TABLE OF CONTENTS

Opinion, United States Court of Appeals for the Tenth Circuit, March 17, 2026 ..... 1a

Opinion and Order, United States District Court for the Northern District of Oklahoma, June 2, 2025 ..... 20a

Order, United States Court of Appeals for the Tenth Circuit, July 20, 2026..... 46a

Petition, District Court for Tulsa County, Oklahoma, June 2, 2023 ..... 51a

FILED
United States Court of Appeals
Tenth Circuit
March 17, 2026
Christopher M. Wolpert
Clerk of Court

PUBLISH

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

HUA JIANG, Plaintiff - Appellant, v. CITY OF TULSA, Defendant - Appellee.	No. 25-5097

Appeal from the United States District Court for the Northern District of Oklahoma (D.C. No. 4:23-CV-00255-CVE-CDL)

Mark A. Smith of Caruso & Smith, PLLC, Tulsa, Oklahoma (Daniel E. Smolen of Smolen & Roytman, PLLC, Tulsa, Oklahoma, with him on the briefs), for Plaintiff-Appellant.

Hayes T. Martin, Assistant City Attorney (Jack C. Blair, City Attorney, and R. Lawson Vaughn, Senior Assistant City Attorney with him on the brief), Tulsa, Oklahoma, for Defendant-Appellee.

Before **MATHESON**, **PHILLIPS**, and **ROSSMAN**, Circuit Judges.

PHILLIPS, Circuit Judge.

When he applied to be the superintendent of Tulsa's A.B. Jewell water-treatment plant, Hua Jiang was an accomplished engineer. But the city wanted someone with leadership experience. And Jiang, a middle-aged man from China, didn't have any. So the city hired a younger, white candidate who did.

In the process, the city violated its written hiring policies. Those policies required the city to hire someone with a college degree in biology, engineering, environmental sciences, or a related field. Yet the hired candidate didn't have a degree at all. Jiang reported the city's error to its civil-service commission, which confirmed that the city had violated its policies.

In response, the city removed the job posting's degree requirement to reflect the city's customary practice of substituting experience for education. The city then redid its hiring. The same three people applied, and, again, the city hired the candidate with more leadership experience.

Jiang sued the city for discrimination. He alleged that the reason the city didn't choose him for superintendent was his age and race. Though the city had said that it wanted a candidate with more leadership experience, Jiang argued that this justification was pretext for the city's discriminatory animus. He also argued that the city removed the degree requirement to retaliate for his reporting discrimination.

At summary judgment, Jiang pointed to his superior qualifications, the city's subjective hiring process, and the procedural shortcuts the city took to hire its preferred candidate. But Jiang didn't point to

facts upon which a jury could find that the city was untruthful about valuing a candidate with leadership experience. So the district court granted summary judgment to the city.

Exercising jurisdiction under 28 U.S.C. § 1291, we affirm.

BACKGROUND

I. Factual Background

We present the facts in the light most favorable to Jiang, the nonmoving party. *See Deherrera v. Decker Truck Line, Inc.*, 820 F.3d 1147, 1151 n.1 (10th Cir. 2016).

When he sued, Jiang was a senior engineer at Tulsa's A.B. Jewell water-treatment plant. Jiang was born in China and speaks English with a Chinese accent. He holds a Ph.D. in engineering, and though he excelled in his job, outside contractors sometimes complained that he was hard to work with.

By 2021, Jiang had worked for Tulsa's water department for over a decade. During that time, he applied to many managerial positions. He did so because he wanted managerial experience: outside of coaching a water-department quiz-bowl team, Jiang hadn't supervised anyone except a temporary employee and a few interns. And he thought moving to a managerial role could position him to one day run the department. Yet every time he applied for a managerial role, the city picked a white candidate instead.

In June 2021, when Jiang applied to be A.B. Jewell's superintendent, it happened again. The city picked one of the two younger, white men who had also applied. Dylan Hutchcraft, the eventual pick, was an

operations supervisor at one of Tulsa's other water-treatment plants. In that role, he oversaw multiple employees. And years before, while deployed in Afghanistan with the National Guard, he had served as a squad leader. John Curry, the other applicant, was an A.B. Jewell maintenance supervisor who led a team of ten.

The hiring process began uneventfully. The city followed its familiar two-step procedure. First, the city's personnel director certified Jiang, Hutchcraft, and Curry as being qualified for the position. The personnel director gave that list of candidates to Stefanie Hunter, the hiring manager for the position.

Second, Hunter decided whom to hire from the certified applicants. Though she had ultimate hiring authority, she convened a panel to interview and evaluate the candidates. That panel consisted of Hunter and two other senior water-department employees. The panel interviewed Jiang, Hutchcraft, and Curry, asking the same questions of each and grading under a uniform matrix. One panelist ranked Hutchcraft first, Jiang second, and Curry third. The other two ranked Hutchcraft first, Curry second, and Jiang third. After concluding that Hutchcraft had the best mix of technical knowledge and leadership experience, Hunter hired him.

Then the process took a turn. When Jiang found out that Hutchcraft was hired over him, he complained of race and age discrimination to the city's human-resources department. According to Jiang, the personnel director shouldn't have certified Hutchcraft and Curry as applicants, as neither met the job's

education requirement. The human-resources department denied Jiang's grievance, and Jiang appealed to the city's civil-service commission.

For good reason, the civil-service commission agreed with Jiang. To start, the city had recently revised the minimum requirements for the treatment-plant-superintendent position. Those revisions preserved an education requirement: "a bachelor's degree in engineering technology, environmental/biological sciences, or a related field." App. vol. II at 566. And even though the position also permitted "an equivalent combination of training and experience," *id.*, that option didn't apply. Why? Because, for positions requiring a specific degree, the city's written policy prohibited substituting experience for education. Neither Hutchcraft nor Curry had a college degree, let alone one in engineering or biology. Thus, according to the city's written policy, the personnel director never should have certified them. The civil-service commission told the city to "go back and follow" its policies. App. vol. III at 803.

So the city rewrote the position's education requirement. Put bluntly, the city changed the job description to qualify Hutchcraft and Curry. First, the city removed the degree requirement. The new description instead required 120 hours of college credit in any discipline. Second, the city gave a new formula for substituting experience for education. That formula treated applicants who had sixty hours of college credit and seven years of relevant experience as if they had 120 hours of college credit. Conveniently, Curry had exactly sixty hours of college credit and seven years of relevant experience. Hutchcraft had sixty-six and eight. So under the new

requirements, both Hutchcraft and Curry qualified for the job.

Years later, in depositions, two senior water-department managers worried about these changes. One said that removing the degree requirement was improper. And she agreed with Jiang's counsel that something seemed odd: the city had made the qualifications for superintendent lower than those for the superintendent's immediate subordinate. The other manager said that it was inappropriate to change a job's requirements to suit a desired candidate.

But from the personnel director's perspective, the city had followed its custom all along, if not its written rules. In a declaration, the director explained that the city's "past practice regarding the substitution of experience for education did not reflect its written policies." App. vol. II at 322. That past practice let the director substitute experience for education if an applicant met at least half the position's education requirement. So in the director's view, the new job description reflected the city's "consistent past practice." *Id.*

Plus, emails from the time Jiang first applied to the position show that human-resources employees believed that this was the policy. That's why the personnel director had qualified Hutchcraft and Curry in the first place. Indeed, the city had hired at least one other treatment-plant superintendent who hadn't met the subject-specific degree requirement. And the city had other supervisors whose subordinates had higher professional or educational qualifications.

After removing the degree requirement, the city reposted the position. Again, Jiang, Hutchcraft, and Curry applied.

Hunter convened a new panel to interview and evaluate the candidates. This second set of reviewers used an updated evaluation matrix. The new matrix addressed "the essential tasks in the job description" and omitted certain "fuzzier" inquiries, like enthusiasm for the role. App. vol. II at 482. Under that matrix, one reviewer ranked Jiang first, Hunter ranked him second, and a third ranked him last.[1] Meanwhile, Hutchcraft was ranked first by Hunter and second by both of the other reviewers. After considering the reviewers' evaluations and the candidates' materials, Hunter again picked Hutchcraft.

After learning that Hunter had again hired Hutchcraft instead of him, Jiang filed another grievance with the human-resources department. That department denied his grievance, and Jiang again appealed to the civil-service commission. But this time, the commission denied Jiang's grievance, concluding that the city "did follow its policies in this matter." App. vol. IV at 1050.

II. Procedural History

Jiang sued the city for race discrimination under Title VII of the Civil Rights Act of 1964, for age discrimination under the Age Discrimination in Employment Act, and for race and age discrimination under the Oklahoma Anti-Discrimination Act. *Jiang*

---

[1] The reviewer who ranked Jiang last said she evaluated him on his interview performance and lack of supervisory experience, not on his application or resume.

v. City of Tulsa, No. 23-CV-255, 2025 WL 1557283, at *4 (N.D. Okla. June 2, 2025). He brought retaliation claims under these statutes as well. *Id.* He also brought an Equal Pay Act claim, which the district court dismissed. *Id.* After discovery, the court granted the city's motion for summary judgment on all remaining claims. *Id.* at *1, *10. Jiang appealed the summary-judgment decision.[2]

DISCUSSION

We review de novo the district court's grant of summary judgment. *EEOC v. Picture People, Inc.*, 684 F.3d 981, 985 (10th Cir. 2012). We affirm if "there is no genuine dispute as to any material fact." Fed. R. Civ. P. 56(a). A fact is material if it could affect the suit's outcome. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). And a dispute is "genuine" if it could let a rational jury find for the nonmoving party. *Id.* We view the evidence in the light most favorable to the nonmoving party, resolving all disputed facts and making all reasonable inferences in his favor. *Hawkins v. Schwan's Home Serv., Inc.*, 778 F.3d 877, 882 (10th Cir. 2015).

The district court accepted that Jiang had made a prima facie case of age and race discrimination. *Jiang*, 2025 WL 1557283, at *6. But it held that he hadn't shown that the city's legitimate explanations for hiring someone else were pretextual. *Id.* at *7-8. It also held that Jiang didn't make a prima facie retaliation case. *Id.* at *9-10.

On appeal, Jiang argues that the record contained evidence of pretext, so a jury should hear his

[2] On appeal, Jiang doesn't separately analyze his OADA claims, so we don't separately consider them in this opinion.

disparate-treatment and retaliation claims. We disagree.

I. Disparate Treatment

Because Jiang has no direct evidence of age or race discrimination, we apply the *McDonnell Douglas* burden-shifting framework to his ADEA and Title VII claims. *Frappied v. Affinity Gaming Black Hawk, LLC*, 966 F.3d 1038, 1056 (10th Cir. 2020); *Johnson v. Weld County*, 594 F.3d 1202, 1210 (10th Cir. 2010).[3]

That framework has three steps: (1) the employee makes a prima facie case of discrimination, or else the employer wins; (2) the employer offers a "legitimate, nondiscriminatory reason for the adverse employment action," or else the employee wins; and (3) the employee identifies facts that could let a jury find each of the employer's legitimate reasons pretextual, or else the employer wins. *See Jenny v. L3Harris Techs., Inc.*, 144 F.4th 1194, 1198 (10th Cir. 2025). Jiang need not show other evidence of discrimination: pretext itself lets a juror infer it. *See Walkingstick Dixon v. Oklahoma ex rel. Reg'l Univ. Sys. of Okla. Bd. of Regents*, 125 F.4th 1321, 1337 (10th Cir. 2025).

At the first step of *McDonnell Douglas*, the city conceded that Jiang made a prima facie case of discrimination. *See Jiang*, 2025 WL 1557283, at *6. So we need not dwell on this step. *See, e.g.*, *Conroy v. Vilsack*, 707 F.3d 1163, 1171 (10th Cir. 2013).

---

[3] Jiang asks us to stop using the *McDonnell Douglas* framework at summary judgment in Title VII and ADEA cases. But earlier panel decisions bind us unless there's "en banc reconsideration or a superseding contrary decision by the Supreme Court." *United States v. Reed*, 39 F.4th 1285, 1295 (10th Cir. 2022).

At the second step, the city gave nondiscriminatory reasons for not hiring Jiang. *See Jiang*, 2025 WL 1557283, at *6. The decisionmaker, Hunter, wanted a candidate with both technical knowledge and leadership experience. Hutchcraft had both. And though Jiang had more technical knowledge, he didn't have leadership experience.[4]

At the third step, the district court held that Jiang didn't show facts that would let a reasonable jury find pretext. *Id.* at *7-8.

Pretext is where our analysis begins and ends. At summary judgment, an employer's justification is pretextual if it is "so incoherent, weak, inconsistent, or contradictory" that a reasonable jury could find it "unworthy of belief." *Bekkem v. Wilkie*, 915 F.3d 1258, 1268 (10th Cir. 2019) (citation omitted). When deciding whether an explanation is pretextual, we consider the facts from the decisionmaker's point of view. *See Kendrick v. Penske Transp. Servs., Inc.*, 220 F.3d 1220, 1231 (10th Cir. 2000). We then ask whether the decisionmaker "honestly believed" her nondiscriminatory reasons for hiring someone else. *Johnson*, 594 F.3d at 1211 (citation omitted). And that's *all* we ask—not whether the hiring decision was "wise, fair or correct." *Id.* (citation omitted).

On appeal, Jiang disputes the city's explanation that it wanted a candidate with more leadership experience. He offers three theories of pretext. First, there were two procedural irregularities. Second,

---

[4] In its motion for summary judgment, the city also asserted that "Jiang had proven to be difficult to work with and unwilling to compromise with outside contractors." App. vol. I at 58. In fact, outside contractors had complained to Hunter and another reviewer about difficulties working with Jiang.

Hunter used subjective selection criteria. And third, Jiang's qualifications eclipsed Hutchcraft's.

We reject Jiang's arguments because none render the city's explanation "unworthy of belief." *Bekkem*, 915 F.3d at 1268 (citation omitted).

A. Procedural Irregularities

A prospective employee can show pretext by pointing to a procedural irregularity. *See Conroy*, 707 F.3d at 1176. But not all procedural irregularities show pretext. *Johnson*, 594 F.3d at 1213. The irregularities must "directly and uniquely disadvantage[] a minority employee" or applicant. *Id.* And ultimately, the factfinder must be able to infer that "the employer didn't really believe" the reasons it gave for hiring someone else. *Id.* at 1211; *Randle v. City of Aurora*, 69 F.3d 441, 454-55 (10th Cir. 1995).

Jiang argues that two procedural irregularities reveal pretext. First, the human-resources department certified Hutchcraft and Curry before the first set of interviews, even though neither qualified for the job under the city's written policies. Second, after being told that Hutchcraft and Curry didn't qualify, the city rewrote the job's requirements to qualify them.

On the first procedural-irregularity argument, our unpublished opinion in *Hamilton v. Oklahoma City University* persuades us that Jiang hasn't identified a procedural irregularity that reveals pretext. 563 F. App'x 597 (10th Cir. 2014). In *Hamilton*, a university hired a male All-But-Dissertation applicant—meaning he'd met all the requirements for a Ph.D. except the dissertation—over a female applicant with a Ph.D., even though the job posting required a Ph.D.

Id. at 598-99. The university gave several legitimate reasons for choosing the male, ABD candidate. *See id.* at 599-600. Most relevant here, the university officials said—and the female candidate didn't contradict—that they hired ABD candidates for positions requiring a Ph.D. "all the time." *Id.* at 604 (citation omitted). We concluded that the alleged procedural irregularity didn't establish that the officials' explanation was pretextual. *See id.* at 606.

Similarly here, the city hired a younger, white applicant without a degree over an older, Asian applicant with a degree, even though the job posting required a degree. But as in *Hamilton*, Jiang didn't contradict the city's evidence that it regularly substituted experience for education, even for jobs requiring a specific degree. Nor did he contradict evidence showing that the personnel director had previously certified a treatment-plant superintendent who hadn't met the degree requirement.

Pressed at oral argument, Jiang's counsel argued that the civil-service commission's decision—that the city had not followed its written policy—itself shows pretext. But the commission's decision never contradicts the city's explanation: for years, the city had followed a custom inconsistent with its written policy.

As for the second procedural irregularity, Jiang points to the city's relaxing the requirements and reposting the position. Generally, relaxing requirements and reposting a position won't by itself let a jury find pretext. For example, in *Conroy*, after the plaintiff applied to a position in the Forest Service, the agency relaxed the qualifications and reposted the job. *See* 707 F.3d at 1166. At *McDonnell Douglas* step two, the agency explained that it relaxed and reposted the

position because the applicant pool was too small: only two people had applied. *Id.* at 1179. Plus, agency policy permitted the agency to do just that, and the agency had even done so for other positions. *See id.* at 1180. At *McDonnell Douglas* step three, the plaintiff then had to identify evidence that would contradict the agency's nondiscriminatory explanation. *See id.* She didn't, so we held that no reasonable jury could find pretext. *Id.*

Still, combined with other factors, serious procedural irregularities can let a jury find pretext. For example, in *Mohammed v. Callaway*, the plaintiff applied to be a munitions chief at an Army base. 698 F.2d 395, 397 (10th Cir. 1983). At *McDonnell Douglas* step one, he showed that the position required an engineering degree and that the Army hired a white applicant who lacked an engineering degree and had less experience than the plaintiff, who was of Mexican-Pakistani origin. *See id.* at 396-97. At step two, the Army said that the white applicant was just as qualified as the plaintiff. *See id.* at 399.

At step three, the plaintiff proved that the Army's justification was pretextual, in part because of procedural irregularities. *Id.* at 401. The job posting had stated that applicants would be "ranked by an ad hoc committee as to best qualified." *Id.* at 397 (citation omitted). But the Army neither convened an ad hoc committee nor ranked the applicants before picking the white one. *Id.* at 398. Instead, after the plaintiff complained, the Army convened a committee to retroactively rank the candidates using a rubric created to correspond to the white applicant's strengths. *See id.* at 398, 400-01 & n.4. These irregularities, coupled with the plaintiff's uniformly

superior qualifications, convinced us to reverse a bench verdict for the Army. *Id.* at 401.

Jiang's situation resembles *Conroy* and *Hamilton* more than it resembles *Mohammed*. As in *Conroy*, the city relaxed and reposted its job description to capture applicants with the background it wanted: technical knowledge and leadership experience. And unlike the Army in *Mohammed*, the city revised the position and restarted its entire hiring process instead of retroactively justifying a facially unqualified candidate.

From Jiang's perspective, though, two facts save his relaxing-and-reposting argument.

First, according to Jiang, two senior water-department employees testified that relaxing the job's requirements didn't make sense. One called removing the degree requirement "improper," App. vol. V at 1197, and the other confirmed that changing a job's requirements to suit a desired candidate was not appropriate.

Removing the degree requirement may have been improper and inappropriate. But our role is to protect against unlawful discrimination, not to verify that employment decisions are "wise, fair or correct." *Johnson*, 594 F.3d at 1211 (citation omitted). Relaxing the education requirement doesn't undermine the city's explanation that it wanted a candidate with both technical knowledge and leadership experience. Hutchcraft had technical knowledge, even though he didn't have a degree. And though Hunter and the personnel department may have cut corners to hire Hutchcraft, their corner cutting coheres with the city's nondiscriminatory explanation: it wanted a candidate

with both technical knowledge and leadership experience.

Second, Jiang points to a quirk in the city's explanation. After the city relaxed and reposted the position, the superintendent's subordinate needed a college degree, but the superintendent didn't. Again, we need not decide whether this was wise or correct. *See Johnson*, 594 F.3d at 1211. Instead, we need only decide whether this renders the city's preferring a superintendent with leadership experience "incoherent, weak, inconsistent, or contradictory." *See Bekkem*, 915 F.3d at 1268 (citation omitted). And it doesn't. Plus, unrebutted testimony said that other managers supervised employees with higher technical qualifications.

Without more, the procedural irregularities here aren't enough to show pretext.

B. Subjectivity

Next, Jiang argues that the city's interview process was so subjective that it reveals pretext. To Jiang, Hunter's rubrics and panel interviews only distracted from her ultimate authority to choose a candidate based on discriminatory criteria—like Jiang's race or age. As proof, he points to Hunter's choosing Hutchcraft over Jiang despite Jiang's evaluations from the second set of reviewers. In response, the city points to its rubrics and panel interviews.

An employer's system for evaluating employees can be so subjective that it reveals pretext. *See Garrett v. Hewlett-Packard Co.*, 305 F.3d 1210, 1218 (10th Cir. 2002). But we send that question to a jury only when hiring rationales are so opaque that they might hide "unspoken discriminatory input." *Conroy*, 707 F.3d at

1178 (citation omitted). And for a rationale to be *that* opaque, the "criteria on which the employers ultimately rely" must be "*entirely* subjective." *Id.* (citation omitted). Even subjective evaluations—opinions on qualities like leadership or professionalism—don't support pretext when evaluators explain their impressions and grade all candidates using the same criteria. *See Hinds v. Sprint/United Mgmt. Co.*, 523 F.3d 1187, 1200 (10th Cir. 2008).

Here, the evaluators did just that. Hunter and the other reviewers used the same criteria: experience managing conflicts between personnel, experience issuing disciplinary actions, and experience directing the work of treatment-plant employees, among other criteria. And through their notes—and retrospectively in depositions—the evaluators showed their work. So even though Hunter had ultimate authority to choose a candidate, Jiang gives no reason to disbelieve Hunter's testimony that she considered the applicants' materials and the panel reviewers' observations.

Finally, Jiang notes that after the second interview, one reviewer ranked him as the most qualified candidate, and another ranked him as the least. But there's no pretext in different reviewers attaching different weight to different criteria. *Conroy*, 707 F.3d at 1178. In fact, that's why employers often "employ more than one individual to evaluate subjective criteria," as the city did here. *See id.* (citation omitted). So we reject Jiang's subjectivity argument.

C. Overqualification

Jiang next argues that not being hired despite his superior qualifications could let a jury find pretext.

Indeed, the city concedes that Jiang had better technical knowledge than Hutchcraft. But according to the city, Hutchcraft's technical knowledge sufficed for the role. More importantly, Hutchcraft had leadership experience while Jiang did not, and Hunter wanted someone with both.

A jury can find pretext based on overqualification only when there's an "overwhelming disparity in qualifications." *Johnson*, 594 F.3d at 1211 (citation modified). And we don't permit cherry-picking some qualities over others. For instance, in *Conroy*, the female plaintiff had better technical qualifications than the eventual male hire. *See* 707 F.3d at 1174. Even so, the Forest Service had said that technical qualifications were not all it wanted in a candidate. *See id.* at 1172-73. Most of all, it wanted leadership and program-management experience. *Id.* And the eventual male hire had both. *Id.* at 1173. Thus, in those "very key area[s]," the plaintiff didn't show "overwhelming merit disparity." *Id.* (citation omitted). So a jury couldn't find pretext through over-qualification. *See id.* at 1174.

Conroy sinks Jiang's argument. Like the plaintiff in that case, Jiang had better technical qualifications than Hutchcraft, the eventual hire. *See id.* And like the Forest Service, the city wanted both technical qualifications and leadership. *Id.* at 1172-73. Jiang concedes that Hutchcraft had leadership experience. Hutchcraft oversaw subordinates in his city job and had served as a squad leader while deployed in Afghanistan. In contrast, Jiang had at most supervised a few interns, a temporary employee, and a quiz-bowl team. By his own account, he applied for management jobs in part to acquire leadership experience. In short, Hutchcraft outmatched Jiang in

a "very key area," *see id.* at 1173, so we reject Jiang's overqualification argument.

* * *

Finally, Jiang argues that his disparate-treatment arguments cumulatively allow a jury to find pretext. We disagree. Even taken together, the evidence supporting Jiang's three theories wouldn't let a jury find the city's explanation for choosing Hutchcraft pretextual. *See, e.g.*, *Kincaid v. Unified Sch. Dist. No. 500*, 94 F.4th 936, 950 (10th Cir. 2024). We affirm summary judgment on Jiang's disparate-treatment claims.

II. Retaliation

On appeal, Jiang argues two theories of retaliation. First, he says that the city retaliated by tailoring the revised education requirement "to the two white and younger applicants." Op. Br. at 25. Second, he says the city chose not to hire him the second time to retaliate for his complaint to the civil-service commission.

To start, we ordinarily decline to consider arguments made for the first time on appeal. *Butler v. Daimler Trucks N. Am., LLC*, 74 F.4th 1131, 1142 (10th Cir. 2023). Jiang made his latter argument for the first time on appeal, so we address only the former.

To show retaliation under Title VII and the ADEA, an employee must show (1) that he engaged in protected opposition to discrimination, (2) that "a reasonable employee would have found the challenged action materially adverse," and (3) that there was a causal connection between the two. *See Reznik v. inContact, Inc.*, 18 F.4th 1257, 1260 (10th Cir. 2021) (citation omitted); *Hinds*, 523 F.3d at 1201-02. Because Jiang lacks direct evidence of retaliation, we

again apply *McDonnell Douglas* burden-shifting. *See Pinkerton v. Colo. Dep't of Transp.*, 563 F.3d 1052, 1064 (10th Cir. 2009); *Hinds*, 523 F.3d at 1201.

For his prima facie retaliation case, Jiang argues that (1) his civil-service-commission complaint was protected opposition, (2) the city's changing the job description was a materially adverse action, and (3) the short time between his complaint and the city's rewrite showed causation. And, citing his disparate-treatment theories, he argues that the city's explanation is pretextual. The city argues that Jiang neither made a prima facie case nor showed pretext.

Even if we assume that Jiang made a prima facie case, he didn't show pretext. According to the city's personnel director, the city changed the education requirement to "reflect the previous practice of the City of Tulsa." App. vol. II at 323. And as we explained, Jiang never contradicted this legitimate explanation. So we affirm summary judgment on his retaliation claim.

CONCLUSION

We affirm the district court's judgment.

Filed: June 2, 2025

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

HUA JIANG,	)	
	)	
Plaintiff,	)	**Case No. 23-CV-255-CVE-CDL**
v.	)	
	)	
CITY OF TULSA,	)	
Defendant.	)	

OPINION AND ORDER

Now before the Court is Defendant City of Tulsa's Motion for Summary Judgment and Brief in Support (Dkt. # 45). The City of Tulsa (the City) seeks summary judgment on plaintiff Hua Jiang's employment discrimination claims under federal and state law. Plaintiff's employment discrimination claims are based on a failure to promote theory, and the City argues that plaintiff has failed to show that he was so substantially more qualified than the other job applicants that it creates an appearance of workplace discrimination. Dkt. # 45. Plaintiff responds that he should have been considered the only qualified applicant for the position, and the City's efforts to minimize the job requirements to allow less qualified younger and white applicants to qualify for the position shows that the City's stated reason for denying him the position was pretextual.

I.

Jiang has worked for the City since 2010, and he is currently employed as a senior engineer in the water and sewer department of the City. Dkt. # 45-1, at 14-

15. Jiang was originally classified as a professional engineer at level EX-40 on the City's pay scale, and he has been a senior engineer at level EX-44 since 2012. *Id.* at 16. Jiang's duties have remained similar throughout his employment with the City, and he broadly provides technical support for the operation of water treatment plants. *Id.*

The City charter requires that "[a]ll original appointments and promotions to positions in the classified service shall be based upon competitive procedures." Dkt. # 45-2, at 2. When a person applies for original appointment or a promotion, the City's personnel director must initially certify that the applicant meets the minimum requirements for the position, which can include education and work experience. Dkt. # 45-4, at 1. The City's personnel policies and procedures provide guidance for the consideration of education as a factor for employment or promotion, and the City has the discretion to consider experience in lieu of education in certain circumstances. Dkt. # 45-3, at 24. However, experience may not be substituted for education "for positions with specific degree requirements of positions that require specific course work." *Id.* Prior to August 2021, the City allowed applicants to substitute years of experience for years of education at a one to one rate, as long as the applicant had half of the required education required for the position. *Id.* Certification is a preliminary process for the personnel director to make an initial determination as to which applicants meet the qualifications for a position, and certification does not require the appointing authority to hire a particular applicant. *Id.* at 10.

In June 2021, Jiang applied for a job opening for the water treatment plant superintendent of the AB

Jewell Water Treatment Plant. Dkt. # 45-1, at 94; Dkt. # 53-4. The position would not have provided Jiang a pay raise, but he believed the position would have provided him valuable managerial experience that would help open up other career prospects. Dkt. # 45-1, at 51-52. The job posting provided the following description of the necessary educational qualifications and jobs skills:

> Training and Experience: Graduation from an accredited college or university with a bachelor's degree in engineering technology, environmental/biological sciences, or a related field and five (5) years of progressively responsible experience in the operation of a water treatment plant; or an equivalent combination of training and experience per Personnel Policies and Procedures, Section 128. Certification as an engineering intern can be substituted for one year of experience.
>
> Knowledge, Abilities, and Skills: Considerable knowledge of the principles, practices, and techniques involving water or wastewater treatment; considerable knowledge of technology utilized in treatment plant operations and maintenance; considerable knowledge of engineering design problems and troubleshooting techniques in a treatment plant; and considerable knowledge of local, state and federal requirements governing treatment plant processes and compliance. Ability to effectively supervise and develop the subordinate personnel; ability to maintain records and organize data to report to management and to make recommendations for improved operations; ability to effectively train and provide employees with the necessary tools

> to successfully perform their job duties; and the ability to utilize the highest level of inter-personal skills to understand, select, develop, and motivate people at any level within or outside the organization.

Dkt. # 45-7, at 2. Jiang, John Curry, and Dylan Hutchcraft were certified by the personnel director as candidates for the water treatment plant superintendent position. Dkt. # 45-6, at 39-40. Jiang holds a Ph. D in environmental engineering from the University of Missouri-Rolla. Dkt. # 45-10, at 3. Jiang's application listed his employment with the City as a senior engineer, and he also had prior employment as a process engineer and laboratory director prior to beginning his employment with the City. *Id.* at 6-7. John Curry had been the maintenance supervisor for the AB Jewell Water Treatment Plant since 2014, and he claimed that he managed a ten member team "to maintain rotating machinery, electrical systems, instrumentation, plumbing, HVAC, and SCADA related equipment." Dkt. # 45-8, at 4. However, he did not have a bachelor's degree and had completed 60 credit hours at Tulsa Community College. *Id.* at 3. Dylan Hutchcraft had been a treatment plant operations supervisor at the Mohawk Water Treatment Plant since May 2020, and he had previously worked as a treatment plant operator. Dkt. # 45-9, at 4. Hutchcraft served in the National Guard, and he had completed 66 credit hours at Southern New Hampshire University. *Id.* at 3. The personnel director certified Jiang, Curry, and Hutchcraft for the water treatment plant superintendent position, even though Curry and Hutchcraft did not satisfy the educational requirement for the position. Dkt. # 45-4, at 2. The City claims that it had a policy of

substituting one year of experience for one year of education as long as the candidate met half of the educational requirement for a position, and Curry and Hutchcraft were certified under this policy. *Id.*

The water supply systems manager, Stefanie Hunter, assembled an interview panel consisting of Eric Lee, Joan Gausvik, and herself, and the interviews took place on June 28, 2021. Dkt. # 45-6, at 50-51. Each interviewer provided a score of up to 40 points per candidate, consisting of up to 5 points in eight separate categories. Dkt. # 45-11, at 2. Jiang received high scores from each of the interviewers on his educational and technical qualifications for the position, but he received much lower scores in the categories of verbal communication and interpersonal skills. Hunter noted that Jiang had excellent technical skills, but it seemed he needed better communications skills and additional managerial experience before he would be ready for the position of water treatment plant superintendent. *Id.* at 5. Lee's scores and remarks were consistent with Hunter's opinions, and Gausvik noted that she expected Jiang to have more "concrete recommendations and ideas for improvement." *Id.* at 1, 8. Jiang received a total of 83 points from the interview panel. Curry received low scores for educational qualifications, but he was generally scored higher for his interpersonal skills and enthusiasm for the position. *Id.* at 3, 7, 10. Curry received a total of 81 points from the interview panel. Hutchcraft received the highest score from each member of the interview panel. Hutchcraft's scores were lower for his educational qualifications for the job, but each panel member found that he had significant managerial experience and strong communication and interpersonal skills. *Id.* at 2, 6, 9.

Hutchcraft received a total of 88 points from the interview panel.

Hunter was the ultimate decision maker as to the selection of the water treatment plant superintendent, because the position would report to her. Dkt. # 45-15, at 1. Hunter selected Hutchcraft for the position and Jiang was notified on June 30, 2021, and thereafter Jiang filed a grievance challenging the decision. Dkt. # 45-14. Jiang claimed that he was "more educated, more experienced and more qualified" than Hutchcraft, and Jiang alleged that he had repeatedly been denied promotions due to racial discrimination in the selection process. *Id.* at 2. The City's human resources department rejected Jiang's grievance, and Jiang appealed the decision to the Civil Service Commission (the Commission). Dkt. # 45-15, at 2. In August 2021, the Commission investigated Jiang's allegations that the City failed to follow its own written policies on the substitution of experience for education, and the Commission separately considered Jiang's allegations of racial discrimination. *Id.* The Commission concluded that "the City did not follow Section 114.2 of the Personnel Policy and Procedures Manual on Certification; specifically, as to the application of qualification and the current job description as written and the application of Section 128 of the Personnel Policy and Procedures Manual." Dkt. # 45-16, at 2.

The City's personnel director states that the City thereafter changed its policies on August 26, 2021 to reflect its past practices, and the City also revised the job description for the treatment plant superintendent position. Dkt. # 45-4; Dkt. # 45-17. The "knowledge, abilities, and skills" section remained unchanged from

the previous job listing, but the training and experience requirements were modified as follows:

> Training and Experience: Completion of 120 hours from an accredited college or university and five (5) years of experience in a field relevant to the essential tasks of this job description or completion of 60 hours from an accredited college or university and seven (7) years of experience in a field relevant to the essential tasks of this job description. Certification as an engineering intern can be substituted for one year of experience.

Dkt. # 45-17, at 2. The job description no longer required a degree in the specific fields of engineering technology, environmental biological sciences, or a similar field, and the educational requirements could also be satisfied by 60 hours of general college credits and seven years of relevant experience. Both Hutchcraft and Curry could meet the educational requirements for the revised job description.

In September 2021, the personnel director again certified Jiang, Hutchcraft, and Curry as applicants for the AB Jewell water treatment plant superintendent position. Dkt. # 45-4, at 3. The second interview panel consisted of Hunter, Matt Vaughan, and Jo Brown. Vaughan was the water pollution control manager for the City at the time of the interview, and Brown was the City's water quality assurance manager. Dkt. # 45-18, at 9; Dkt. # 45-21, at 7. The interviews were scored on a scale with a maximum score of 5.0. Vaughan rated Jiang the highest out of the three applicants with a score of 3.87, even though Vaughan was aware of a complaint from a consultant who had a difficult time working with

Jiang. Dkt. # 45-20, at 3. Vaughan gave Hutchcraft a score of 3.325, and Curry received a score of 3.0 from Vaughan. Dkt. # 45, at 12; Dkt. # 53, at 15. Hunter rated Hutchcraft the highest with a score of 4.15, and she found that Hutchcraft had a "big advantage" over the other candidates in terms of managerial experience and leadership. Dkt. # 45-20 at 8. Hunter gave Curry a score of 3.725, and she scored Jiang the lowest out of the three candidates at 3.375. Dkt. # 45, at 13; Dkt. # 53, at 17. Brown gave Curry and Hutchcraft very similar scores of 3.375 and 3.325 respectively, but Jiang received a much lower score of 1.725 from Brown. Brown felt that her scores reflected who she thought was the best candidate and, even though she had previously worked with all three candidates, her interview scores solely reflected her evaluation of the candidates' interview responses. Dkt. # 45-21, at 68-69. Hunter felt that Brown's scoring of Jiang was too low, but Hunter acknowledged that Jiang often talked in circles and did not provide concrete examples to support his explanations. Dkt. # 45-6, at 166-67.

Hunter had final decision making authority for the water treatment plant superintendent position, and she selected Hutchcraft as the best all-around candidate. *Id.* at 164-65, 233. She found that Jiang had strong technical abilities and Curry had leadership ability, but Hutchcraft was more even across multiple qualifications for the position. *Id.* at 164. Jiang acknowledges that it is "pretty common" for an operations supervisor to move into the plant superintendent position. Dkt. # 1, at 55. Jiang has declined to apply for a position as an operations supervisor to gain additional experience, because he would view that as a demotion and an insult. *Id.* Upon

learning of Hutchcraft's selection for the job, Jiang filed a second grievance challenging his non-selection, and the grievance was heard by the Commission on January 13, 2021. Dkt. # 45-24. The Commission determined that City followed its personnel policies during the selection process, and Jiang's grievance was denied. *Id.* Jiang filed a charge of discrimination with the Equal Employment Opportunity Commission (EEOC) that was signed by Jiang on November 17, 2021, but the charge states that it was received by the EEOC Chicago district office on August 5, 2022.[1] Dkt. 45-5. The charge alleges that the City discriminated against Jiang based on his race, national origin, and age, and he also claims that the City retaliated against him for engaging in protected activity. *Id.*

On June 2, 2023, Jiang filed this case in Tulsa County District Court alleging race discrimination and retaliation claims under Title VII, as well as state law claims under the Oklahoma Anti-Discrimination Act, OKLA. STAT. tit. 25, § 1101 *et seq.* (OADA) under the same theories. Jiang alleges age discrimination

---

[1] Plaintiff has provided evidence that he mailed the charge on November 17, 2021 and FedEx delivered the charge to an undisclosed address in Oklahoma City on November 18, 2021. Dkt. # 53-8, a 2. Plaintiff contacted the EEOC in May 2022 when he had not received any response from the EEOC about his charge, and there is sufficient evidence to support an inference that plaintiff actively attempted to file a charge well before August 5, 2022. The City argues that plaintiff lacks standing to bring many of his claims based on a filing date of August 5, 2022 but, viewing the evidence in a light most favorable to plaintiff, it appears he actually filed or attempted to file his charge in November 2021. Therefore, the Court does not find that plaintiff's employment discrimination claims are time-barred to the extent that his claims were included in his November 2021 charge.

and retaliation claims under the Age Discrimination in Employment Act, 29 U.S.C. § 621 *et seq*. (ADEA), and he also alleged a claim under the Equal Pay Act, 29 U.S.C. § 206(d) (EPA). The City removed the case to this Court based on federal question jurisdiction. The City filed a motion to dismiss plaintiff's EPA claim, and the motion was granted without opposition from plaintiff. Dkt. ## 8, 12, 13.

II.

Summary judgment pursuant to Fed. R. Civ. P. 56 is appropriate where there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 (1986); *Kendall v. Watkins*, 998 F.2d 848, 850 (10th Cir. 1993). The plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial. *Celotex*, 477 U.S. at 317. "Summary judgment procedure is properly regarded not as a disfavored procedural shortcut, but rather as an integral part of the Federal Rules as a whole, which are designed 'to secure the just, speedy and inexpensive determination of every action.'" *Id.* at 327.

"When the moving party has carried its burden under Rule 56(c), its opponent must do more than simply show that there is some metaphysical doubt as to the material facts. . . . Where the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is no 'genuine issue for

trial.'" *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87 (1986) (citations omitted). "The mere existence of a scintilla of evidence in support of the plaintiff's position will be insufficient; there must be evidence on which the [trier of fact] could reasonably find for the plaintiff." *Anderson*, 477 U.S. at 252. In essence, the inquiry for the Court is "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." *Id.* at 250. In its review, the Court construes the record in the light most favorable to the party opposing summary judgment. *Garratt v. Walker*, 164 F.3d 1249, 1251 (10th Cir. 1998).

III.

The City argues that it has provided a legitimate, non-discriminatory explanation for its selection of another candidate for the water treatment plant superintendent position, and plaintiff has no evidence suggesting that the City's explanation was pretextual for race or age discrimination. Dkt. # 45, at 21-24. As to plaintiff's retaliation claims, the City contends that plaintiff has not suffered an adverse employment action in retaliation for engaging in protected activity, and he cannot show that the City engaged in any action with the intent to retaliate against plaintiff for engaging in protected activity. *Id.* at 26. Plaintiff responds that City changed the job requirements for the water treatment plant superintendent position to allow less qualified white applicants to meet the requirements for the position, and this supports an inference that the City intended to discriminate against plaintiff because of his race or age. Dkt. # 53, at 27-28. Plaintiff also claims that changing the job

description was itself a retaliatory act for plaintiff's filing of a successful grievance challenging the first hiring process for the water treatment plant superintendent position. *Id.* at 30.

Race and Age Discrimination

The City asserts that it had a legitimate, non-discriminatory reason for awarding the water treatment plant superintendent position to another candidate, and plaintiff cannot establish that this decision was pretextual based only on his allegedly superior qualifications for the position. Dkt. # 45, at 23-24. Plaintiff contends that the City lowered the educational requirements for the water treatment plant superintendent position to allow less qualified white applicants to qualify for certification and the City relied solely on subjective hiring criteria, and these factors support an inference that the City's explanation for awarding the position to Hutchcraft was pretext for race or age discrimination.[2] Dkt. # 53, at 27-28.

---

[2] The Court has reviewed plaintiff's response and the evidence city by plaintiff and can find no evidence actually providing the age of Hutchcraft or Curry. Plaintiff repeatedly refers to Hutchcraft and Curry as "younger" workers, but he fails to provide evidence to support this assertion. This is a sufficient reason to grant summary judgment to the City on plaintiff's age discrimination claims. In any event, plaintiff also makes no attempt to separately analyze the City's actions in terms of alleged racial or age discrimination, and the Court's pretext analysis will be the same for plaintiff's race and age discrimination claims. For the purpose of this Opinion and Order, the Court will assume that Hutchcraft and Curry would be considered younger workers for the purpose of an ADEA claim and will follow the burden-shifting analysis for race and age discrimination claims.

Plaintiff has no direct evidence of race or age discrimination and, in reviewing a discrimination claim based on circumstantial evidence, the Court must apply the burden-shifting framework set forth in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973).[3] *Frappied v. Affinity Gaming Black Hawk, LLC*, 966 F.3d 1038, 1056 (10th Cir. 2020) (burden shifting analysis applies to ADEA as well as Title VII claims). Under this framework, the plaintiff bears the initial burden to establish a *prima facie* case of discrimination. *Sanders v. Southwestern Bell Telephone, L.P.*, 544 F.3d 1101, 1105 (10th Cir. 2008). To establish a *prima facie* case of race or age discrimination, a plaintiff must show: (1) he is within the protected group; (2) he suffered an adverse employment action; and (3) the challenged action took place under circumstances giving rise to an inference of discrimination. *Ford v. Jackson Nat'l Life Ins. Co.*, 45 F.4th 1202, 1215 (10th Cir. 2022). If the plaintiff meets his burden, the employer must "come forward with some legitimate, non-discriminatory reason for the adverse employment action." *Hinds v. Sprint/United Management Co.*, 523 F.3d 1187, 1195 (10th Cir. 2008). If the employer produces a legitimate, nondiscriminatory reason for its decision, the burden shifts to the plaintiff "to prove by a preponderance of the evidence that the legitimate reasons offered by the [employer] were not its true reasons, but were a pretext for discrimination." *Rivera v. City & County of Denver*, 365 F.3d 912, 920 (10th Cir. 2004). The mixed-motive analysis established in *Price Waterhouse v.*

[3] Plaintiff has also alleged race and age discrimination claims under the OADA, and these claims are subject to the same burden-shifting analysis as plaintiff's Title VII claim. *Jones v. Needham*, 856 F.3d 1284, 1292 (10th Cir. 2017).

Hopkins, 490 U.S. 228 (1989), does not apply to claims under the ADEA, and a plaintiff asserting an age discrimination claim under the ADEA retains the "burden of persuasion to establish that age was the 'but-for' cause of the employer's adverse action." *Gross v. FBL Financial Servs., Inc.*, 557 U.S. 167, 177 (2009).

At the second stage of the *McDonnell Douglas* analysis, the burden shifts to defendant to come forward with a legitimate, non-discriminatory reason for its actions. "The defendant's burden is merely to articulate through some proof a facially non-discriminatory reason for the [action]; the defendant does not at this stage of the proceeding need to litigate the merits of the reasoning, nor does it need to prove that the reason relied upon was bona fide, nor does it need prove that the reasoning was applied in a nondiscriminatory fashion." *EEOC v. Flasher Co., Inc.*, 986 F.2d 1312, 1316 (10th Cir. 1992). The Tenth Circuit has described the defendant's burden at this stage of the proceedings as "exceedingly light." *Zamora v. Elite Logistics, Inc.*, 478 F.3d 1160, 1165 (10th Cir. 2007). Even if the plaintiff disputes that the defendant's stated reason was not the true reason for the adverse employment action, the burden shifts to plaintiff to show that the stated reason is pretextual as long as the defendant meets its burden to state a legitimate, nondiscriminatory reason for its actions. *Plotke v. White*, 405 F.3d 1092,1099 (10th Cir. 2005); *Salguero v. City of Clovis*, 366 F.3d 1168, 1176 (10th Cir. 2004).

"A plaintiff demonstrates pretext by showing . . . that the employer's proffered explanation is unworthy of credence." *Stinnett v. Safeway, Inc.*, 337 F.3d 1213, 1218 (10th Cir. 2003) (quoting *Rea v. Martin Marietta Corp.*, 29 F.3d 1450, 1455 (10th Cir. 1994)). A plaintiff

typically attempts to satisfy his burden by "revealing 'such weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions in the employer's proffered legitimate reasons for its action that a reasonable factfinder could rationally find them unworthy of credence.'" *Mackenzie v. City & County of Denver*, 414 F.3d 1266, 1278 (10th Cir. 2005) (quoting *Morgan v. Hilti, Inc.*, 108 F.3d 1319, 1323 (10th Cir. 1997)). A plaintiff's "mere conjecture" that the employer's explanation is pretext is not a sufficient basis to deny a motion for summary judgment. *Branson v. Price River Coal Co.*, 853 F.2d 786, 772 (10th Cir. 1988). In the context of an age discrimination claim, the burden of persuasion remains with plaintiff at all times to show that age was the but-for cause of plaintiff's termination. *Smith v. City of Allentown*, 589 F.3d 684, 691 (10th Cir. 2009).

The City does not contest that plaintiff can establish a *prima facie* case of race or age discrimination, and the Court will proceed directly to the City's legitimate, non-discriminatory explanation for failing to promote plaintiff. Dkt. # 45, at 21. The City acknowledges that plaintiff was qualified for the position of water treatment plant superintendent, but Hunter preferred to select a candidate with a range of technical skills and leadership abilities. *Id.* at 22. The selected candidate, Hutchcraft, did not have as much technical knowledge as plaintiff and was not as strong in management skills as Curry, but Hunter believed that Hutchcraft was strong in both areas and was a better all-around candidate. *Id.* This explanation satisfies the City's requirement to provide a legitimate, non-discriminatory reason for the decision to offer the water treatment plant superintendent position to Hutchcraft, and the burden shifts to

plaintiff to come forward with evidence showing that the City's explanation is pretextual.

Plaintiff argues that the City violated its own policies to consider Hutchcraft and Curry for the position of water treatment plant superintendent during the initial hiring process, and plaintiff contends that he should been considered the only qualified applicant for the position. Dkt. # 53, at 27. Plaintiff relies on the City's decision to change the requirements for the job after he successfully challenged the first hiring decision, and he claims the City lowered the job requirement to favor white and younger applicants. *Id.* Plaintiff complains that the certification and hiring decisions were wholly subjective, and the lack of objective criteria for certifying and hiring allowed the City to favor white applicants. *Id.* at 28. Finally, plaintiff argues that he was vastly more qualified that Hutchcraft or Curry, and the decision to select a candidate other than plaintiff is sufficient on its own to establish pretext. *Id.* at 28-29.

Plaintiff's assertion that the hiring criteria for the water treatment plant superintendent position was "wholly subjective" is not supported by any credible evidence. During the second hiring process, each interviewer completed a form with 14 questions concerning various qualifications for the position, goals if the candidate were selected, and past experience that would be relevant to the job. Dkt. # 45-20. The interviewers were provided a scoring matrix that gave varying weight to each of the 14 questions. Dkt. # 45-19. This method is not certainly not wholly objective, but plaintiff's description of the process as "wholly subjective" in not supported by the evidence. It is unlikely that any hiring process is ever entirely

objective, and there will always be factors outside of purely objective qualifications that affect the ultimate hiring decision. Evidence of subjective criteria will typically not be considered sufficient to establish pretext unless "the criteria on which the employers ultimately rely are entirely subjective in nature," and courts have "long respected employers' wide latitude 'in setting job standards and requirements and in deciding whether applicants meet those standards.'" *Ford*, 45 F.4th at 1218-19 (quoting *Conroy v. Vilsack*, 707 F.3d 1163, 1177 (10th Cir. 2013); *see also Turner v. Public Service Co. of Colorado*, 563 F.3d 1136, 1145 (10th Cir. 2009) (noting that there is "certainly a level of subjectivity in any interview-based selection process" and the use of subjective criteria is not inherently discriminatory). The subjective components of the interview process in this case were balanced with an effort to rank the applicants based on a set of objective criteria, and plaintiff has not shown that the hiring process was so subjective that it gives rise to the appearance that the City's stated reason for selecting another candidate for the water treatment plant superintendent position was pretextual.

Plaintiff argues that the City's decision to change the job description after his successful grievance was a "backdoor to favor the two unqualified white and younger applicants." Dkt. # 53, at 27. Even if the Court assumed that the City changed the job description to widen the pool of applicants, this by itself does not tend to show that City acted with the intention of discriminating against plaintiff because of his race or age. The mere fact that the City changed the job description and expanded the potential pool of applicants does not inherently suggest that the City

took this action to discriminate against plaintiff because of his race or age. *See Conroy*, 707 F.3d at 1179 (readvertising a position and lowering the qualifications to attract more applicants was not evidence that the employer sought to discriminate against the plaintiff). Even if the Court were to assume Hunter had some personal animus against plaintiff, he still has the burden to come forward with some evidence suggesting that Hunter selected another candidate for a prohibited reason. Plaintiff has not identified any comments by co-workers or other incidents suggesting that he was subjected to mistreatment because of his race or age. Instead, plaintiff argues that he was obviously more qualified for the position of water treatment plant superintendent, and he claims that the hiring process and the decision to select another candidate are sufficient evidence of pretext. *Id.* at 28-29.

In some cases, a court may be willing to infer pretext "when the facts assure us that the plaintiff is better qualified than the other candidates for the position . . . ." *Jones v. Barnhart*, 349 F.3d 1260, 1266-67 (10th Cir. 2003). The Tenth Circuit has cautioned that "'pretext cannot be shown simply by identifying minor differences between plaintiff's qualifications and those of successful applicants,' but only by demonstrating an 'overwhelming' merit disparity." *Santana v. City and County of Denver*, 488 F.3d 860, 865 (10th Cir. 2007) (quoting *Bullington v. United Air Lines, Inc.*, 186 F.3d 1301, 1319 (10th Cir. 1999)). An employee's own belief that he is better qualified for a position than other candidates is not sufficient to establish pretext, and a plaintiff must do more than offer "self-serving appraisals." *Ford*, 45 F.4th at 1219. The Court must ultimately assess whether an

employer could have believed in good faith that the selected candidate was more qualified than the plaintiff. *See Jaramillo v. Colorado Judicial Dept.*, 427 F.3d 1303, 1308 (10th Cir. 2005).

Applying this standard, the Court finds that the City had a good faith belief that Hutchcraft was better qualified for the position of water treatment plant superintendent than plaintiff. Plaintiff is correct that Hunter has not disputed that plaintiff was qualified for the position, and Hunter acknowledges that plaintiff's educational and technical qualifications were strong. Dkt. # 45-6, at 164. However, this was not the only consideration when selecting a candidate for the position, and leadership and managerial skills were equally important to Hunter. *Id.* at 164-65. Hunter found that Hutchcraft "was fairly high across all of the categories," even if he was not the strongest candidate in any particular category. *Id.* The overall scores from both rounds of interviews support Hunter's opinion that Hutchcraft was generally viewed as the best all-around candidate, even though every interviewer noted plaintiff's outstanding educational qualifications. *Conroy*, 707 F.3d at 1175 (the plaintiff's strong technical skills alone did not make her the best candidate when leadership and managerial skills were considered more important by the employer).

Plaintiff has not met his burden to show that the City's stated reason for selecting Hutchcraft for the position of water treatment plant superintendent was pretextual. It is clear that plaintiff believes he was the strongest candidate for the position, but this by itself is not enough to support a workplace discrimination claim. Plaintiff was very strong in the areas of education and technical skills, but interviewers

consistently found that plaintiff was lacking in other areas. The City incorporated objective criteria into the hiring decision, and the City was not required to wholly remove subjective considerations from the hiring process. Plaintiff has not shown that the City's decision to select Hutchcraft for the position of water treatment plant superintendent was pretextual for race or age discrimination, and summary judgment should be granted to the City on plaintiff's disparate treatment claims based on race and age discrimination.

Retaliation

The City argues that plaintiff has failed to produce evidence showing that he suffered an adverse employment action for engaging in protected activity or that any minor harms allegedly suffered by plaintiff were motivated by a desire to retaliate against plaintiff for engaging in protected activity. Dkt. # 45, at 26. Plaintiff responds that Hunter has cancelled his projects and isolated him from coworkers in retaliation for filing grievances contesting the City's decision to award the water treatment plant superintendent position to Hutchcraft. Dkt. # 53, at 30. He also claims the City's decision to reopen the position of water treatment plant superintendent after his successful grievance was retaliatory, and he claims that the City should have awarded him the position as the only qualified candidate after the City's initial decision to award the position to Hutchcraft was set aside. *Id.*

Under Title VII and the ADEA, it is unlawful for an employer to take any adverse action against an employee for filing a charge or reporting acts of

alleged workplace discrimination.[4] 42 U.S.C. § 2000e-3(a); *Mauldin v. Driscoll*, 136 F.4th 984, 995 (10th Cir. 2025). To prove a *prima facie* case of retaliation, plaintiff must show that: (1) he engaged in protected opposition to discrimination; (2) his employer took an adverse employment action against him; and (3) there is a causal connection between the opposition and the adverse action. *Stover v. Martinez*, 382 F.3d 1064, 1071 (10th Cir. 2004). The law is clear that reporting workplace discrimination to the EEOC is protected behavior, but protected opposition broadly encompasses any type of communication putting the employer on notice that the employee is challenging allegedly discriminatory behavior. *Walkingstick Dixon v. Oklahoma ex rel. Regional University System of Oklahoma Board of Regents*, 125 F.4th 1321, 1339 (10th Cir. 2025); *Anderson v. Coors Brewing Co.*, 181 F.3d 1171, 1178 (10th Cir. 1999); *McCue v. State of Kansas, Dep't of Human Resources*, 165 F.3d 784, 789 (10th Cir. 1999). An employee may establish causation by showing that the adverse employment action occurred soon after the protected activity. *Annett v. University of Kansas*, 371 F.3d 1233, 1239-40 (10th Cir. 2004); *Burrus v. United Tel. Co. of Kansas, Inc.*, 683 F.2d 339, 343 (10th Cir. 1982). "Unless there is a very close temporal proximity between the protected activity and the retaliatory conduct, the plaintiff must offer additional evidence to establish causation." *O'Neal v. Ferguson Constr. Co.*, 237 F.3d 1248, 1252 (10th Cir. 2001). If the plaintiff can establish a *prima*

[4] The parties dispute whether the OADA provides a claim for retaliation. Dkt. # 45, at m25; Dkt. # 53, at 29. The Court finds that it is unnecessary to resolve this issue, because has not produced any evidence tending to show that he has a viable retaliation claim under federal or state law.

facie case of retaliation, the burden shifts to the employer to articulate a legitimate, nondiscriminatory reason for the adverse employment action. *Pinkerton v. Colorado Dep't of Transp.*, 563 F.3d 1052, 1064 (10th Cir. 2009). If the employer comes forward with a legitimate, nondiscriminatory reason for its actions, the burden shifts to the employee to show that employer's stated reason is pretextual. *Id.*

The City challenges plaintiff's retaliation claims on the ground that he cannot establish a *prima facie* case of retaliation for protected activity concerning race or age discrimination, because he did not suffer an adverse employment action in retaliation for engaging in protected activity. There is no dispute that plaintiff filed grievances challenging the City's decision to award the water plant superintendent position to Hutchcraft after both rounds of interviews, and plaintiff succeeded in overturning the first decision on the basis that the City failed to follow its own employment policies. Dkt. # 45-16. The Commission treated plaintiff's grievance as a non-selection grievance based on the misapplication of City policies, and it did not consider his complaints of racial discrimination. Dkt. # 45-15, at 2. The City's human resources department separately investigated plaintiff's allegations of racial discrimination after the completion of the second hiring process, and found no evidence that discriminatory animus had any part in the employment decision. *Id.* at 9. Plaintiff clearly made a complaint of racial discrimination concerning the hiring decision for the water plant superintendent position prior to filing his EEOC charge, and he submitted his grievance to the City on August 2, 2021. Dkt. # 45-14 (plaintiff's initial grievance challenging the City's decision on the grounds of City policy and

racial discrimination). Plaintiff's EEOC charge does include an allegation of age discrimination and, even though plaintiff contends that he mailed the charge in November 2021, it was not received by the EEOC until August 2022. Plaintiff clearly engaged in protected opposition to allegedly discriminatory behavior, and he can satisfy the first element of a *prima facie* case of retaliation.

Plaintiff prepared a document outlining his allegations of retaliatory acts committed by City employees, and plaintiff contends the allegedly retaliatory acts began in 2014.[5] Dkt. # 53-12. Plaintiff testified in his deposition that a former supervisor, Roy Foster, believed that plaintiff held a grudge against Foster after plaintiff failed to receive a promotion, and Foster gave plaintiff less desirable work assignments. Dkt. # 53-11, at 3-4. Plaintiff alleges that Hunter gave him poor performance reviews and shut down his projects after he filed a grievance challenging the City's decision to award the water treatment plant superintendent position to Hutchcraft. Dkt. # 53-11, at 5-10; Dkt. # 53-12, at 1. Hunter stopped having staff meetings in July and

[5] The Court notes that plaintiff never undertakes any type of analysis in his response (Dkt. # 53) as to which of the acts listed in his document could qualify as an adverse employment action. Plaintiff attempts to state as an undisputed fact that he suffered "multiple instances of retaliation . . . after his second grievance was denied," and he simply cites 32 pages of deposition testimony without making any attempt to identify any specific act or acts that could qualify as an adverse employment action to support a retaliation claim. Dkt. # 53, at 25. The Court has reviewed the full summary judgment record and has considered all of the evidence, but any failure to frame the issue in a particular manner is due to plaintiff's counsel's failure to make more specific arguments on this issue.

August 2021, and plaintiff believes this was an attempt to exclude him from plant management operations. Dkt. # 53-11, at 11-12. Plaintiff includes a lengthy list of Hunter's allegedly retaliatory acts, which include ignoring his concerns about plant operations, giving him tasks outside of his job duties, setting unreasonable deadlines for assignments, and acting in an aggressive manner towards plaintiff. Dkt. # 53-12, at 2-3. Plaintiff alleges that Cathey Gillingham, a procurement coordinator, failed to consult plaintiff before sending out a bid to vendors, and plaintiff perceived that he was excluded from the process because he had filed a grievance. Dkt. # 53-11, at 12-13. Plaintiff believes that Hutchcraft regularly excludes plaintiff from meetings or project discussions, and he claims that Hutchcraft has excluded plaintiff from social gatherings at work. Dkt. # 53-12, at 2-3. Plaintiff also argues that the City's act of changing the job description after his first successful grievance to the Commission was a retaliatory act meant to prevent him from receiving the water plant superintendent position. Dkt. # 53, at 30.

Plaintiff's retaliation claim is not based on single substantial act that constitutes an adverse employment action but, instead, it appears that plaintiff is trying to prove retaliation in a manner similar to a hostile work environment theory. Many of the alleged acts of retaliation are more properly classified as perceived personal slights rather than discrete acts that had any concrete effect on his employment, and there is no evidence that plaintiff's job assignment, pay, schedule, or any condition of his employment has been affected. For the purpose of a retaliation claim, the aggrieved employee is not required to show that an adverse action actually

affected the terms or conditions of employment, but an action will be considered "materially adverse" if it would have deterred a reasonable person from making or supporting a charge of discrimination. *Culp v. Remington of Montrose Golf Club, LLC*, 133 F.4th 968 (10th Cir. 2025). Plaintiff does not make any argument that the alleged acts of exclusion or aggression towards him actually deterred him from pursuing a charge of discrimination or that these acts altered the terms or conditions of his employment. Instead, he places substantial emphasis on the City's decision to change the job description to expand the potential pool of applicants. Changing the job description for the plant superintendent position had no effect on the terms or conditions of plaintiff's employment and, in any event, the action did not deter plaintiff from making future challenges to perceived discriminatory conduct. The Court agrees with the City that plaintiff has not shown he suffered an adverse employment action that would support a retaliation claim.

The parties do not offer a separate pretext analysis in the context of plaintiff's retaliation claims but, even if the Court were to reach this issue, the Court would conclude that plaintiff could not establish that the City's stated reason for selecting another candidate for the water plant superintendent position was pretextual for engaging in retaliatory conduct. The Court has separately considered whether this action tended to support plaintiff's claim that the City's explanation selecting another candidate for the water plant superintendent position was pretextual. *See* supra at 13-17. For the same reasons, the Court would also find reopening the position of water treatment plant superintendent after plaintiff's first successful

grievance was not pretextual, and the City has established that it had a legitimate, non-discriminatory reason for reopening the position. Plaintiff's retaliation claims would fail at the pretext stage even if he could establish a *prima facie* case of retaliation.

IT IS THEREFORE ORDERED that Defendant City of Tulsa's Motion for Summary Judgment and Brief in Support (Dkt. # 45) is **granted**. A separate judgment is entered herewith.

DATED this 2nd day of June, 2025.

/s/ Claire V. Eagan
CLAIRE V. EAGAN
UNITED STATES DISTRICT JUDGE

FILED
United States Court of Appeals
Tenth Circuit
July 20, 2026

Christopher M. Wolpert
Clerk of Court

PUBLISH

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

HUA JIANG, Plaintiff - Appellant, v. CITY OF TULSA, Defendant - Appellee.	No. 25-5097 (D.C. No. 4:23-CV-00255-CVE-CDL) (N.D. Okla.)

ORDER

Before **HOLMES,** Chief Judge**, HARTZ, TYMKOVICH, MATHESON, BACHARACH, PHILLIPS, McHUGH, MORITZ, EID, CARSON, ROSSMAN,** and **FEDERICO,** Circuit Judges.

This matter is before the court on Appellant's *Petition for Rehearing En Banc* and Appellee's *Response To Petition for Rehearing En Banc*.

The petition and response were circulated to all judges of the court who are in regular active service, and a poll was called. The poll did not carry. Consequently, the petition is DENIED.

Judges Hartz, Tymkovich, Bacharach, and Eid would grant the petition. Judge Eid has filed a separate dissent from the denial of rehearing en banc, which is joined by Judges Hartz and Tymkovich.

Entered for the Court
Per Curiam

EID, Circuit Judge, dissenting from denial of petition for rehearing en banc.

Hua Jiang—a middle-aged man from China—applied to be the superintendent of the City of Tulsa's ("City") A.B. Jewell water-treatment plant. The original posting required someone with a college degree in biology, engineering, environmental sciences, or a similar field. However, Jiang was rejected, and a younger, white applicant without a bachelor's degree was hired, contrary to the job posting. Jiang reported this error to the civil-service commission, and indeed, the City redid its hiring—now without requiring a bachelor's degree for the position—and the same candidate was hired. Jiang then sued the City for discrimination, arguing that he was passed over for the job due to his race, age, and national origin. Moreover, Jiang claims that the City's desire to hire someone with more leadership experience was pretext for its discriminatory animus. Here, the majority held that the district court correctly granted summary judgment to the City because Jiang could not show pretext under *McDonnell Douglas*.

This case involves the burden-shifting framework of *McDonnell Douglas*, which is used by courts to determine if employment discrimination occurred under Title VII. *See McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802 (1973). As I said in my concurrence in *Jenny v. L3Harris Technologies, Inc.*, I believe that *McDonnell Douglas*'s fixation on pretext is especially problematic in cases like this one, where the facts presented at summary judgment make the case close enough to go to a jury. *See* 144 F.4th 1194, 1201 (10th Cir. 2025) (Eid, J., concurring). *McDonnell Douglas* has faced mounting scrutiny over the years,

both within this Circuit and outside of it,[1] and I believe the instant case offers us a chance to address pretext in the summary judgment context.

In focusing our inquiry on evaluating pretext, I believe that we ignore the summary judgment standard, under which courts are not to "weigh the evidence and determine the truth of the matter but to

---

[1] Justice Thomas has stated that he has serious doubts on multiple grounds about the use of *McDonnell Douglas* at summary judgment, including the fact that "the *McDonnell Douglas* framework lacks any basis in the text of Title VII and has proved difficult for courts to apply"; notably, Justice Gorsuch joined this opinion. *See Ames v. Ohio Department of Youth Services*, 605 U.S. 303 (2025) (Thomas, J., concurring). Moreover, several judges in our Circuit have raised doubts about the propriety of *McDonnell Douglas* in both the summary-judgment context and other postures. *See, e.g.*, *McNellis v. Douglas Cnty. Sch. Dist.*, 116 F.4th 1122, 1144 (10th Cir. 2024) (Hartz, J., concurring); *Wells v. Colo. Dep't of Transp.*, 325 F.3d 1205, 1221-28 (10th Cir. 2003) (Hartz, J., writing separately) (arguing *McDonnell Douglas* causes courts to "los[e] sight of the ultimate issue" at summary judgment—which is "whether the evidence supports a finding of unlawful discrimination"); *Walton v. Powell*, 821 F.3d 1204, 1211 (10th Cir. 2016) (Gorsuch, J.) ("[T]he tide runs against *McDonnell Douglas* as strongly as it does for a good reason[,] for the test has proven of limited value even in its native waters."). And Judge Tymkovich has written that the "focus on pretext has shifted the emphasis of an employment discrimination case away from the ultimate issue of whether the employer discriminated against the complaining employee," instead leading courts to analyze pretext using "artificial categories of evidence" or unnecessary orders of proof. Timothy M. Tymkovich, *The Problem with Pretext*, 85 Denv. L. Rev. 503, 505, 529 (2008). Additionally, judges outside of our Circuit have also criticized *McDonnell Douglas*. *See, e.g.*, *Tynes v. Fla. Dep't of Juv. Just.*, 88 F.4th 939, 951 (11th Cir. 2023) (Newsom, J., concurring); *Brady v. Off. of the Sergeant at Arms*, 520 F.3d 490, 493-94 (D.C. Cir. 2008) (Kavanaugh, J.); *Coleman v. Donahoe*, 667 F.3d 835, 863 (7th Cir. 2012) (Wood, J., concurring).

determine whether there is a genuine issue for trial"—and, in doing so, are to view the record in the light most favorable to the non-movant. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249-50 (1986). Put differently, if a case has made it to the third step of *McDonnell Douglas*, both parties will usually have met their burden of production. As a result, we need only to determine which party to believe—which is a question of fact for the jury to decide, not a legal question for the court.

Moreover, the Supreme Court has stated that the *McDonnell Douglas* framework was "never intended to be rigid, mechanized, or ritualistic. Rather, it is merely a sensible, orderly way to evaluate the evidence in light of common experience as it bears on the critical question of discrimination." *U.S. Postal Serv. Bd. of Governors v. Aikens*, 460 U.S. 711, 715 (1983) (internal quotation marks omitted) (quoting *Furnco Const. Corp. v. Waters*, 438 U.S. 567, 577 (1978)). And the *Aikens* Court went on to say that once the defendant no longer challenged whether the plaintiff had successfully established a prima facie case, courts should no longer use *McDonnell Douglas* and simply decide whether "the defendant intentionally discriminated against the plaintiff," "proceed[ing] to this specific question directly, just as district courts decide disputed questions of fact in other civil litigation." *Id.* at 715-16. In other words, the Court has directed us to be more flexible when evaluating whether pretext existed under *McDonnell Douglas*, but we have not followed that instruction in this case.

Accordingly, I respectfully dissent from the court's order denying en banc review.

DISTRICT COURT
FILED
June 02 2023

DON NEWBERRY, Court Clerk
STATE OF OKLA. TULSA COUNTY

IN THE DISTRICT COURT FOR
TULSA COUNTY
STATE OF OKLAHOMA

HUA JIANG, Plaintiff, vs. CITY OF TULSA Defendant.	**CJ-2023-01968** **DAMAN CANTRELL**

PETITION

COMES NOW the Plaintiff, Hua Jiang, by and through his attorneys of record, and hereby files his Petition against Defendant, City of Tulsa, for the violations of his constitutionally protected rights arising out of his employment by Defendant. Plaintiff respectfully shows the Court the following:

PARTIES

1. Plaintiff Hua Jiang is a citizen of the State of Oklahoma and a resident of Tulsa County.

2. Defendant City of Tulsa is headquartered in Tulsa, OK and regularly conducts business in Tulsa County, State of Oklahoma.

3. Defendant City of Tulsa, regularly employs more than five hundred (500) people in Tulsa County, Oklahoma.

JURISDICTION AND VENUE

4. Plaintiff incorporates as if re-alleged all preceding paragraphs.

5. This is an action for damages and to secure protection of and to redress deprivation of rights secured by Title VII of the Civil Rights act of 1964, as amended 42 U.S.C. §2000-2 (Title VII) providing relief against discrimination and retaliation on the basis of race, national origin, retaliation, age.

6. This is an action for damages and to secure protection and to redress deprivation of rights secured by the Oklahoma Anti-Discrimination Act (OADA), 25 O.S. §1301, *et seq.*, providing relief against discrimination and retaliation on the basis of race, national origin, retaliation, age.

7. This is an action for damages to redress deprivation of rights secured by the Age Discrimination in Employment Act of 1967 as amended, 29 U.S.C. 621 *et seq.* (hereinafter "ADEA").

8. This is an action for damages and to secure protection of and to redress deprivation of rights secured by the Equal Pay Act, 29 U.S.C. § 206(d)(1) and 29 U.S.C. § 216(b).

9. Plaintiff, Hua Jiang, filed a charge of discrimination against Defendant with the Equal Employment Opportunity Commission (EEOC). Plaintiff complained to the EEOC of discrimination based on race, national origin, retaliation, age and violation of the Equal Pay Act.

10. Plaintiff received a Notice of Right to Sue and this Petition is filed within ninety (90) days of the receipt of the Notice of Right to Sue. As such, Plaintiff has complied fully with all administrative

prerequisites in this Court under all applicable statutes.

11. Jurisdiction of the Court is proper as a court of general jurisdiction.

12. Venue is proper because Defendant may be properly sued in the county where it has its place of business.

FACTS COMMON TO ALL CLAIMS

13. Plaintiff incorporates as if re-alleged all preceding paragraphs.

14. Plaintiff worked for City of Tulsa, beginning in 2010.

15. Plaintiff is employed by the City of Tulsa in the water and sewer department and holds a PhD in Civil Engineering. He has over 20 years of experience in water treatment and operation of treatment plants.

16. The Plaintiff was continually passed over for promotion in favor of lesser qualified, less experienced white employees.

17. The Plaintiff applied for promotion five times during his employment with the City and was never selected for the positions he applied. He first applied for promotion in November 2013. He applied again in 2015. He also applied for promotion in February of 2021 and again in June 2021 and he was not selected for either promotion.

18. In June 2021, the individual selected for the position was a much younger white male who did not meet the minimum requirements listed in the job description. The Plaintiff filed a grievance and the Civil Service Commission agreed that the Defendant failed to follow proper promotional practices. The job search was to be re-opened in September 2021. The

Plaintiff applied again and the Defendant. merely adjusted the position requirements and hired the same white male. Upon information and belief, he still did not meet the listed requirements, even after adjustments. Plaintiff was also denied promotions for which he was the most qualified in September, October, and December 2021.

19. Several individuals promoted over the Plaintiff were younger than him and every single individual promoted over the Plaintiff have been white.

20. The Plaintiff was on the same pay scale for ten years. The Plaintiff was the only individual to remain on this particular pay scale for such an extended period of time and was one of the lowest paid employees on said scale.

21. The Plaintiff's supervisor indicated that the Plaintiff's accent and the fact that English is his second language affects how [his] coworkers and managers view the Plaintiff.

22. When the Plaintiff complained about the hiring process and discrimination, suddenly several of the Plaintiff projects were shut down and he was isolated at work. Such projects were necessary for Plaintiff to have advancement opportunities.

CLAIM I
DISPARATE TREATMENT
BASED ON RACE (TITLE VII)

23. Plaintiff incorporates the preceding paragraphs as if realleged.

24. Plaintiff was treated worse than his younger, Caucasian and non-Asian co-workers employed with the Defendant.

25. Plaintiff was held to a different, standard than his younger non-Asian comparators.

26. Defendant did nothing to ensure equal treatment under the law for Plaintiff nor to investigate his complaints.

27. By treating Plaintiff differently than similarly-situated younger, Caucasian and non-Asian American employees with regard to pay, promotions, and raises, Defendant has violated Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, et. seq.

28. Defendant's discriminatory practices have resulted in the loss of past and future wages and other job benefits, and have caused the Plaintiff to suffer humiliation, embarrassment, and emotional distress.

WHEREFORE, Plaintiff prays for judgment against Defendant for:

a. Back pay lost benefits; front pay until normal retirement
b. Compensatory damages for his mental anguish, pain and suffering and other nonpecuniary losses;
c. Punitive damages for the intentional and knowing acts of discrimination committed by the Defendant's management;
d. His attorney fees and the costs and expenses of this action;
e. Such other relief as the Court deems just and equitable.

CLAIM II
RETALIATION IN VIOLATION
OF TITLE VII 42 USC §2000e, et seq.

29. Plaintiff incorporates as if re-alleged all preceding paragraphs.

30. Defendant canceled Plaintiff's projects and isolated Plaintiff because he engaged in protected opposition to discrimination in violation of Title VII of the Civil Rights Act of 1964.

31. Defendant's discriminatory practices have resulted in the loss of past and future wages and other job benefits, and have caused the Plaintiff to suffer humiliation, embarrassment, and emotional distress.

WHEREFORE, Plaintiff prays for judgment against the Defendant for:

a. Back pay lost benefits; front pay until normal retirement
b. Compensatory damages for his mental anguish, pain and suffering and other nonpecuniary losses;
c. Punitive damages for the intentional and knowing acts of discrimination committed by the Defendant's management;
d. His attorney fees and the costs and expenses of this action;
e. Such other relief as the Court deems just and equitable.

CLAIM III
DISCRIMINATION IN
VIOLATION OF THE OADA

32. Plaintiff incorporates as if re-alleged all preceding paragraphs.

33. Plaintiff was treated worse than his younger, Caucasian and non-Asian co-workers employed with the Defendant.

34. Plaintiff was held to a different, standard than his younger non-Asian comparators.

35. Defendant did nothing to ensure equal treatment under the law for Plaintiff nor to investigate his complaints.

36. By treating Plaintiff differently than similarly-situated Caucasian and non-Asian American employees with regard to pay, promotions, and raises, the Defendant has violated the Oklahoma Anti-Discrimination Act.

37. Defendant's discriminatory practices have resulted in the loss of past and future wages and other job benefits, and have caused the Plaintiff to suffer humiliation, embarrassment, and emotional distress.

WHEREFORE, Plaintiff prays for judgment against the Defendant for:

a. Back pay and lost benefits; front pay until normal retirement
b. Compensatory damages for his mental anguish, pain and suffering and other nonpecuniary losses;
c. Punitive damages for the intentional and knowing acts of discrimination committed by the Defendant's management;
d. His attorney fees and the costs and expenses of this action;
e. Such other relief as the Court deems just and equitable.

CLAIM IV
RETALIATION IN
VIOLATION OF THE OADA

38. Plaintiff incorporates as if re-alleged all preceding paragraphs.

39. Defendant canceled Plaintiff's projects and isolated Plaintiff because he engaged in protected opposition to discrimination in violation of the Oklahoma Anti-Discrimination Act.

WHEREFORE, Plaintiff prays for judgment against the Defendant for:

a. Back pay and lost benefits; front pay until normal retirement

b. Compensatory damages for his mental anguish, pain and suffering and other non-pecuniary losses;

c. Punitive damages for the intentional and knowing acts of discrimination committed by the Defendant's management and executives;

d. Her attorney fees and the costs and expenses of this action;

e. Such other relief as the Court deems just and equitable.

CLAIM V
DISCRIMINATION ON THE
BASIS OF AGE IN VIOLATION OF
THE AGE DISCRIMINATION IN
EMPLOYMENT ACT OF 1967
(29 U.S.C. 621 *ET SEQ.*)

40. Plaintiff incorporates the preceding paragraphs as if realleged herein.

41. The foregoing conduct violates the ADEA of 1967 as amended, 29 U.S.C. § 621 *et seq*.

42. Plaintiff experienced discrimination by way of a failure to provide equal pay, denial of promotions, and denial of raises in violation of the ADEA.

43. Defendant's discriminatory practices have resulted in the loss of past and future wages and other job benefits, and have caused the Plaintiff to suffer humiliation, embarrassment, and emotional distress.

44. Upon information and belief, Plaintiff's denied promotions and raises were motivated in substantial part by his age, in violation of the ADEA.

45. WHEREFORE, Plaintiff prays for judgment against Defendant for:

a. Back pay and lost benefits; front pay until normal retirement;
b. Liquidated damages for his mental anguish, pain and suffering, and other nonpecuniary losses;
c. Punitive damages for the intentional and knowing acts of discrimination committed by Defendant;
d. Plaintiff's attorney fees and the costs and expenses of this action;
e. Such other relief as the Court deems just and equitable.

CLAIM VI
RETALIATION IN VIOLATION OF THE AGE DISCRIMINATION IN EMPLOYMENT ACT OF 1967 (29 U.S.C. 621 *ET SEQ.*)

46. Plaintiff incorporates as if realleged Paragraphs 1-22.

47. The foregoing conduct violates the ADEA of 1967 as amended, 29 U.S.C. § 621 *et seq*.

48. Plaintiff engaged in protected opposition to discrimination when he complained about the discriminatory denials of promotions and raises based on his age.

49. Defendant canceled Plaintiff's projects and isolated Plaintiff because he engaged in protected opposition to discrimination in violation the ADEA of 1967 as amended, 29 U.S.C. § 621 *et seq*.

50. Defendant's discriminatory practices have resulted in the loss of past and future wages and other job benefits, and have caused the Plaintiff to suffer humiliation, embarrassment, and emotional distress.

51. Defendant committed the act alleged with malice or reckless indifference to the protected rights of the Plaintiff. Plaintiff is thus entitled to recover punitive damages in an amount to be determined by a jury.

WHEREFORE, Plaintiff prays for judgment against Defendant for:

f. Back pay and lost benefits; front pay until normal retirement;

g. Liquidated damages for his mental anguish, pain and suffering, and other nonpecuniary losses;

h. Punitive damages for the intentional and knowing acts of discrimination committed by Defendant;

i. Plaintiff's attorney fees and the costs and expenses of this action;

j. Such other relief as the Court deems just and equitable.

CLAIM VII
VIOLATION OF THE EQUAL PAY ACT
29 U.S.C. § 206(d)(1) and 29 U.S.C. § 216(b)

52. Plaintiff incorporates as if re-alleged all preceding paragraphs.

53. The Defendant's actions of paying Plaintiff less than his younger and non-Asian American counterparts for the same work violates the Equal Pay Act.

WHEREFORE, Plaintiff prays for judgment against the Defendant for:

a. Back pay lost benefits; front pay until normal retirement;

b. Liquidated damages for his mental anguish, pain and suffering, and other nonpecuniary losses;

c. Punitive damages for the intentional and knowing acts of discrimination committed by Defendant;

d. Plaintiff's attorney fees and the costs and expenses of this action;

e. Such other relief as Court deems just and equitable.

WHEREFORE, based on the foregoing, Plaintiff prays that this Court grant the relief sought, including, but not limited to, actual damages in excess

of Seventy-Five Thousand Dollars ($75,000.00), with interest, punitive damages in excess of Seventy-Five Thousand Dollars ($75,000.00), the costs of bringing this action, a reasonable attorney's fee, along with such other relief as deemed just and equitable.

Respectfully submitted,

/s/ Daniel E. Smolen
Daniel E. Smolen, (OBA#19943)
SMOLEN & ROYTMAN
701 South Cincinnati Avenue
Tulsa, OK 74119
(918) 585-2667
(918) 585-2669 (Fax)
danielsmolen@ssrok.com

Mark A. Smith, OBA No. 31231
Caruso & Smith, PLLC
2021 South Lewis Ave, Suite 720
Tulsa, Oklahoma 74104
(918) 583-5900 (Office)
(918) 583-5902 (Fax)
mark.smith@smithlegalok.com

Attorneys for Plaintiff