

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

MAR 18 2019

FOR THE NINTH CIRCUIT

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

DARRELL WORTHEN,

Plaintiff-Appellant,

v.

HEATHER A. WILSON*, Secretary of the
Air Force,

Defendant-Appellee.

No. 18-55766

D.C. Nos. 2:16-cv-03181-ODW-JC
2:15-cv-01747-ODW-JC

MEMORANDUM**

Appeal from the United States District Court
for the Central District of California
Otis D. Wright II, District Judge, Presiding

Submitted March 12, 2019***

Before: LEAVY, BEA, and N.R. SMITH, Circuit Judges.

Darrell Worthen appeals pro se from the district court's summary judgment in his federal employment action. We have jurisdiction under 28 U.S.C. § 1291.

* Heather A. Wilson is substituted for her predecessor, Deborah Lee James, as Secretary of the Air Force. *See* Fed. R. App. P. 43(c)(2).

** 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).

We review de novo. *Toguchi v. Chung*, 391 F.3d 1051, 1056 (9th Cir. 2004). We may affirm on any basis supported by the record. *Hell's Angels Motorcycle Corp. v. McKinley*, 360 F.3d 930, 933 (9th Cir. 2004). We affirm.

The district court properly granted summary judgment on Worthen's discrimination and retaliation claims because Worthen failed to raise a genuine dispute of material fact as to whether defendant's legitimate, non-discriminatory reasons for its actions were pretextual. *See Aragon v. Republic Silver State Disposal, Inc.*, 292 F.3d 654, 658-59 (9th Cir. 2002) (discussing elements of a discrimination claim and burden-shifting framework under Title VII and explaining that evidence of pretext must be specific and substantial); *Cohen v. Fred Meyer, Inc.*, 686 F.2d 793, 796 (9th Cir. 1982) (discussing elements of a retaliation claim under Title VII).

Summary judgment on Worthen's harassment claim was proper because Worthen failed to raise a genuine dispute of material fact as to whether any hostile conduct was engaged in "because of" his race, or was sufficiently severe or pervasive to constitute harassment as a matter of law. *See Manatt v. Bank of Am., NA*, 339 F.3d 792, 798 (9th Cir. 2003) (setting forth elements of Title VII hostile work environment claim and explaining that "simple teasing" or "offhand

comments” will typically not amount to actionable discrimination (citation and internal quotation marks omitted)).

We do not consider Worthen’s claims relating to the Family and Medical Leave Act and the collective bargaining agreement because Worthen failed to raise them in the operative complaint. We do not consider arguments and allegations raised for the first time on appeal. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009).

AFFIRMED.