UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 20-1873

PATRICK MYLES,

Plaintiff - Appellant,

v.

THE JOHNS HOPKINS UNIVERSITY APPLIED PHYSICS LABORATORY,

Defendant - Appellee.

Appeal from the United States District Court for the District of Maryland, at Greenbelt. Peter J. Messitte, Senior District Judge. (8:18-cv-03180-PJM)

Submitted: June 30, 2022 Decided: July 19, 2022

Before MOTZ, RICHARDSON, and QUATTLEBAUM, Circuit Judges.

Affirmed by unpublished per curiam opinion.

ON BRIEF: David A. Branch, LAW OFFICE OF DAVID A. BRANCH & ASSOCIATES, PLLC, Washington, D.C., for Appellant. Amy Miller, Washington, D.C., Caroline Bassett Warren, BUCHANAN INGERSOLL & ROONEY PC, Charlotte, North Carolina, for Appellee.

PER CURIAM:

Patrick Myles, an African American man, appeals the district court's order granting summary judgment to his former employer, the Johns Hopkins University Applied Physics Laboratory ("APL"), in Myles' action alleging race-based claims of failure to promote and unlawful termination, in violation of 42 U.S.C. § 1981 and Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e to 2000e-17 (Title VII). Myles also alleged that APL retaliated against him for filing complaints with APL's Equal Employment Opportunity Office. For the reasons that follow, we affirm.

We "review[] de novo the district court's order granting summary judgment." *Jacobs v. N.C. Admin. Off. of the Cts.*, 780 F.3d 562, 565 n.1 (4th Cir. 2015). "A district court 'shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.'" *Id*. at 568 (quoting Fed. R. Civ. P. 56(a)). "A dispute is genuine if a reasonable jury could return a verdict for the nonmoving party." *Id.* (internal quotation marks omitted). In determining whether a genuine issue of material fact exists, "we view the facts and all justifiable inferences arising therefrom in the light most favorable to . . . the nonmoving party." *Id.* at 565 n.1 (internal quotation marks omitted). However, "the nonmoving party must rely on more than conclusory allegations, mere speculation, the building of one inference upon another, or the mere existence of a scintilla of evidence." *Humphreys & Partners Architects, L.P. v. Lessard Design, Inc.*, 790 F.3d 532, 540 (4th Cir. 2015) (internal quotation marks omitted).

Absent direct evidence of discrimination, a plaintiff pursuing a claim under Title VII or § 1981 may rely on the burden-shifting framework established in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802 (1973). *See Love-Lane v. Martin*, 355 F.3d 766, 786 (4th Cir. 2004) (explaining that elements for establishing discrimination claim are the same under Title VII and § 1981). Under *McDonnell Douglas*, the plaintiff bears the initial burden of establishing a prima facie case of discrimination. 411 U.S. at 802. Where a plaintiff makes a showing sufficient to support a prima facie case, the burden shifts to the employer "to articulate a legitimate, nondiscriminatory reason for the" contested employment action. *Id.* If the employer does so, the burden shifts to the plaintiff to show that the employer's rationale is a pretext for discrimination. *Id.* at 804.

Regarding the failure-to-promote claim, Myles was one of three people who interviewed for a supervisor position at APL. Based on a matrix that rated the candidates on relevant factors listed in the job requisition, APL selected a white applicant, Bradley Stickles, for the position. Myles contends that Stickles was unfairly preselected for the position and, further, that one of the decisionmakers had previously discriminated against African Americans in personnel matters.

This court has recognized that "[t]he argument that a supervisor may have preselected an employee for a promotion is not sufficient evidence for jurors reasonably to conclude that the defendant['s] explanation . . . was pretext." *Anderson v. Westinghouse Savannah River Co.*, 406 F.3d 248, 271 (4th Cir. 2005) (internal quotation marks omitted). This is so because "[i]f one employee was unfairly preselected for the position, the preselection would work to the detriment of all applicants for the job," regardless of race.

Id. (internal quotation marks omitted). Thus, we are unpersuaded by Myles' preselection argument.

Next, we discern no evidence that one of the decisionmakers had a history of discriminating against African Americans. In support of this argument, Myles merely points to times when he allegedly was overlooked for promotions or received unappealing opportunities for advancement. But without evidence that racial animus motivated these personnel decisions, these episodes at most show that Myles was personally disfavored, not that all African American employees were.

At bottom, we see no basis for finding that Myles was rejected for the supervisor position under circumstances giving rise to an inference of unlawful discrimination, as is necessary for establishing Myles' prima facie case. *Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 319 n.6 (4th Cir. 2005) (providing elements of failure-to-promote claim). And, even if Myles had discharged this initial burden, APL provided a legitimate, nondiscriminatory basis for selecting Stickles—the hiring matrix—and Myles has failed to show that APL's proffered reason was pretext for discrimination. *See Evans v. Techs. Applications & Serv. Co.*, 80 F.3d 954, 960 (4th Cir. 1996) ("[R]elative employee qualifications are widely recognized as valid, nondiscriminatory bases for any adverse employment decision.").

Turning to the termination claim, a prima facie case of wrongful termination requires the plaintiff to "show that: (1) he is a member of a protected class; (2) he was qualified for his job and his job performance was satisfactory; (3) he was fired; and (4) other employees who are not members of the protected class were retained under

apparently similar circumstances." *Honor v. Booz-Allen & Hamilton, Inc.*, 383 F.3d 180, 188 (4th Cir. 2004). Here, Myles was fired after failing to obtain a necessary security certification, despite having several months' notice of the requirement and the consequences of failing to comply. And while Myles contends that two white employees were retained despite failing the certification test, the record reflects that, unlike Myles, neither employee was required to have the certification. Thus, Myles was no longer qualified for his job at the time he was terminated, and, in addition, he was not similarly situated to the two employees on whom he relies.

Finally, Myles purports to challenge the district court's resolution of his retaliation claims. Rather than providing any argument, however, Myles simply contends that his unlawful termination arguments apply with equal force to his claims of retaliation. But the elements of a retaliation claim are materially different from those of a termination claim. *See Jacobs*, 780 F.3d at 578 (providing elements of retaliation claim). For this reason, we conclude that Myles has abandoned his retaliation claims. *See Edwards v. City of Goldsboro*, 178 F.3d 231, 241 n.6 (4th Cir. 1999) (explaining that claim is abandoned if opening brief's argument section contains no supporting argument or citations).

Accordingly, we affirm the district court's judgment. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED