NONPRECEDENTIAL DISPOSITION
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United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Argued December 14, 2022
Decided March 9, 2023

Before

DIANE S. SYKES, *Chief Judge*

MICHAEL Y. SCUDDER, *Circuit Judge*

JOHN Z. LEE, *Circuit Judge*

No. 22-1534

NALINI BIDANI,
Plaintiff-Appellant,

v.

DENIS McDONOUGH,
Secretary of the United States Department of Veterans Affairs,
Defendant-Appellee.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

No. 18 C 7188

Robert W. Gettleman,
Judge.

O R D E R

The Department of Veterans Affairs fired Nalini Bidani, a diabetic, after she complained that her supervisor had harassed her for taking sick leave necessitated by her condition. The district judge entered summary judgment for the Department on Bidani's claims under the Rehabilitation Act of 1973, 29 U.S.C. § 791. Bidani appeals the judgment only as to her retaliation claim. Because a trial is needed to resolve several

disputes of material fact germane to that claim, we vacate and remand for further proceedings.

Bidani began working at the Veterans Affairs Medical Center ("VA") in 2005 as a part-time radiologist. The VA scheduled Bidani to work four days each week, Monday, Wednesday, Thursday, and Friday.

Three aspects of Bidani's tenure with the VA are relevant here. First, starting in 2013, and continuing over the next four years, Bidani received letters from her supervisor, Caryl Salomon, about her "pattern of sick leave." Salomon never denied any of Bidani's leave requests, but she complained to Bidani that most of her sick-leave days fell on a Monday or Friday, thereby extending her weekend. Bidani responded that she sought leave only when she was "actually sick," and she gave Salomon a letter from her doctor confirming the medical basis for her absences. The letter stated, "Dr. Bidani has been a patient of mine for 15 years. She has multiple medical problems including … sciatica, hypertension, diabetes, nephrolithiasis, and a meniscal tear in her left knee. These medical issues are likely to necessitate occasional absences from work." Despite Bidani's explanation and the doctor's note, Salomon continued to send similar letters to Bidani.

Second, Salomon took issue with Bidani's performance at the VA. In 2014 and early 2015, Salomon said that Bidani's productivity was lower than the company's target. But reports over the next two years showed that Bidani's productivity improved. Bidani's 2015 proficiency report stated that she was "fully successful," and she received a 95% bonus in 2016. Furthermore, in November 2016, Salomon recommended that Bidani be reappointed to her position for another two years.

Third, Salomon was concerned about an incident that took place on February 10, 2017, between Bidani and another supervisor, Myriam Bermudez. According to Bermudez, Bidani had yelled at her in front of other employees, and witnesses corroborated Bermudez's account. As a result, Salomon convened a fact-finding meeting on February 17, 2017, with Bermudez and Bidani, to obtain Bidani's account of the incident. At the meeting, Bidani denied yelling at Bermudez, but she accepted that she had called her "unprofessional" and "rude."

Near the conclusion of the meeting, Salomon and Bermudez raised their concerns regarding Bidani's use of sick leave. Bermudez asked Bidani to "elaborate on a

reason" for her pattern of taking leave on a Monday or Friday, and Bidani reiterated that her medical conditions (including her diabetes) necessitated her sick-leave use:

> I have given Dr. Salomon my doctor's note. I'm a diabetic, I'm … hypotensive, I have high cholesterol, I have tremendous degenerat[ive] disease, and I also have often had stones; kidney stones. Many times at night when I go to [the] bathroom, I am not able to fall asleep and so it's dangerous for me at such situations to drive when my thinking is not clear; I haven't had sleep. When I call in sick, I am actually sick. I don't call in because I'm enjoying myself or going to a party or doing something. It's because I'm actually sick. I'm an older person and I have these health issues that other people in our department do not have.

Bidani then protested Salomon's longstanding harassment of her for using sick leave, stating, "There has been a pattern of harassment about sick leave, counseling letters, something or the other throughout the last three years since [Salomon] has come. Sometimes about [productivity,] something about something, or taking the sick leave which is not appropriate."

Bidani's discharge from the VA quickly followed. Salomon testified that "[b]y the conclusion of" the fact-finding meeting, she had "decided that [she] would propose the termination of Dr. Bidani's employment." Her recommendation was subject to the approval of Marc Magill, the VA director.

To obtain Magill's approval, Salomon sent him an "evidence file" that included a transcript from the fact-finding meeting, documents related to Bidani's use of sick leave, and documents related to Bidani's altercation with Bermudez. Meanwhile, on February 22, 2017, Bidani filed a charge of discrimination with the VA's internal employment-rights office.

The employment-rights office informed Magill of Bidani's discrimination claim on March 8, 2017, and on March 10, 2017, he sent a letter to Bidani notifying her that she would be removed from her position. Then, on March 20, 2017, the Department sent Bidani a letter terminating her as of March 22, 2017. The reasons were Bidani's "unacceptable attendance, performance, and conduct unbecoming a federal employee." Curiously, as this was taking place, on March 16, 2017, Salomon sent another letter to Bidani questioning her use of sick leave. In it, Salomon imposed a requirement that Bidani submit a physician's certification after taking sick leave and noted, "I will review

this requirement no later than September 15, 2017 and I will notify you in writing at that time whether I will continue or rescind the requirement."

Once terminated, Bidani sued the Department, alleging retaliatory discharge in violation of the Rehabilitation Act of 1973, 29 U.S.C. § 791. According to Bidani, the Department fired her for complaining (at the fact-finding meeting and in her communications with the employment-rights office) about Salomon's harassment of her for taking sick leave on account of her disability.

After discovery, the Department filed a motion for summary judgment, which the district court granted. In doing so, the district court acknowledged that Bidani's diabetes was a disability under the Rehabilitation Act, but concluded that her statements during the fact-finding meeting were too general to be construed as complaints that Salomon had discriminated against her for her disability and, thus, did not constitute protected activity under the Act. The district court also found that Bidani had failed to show that the discrimination charge she had filed with the employment-rights office had caused Magill to fire her.

This court reviews the district court's order granting summary judgment *de novo* and construes all facts in the light most favorable to Bidani. *See Huff v. Buttigieg*, 42 F.4th 638, 646 (7th Cir. 2022). For Bidani to proceed to trial on her claim of retaliatory discharge under the Rehabilitation Act, she must furnish evidence sufficient to convince a jury of two issues. First, she must show that she engaged in statutorily protected activity. *McHale v. McDonough*, 41 F.4th 866, 871 (7th Cir. 2022); *see also Burks v. Wis. Dep't of Transp.*, 464 F.3d 744, 758 n.16 (7th Cir. 2006) (analysis of a retaliation claim under the Rehabilitation Act is identical to that under Title VII). Second, she must show that her protected activity caused her discharge. *Huff*, 42 F.4th at 646.

As to the first, we agree with Bidani that, when the facts are viewed in her favor, a reasonable jury could find that her statements at the February 17 meeting constituted protected activity. An employee's complaint is protected if it is "based on a good-faith and reasonable belief that [the employee is] opposing unlawful conduct." *O'Leary v. Accretive Health, Inc.*, 657 F.3d 625, 631 (7th Cir. 2011); *see Fine v. Ryan Int'l Airlines*, 305 F.3d 746, 752 (7th Cir. 2002). While Bidani's statements at the meeting could have been more explicit, she did link Salomon's "pattern of harassment" to her "diabet[es]" and use of "sick leave." Because an employer's disability-related harassment may violate the law, *see Ford v. Marion Cnty. Sheriff's Off.*, 942 F.3d 839, 851–52 (7th Cir. 2019), Bidani's complaint about that harassment was protected activity.

The cases that the district court and the Department cite do not undermine this conclusion. In *Skiba v. Illinois Central Railroad Co.*, 884 F.3d 708, 718 (7th Cir. 2018), we ruled that the plaintiff's complaints to his supervisor were not protected because he never mentioned his protected classes of age or national origin "either directly or indirectly." Therefore, "[n]othing … suggest[ed] he was protesting discrimination." *Id.* Similarly, in *McHale*, 41 F.4th at 868–71, we held that a plaintiff, who never "mentioned or alluded to any disability" and had "private, undisclosed reasons for [her] sick leave," did not engage in protected activity. By contrast, Bidani explained during the February 17 meeting that her diabetes caused her to take sick leave and that Salomon had harassed her for doing so.

That brings us to the second issue—whether it was Bidani's protected complaints about Salomon's disability-related harassment that led to her discharge. Again, based on the totality of this record, a reasonable jury could find for Bidani on this issue as well. *See Ortiz v. Werner Enters., Inc.*, 834 F.3d 760, 766 (7th Cir. 2016).

For example, Salomon admits that, "[b]y the conclusion" of the February 17 meeting, she had decided to recommend Bidani's termination. Furthermore, before firing Bidani, Magill reviewed the transcript of the meeting, including Bidani's complaints regarding Salomon's discriminatory treatment of her. Magill also prepared Bidani's discharge letter just two days after learning that Bidani had filed a charge of discrimination with the employment-rights office. Although suspicious timing alone is not enough to prove causation, *see Kotaska v. Fed. Express Corp.*, 966 F.3d 624, 633 (7th Cir. 2020); *Sklyarsky v. Means-Knaus Partners, L.P.*, 777 F.3d 892, 898 (7th Cir. 2015), the timing of Bidani's termination along with these other facts are enough to save her retaliation claim from summary judgment. *See Kasten v. Saint-Gobain Performance Plastics Corp.*, 703 F.3d 966, 974 (7th Cir. 2012).

The Department, on the other hand, contends that Bidani was fired due to her poor attendance record and substandard performance. But there is evidence from which a reasonable jury could find that these reasons were pretextual. For example, although Salomon sent several letters to Bidani expressing concern about her use of sick leave, Salomon always approved Bidani's sick-leave requests. Furthermore, in a letter Salomon sent to Bidani a few days *after* Magill had composed Bidani's discharge letter, Salomon stated that Bidani's use of sick leave would be reviewed over the coming year. Additionally, in a performance review preceding her firing, Bidani was informed that her performance was "[f]ully successful." And, just four months before Bidani's discharge, Salomon thought Bidani's performance merited reappointment. Such facts

raise genuine questions as to the veracity of the Department's reasons for firing Bidani and can only be resolved at trial. *See Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 147–49 (2000).

We therefore VACATE the district court's entry of summary judgment for the Department on Bidani's retaliation claim and REMAND for further proceedings.