

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

ALEMAYEHU GETACHEW,

Plaintiff,

v.

Case No. 2:11-CV-00169

JUDGE EDMUND A. SARGUS, JR.

Magistrate Judge Norah M. King

CENTRAL OHIO WORKFORCE
INVESTMENT CORPORATION, *et al.*,

Defendants.

OPINION AND ORDER

This matter is before the Court for consideration of the parties' pending Motions. (ECF Nos. 60, 63, 72, 80.) For the following reasons:

- Plaintiff Alemayehu Getachew's Motion for Judgment (ECF No. 60), Motion Requesting Resignation of Defendant's Attorneys (ECF No. 63), and Motion Requesting Compensatory Damages (ECF No. 72) are all **DENIED**.
- Defendant Goodwill Industries of Central Ohio, Inc.'s Motion for Summary Judgment (ECF No. 80) is **GRANTED**.

I.

Plaintiff Alemayehu Getachew ("Plaintiff"), who is proceeding *pro se*, brought this action against Defendants Central Ohio Workforce Investment Corporation ("COWIC") and Goodwill Industries of Central Ohio, Inc. ("Goodwill") (collectively "Defendants") in February 2011. Plaintiff set forth multiple federal claims, contending that—in refusing to employ him—Defendants engaged in retaliation as well as discrimination based on race, national origin, and age. After Plaintiff received an opportunity to amend his pleadings, both Defendants moved for dismissal. On May 3, 2012, the Court dismissed all claims against COWIC and the bulk of

the claims against Goodwill. The only claim that remains at this time is Plaintiff's claim for retaliation pursuant to 42 U.S.C. § 1981 against Goodwill. Within his pleadings, Plaintiff specifically maintains that Goodwill denied him employment because it discovered, through background checks and information gathering, that he had engaged in prior protected activity.

Plaintiff sent an application for employment to Goodwill in June 2009, seeking consideration for the positions of Job Retention Technician, Training Specialist, and Rehabilitation Specialist. (Pl. Dep. Ex. 1, ECF No. 78.) Plaintiff has a bachelor's degree in educational psychology, which the resume and application he submitted reflected. (*See id.*)

Stacy Collins, a former hiring manager for the Job Retention Technician position at Goodwill, reviewed Plaintiff's application materials. (Collins Decl. ¶ 3, ECF No. 80-2.) Ms. Collins averred that she determined, from her review, that Plaintiff was not qualified for the Job Retention Technician position. (*Id.*) She, therefore, decided not to call him for an interview. (*Id.*) According to Ms. Collins, based on Plaintiff's resume and application, he lacked "experience training individuals who have disabilities and other barriers to employment" (*Id.*) Ms. Collins further stated that—in reaching this decision—she never spoke with Plaintiff, never performed a background check relating to Plaintiff, and was unaware that Plaintiff had been involved in any lawsuits or charges of discrimination against others. (*Id.* at ¶¶ 7–9.)

Goodwill also submitted the affidavit of Ben Warren, its Human Resource Director, who provided further detail regarding Goodwill's hiring process. Mr. Warren stated that when an applicant applies for multiple positions, the application is first considered for the lowest level position. (Warren Decl. ¶ 3, ECF No. 80-1.) If the hiring manager determines that the applicant is not qualified for the lowest level position, Mr. Warren averred that the applicant is not

considered for higher level positions. (*Id.*) Mr. Warren testified that because the Job Retention Technician was the lowest level position Plaintiff applied for, he was not considered for other positions based on Ms. Collins' determination. (*Id.* at ¶¶ 4–5.)

Mr. Warren also detailed Goodwill's background check process. (*Id.* at ¶¶ 7–9.) Mr. Warren stated that Goodwill does not run background checks on applicants detailing the persons civil lawsuit or discrimination charge activity. (*Id.* at ¶ 7.) Mr. Warren testified that Goodwill checks the criminal and driving records of applicants for some positions, but only after receiving the applicant's permission. (*Id.* at ¶ 8.) Finally, Mr. Warren averred that the company has no records indicating that it performed a background check on Plaintiff.¹ (Warren Decl. ¶ 9.)

Goodwill moves for summary judgment on Plaintiff's remaining 42 U.S.C. § 1981. It maintains that it was unaware that Plaintiff had engaged in protected activity and had a legitimate reason for rejecting his application. Plaintiff also moves for judgment as well as compensatory damages. He maintains that in light of his bachelor's degree in educational psychology, he was well qualified for the position. Additionally, Plaintiff accuses opposing counsel of misconduct and seeks their removal from this case.

II.

Summary judgment is appropriate "if the movant shows that there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). The Court may therefore grant a motion for summary judgment if the nonmoving party who has the burden of proof at trial fails to make a showing sufficient to establish the existence

¹ According to Mr. Warren, Goodwill could not have run a background check on Plaintiff because it did not have his full name, social security number, or date of birth at the time it reviewed his application. (Warren Decl. ¶ 9.)

of an element that is essential to that party's case. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986).

The “party seeking summary judgment always bears the initial responsibility of informing the district court of the basis for its motion and identifying those portions of the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, which it believes demonstrate the absence of a genuine issue of material fact.” *Id.* at 323 (internal quotations omitted). The burden then shifts to the nonmoving party who “must set forth specific facts showing that there is a genuine issue for trial.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 (1986) (quoting Fed. R. Civ. P. 56). “The evidence of the nonmovant is to be believed, and all justifiable inferences are to be drawn in his favor.” *Id.* at 255 (citing *Adickes v. S. H. Kress & Co.*, 398 U.S. 144, 158-59 (1970)). A genuine issue of material fact exists if the evidence is such that a reasonable jury could return a verdict for the nonmoving party. *Liberty Lobby, Inc.*, 477 U.S. at 248.

Additionally, the Court recognizes that *pro se* filings are to be liberally construed. *Yagley v. Occupational Safety & Health Admin., U.S. Dep't of Labor*, 461 F. App'x 411, 414 (6th Cir. 2012).

III.

A. Motion for Attorney Sanctions

As a preliminary matter, the Court will address Plaintiff's charges of misconduct against opposing counsel. Plaintiff continues to maintain, as he has previously in this case, that Goodwill's counsel improperly concealed information during the initial disclosure process.

Plaintiff's Motion has no merit. The Court has already considered Goodwill's initial

disclosures and found them in compliance with the requirements of Federal Rule of Civil Procedure 26(a)(1). (ECF No. 62 at 2.) Based on the record, the Court finds that there is simply no evidence that Goodwill’s attorneys have engaged in professional misconduct.

B. 42 U.S.C. § 1981

Once again, the sole remaining claim before the Court is Plaintiff’s claim for retaliation in violation of 42 U.S.C. § 1981. Goodwill maintains that it is entitled to judgment as a matter of law because it was unaware of Plaintiff’s protected activity at the time of its employment decision.² Plaintiff also moves for judgment, and damages. Plaintiff maintains that his educational background proves that Goodwill’s reasons were a pretext for discrimination, but fails to expressly address the requirements of his retaliation claim.³

In addition to prohibiting discrimination, § 1981 also “encompasses claims of retaliation.” *CBOCS West, Inc. v. Humphries*, 553 U.S. 442, 457 (2008). “To make a prima facie showing of retaliation, plaintiff must show that (1) he engaged in protected activity, (2) the activity was known to the defendant, (3) plaintiff was subjected to materially adverse action, and (4) there was a causal connection between the protected activity and the adverse action.” *Harris v. Metro. Gov’t of Nashville & Davidson Cnty., Tenn.*, 594 F.3d 476, 485 (6th Cir. 2010); *see also Frazier v. USF Holland, Inc.*, 250 F. App’x 142, 148 (6th Cir. 2007) (“The decisionmaker’s knowledge of the protected activity is an essential element of the prima facie case of unlawful

² The parties also dispute whether an issue of fact remains as to pretext. The parties specifically disagree regarding Plaintiff’s qualifications for the position. Because the Court finds that Plaintiff fails to establish a prima facie case, it is unnecessary to reach this issue.

³ Plaintiff offers only a limited response in opposition to Goodwill’s Motion for Summary Judgment. (*See* ECF Nos. 81–82.) Nevertheless, in considering Goodwill’s Motion, the Court has also considered Plaintiff’s own Motion for Judgment.

retaliation.”).

In this case, based on the record evidence, it is clear that Goodwill is entitled to judgment as a matter of law. A reasonable jury could not conclude that Goodwill or any of its employees were aware of Plaintiff’s prior protected activity at the time the company rejected Plaintiff’s application for employment. The evidence indicates that, at the time of the relevant employment decision, Goodwill possessed Plaintiff’s resume and employment application. It is not apparent from either of these documents that Plaintiff had filed civil lawsuits, made charges of discrimination, or engaged in any other form of protected activity. Moreover, Goodwill submits evidence, through the Declarations of Ms. Collins and Mr. Warren, reflecting that Goodwill never ran a background check on Plaintiff and was not aware that he had engaged in protected activity. Finally, although Plaintiff’s briefing focuses on the issue of discrimination and pretext, he fails to direct the Court to any evidence supporting his belief—as stated within his pleadings—that Goodwill was aware of his civil rights and Equal Employment Opportunity Commission activities. Under these circumstances, Plaintiff fails to establish a genuine issue of fact with regard to his retaliation claim.

IV.

For the foregoing reasons:

- Plaintiff Alemayehu Getachew’s Motion for Judgment (ECF No. 60), Motion Requesting Resignation of Defendant’s Attorneys (ECF No.63), and Motion Requesting Compensatory Damages (ECF No. 72) are all **DENIED**.
- Defendant Goodwill Industries of Central Ohio, Inc.’s Motion fo Summary Judgment (ECF No. 80) is **GRANTED**.

The Clerk is **DIRECTED** to remove this action from the Court’s pending case list.

