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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
CHARLOTTESVILLE DIVISION

JAMES J. CONDON,

Plaintiff,

v.

ASSOCIATED UNIVERSITIES, INC.,

Defendant.

CASE NO. 3:24-CV-00063

ORDER

JUDGE NORMAN K. MOON

In this Title VII case, Defendant Associated Universities, Inc. (“AUI”) moves the Court for summary judgment on Plaintiff James J. Condon’s (“Condon”) retaliation claim. Dkt. 34. Because Title VII protects Condon as a former AUI employee, because genuine disputes of material fact exist as to AUI’s revocation of his Emeritus status, and because Condon establishes AUI’s reason for terminating him was pretext, the Court **DENIES** the motion.

Summary judgment is appropriate where “there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). A dispute is “genuine if a reasonable [factfinder] could return a verdict for the nonmoving party,” and a fact is “material if it might affect the outcome of the suit under the governing law.” *Variety Stores, Inc. v. Wal-Mart Stores, Inc.*, 888 F.3d 651, 659 (4th Cir. 2018). The moving party bears the burden of establishing its entitlement to summary judgment, and the court must draw all justifiable inferences in favor of the nonmoving party. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 322–23 (1986); *Dash v. Mayweather*, 731 F.3d 303, 311 (4th Cir. 2013).

In its opinion on AUI's motion to dismiss, the Court determined that Title VII protects Condon as a former AUI employee and thus need not further address these arguments at summary judgment. Dkt. 39 at 4-5. However, AUI also argues summary judgment should be granted because: (i) Condon did not engage in protected activity as his email to the scistaff@nrao.edu listserv was "objectively unreasonable," and (ii) because Condon cannot rebut AUI's "legitimate, non-retaliatory reason for revoking his Emeritus status." Dkt. 35 at 20-21.

"An employer may not be liable under Title VII if an employee's conduct at work is sufficiently insubordinate, disruptive, or nonproductive." *See DeMasters v. Carilion Clinic*, 796 F.3d 409, 423 (4th Cir. 2015) (quoting *Armstrong v. Index J. Co.*, 647 F.2d 441, 448 (4th Cir. 1981)). When addressing the reasonableness of a plaintiff's conduct, courts must "balance the purposes of [Title VII] to protect persons reasonably engaged in activities opposing . . . discrimination, against Congress' equally manifest desire to not tie the hands of employers in the objective selection and control of personnel." *Armstrong*, 647 F.2d at 448 (quoting *Hochstadt v. Worcester Found. for Experimental Biology*, 545 F.2d 222, 231 (1st Cir. 1976)).

AUI argues Condon's email was "objectively unreasonable" as it was "disruptive;" "went to parties outside of the Observatory;" and "caused institutional problems for AUI" as the organization "had to shut down the scistaff listserv entirely due to his Email." Dkt. 35 at 21. Because Condon "chose not to use" "other avenues by which to complain, such as an ombudsman and an anonymous ethics hotline," AUI asserts his email cannot be protected activity. *Id.* However, Condon couches his email in a ten-year battle with AUI's leadership regarding "the organization's DEI policies," in which "Dr. Condon . . . was not getting the desired responses through HR [or] the Director" even after he complied with the Director's requirement that he "draft a memorandum documenting the complaints." Dkt. 36 at 12. Condon

also argues he “did not know at the time of sending” the email that the listserv contained “external recipients.” *Id.* at 13. Thus, several genuine issues of material fact exist as to the circumstances surrounding Condon’s email; because of these disputes, the Court cannot evaluate the reasonableness of Condon’s choice and cannot grant summary judgment on this argument.

When evaluating Title VII retaliation claims on summary judgment, a court must apply the burden shifting framework of *McDonnell-Douglas*. 411 U.S. 793, 807 (1973). According to this framework, Condon must first state a “prima facie case” of discrimination. *Id.* Next, AUI must offer a “legitimate, non-discriminatory reason” for its actions. *Id.* Finally, Condon must demonstrate that AUI’s alleged facts are pretext. *Id.* Although the “perception of the decision maker” is the relevant inquiry rather than the “self-assessment of the plaintiff,” pretext may be demonstrated through “facts as to the [decision-maker’s] treatment of the [employee] during his prior term of employment.” *Id.* at 804; *Fry v. Rand Constr. Corp.*, 964 F.3d 239, 248 (4th Cir. 2020).

The Court previously found Condon stated a prima facie claim for discrimination. Dkt. 39 at 5-7. AUI next argues Condon “violat[ed] AUI’s policies,” essentially asserting the Board “terminated [his] Emeritus status not because of his ideas, but because of his methods”—asserting a “non-discriminatory reason” under *McDonnell-Douglas*. Dkt. 35 at 22-23. In response, Condon points to how AUI treated him throughout his employment—namely, that an “antagonistic dynamic” existed in the workplace and that then-director Beasley engaged in “a progression of retaliatory actions against [him] after he expressed his opinions,” including removing him from “leadership roles” and making threats that culminated in his termination. Dkt. 36 at 15-16. Condon also points to evidence that Beasley “was looking for a way to *fit* the September 14, 2022 email into a computer use violation [by] reach[ing] out to the Chief

Information Security Officer and ask[ing] if there were any ‘scistaff exploder systems usage polic[ies] . . . applicable to this matter.’” *Id.* at 16-17. This evidence, paired with AUI’s failure to provide Condon with “a chance to explain or defend his actions” calls into question whether AUI’s proffered reason is “the real reason” for his termination. *Id.* at 17. As such, Condon has rebutted AUI’s non-discriminatory reason under the *McDonnell-Douglas* framework and the Court cannot grant summary judgment on this argument. 411 U.S. 793, 807 (1973).

For the above-stated reasons, the Court **DENIES** AUI’s motion for summary judgment.
Dkt. 34.

The Clerk of court is directed to send a copy of this order to all counsel of record.

It is **SO ORDERED**.

Entered this the 30th of December, 2025.



NORMAN K. MOON
SENIOR UNITED STATES DISTRICT JUDGE