NOT FOR PUBLICATION

FILED

DEC 12 2022

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

TYRONE DOUTHERD, Plaintiff-Appellant, v. UNITED PARCEL SERVICE, INC.; LIBERTY MUTUAL INSURANCE COMPANY, Defendants-Appellees, and DORIS MARIE MONTESDEOCA; et al., Defendants.	No. 21-15966 D.C. No. 2:17-cv-02225-KJM-JDP MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Kimberly J. Mueller, Chief District Judge, Presiding

Submitted December 8, 2022**
San Francisco, California

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Before: BRESS and VANDYKE, Circuit Judges, and RESTANI,[***] Judge.

Tyrone Doutherd appeals the district court's grant of summary judgment to UPS Freight (UPSF) in Doutherd's employment action alleging various federal and state law claims. We review the grant of summary judgment de novo and may affirm on any ground supported in the record. *Nat'l R.R. Passenger Corp. v. Su*, 41 F.4th 1147, 1152 (9th Cir. 2022). We have jurisdiction under 28 U.S.C. § 1291 and affirm.

1. The district court properly granted summary judgment on Doutherd's fraud claim. Doutherd presents no evidence that his managers had the intent to defraud him as to his workers' compensation benefits or that he justifiably relied on any alleged misrepresentations. *See Lovejoy v. AT&T Corp.*, 111 Cal. Rptr. 2d 711, 717 (Cal. Ct. App. 2001) (reciting elements of fraud claim under California law). Doutherd's allegations that his managers harbored ill-will toward him, demonstrated by the fact that they forced him to "work injured" and did not "give [him] the time of day," are too "general and conclusory" to make out a fraud claim. *Lazar v. Superior Ct.*, 909 P.2d 981, 984–85 (Cal. 1996). Doutherd also admitted in his deposition that he knew the alleged misrepresentations about company policy were wrong, belying any reliance on them. Finally, to the extent that Doutherd's fraud claim pertains to his workers' compensation benefits, it is preempted by California's

[***] The Honorable Jane A. Restani, Judge for the United States Court of International Trade, sitting by designation.

workers' compensation statute. Cal. Lab. Code § 3602(a); *see King v. CompPartners, Inc.*, 423 P.3d 975, 981 (Cal. 2018) (holding that "injuries stemming from conduct occurring in the workers' compensation claims process" fall within the statute's exclusivity bar); *Charles J. Vacanti, M.D., Inc. v. State Comp. Ins. Fund*, 14 P.3d 234, 243 (Cal. 2001) (explaining that claims predicated on injuries "'collateral to or derivative of' an injury compensable by the exclusive remedies of the WCA . . . may be subject to the exclusivity bar" (quoting *Snyder v. Michael's Stores, Inc.*, 945 P.2d 781, 785 (Cal. 1997))).

2. The district court properly granted summary judgment on Doutherd's disability discrimination and retaliation claims under the Americans with Disabilities Act (ADA), 42 U.S.C. § 12112(b)(5)(A), and California's Fair Employment and Housing Act (FEHA), Cal. Gov. Code. § 12940(m)(1). Doutherd does not raise a genuine dispute of material fact as to whether UPSF failed to accommodate his alleged disability or retaliated on account of it. UPSF granted the only accommodation request Doutherd made that was supported by medical documentation. And Doutherd does not point to any other evidence—either from medical records or his own testimony—raising a genuine dispute of material fact as to whether he informed his employer that his disability rendered him incapable of performing his assigned duties. *See Avila v. Cont'l Airlines, Inc.*, 82 Cal. Rptr. 3d

440, 453 (Cal. Ct. App. 2008) ("The employee bears the burden of giving the employer notice of his or her disability.").

3. The district court properly granted summary judgment on Doutherd's ADA and FEHA retaliation claims because Doutherd failed to show that there was "a causal link" between his "protected activity" and an "adverse employment action." *Pardi v. Kaiser Found. Hosps.*, 389 F.3d 840, 849 (9th Cir. 2004). Doutherd has not demonstrated that any of the alleged adverse employment actions were causally related to his requests for accommodations.[1]

4. The district court did not abuse its discretion in denying Doutherd leave to amend his complaint. *See Gardner v. Martino*, 563 F.3d 981, 990 (9th Cir. 2009) (standard of review). Because Doutherd sought to amend his complaint after the district court had entered a pretrial scheduling order, he was required to satisfy the more stringent "'good cause' standard of Federal Rule of Civil Procedure 16(b)(4) . . . rather than the liberal standard of Federal Rule of Civil Procedure

[1] Doutherd's complaint also alleges that he was discriminated against and harassed on account of his race and disability. The district court granted summary judgment on the disability claim and granted UPSF's unopposed judgment on the pleadings on the race claim. Doutherd does not appear to challenge these rulings. These claims are therefore forfeited. *Novato Fire Prot. Dist. v. United States*, 181 F.3d 1135, 1141 n.6 (9th Cir. 1999). Regardless, judgment for UPSF on these claims was proper for the reasons the district court provided. Similarly, Doutherd does not appear to challenge the district court's resolution of Doutherd's claims under Title VII and the Age Discrimination and Employment Act (ADEA) and related state laws. These claims are also forfeited, *see id.*, but would lack merit regardless for the reasons the district court provided.

15(a)." *In re W. States Wholesale Nat. Gas Antitrust Litig.*, 715 F.3d 716, 737 (9th Cir. 2013). The district court reasonably concluded that Doutherd lacked good cause for amendment because he was aware of most of the facts that formed the basis of his proposed amendments prior to the deadline. *See Coleman v. Quaker Oats Co.*, 232 F.3d 1271, 1295 (9th Cir. 2000). The district court also properly concluded that the late amendment would prejudice UPSF because discovery had already closed.

5. The district court properly granted UPSF's application for a recovery lien. Under California law, an employer who has paid workers' compensation benefits based on injuries to an employee caused by a negligent third party may obtain a lien against the employee's recovery in a suit against that third party. Cal. Lab. Code § 3856. Doutherd's argument that UPSF failed to provide proof that it had actually paid workers' compensation benefits in the amount of the lien is contradicted by the record.

6. The district court properly dismissed Doutherd's claims against Liberty Mutual. These claims are all "collateral to or derivative of" of an injury compensable under California's workers' compensation statute and are thus barred by its exclusive remedy provision. *See King*, 423 P.3d at 981.[2]

AFFIRMED.

[2] We deny Doutherd's motion for judicial notice, Dkt. No. 12, because Doutherd has not explained how the materials at issue are relevant to this appeal.