claims that between receiving the UTC on January 17 and being terminated on January 29, she contacted human resources ("HR") and Appellee's Employee Assistance Program ("EAP") to report that Yoon was discriminating against her

based on her age and race. But, aside from Appellant's assertion, there is no record evidence to support these claims.

On February 13, 2023, Appellant filed separate charges of discrimination with the Equal Employment Opportunity Commission ("EEOC") and the Virginia Office of Civil Rights. After receiving notice of her right to sue from the EEOC, Appellant filed this lawsuit against Appellee in the Eastern District of Michigan on November 10, 2023. The case was later transferred to the Eastern District of Virginia.

Appellant's complaint raised the following eight claims: (I) retaliation, in violation of 42 U.S.C. § 1981; (II) racial discrimination, in violation of 42 U.S.C. § 1981; (III) racial discrimination, in violation of Title VII, 42 U.S.C. 2000d et seq.; (IV) racial discrimination, in violation of the Michigan Elliott-Larsen Civil Rights Act, MCL § 37.2101 et seq. ("ELCRA"); (V) retaliation, in violation of Title VII; (VI) retaliation, in violation of the ELCRA; (VII) age discrimination, in violation of the Age Discrimination in Employment Act, 29 U.S.C. § 621 to 29 U.S.C. § 634; and (VIII) harassment and discrimination on the basis of age, in violation of the ELCRA. The district court granted summary judgment in favor of Appellee on all of Appellant's claims on October 10, 2024.

Appellant timely filed this appeal.

II.

"We review the district court's grant of summary judgment de novo, applying the same legal standards as the district court." *al-Suyid v. Hifter*, 139 F.4th 368, 373 (4th Cir. 2025) (quotation marks and citation omitted). "Summary judgment is appropriate if there is no genuine dispute as to any material fact and the movant is entitled to judgment as a

matter of law.” *Sigley v. ND Fairmont LLC*, 129 F.4th 256, 260 (4th Cir. 2025) (quoting Fed. R. Civ. P. 56(a)). While we take the facts in the light most favorable to the non-moving party, “it is ultimately the nonmovant’s burden to persuade us that there is indeed a dispute of material fact. It must provide more than a scintilla of evidence -- and not merely conclusory allegations or speculation -- upon which a jury could properly find in its favor.” *Canaan Christian Church v. Montgomery Cnty.*, 29 F.4th 182, 192 (4th Cir. 2022) (quoting *CoreTel Va., LLC v. Verizon Va., LLC*, 752 F.3d 364, 370 (4th Cir. 2014)).

III.

On appeal, Appellant challenges the district court’s dismissal of her federal retaliation claims, that is, Counts I and V.² She also argues generally that summary judgment is improper because it deprives a plaintiff of her Seventh Amendment right to a jury. We reject both of Appellant’s arguments.

A.

Because Appellant has no direct evidence of retaliation, her claims must be analyzed using the burden-shifting framework of *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973), which proceeds in three steps. First, “a plaintiff must make out a *prima facie* case of [retaliation].” *Wannamaker-Amos v. Purem Novi, Inc.*, 126 F.4th 244, 255 (4th Cir. 2025) (citation omitted). If the plaintiff does so, the second step shifts “[t]he burden of production . . . to the employer to articulate a legitimate, non-discriminatory justification

² There is no dispute that all of Appellant’s retaliation claims pursuant to 42 U.S.C. § 1981 and Title VII can be considered together.

for its allegedly discriminatory action.” *Id.* Finally, “[i]f the employer carries this burden, the plaintiff then must prove by a preponderance of the evidence that the neutral reasons offered by the employer were not its true reasons, but were a pretext for discrimination.” *Id.* (internal quotation marks and citation omitted).

The district court determined that Appellant did not establish a prima facie case in the first instance. But even if she did, the district court also determined that Appellant could not adduce facts to create a genuine dispute as to whether Appellee’s proffered legitimate, nondiscriminatory reason for firing her was pretextual. Appellant challenges both rulings on appeal.³

As to the prima facie case, Appellant must show “(i) that she engaged in protected activity, (ii) that [Appellee] took adverse action against her, and (iii) that a causal relationship existed between the protected activity and the adverse employment activity.” *Foster v. Univ. of Maryland-Eastern Shore*, 787 F.3d 243, 250 (4th Cir. 2015) (cleaned up). Only the first and third elements are at issue here.

Appellant claims she engaged in protected activity “when she reported discriminatory treatment by her supervisor, [Yoon], to . . . HR and the . . . EAP[] in early January 2023.” Opening Br. at 12.⁴ But there is no record evidence beyond Appellant’s

³ Appellant also argues that the district court improperly applied *McDonnell Douglas* “as a procedural requirement rather than as a tool for evaluating circumstantial evidence.” Opening Br. at 15–16. We disagree and decline to address this argument further given our de novo review.

⁴ Appellant also claims that she reported discriminatory conduct to Appellee’s Dulles Base Manager, Brian Kozminski. But, critically, she admitted in her deposition that (Continued)

self-serving deposition testimony that those reports actually occurred. There are no emails or phone records to corroborate Appellant’s deposition testimony, even though she claims to have contacted HR from her United email account. But we need not wade further into that analysis, because even if we assume Appellant provided sufficient evidence of protected activity, we conclude that she failed to provide evidence of a causal relationship between the alleged protected activity and her termination.

In order to demonstrate the requisite causal relationship, “we have consistently required proof of a decisionmaker’s knowledge of protected activity to support a Title VII retaliation claim.” *McIver v. Bridgestone Americas, Inc.*, 42 F.4th 398, 412 (4th Cir. 2022) (cleaned up). “Knowledge of a protected activity means not only knowledge that the activity occurred, but also knowledge that the employee engaged in the protected activity *because* the employee had a reasonable belief that a Title VII violation occurred.” *Id.* (emphasis in original) (internal citation omitted). In her appeal brief, Appellant argues -- without any citation -- that “the causal connection between Plaintiff’s complaints and her termination is evident from the fact that her supervisors were aware of her complaints and acted to terminate her shortly after.” Opening Br. at 13. But Appellant makes no attempt to point to *any* facts to demonstrate that Yoon⁵ was aware of her alleged protected

she “told him that I felt like I was being treated unfair. I don’t believe I mentioned age or race. I may or may not have mentioned discrimination.” J.A. 697–98. As the district court rightly determined, this alleged conversation cannot constitute protected activity if Appellant did not complain about discrimination.

⁵ Appellant concedes that Yoon was the decisionmaker. *See* Opening Br. at 9 (“Yoon made the final decision.”).

activity.

Federal Rule of Appellate Procedure 28(a)(8)(A) requires the argument section of Appellant’s brief to contain her “contentions and the reasons for them, with citations to the authorities and parts of the record on which the appellant relies.” And we have explained that where an appellant “fails to include any record citations supporting [her] arguments, [] we consider them waived.” *United States v. Miller*, 41 F.4th 302, 313 (4th Cir. 2022); *Edwards v. City of Goldsboro*, 178 F.3d 231, 241 n.6 (4th Cir. 1999) (“Failure to comply with the specific dictates of [Rule 28(a)(8)(A)] with respect to a particular claim triggers abandonment of that claim on appeal.”). Because Appellant fails to develop any argument on appeal that Yoon had actual knowledge of her alleged protected activity, she has waived that argument. This waiver completely forecloses Appellant’s case, and we need not address her pretext arguments.

B.

Finally, we briefly address Appellant’s argument that summary judgment violates the Seventh Amendment by depriving a plaintiff of her right to a jury trial. While a civil plaintiff certainly possesses the right to have a jury resolve factual disputes, summary judgment allows courts to “isolate and dispose of factually unsupported claims or defenses.” *Carr v. Deeds*, 453 F.3d 593, 605 (4th Cir. 2006) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 323–24 (1986)). Indeed, summary judgment is only appropriate where there is “no genuine dispute as to any material fact.” Fed. R. Civ. P. 56(a). Thus, summary judgment does not usurp the role of the jury or violate the Seventh Amendment. *See Parklane Hosiery Co., Inc. v. Shore*, 439 U.S. 322, 336 (1979) (explaining that “many

procedural devices” including directed verdict and summary judgment “have been found not to be inconsistent with the Seventh Amendment” (citing *Galloway v. United States*, 319 U.S. 372, 388–393 (1943) (directed verdict does not violate the Seventh Amendment); *Fidelity & Deposit Co. v. United States*, 187 U.S. 315, 319–321 (1902) (summary judgment does not violate the Seventh Amendment)); *see also Barber v. Kimbrell’s, Inc.*, 577 F.2d 216, 221 n.12 (4th Cir. 1978) (“[W]here summary judgment is properly granted, no Seventh Amendment issue arises.” (citation omitted)).

IV.

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

AFFIRMED.

FILED: January 6, 2026

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUITNo. 24-2128, Leslie Anthony v. United Airlines, Incorporated
1:24-cv-00494-AJT-LRV

NOTICE OF JUDGMENT

Judgment was entered on this date in accordance with Fed. R. App. P. 36. Please be advised of the following time periods:

PETITION FOR WRIT OF CERTIORARI: The time to file a petition for writ of certiorari runs from the date of entry of the judgment sought to be reviewed, and not from the date of issuance of the mandate. If a petition for rehearing is timely filed in the court of appeals, the time to file the petition for writ of certiorari for all parties runs from the date of the denial of the petition for rehearing or, if the petition for rehearing is granted, the subsequent entry of judgment. See Rule 13 of the Rules of the Supreme Court of the United States; www.supremecourt.gov.

VOUCHERS FOR PAYMENT OF APPOINTED OR ASSIGNED COUNSEL: Vouchers must be submitted within 60 days of entry of judgment or denial of rehearing, whichever is later. If counsel files a petition for certiorari, the 60-day period runs from filing the certiorari petition. (Loc. R. 46(d)). If payment is being made from CJA funds, counsel should submit the CJA 20 or CJA 30 Voucher through the CJA eVoucher system. In cases not covered by the Criminal Justice Act, counsel should submit the Assigned Counsel Voucher to the clerk's office for payment from the Attorney Admission Fund. An Assigned Counsel Voucher will be sent to counsel shortly after entry of judgment. Forms and instructions are also available on the court's website, www.ca4.uscourts.gov, or from the clerk's office.

BILL OF COSTS: A party to whom costs are allowable, who desires taxation of costs, shall file a [Bill of Costs](#) within 14 calendar days of entry of judgment. (FRAP 39, Loc. R. 39(b)).

PETITION FOR REHEARING AND PETITION FOR REHEARING EN

BANC: A petition for rehearing must be filed within 14 calendar days after entry of judgment, except that in civil cases in which the United States or its officer or agency is a party, the petition must be filed within 45 days after entry of judgment. A petition for rehearing en banc must be filed within the same time limits and in the same document as the petition for rehearing and must be clearly identified in the title. The only grounds for an extension of time to file a petition for rehearing are the death or serious illness of counsel or a family member (or of a party or family member in pro se cases) or an extraordinary circumstance wholly beyond the control of counsel or a party proceeding without counsel.

Each case number to which the petition applies must be listed on the petition and included in the docket entry to identify the cases to which the petition applies. A timely filed petition for rehearing or petition for rehearing en banc stays the mandate and tolls the running of time for filing a petition for writ of certiorari. In consolidated criminal appeals, the filing of a petition for rehearing does not stay the mandate as to co-defendants not joining in the petition for rehearing. In consolidated civil appeals arising from the same civil action, the court's mandate will issue at the same time in all appeals.

A petition for rehearing must contain an introduction stating that, in counsel's judgment, one or more of the following situations exist: (1) a material factual or legal matter was overlooked; (2) a change in the law occurred after submission of the case and was overlooked; (3) the opinion conflicts with a decision of the U.S. Supreme Court, this court, or another court of appeals, and the conflict was not addressed; or (4) the case involves one or more questions of exceptional importance. A petition for rehearing, with or without a petition for rehearing en banc, may not exceed 3900 words if prepared by computer and may not exceed 15 pages if handwritten or prepared on a typewriter. Copies are not required unless requested by the court. (FRAP 40, Loc. R. 40(c)).

MANDATE: In original proceedings before this court, there is no mandate. Unless the court shortens or extends the time, in all other cases, the mandate issues 7 days after the expiration of the time for filing a petition for rehearing. A timely petition for rehearing, petition for rehearing en banc, or motion to stay the mandate will stay issuance of the mandate. If the petition or motion is denied, the mandate will issue 7 days later. A motion to stay the mandate will ordinarily be denied, unless the motion presents a substantial question or otherwise sets forth good or probable cause for a stay. (FRAP 41, Loc. R. 41).

U.S. COURT OF APPEAL FOR THE FOURTH CIRCUIT BILL OF COSTS FORM
(Civil Cases)

Directions: Under FRAP 39(a), the costs of appeal in a civil action are generally taxed against appellant if a judgment is affirmed or the appeal is dismissed. Costs are generally taxed against appellee if a judgment is reversed. If a judgment is affirmed in part, reversed in part, modified, or vacated, costs are taxed as the court orders. A party who wants costs taxed must, within 14 days after entry of judgment, file an itemized and verified bill of costs, as follows:

- Itemize any fee paid for docketing the appeal. The fee for docketing a case in the court of appeals is \$600 (effective 12/1/2023). The \$5 fee for filing a notice of appeal is recoverable as a cost in the district court.
 - Itemize the costs (not to exceed \$.15 per page) for copying the necessary number of formal briefs and appendices. (The court typically orders 4 copies when tentatively calendared; 0 copies for service unless brief/appendix is sealed.). The court bases the cost award on the page count of the electronic brief/appendix. Costs for briefs filed under an informal briefing order are not recoverable.
 - Cite the statutory authority for an award of costs if costs are sought for or against the United States. See 28 U.S.C. § 2412 (limiting costs to civil actions); 28 U.S.C. § 1915(f)(1) (prohibiting award of costs against the United States in cases proceeding without prepayment of fees).
- Any objections to the bill of costs must be filed within 14 days of service of the bill of costs. Costs are paid directly to the prevailing party or counsel, not to the clerk's office.

Case Number & Caption: _____

Prevailing Party Requesting Taxation of Costs: _____

Appellate Docketing Fee (prevailing appellants):			Amount Requested: _____			Amount Allowed: _____	
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TOTAL BILL OF COSTS:						\$0.00	\$0.00

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2. If costs are sought for or against the United States, I further certify that 28 U.S.C. § 2412 permits an award of costs.
3. I declare under penalty of perjury that these costs are true and correct and were necessarily incurred in this action.

Signature: _____ Date: _____

Certificate of Service

I certify that on this date I served this document as follows:

Signature: _____ Date: _____

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

LESLIE M. ANTHONY,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 1:24-cv-00494 (AJT/LRV)
	)	
UNITED AIRLINES, INC.,	)	
	)	
Defendant.	)	

ORDER

In this employment discrimination action, Plaintiff alleges that she was terminated because of her race and age in violation of state and federal law. Defendant United Airlines, Inc. (“United”) has filed a Motion for Summary Judgment, [Doc. No. 36] (the “Motion”). A hearing was held on September 25, 2024, following which the Motion was taken under advisement. Upon consideration of the Motion, memoranda in support thereof, [Doc. Nos. 37, 63], in opposition thereto [Doc. No. 60], and the argument of counsel, for the reasons stated below, the Motion is GRANTED.

I. BACKGROUND

The following facts are undisputed unless stated otherwise:

Plaintiff Leslie M. Anthony is a Black woman in her late fifties who worked as a probationary flight attendant for Defendant United Airlines, Inc. from approximately July 4, 2022 to January 29, 2023. [Doc. No. 60] ¶¶ 6, 66.

All new United flight attendants must undergo a six-week training period, followed by a 180-day probation period. *Id.* ¶¶ 3–5. From July 2022 to August 2022, Plaintiff underwent training, and from mid-August 2022 to January 2023, Plaintiff was a “Probationary Flight Attendant” assigned to Dulles Airport in Virginia. *Id.* ¶¶ 6–7. During her probation period, Plaintiff was subject to United’s attendance policies, as articulated in the “Developing U Disciplinary Process”

protocol. *Id.* ¶ 11. Sabrina Yoon, Plaintiff’s supervisor, was responsible for enforcing the Developing U Disciplinary process and fashioning disciplinary penalties. *Id.* ¶¶ 7, 11.

When Plaintiff called out sick on October 2, and November 9, 2022, her penalties were, respectively, an “Interim Evaluation 2” and “Interim Evaluation 3.” *Id.* ¶¶ 28, 33. Interim Evaluations are akin to strikes and an employee who accumulates a certain number of them may be terminated. *Id.* ¶¶ 13, 100. Plaintiff became eligible for termination upon her third absence at issue, on January 17, 2023, when she was on United’s Reserve List, an on-call list, and failed to respond to at least two of the Scheduling Team’s calls after taking a Tylenol PM. *Id.* ¶¶ 15, 17, 37–39, 56.¹

Between January 17 and January 29, 2023, Plaintiff attempted to contact Yoon to remedy her latest absence but received no response. *Id.* ¶¶ 56, 57. Plaintiff then contacted the United human resources department and Dulles Base Manager Brian Kozminski to report Yoon’s conduct. *Id.* ¶¶ 73, 75. On January 29, 2023, Yoon exercised her discretion to terminate Plaintiff instead of taking other lesser disciplinary measures. *Id.* ¶ 66.

On February 13, 2023, Plaintiff filed a Charge of Discrimination (No. 570- 2023-01230) with the Virginia Office of Civil Rights and Equal Employment Opportunity Commission. *Id.* ¶ 106. On November 10, 2023, Plaintiff filed a complaint² raising eight (8) claims: (I) retaliation, in violation of 42 U.S.C. § 1981, (II) racial discrimination, in violation of 42 U.S.C. § 1981, (III)

¹ In some instances, a Probationary Flight Attendant can coordinate with the Scheduling Team to remedy an absence or “Unable to Contact” (“UTC”) entry, so long as there is another plane in need of a flight attendant. *Id.* ¶¶ 26, 27. Plaintiff was able to cure an absence in this manner on August 24, 2022, but there was no alternative flight on January 17, 2023. *Id.* ¶ 52. As a result, only Yoon could remove the UTC upon Plaintiff showing “good cause” for why she did not respond to the Scheduling Team’s calls. *Id.* ¶ 41. Instead of meeting with Plaintiff to discuss what her “good cause” may be, Yoon listened to the recorded calls between Plaintiff and the Scheduling Team on January 17, 2023, and read the email Plaintiff sent Yoon on the same day. *Id.* ¶¶ 56, 58. Yoon then decided that the UTC would remain on Plaintiff’s record. *Id.* ¶ 59.

² Plaintiff initially filed her complaint in the Eastern District of Michigan. On March 27, 2024, this action was transferred to this Court.

racial discrimination, in violation of Title VII, 42 U.S.C. 2000d et seq., (IV) racial discrimination, in violation of the Michigan Elliott-Larsen Civil Rights Act, MCL 37.2101 et seq. (“ELCRA”), (V) retaliation, in violation of Title VII, (VI) retaliation, in violation of the ELCRA, (VII) age discrimination, in violation of the ADEA, 29 U.S.C. § 621 to 29 U.S.C. § 634, and (VIII) harassment and discrimination on the basis of age, in violation of the ELCRA.

II. LEGAL STANDARD

In reviewing a motion for summary judgment, courts must view the facts in the light most favorable to the party opposing the motion. *Porter v. U.S. Alumoweld Co.*, 125 F.3d 243, 245 (4th Cir. 1997). Summary judgment is appropriate where “there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a); *see also Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). A “genuine” dispute as to a material fact is present “if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). Whether a fact is considered “material” is determined by the substantive law, and “[o]nly disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment.” *Id.*

III. DISCUSSION

As explained below, Defendant is entitled to judgment as a matter of law on the eight counts because:

(A) the ELCRA claims are inapplicable,

(B) Plaintiff has not established a prima facie case of racial discrimination or that Defendant’s non-discriminatory reason for Plaintiff’s termination was a pretext for discrimination,

(C) Plaintiff has not established a prima facie case of age discrimination,

(D) Yoon did not have knowledge of Plaintiff's alleged protected activity when she made the decision to terminate her employment and therefore Plaintiff's termination cannot be deemed in retaliation for her alleged protected activity.

A. ELCRA

Plaintiff has alleged claims under the ELCRA for race discrimination (Count IV), age discrimination (Count VIII), and retaliation (Count VI). Because the ELCRA only applies to conduct that has some links to Michigan, beyond the plaintiff's Michigan citizenship;³ and the underlying conduct Plaintiff relies on occurred wholly in Virginia, the ELCRA provides no basis for any of Plaintiff's claims.

B. Racial Discrimination Under 42 USC § 1981 and Title VII

Plaintiff raises claims for racial discrimination under 42 USC § 1981 (Count II) and Title VII (Count III). To establish a prima facie case for racial discrimination under either statute, Plaintiff must "demonstrate: (1) membership in a protected class; (2) satisfactory job performance; (3) adverse employment action; and (4) different treatment from similarly situated employees outside the protected class." *Sanders v. Tikras Tech. Sols. Corp.*, 725 Fed. Appx. 228, 230 (4th Cir. 2018). Only the second and fourth elements are in dispute.

1. *Satisfactory job performance*

With respect to whether Plaintiff's performance was satisfactory, the disagreement between the parties reduces to whether Plaintiff's four absences, alone, rendered her job performance unsatisfactory where she was otherwise performing up to par. "[A] showing of

³ See *Ausel v. Unisys Corp.*, 1996 U.S. Dist. LEXIS 6024, at *13, No. 94-73359 (E.D. Mich. Apr. 8, 1996) (holding the ELCRA is inapplicable when the alleged discriminatory conduct occurred in New Jersey and Virginia), *aff'd*, *Ausel v. Unisys Corp.*, 1997 U.S. App. LEXIS 32771 (6th Cir. Nov. 13, 1997); *Nieman v. Nationwide Mut. Ins. Co.*, 706 F. Supp. 2d 897, 915 (C.D. Ill. 2010) ("[ELCRA] was designed to protect the rights of Michigan employees within the State of Michigan."). The conduct at issue includes Plaintiff requesting sick days, Plaintiff missing the Scheduling Team's calls, Yoon commenting on Plaintiff's hair, Plaintiff communicating with human resources, Plaintiff contacting Kozminski, and Yoon terminating Plaintiff. [Doc. No. 37] at 14.

satisfactory performance does not require the plaintiff to show that he was a perfect or model employee. Rather, a plaintiff must show only that he was qualified for the job and that he was meeting his employer's legitimate expectations.” *Haynes v. Waste Connections, Inc.*, 922 F.3d 219, 225 (4th Cir. 2019). However, “[a] plaintiff’s naked assertion that he performed above expectations is insufficient.” *Robinson v. Loudon Cnty. Pub. Sch.*, 2017 WL 3599639, at *4 (E.D. Va. Aug. 18, 2017). Relevant evidence for purposes of this analysis includes performance reviews, discretionary bonuses, and other objective metrics. *See id.*; *see also Haynes*, 922 F.3d at 225, *Trigiani v. New Peoples Bank, Inc.*, 599 F. Supp. 3d 372, 381 (W.D. Va. 2022).

Here, Defendant’s attendance expectations are grounded in a legitimate business interest to have its flights depart as planned⁴ and it is undisputed that Plaintiff was absent for four flights that she was assigned to or on call for. [Doc. No. 37] ¶ 10, [Doc. No. 60] at 7–8. Under Defendant’s attendance policy, that conduct, alone, constitutes unsatisfactory job performance. It is of no consequence that Plaintiff may have been a great employee in every area other than attendance. *See e.g., Hill v. Jamestown-Yorktown Found.*, 2021 WL 2142694, at *12 (E.D. Va. May 26, 2021) (finding the employee’s “repeated attendance and timeliness infractions” were “sufficient to defeat any claim that Plaintiff was performing her job satisfactorily”); *Pollard v. Azcon Corp.*, 904 F. Supp. 762, 773 (N.D. Ill. 1995) (same); *McCreless v. Decatur City Bd. of Educ.*, 2010 WL 11565309, at *11 (N.D. Ala. Aug. 18, 2010) (same).⁵

⁴ Under United’s “Developing U Disciplinary Process,” an employee may be terminated if they are unable to board four assigned flights during the 180-day probation period, including flights that are offered while the flight attendant is on the Reserve List. [Doc. No. 60] at 5, 7–8. Defendant includes sick days when calculating absences. *Id.* Even if considered harsh, the policy is nonetheless legitimate. *See Tyndall v. Nat’l Educ. Centers, Inc. of California*, 31 F.3d 209, 213 (4th Cir. 1994) (finding “a regular and reliable level of attendance is a necessary element of most jobs.”); *Warren v. Halstead Indus., Inc.*, 802 F.2d 746, 755 (4th Cir. 1986), *on reh’g*, 835 F.2d 535 (4th Cir. 1988) (“The question of whether the employer’s policies or decisions are harsh, unfair, or inappropriate is not at issue, absent some showing of discrimination.”).

⁵ Given Plaintiff’s four absences within a relatively short time during her probation period at United, this case is not one where an employee’s satisfactory performance over an extended period of time established this element of a prima facie case despite an occasional performance issue. *See Tyndall v. Nat’l Educ. Centers, Inc. of California*, 31 F.3d

In conclusion, Plaintiff has not demonstrated that her performance was satisfactory and has, therefore, not established a prima facie case of racial discrimination.

2. *Different treatment from similarly situated employees outside the protected class*

Plaintiff also fails to provide sufficient evidence to establish the fourth element of a prima facie case of racial discrimination—disparate treatment of a similarly situated person. To prevail under the disparate treatment element, Plaintiff must “provide evidence that the proposed comparators are not just similar in *some* respects, but ‘similarly-situated *in all respects*.’” *Cosby v. S.C. Prob., Parole & Pardon Servs.*, 93 F.4th 707, 714 (4th Cir. 2024) (internal citations omitted). Plaintiff is required to prove that she and the comparator “dealt with the same supervisor, were subject to the same standards[,] and engaged in the same conduct without such differentiating or mitigating circumstances that would distinguish their conduct or the employer’s treatment of them for it.” *Id.* (quoting *Haynes*, 922 F.3d at 223–24).

In that regard, Plaintiff puts forth only one employee, A. G., a younger white man, who Plaintiff contends had the same supervisor, was subject to the same standards, and engaged in similar conduct.⁶ [Doc. No. 60] at 22.⁷ But A.G. received the *same* penalty as Plaintiff for being late for a flight during the probation period; and Plaintiff has not presented sufficient evidence to establish that A.G. was late or absent on any other day during his probation period.⁸ In sum,

209, 213 (4th Cir. 1994) (concluding that an employee’s two years of satisfactory performance could not overcome her frequent absences).

⁶ Plaintiff alleges there was one other white male comparator, an unnamed man who was drunk on a flight and not terminated, yet Plaintiff did not establish that the unnamed man was supervised by Yoon or a probationary flight attendant at the time. [Doc. No. 60-8] at 2–3.

⁷ Yoon denies she was ever A.G.’s supervisor and asserts that Dominguez issued A.G.’s Interim Evaluation. [Doc. No. 37-5] ¶ 34. In A.G.’s deposition, A.G. recalled that Yoon was his supervisor. [Doc. No. 39-4] at 51:9.

⁸ A.G. did not recall committing any other reliability infractions, [Doc. No. 39-4] at 52, United has found no such infraction in its records, [Doc. No. 39] at 14, and Plaintiff relies on hearsay to assert that A.G. was late on other occasions, [Doc. No. 39-2] at 88–89. A.G.’s other alleged infractions of forgetting his link pass and not setting up hotel payment are not comparable because they did not occur during the probation period and were therefore subject to a different set of United policies.

Anthony has not established the fourth element of her prima facie case because she cannot show Yoon treated other similarly situated employees more leniently.

C. Age Discrimination Under the ADEA

Likewise, Plaintiff's age discrimination claim under the ADEA (Count VII) cannot survive the Motion. To establish a prima facie case for age discrimination under the burden-shifting framework, Plaintiff must show "(1) [she] is a member of a protected class, (2) [she] suffered an adverse employment action (such as discharge), (3) [she] was performing [her] job duties at a level that met the employer's legitimate expectations at the time of the adverse employment action, and (4) [her] position remained open or was filled by a similarly qualified applicant outside the protected class." *Palmer v. Liberty Univ., Inc.*, 72 F.4th 52, 63 (4th Cir. 2023). Only the third and fourth elements are at issue.

Plaintiff has failed to present sufficient evidence that her performance met United's legitimate expectations or that she was replaced by a similarly qualified younger flight attendant. As explained above, Plaintiff's absences rendered her performance unsatisfactory. With respect to who replaced her, Plaintiff points to the fact that, in 2023, United hired or transferred to Dulles approximately 724 flight attendants, and, of those, approximately 78% were substantially younger than Plaintiff. [Doc. No. 60] at 26–27. But Plaintiff puts forth no evidence that one of those flight attendants, if any, replaced her. Because of those deficiencies, Plaintiff has not made out a prima facie case of age discrimination. *See Hill v. Se. Freight Lines, Inc.*, 523 F. App'x 213, 217 (4th Cir. 2013) (concluding the fourth element of age discrimination could not be established via a conclusory assertion that "[b]y necessity, plaintiff's position had to be filled by someone else").

D. Retaliation Under 42 USC § 1981 and Title VII

Plaintiff's retaliation claims under 42 USC § 1981 (Count I) and Title VII (V) also fail because she has not established that Yoon had knowledge of her complaints or that her complaints

amount to “protected activity.” To establish a *prima facie* case of retaliation, Plaintiff must demonstrate “(1) that she engaged in a protected activity; (2) that her employer took an adverse employment action against her; and (3) that there was a causal link between the two events.” *EEOC v. Navy Fed. Credit Union*, 424 F.3d 397, 406 (4th Cir. 2005). The first and third elements are in dispute.

First, the parties have not produced emails or call transcripts where Plaintiff engaged in protected activity, and Plaintiff, by her own testimony, cannot recall if she mentioned age, race, or discrimination when communicating with Dulles Base Manager Brian Kozminski. Rather, Plaintiff stated that she did not “believe [she] mentioned age or race” and “may or may not have mentioned discrimination” when communicating with Kozminski. [Doc. No. 60-1] at 98:2, 181:2–10. Since there is insufficient evidence that Plaintiff linked her complaints to her age or race, her complaints against Yoon do not constitute “protected activity.” See *McIver v. Bridgestone Americas, Inc.*, 42 F.4th 398, 412 (4th Cir. 2022) (“[I]f she fails to tie complaints about workplace conduct to her protected status, the employer could not have retaliated for engaging in a protected activity.”).

In any case, Plaintiff has not established a causal link between her complaints and termination because she did not “show that the decisionmaker was *aware* of the protected activity at the time the alleged retaliation occurred.” *Roberts v. Glenn Indus. Grp., Inc.*, 998 F.3d 111, 124 (4th Cir. 2021) (emphasis added). “[W]e have consistently required proof of a decisionmaker’s *knowledge* of protected activity to support a Title VII retaliation claim.” *McIver v. Bridgestone Americas, Inc.*, 42 F.4th 398, 412 (4th Cir. 2022) (emphasis added). Three events occurred between January 17 and January 29, 2023, in an unknown order: (i) Plaintiff emailed human resources to report Yoon’s conduct; (ii) Plaintiff communicated with Kozminski about Yoon’s conduct; and (iii) Yoon decided to terminate Plaintiff. [Doc. No. 60] at 29–30. Critically, Plaintiff has not provided sufficient evidence that Yoon knew about Plaintiff’s complaints prior to Yoon’s decision

to terminate her ⁹ but simply speculates that Yoon was likely aware of the complaints because of the temporal proximity between the complaints and the termination, and the fact Yoon previously learned of another employee's complaint against her. *See* [Doc. No. 60] at 28.

E. Pretextual Reasons for Termination.

Even assuming Plaintiff has made a prima facie case, United has clearly articulated a legitimate nondiscriminatory reason for termination—her violation of United's attendance policy during the probation period; and Plaintiff has failed to present evidence sufficient to establish that such a reason was a pretext for discrimination or retaliation.

“In order to show pretext, a plaintiff may show that an employer's proffered nondiscriminatory reasons for the termination are inconsistent over time, false, or based on mistakes of fact.” *Haynes v. Waste Connections, Inc.*, 922 F.3d 219, 225 (4th Cir. 2019). In that regard, Yoon's explanation for the termination has been consistent over time and there is not sufficient evidence of any mistake of fact or false allegation.¹⁰ Nevertheless, Plaintiff contends that Yoon's reasons for termination were pretextual because (i) Yoon once commented on Anthony's hair, (ii) former employees submitted declarations regarding Yoon's conduct, and (iii) Yoon previously exercised her discretion to terminate minority employees. [Doc. No. 60] at 8–9.

With respect to the hair comment, Yoon has asserted that her remark was limited to Plaintiff's non-adherence to United's uniform policy, [Doc. No. 39-3] at 8, while Plaintiff has argued she was adhering to the policy, such that, Yoon's remark was based on Plaintiff's hair being in braids, [Doc. No. 60-1] at 115:1–14, 158:14–22.¹¹ That isolated comment does not give rise to

⁹ Yoon and Kozminski deny that Yoon had knowledge of Plaintiff's complaints or that they discussed Plaintiff's complaints prior to the termination. [Doc. No. 37-5] ¶ 26, [Doc. No. 37-8] ¶ 11, [Doc. No. 60-6] at 89:1–25.

¹⁰ Anthony disputes whether the United Scheduling Team called her two, three, or four times while she was asleep; but any such dispute is not material where she concedes she missed at least two calls while asleep, despite knowing she might be called to work a flight. [Doc. No. 60] at 10.

¹¹ Such comments about a Black employee's hair are usually raised as evidence of a hostile work environment and are, on their own, insufficient to prevail on such claims. *Mathis v. Perry*, 996 F. Supp. 503, 523 (E.D. Va. 1997)

an inference of pretext absent additional evidence that Yoon permitted other flight attendants to wear their hair down. *See Passwaters v. Wicomico Cnty.*, 2019 WL 6341623, at *12 (D. Md. Nov. 27, 2019) (concluding that the employer’s comments regarding employee’s hair did not “give rise to any possible inference of discrimination” where the employee did not allege there were comparators), *aff’d*, 824 F. App’x 171 (4th Cir. 2020).

Nor are the submitted declarations sufficient to allow her claim to survive summary judgment. One of the declarations was not under oath and therefore cannot be considered by the Court. *See* 28 U.S.C. § 1746. The other declaration does not establish that it was made on the basis of personal knowledge, provides no specific examples, and amounts to the conclusory assertion that “it was well known that [Yoon] did not like [Black women] or regard them the same as others who were male or not Black” and his belief that Yoon “singled out Black women for termination.” [Doc. No. 60-8] ¶ 4. At bottom, rumors and subjective beliefs that Plaintiff was treated unfairly cannot be the basis for a finding of pretext. *See Christian v. S.C. Dep’t of Lab. Licensing & Regul.*, 651 F. App’x 158, 164 (4th Cir. 2016) (holding that rumors regarding unnamed employees and “subjective beliefs of [plaintiff’s] co-workers . . . carry no more weight than [plaintiff’s] own bald assertions that [defendants’] conduct was racially motivated”).

Finally, Plaintiff contests that Yoon wielded her discretion in order to discriminate against Black and Latina Probationary Flight Attendants. While “a loose, subjective absenteeism policy may indeed be susceptible to manipulation for a discriminatory reason[,]” *Warren v. Halstead Indus., Inc.*, 802 F.2d 746, 755 (4th Cir. 1986), *on reh’g*, 835 F.2d 535 (4th Cir. 1988), “the burden is on the plaintiff to show that the general policy was applied in a discriminatory manner to him in

(concluding “an isolated ... remark, even though offensive and entirely inappropriate, does not establish an abusive working environment”); *Johnson v. O’Connell & Lawrence, Inc.*, No. CV DKC 21-2468, 2023 WL 1767457, at *6 (D. Md. Feb. 3, 2023) (same).

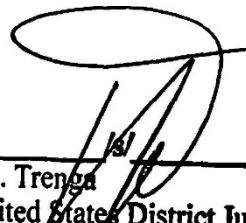
particular.” *Id.* Plaintiff has not done so.¹² See *Lilly v. Harris-Teeter Supermarket*, 720 F.2d 326, 330–31 (4th Cir. 1983) (concluding the employer’s unlimited discretion had been exercised in a racially discriminatory manner where white employees were treated more leniently for the same infractions Black employees committed). In conclusion, Plaintiff has not provided sufficient evidence that Defendant’s legitimate, non-discriminatory reasons for Plaintiff’s termination are a pretext for racial or age discrimination or for retaliation for engaging in protected activity.

IV. CONCLUSION

ORDERED that Defendant’s motion for summary judgment be, and the same hereby is, **GRANTED**, and this action is **DISMISSED**.

The Clerk is directed to forward copies of this Order to all counsel of record and to enter judgment in favor of the Defendant pursuant to Rule 58 of the Federal Rules of Civil Procedure.

Alexandria, Virginia
October 10, 2024



 Anthony J. Trenga
 Senior United States District Judge

¹² The evidence pertaining to this claim is: (1) Yoon’s Declaration, where she sets forth that she terminated seven employees for reliability reasons between 2022 and August 26, 2024, five of whom are Black, another is Hispanic, and the final terminated employee is white, [Doc. No. 39-3] at 6; and (2) a complaint supposedly made by a Latina employee against Yoon. But that complaint is not in the record and the referenced Latina employee has not filed a declaration. See [Doc. No. 60-4] at 207:9–244:7. The only evidence before the Court is Yoon’s deposition where she responded to questions about that Latina employee’s complaint, but that testimony does not establish that the employee claimed any racial animus against Yoon and the record shows that United conducted an “investigation and found no merit to the claims made by the Latina employee.” *Id.* at 240:18–24.