IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

BASHIR SHEIKH, M.D.,

Plaintiff,

v.

GRANT REGIONAL HEALTH CENTER,

Defendant.

OPINION AND ORDER

11-cv-1-wmc

In this employment discrimination claim, plaintiff Bashir Sheikh, M.D., alleges his former employer Grant Regional Health Center ("GRHC") discriminated against him on the basis of his race, national origin and religion, as well as failed to accommodate his religious needs, all in violation of Title VII, 42 U.S.C. § 2000e-2. Sheikh also brings several causes of action premised on state law. GRHC has filed for summary judgment on all claims. (Dkt. #66.) For the reasons that follow, the court will grant defendant's motion for summary judgment as to all of the Sheikh's causes of action premised on federal law, and decline to exercise its supplemental jurisdiction over his state law claims.

UNDISPUTED FACTS[1]

A. The Parties

Plaintiff Bashir Sheikh, M.D., is a physician, licensed to practice medicine in four states, who was formerly employed by defendant as medical director of its emergency department and as a physician providing emergency medicine and walk-in care services. Sheikh's race is Asian and his national origin is Indian. Sheikh is also a Muslim.

Defendant Grant Regional Health Center is a twenty-five bed critical access hospital located in Lancaster, Wisconsin. GRHC has in place, and did at the time of Sheikh's employment, a Human Resources Policies and Procedures Manual containing its policies regarding discrimination, harassment, document and discipline, and its recommendation for complying with equal employment opportunity laws.

Nicole Clapp is the President and C.E.O. of GRHC and has served in that capacity since April 2006. Jennifer Rutkowski is the Vice President of Professional Services at GRHC and has served in that capacity since February 2006. Rutkowski served as Sheikh's direct supervisor during the course of his employment with GRHC. Erin Huebschman, M.D., is a physician who has been employed by Dean Health Systems ("Dean") since 2004. Huebschman served as president of the GRHC medical staff

[1] Except as otherwise noted, the court finds the following facts taken from the parties' proposed findings of fact to be material and undisputed after drawing all inferences in favor of and viewing all facts in a light most favorable to plaintiff. Indeed, the court went further here given Sheikh's failure to respond to Grant Regional's proposed findings of fact in opposition to defendant's motion for summary judgment, instead submitting his own proposed findings. While this is contrary to the standing order on summary judgment procedures provided both sides in the Preliminary Pretrial Conference Order (dkt. #19), the court considered Sheikh's proposed findings of fact in conjunction with defendant's submission to arrive at these undisputed facts.

throughout the duration of Sheikh's employment with GRHC and the medical staff's investigation of Sheikh.

B. Sheikh's Hiring

Before Sheikh began working for GRHC, its emergency department was staffed using on-call rotation of non-employed, local physicians with staff privileges at GRHC. In early 2009, the physicians staffing the department expressed an interest in reducing their on-call obligations. In response, Clapp decided to hire two physicians to staff the emergency department on alternate weeks.

Dr. Sheikh was referred by a recruiter to GRHC for the emergency medicine physician position. Sheikh interviewed with GRHC President and CEO Clapp, V.P. of Professional Services Rutkowski, Dr. Huebschman, and other GRHC employees and members of the medical staff.[2] Based on his interview and purported qualifications for the position, and with input from Rutkowski and members of the GRHC medical staff, Clapp made the decision to hire and offered Sheikh the position. Sheikh accepted. In May of 2009, GRHC and Sheikh entered into a physician employment agreement. GRHC also issued a press release announcing Sheikh's employment. Finally, in July 2009, the GRHC medical staff's Medical Executive Committee ("MEC") recommended,

[2] Clapp, Rutkowski, and Huebschman each aver in their respective affidavits that they became aware of his Indian national origin during the selection process by reviewing his resume which showed that he attended medical school and worked in India and later immigrated to the United States.

and the GRHC Board of Directors ("Board") granted, an active medical staff appointment and clinical privileges to Sheikh.

Among other obligations, in his new position as director of the emergency department, Sheikh was responsible for: completing patients' histories and physical examinations; referring patients to other health care professionals or facilities, as appropriate; performing all aspects of patient care; supervising mid-level providers, such as nurse practitioners and physician assistants; communicating appropriately and maintaining a good working relationship with the staff; and treating all patients and families with dignity and respect. (Def.'s PFOFs (dkt. #68) ¶ 21 (citing Rutkowski Aff. (dkt. #70) ¶ 8, *id.*, Ex. 1 (dkt. #70-1)).)

C. Sheikh's Employment and Termination

Sheikh began part-time employment at GRHC on July 2, 2009, and full-time employment on August 3, 2009. During Sheikh's part-time employment in July 2009, GRHC received two complaints regarding his care. On August 6, 2009, Rutkowski spoke with Sheikh about expectations regarding admission of patients, including which physician would complete the patient's history and physical examinations, the method of notifying community physicians of admissions, and orders for admitted patients.

Many of the findings of facts proposed by GRHC concern complaints regarding Sheikh's treatment of patients and his interactions with GRHC employees and medical

staff. Sheikh contests GRHC's characterizations of these complaints.[3] For purposes of defendant's motion for summary judgment, it is enough to find that GRHC claims it had significant concerns about Sheikh based on patient and staff complaints.

On August 31, 2009, Clapp and Huebschman submitted a request for an investigation into possible corrective action regarding Sheikh. The stated grounds for the investigation included concerns regarding Sheikh's clinical competence and professional conduct, as well as his ability to maintain harmonious relationships with colleagues.

Also, on August 31, 2009, Clapp, Rutkowski and GRHC's Chief Financial Officer Scott Mitchell met with Sheikh at approximately 4:30 p.m. At best, this meeting was unscheduled and, at worst, an "ambush."[4]

During the meeting, Rutkowski attempted to present Sheikh with a 90-day performance improvement plan and a six-month notice of termination of employment. Sheikh refused to discuss his performance, take a copy of the plan or allow Rutkowski to explain the plan. Instead, Sheikh repeatedly called Rutkowski "untruthful." Sheikh also claimed that he had a dry mouth due to fasting during Ramadan and could not continue the discussion until he was done fasting for that day.

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[3] Because the court ultimately finds that Sheikh has failed to put forth sufficient evidence of discriminatory animus based on either race or national origin as explained below in the opinion, the court will not recount GRHC's proposed facts -- most of which are in dispute -- concerning Sheikh's treatment of patients and his interactions with others.

[4] On several occasions between July 14 and August 20, 2009, Sheikh and Clapp visited homes in the Lancaster area with the intention of finding a home for Sheikh in the area so he would not have to travel to GRHC from his home in Illinois. On August 31st, Sheikh understood that he was meeting at Clapp's office for a house-hunting excursion.

Defendant contends that Sheikh stated he would reconvene the meeting only on his terms and no earlier than 9:00 p.m. that evening. Rutkowski stated that the meeting would reconvene only during regular business hours. When Sheikh refused to reschedule the meeting, Rutkowski informed Sheikh that he was not to work his upcoming shifts due to his uncooperative behavior. Rutkowski also informed Sheikh that he should not be in the hospital while on suspension. Finally, Rutkowski advised that if Sheikh violated this directive, and if Rutkowski felt threatened by Sheikh's tone and demeanor, Rutkowski would call the police.

Defendant contends that Sheikh then demanded a written directive from Rutkowski and left the meeting at 4:38 p.m. It is undisputed that Sheikh called Clapp at approximately 5:30 p.m. During that call, Clapp contends that Sheikh acknowledged acting unprofessionally and stated he would meet with Clapp to discuss performance concerns, but not with Rutkowski. Clapp stated that Rutkowski would also attend the meeting. At that point, Clapp contends that Sheikh became agitated and dominated the conversation, repeatedly stating that Rutkowski was untruthful. In response, Clapp informed Sheikh that his employment was being suspended for insubordination and that the conversation concerning his performance would continue on September 3, 2009.

Also on August 31, 2009, Clapp sent Sheikh two letters. The first letter stated that his employment was suspended for seven days due to insubordination and that Clapp would initiate a call on September 3rd to discuss the conditions under which he could return to work. In the second letter, Clapp notified Sheikh that pursuant to his

employment agreement, GRHC was providing him with six months' notice that his agreement would be terminated without cause.

The next day, September 1st, Clapp sent Sheik another letter informing him that (1) his medical staff privileges at GRHC were also being suspended; (2) a medical staff investigating committee was being formed to inquire into his professional competence and conduct; and (3) he would have an opportunity to speak with a member of the investigating committee during a call scheduled for September 3, 2009.[5]

On September 3, 2009, Clapp, Rutkowski, Huebschman, Mitchell, and GRHC Human Resources Director Sheri Fischer participated in a call with Sheikh to discuss his employment and medical staff status. During the call, defendant contends Sheikh dominated the conversation speaking of "untruths" and failing to acknowledge the purpose of the discussion. Defendant also contends that Sheikh refused to allow Huebschman to interview him on behalf of the medical staff investigative committee. Clapp then terminated his employment during the call, effective immediately.

[5] These three letters -- the two from August 31, 2009, and the one dated September 1, 2009 -- were all sent via certified mail but returned to GRHC because Sheikh refused to accept them. Additional copies were provided to Sheikh and his attorneys after he was terminated.

D. Medical Staff Investigation

The medical staff investigative committee's report documented several concerns with respect to Sheikh's practice. Sheikh also disputes the underlying facts of the report.[6]

Following the investigation, the MEC met on September 25, 2009, to consider the report. Sheikh had been invited to the meeting but did not attend. The MEC recommended to the Board that Sheikh's medical staff appointment and all of his clinical privileges be revoked.

GRHC attempted through its attorneys to schedule a hearing in accordance with the Medical Staff Bylaws to review the committee's recommendation before a final decision by the Board. In accordance with its bylaws, GRHC and the MEC decided to utilize a hearing officer (either an attorney or retired judge) as a decision-maker for the fair hearing, rather than rely on a hearing panel made up of physicians. Sheikh and GRHC were required to agree on an acceptable hearing officer. Sheikh refused to agree to GRHC's proposed hearing officer and refused to offer the name of any other potential hearing officers. Sheikh refused to further participate in the process unless GRHC started the medical staff corrective process over. GRHC determined that Sheikh had constructively waived his right to a hearing and cancelled it.

On June 29, 2010, the Board met to consider the MEC recommendation. The Board voted unanimously to accept it and revoke Sheikh's medical staff appointment and

[6] The court will also not recount the details of the committee's concerns in light of its finding below that Sheikh has failed to put forth sufficient evidence of discriminatory animus for this case to proceed to trial.

clinical privileges. In doing so, GRHC, a health care entity, took a professional review action that adversely affected Dr. Sheikh's clinical privileges, as those terms are defined in the Health Care Quality Improvement Act ("HCQIA"), 42 U.S.C. § 11101 *et seq.* As such, GRHC was also required by law to report the action to the National Practitioner Data Bank ("NPDB").

E. EEOC Charge

On June 15, 2010, Sheikh filed a charge with the U.S. Equal Employment Opportunity Commission ("EEOC") alleging claims under Title VII of the Civil Rights Act. On the form, Sheikh checked the following boxes for "cause of discrimination based on": race, color, religion, national origin, retaliation and other. In contrast, the text of the charge only contains allegations of race discrimination; there are no allegations that GRHC discriminated against him based on his religion or that GRHC failed to accommodate him. In the Notice of Charge of Discrimination from the EEOC to GRHC, the EEOC checked race and national origin as the "circumstances of alleged discrimination." (*Id.* at p.1.) In response to that charge, GRHC similarly only addressed race and national origin discrimination claims.

OPINION

At summary judgment, plaintiff must "show through specific evidence that a triable issue of fact remains on issues for which [he] bears the burden of proof at trial. . . . [T]he evidence submitted in support of [his] position must be sufficiently strong that a

jury could reasonably find for [him]." *Knight v. Wiseman*, 590 F.3d 458, 463-64 (7th Cir. 2009) (internal quotation omitted). "In resolving a summary judgment motion, [the court] draw[s] all reasonable inferences and resolve[s] factual disputes in favor of the non-moving party." *Id.* at 462.

I. Title VII: Race and National Origin Claims

A. Overview of Sheikh's Discrimination Claim

Sheikh alleges discrimination based on his race (Asian) and national origin (Indian) pursuant to Title VII, 42 U.S.C. § 2000e-2. In pursuing a discrimination claim, a plaintiff may proceed under the direct or indirect method, also known as the *McDonnell-Douglas* burden-shifting method. *Silverman v. Bd. of Educ. of the City of Chi.*, 637 F.3d 729, 733 (7th Cir. 2011). Sheikh contends that he is proceeding under the direct method. (Pl.'s Opp'n (dkt. #85) 7.)[7]

Under the direct method, Sheikh must put forth "evidence leading *directly* to the conclusion that an employer was illegally motivated, without reliance on speculation." *Good v. Univ. of Chi. Med. Ctr.*, 673 F.3d 670, 676 (7th Cir. 2012) (emphasis in original); *see also Burks v. Wis. Dep't of Transp.*, 464 F.3d 744, 751 n.3 (7th Cir. 2006) (requiring plaintiff to "put forth evidence that demonstrated that []he was a member of a protected class and as a result suffered the adverse employment action of which he complains."

[7] Later in his opposition brief, plaintiff mentions the *McDonnell-Douglas* analysis, but fails to develop any argument in support of the indirect method. In particular, Sheikh fails to develop any argument identifying a similarly-situated employee treated more favorably than he. Instead, Sheikh simply reiterates his evidence submitted in support of his claims under the direct method.

(internal quotation marks and citation omitted)). More specifically, to survive summary judgment, Sheikh must put forth sufficient evidence to raise genuine issues of fact that: (a) he is a member of a protected class; (b) he suffered a "materially adverse employment action"; and (c) there was a "discriminatory reason for the employer's action." *Burks*, 464 F.3d at 751 n.3.

As an Indian, Sheikh is a member of a protected class both in terms of his race and national origin. Defendant also does not dispute, nor could it, that the termination of his employment and revocation of his medical staff privileges constitute a materially adverse employment action. Therefore, the only issue in dispute on summary judgment is whether Sheikh has proffered sufficient evidence for a reasonable trier of fact to find that GRHC's actions were motivated by discrimination based on Sheikh's race and/or national origin.

Under the direct method, Sheikh must present "either direct evidence of discriminatory intent (such as an admission) or enough circumstantial evidence to allow a rational jury to infer that discriminatory intent motivated" GRHC's decision to terminate his employment and revoke his clinical privileges. *Burnell*, 647 F.3d at 708.

Derogatory remarks can be direct evidence of discrimination if they are (1) made by the decisionmaker (or by a person who influences the decisionmaker), (2) near the time of the adverse decision, and (3) in relation to the adverse decision. *Ellis v. United Parcel Serv., Inc.*, 523 F.3d 823, 829 (7th Cir. 2008); *see also Walker v. Glickman*, 241 F.3d 884, 888 (7th Cir. 2001) ("Remarks and other evidence that reflect a propensity by the decisionmaker to evaluate employees based on illegal criteria will suffice as direct

evidence of discrimination even if evidence stops short of a virtual admission of illegality."). While Sheikh mentions direct evidence, he fails to point to any. *Dandy v. United Parcel Serv.*, 388 F.3d 263, 272 (7th Cir. 2004) (describing "direct evidence" as an "admission that an adverse employment action was taken against an employee based solely on an impermissible ground."). Essentially then, Sheikh is left to rely on circumstantial evidence under the direct method, which includes "suspicious timing; ambiguous statements; behavior or comments directed at others in the protected class; and evidence that similarly situated employees outside the protected class received systemically better treatment." *Burnell*, 647 F.3d at 708; *see also Darchak v. City of Chi. Bd. of Educ.*, 580 F.3d 622, 631 (7th Cir. 2009). While "a plaintiff should be free to meet his or her initial burden with this kind of evidence as well, whether we describe it as 'mosaic' evidence or something else," *Sattar v. Motorola, Inc.*, 138 F.3d 1164, 1169 (7th Cir. 1998) (internal citation omitted)), "[w]hatever circumstantial evidence a plaintiff presents 'must point directly to a discriminatory reason for the employer's action.'" *Burnell*, 647 F.3d at 708 (quoting *Adams v. Wal-Mart Stores, Inc.*, 324 F.3d 935, 939 (7th Cir. 2003)). Accordingly, the court will consider Sheikh's circumstantial evidence pointing directly to a discriminatory reason, if any, in determining whether his claims survive summary judgment.

B. Circumstantial Evidence of Race / National Origin Discrimination

In Sheikh's proposed findings of facts, his deposition transcript, and the brief in opposition to defendant's motion, Sheikh points the court to the following discernable, circumstantial evidence of race and/or national origin discrimination:

1. Racially hostile remarks by unidentified individuals

Sheikh claims that he had a confrontation with an unidentified "woman in the cafeteria who stated, 'you must be that Middle Eastern guy whom they hired as a ER director.'" (Pl.'s PFOFs (dkt. #86) ¶ 58.) "The woman then accused Dr. Sheikh of taking her job and spit at Dr. Sheikh while seeming like she also wanted to throw a bowl of hot cereal in his face." (*Id.*) Sheikh also claims he had an encounter with an unidentified nurse who tried to talk Sheikh "out of moving to Lancaster by telling him he would not be welcomed to Lancaster and stated that 'every house to start blowing up.'" (*Id.* at ¶ 59.)

Even if credited as true for purposes of summary judgment,[8] these remarks -- both made by unidentified individuals, one of which may not even have been associated with GRHC -- are not indicative of discriminatory intent on the part of Sheikh's employer. There is nothing in the record to suggest that these individuals were decisionmakers or had input into the decision to terminate. As such, these remarks do not support an inference of discriminatory intent on the part of GRHC. *See Larimer v. Dayton Hudson*

[8] As defendant points out, it is striking that Sheikh failed to previously report these ethnically-charged remarks: Sheikh did not report these instances to GRHC during the course of his employment; nor did he describe these encounters in his EEOC charge; nor did he raise them in any previous court filing. As such, these accounts appear to be of questionable credibility, though that would be for a jury to decide if there were sufficient evidence for this case to proceed to trial.

Corp., 137 F.3d 497, 500 (7th Cir. 1998) ("It is well established that 'statements by nondecisionmakers, or statements by decisionmakers unrelated to the decisional process itself,' are insufficient to satisfy a plaintiff's burden of proof in an employment discrimination case.") (quoting *Price Waterhouse v. Hopkins*, 490 U.S. 228, 277 (1989) (O'Connor, J., concurring)).

2. Complaints from Nurses

Sheikh also contends that he received "email complaints lodged against him by nurses who barely worked with him who were making up things to complain about in an effort to get Dr. Sheikh removed on the basis of his race, national origin and religion." (Pl.'s PFOFs (dkt. #86) ¶ 57.) Although Sheikh fails to identify any emails directed to him from nurses containing concerns or complaints about him, he does point to complaints by nurses sent to Rutkowski and Huebschman.

In particular, Sheikh points to an email dated August 9, 2009, in which Nurse Sara Blum lists several concerns about Sheikh including: "Cleanliness, personal and professional. He had horrible body odor tonight, 2 [patients] and their families complained to me. I apologized to them, and made a feeble explanation about different cultures." (Rutkowski Aff., Ex. 5 (dkt. #70-5) 1.)[9] Sheikh also points to an August 14, 2009, email request from Rutkowski to nurses seeking "feedback about Dr. Sheikh so I can address issues in his orientation." (Rutkowski Aff., Ex. 7 (dkt. #70-7) 2.) Nurse Misty Streif responded with a lengthy email describing several concerns about Sheikh's

[9] Sheikh also contends generally that he "experienced hostility" from Blum. (*Id.* at ¶ 56.)

treatment of patents. Toward the end of the email, Streif wrote: "His accent is too hard! And this sounds terrible…but his body odor is terrible!" (*Id.*)

A reasonable factfinder may infer that comments about a person's accent are sufficiently related to a person's race or national origin to be probative of discrimination based on race or national origin. *See Hasham v. Cal. State Bd. of Equalization*, 200 F.3d 1035, 1045 (7th Cir. 2000) (finding supervisor's comments about plaintiff's accent to be probative of discriminatory animus in national origin Title VII claim). Any inference of discriminatory intent based on nurses' comments about Sheikh's body odor is even more of a stretch. *See Hannoon v. Fawn Eng'g Corp.,* 324 F.3d 1041, 1047 (8th Cir. 2003) ("Because the comments regarding body odor did not suggest any reference to race or national origin, we are unwilling to hold such comments reasonably capable of supporting an inference of discriminatory intent."). Even if the trier of fact were to find these derogatory comments were some evidence of discriminatory animus against Asians or Indians by two nurses, they are at most stray remarks from non-decisionmakers, insufficient to support an inference of discriminatory intent on the part of Sheikh's employer. *See Larimer*, 137 F.3d at 500.

Sheikh argues that these emails may still be material and probative of discriminatory animus under the "cat's paw" theory of discrimination. As Sheikh notes, "discrimination can be shown through the existence of such a link between an employment decision made by an unbiased individual and the impermissible bias of a non-decisionmaking co-worker." (Pl.'s Opp'n (dkt. #85) 17 (citing *Scandelmeier-Bartels v. Chi. Park Dist.*, 634 F.3d 372, 379 (7th Cir. 2011)).) Unfortunately for plaintiff,

however, this theory would have required that he proffer sufficient evidence from which a jury could infer that the nurses "use[d] the formal decision-maker as a dupe in a deliberate scheme to trigger a discriminatory employment action." *Smith v. Bray*, 681 F.3d 888, 897 (7th Cir. 2012) (internal citation and quotation marks omitted).

Here, a reasonable jury could not infer discriminatory animus from isolated statements about Sheikh's accent made by non-decisionmakers, where Sheikh has failed to point to any evidence suggesting that these non-decisionmakers were engaging in a scheme to trigger his termination. While Dr. Huebschman and the other family physician group members may have had played a part in the decision to terminate Sheikh's employment, Sheikh has failed to point to any evidence from which a reasonable jury could infer discriminatory animus on their part directly or circumstantially, including under a "cat's paw" theory.

3. Requests for feedback from Rutkowski and Huebschman

Sheikh also points to an email from Nurse Laurie Meighan, responding to Dr. Huebschman's request "to pass along any inappropriate activities of Dr. Sheikh." (Rutkowski Aff., Ex. 13 (dkt. #70-13).) As noted above, Rutkowski also sent an email to nurses requesting information about Sheikh to help orient him to GRHC. However, none of these requests for information on his performance point to any discriminatory animus. As such, they are not probative. *See Burnell*, 647 F.3d at 708 (requiring that circumstantial evidence point directly to discriminatory intent to be relevant). On the contrary, the evidence is actually quite overwhelming that Sheikh's repeated lack of

professionalism in response to constructive criticism (whether justified or not, whether originally unexpected or not) resulted in a complete consensus by his immediate supervisors, more senior administrators, human resource personnel, the medical committee and the Board that Sheikh should be suspended and ultimately fired, as well as his privileges suspended.

4. Replacement of Sheikh

Sheikh also contends that the race and religion of his replacements is probative of discriminatory intent. Sheikh contends that he was replaced by Dr. Robert Smith, a non-Muslim, Caucasian physician, and Jolene Ziebart, a non-Muslim, Caucasian Nurse Practitioner. Sheikh characterizes Smith as his "replacement," but the record demonstrates that Smith was hired in June 2009, three months before Sheikh's employment was terminated. Similarly, defendant contends that Ziebart was not hired to replace Sheikh, and Sheikh has no evidence to support his conclusory statement to the contrary. As such, Sheikh has failed to point to any evidence to support his contention that he was replaced by individuals outside of his protected status.

5. Demographics of Lancaster, Wisconsin

Sheikh also contends that the demographics of Lancaster, Wisconsin -- a small, predominantly white town, located in rural Wisconsin -- supports his claim of discriminatory intent. This argument warrants little discussion, since any inference that a reasonable jury might draw from the demographics of Lancaster is far too removed from

the question of whether the principal decisionmakers here, namely Clapp and Rutkowski, were motivated by discriminatory intent. The record demonstrates that the same individuals who interviewed and decided to hire Sheikh (and in Clapp's case was also actively assisting him in finding a home in the area) were involved in the decision to terminate his employment and revoke his privileges a few weeks later. Indeed, this "common actor" fact creates a "strong inference" of nondiscrimination. *Roberts v. Separators, Inc.*, 172 F.3d 448, 452 (7th Cir. 2009).

6. Failure to Follow Bylaws

Finally, Sheikh contends that GRHC's failure to follow its own internal bylaws with respect to the investigation supports a finding of discriminatory intent. Specifically, Sheikh points to Article XII(3)(c) of the bylaws which provides: "No individual who is a partner, associate or relative of an appointee against whom corrective action has been requested may be involved in the investigation." (Affidavit of Bashir Sheikh, Ex. 2 (dkt. #87-2) 47.) Sheikh argues that GRHC violated this provision by allowing Sheikh's "associates" -- Dr. Huebschman, Dr. Slane, and Dr. Stader -- on the investigative committee. Defendant argues that these individuals are not Sheikh's associates, because he was not in practice with them. Since all three doctors are employed by Dean Health Systems with clinical privileges at GRHC, defendant again has the better of this argument. Sheikh has failed to point to anything in the records which would exclude other doctors with clinical privileges at GRHC from participating in the investigation. Moreover, this purported circumstantial evidence fails to "point directly to a

discriminatory reason for the employer's action." *Burnell*, 647 F.3d at 708 (internal citation and quotation marks omitted).[10]

After considering all of this purported evidence -- some of it relevant to Sheikh's claims, but most not -- the court finds that viewed separately or in combination as a "mosaic," it is not nearly sufficient for a reasonable jury to infer discriminatory intent. The court, therefore, concludes that Sheikh has failed to put forth sufficient evidence from which a jury could reasonably find that GRHC acted with discriminatory animus, either on the basis of Sheikh's race, national origin, or both, in terminating his employment and revoking his clinical privileges.[11] Accordingly, the court will grant summary judgment to GRHC on Sheikh's Title VII race and national origin discrimination claims.

II. Religious Discrimination and Failure to Accommodate Claims

Sheikh also alleges that GRHC discriminated against him because he is a Muslim and failed to accommodate his religious needs. "As a general rule, a Title VII plaintiff cannot bring claims in a lawsuit that were not included in her EEOC charge." *Cheek v. W. & S. Life Ins. Co.*, 31 F.3d 497, 500 (7th Cir. 1994). "For a plaintiff to proceed on a

[10] Obviously, Sheikh's argument is not helped by his failure to register any contemporaneous objection to the committee's membership, much less cooperate with or respond to the inquiries of the committee.

[11] Because the court finds insufficient evidence from which a jury could infer discriminatory animus on the part of the defendant, it need not and does not wade into the parties' many disputes about Sheikh's performance and interactions with staff and patients during his short term of employment.

claim not raised in an EEOC charge, 'there must be a reasonable relationship between the allegations in the charge and the claims in the complaint,' and it must appear that 'the claim in the complaint can reasonably be expected to grow out of an EEOC investigation of the allegations of the charge.'" *Jones v. Res-Care, Inc.*, 613 F.3d 665, 670 (7th Cir. 2010) (quoting *Vela v. Vill. of Sauk Vill.*, 218 F.3d 661, 664 (7th Cir. 2000)).

As noted previously, Sheikh checked "religion" along with a host of other categories on the EEOC form, but failed to include any allegations in the text of his EEOC complaint concerning a claim of discriminatory animus based on his religion. Even if Sheikh had preserved this claim in his EEOC charge, Sheikh has still not put forth sufficient evidence from which a reasonable jury could infer that: (1) he was discriminated against on the basis of his religion; or (2) his fasting for Ramadan was the basis for GRHC's decision to terminate him. Indeed, Sheikh proffers *no* evidence in support of his religious discrimination claim.

As for his failure to accommodate claim, Sheikh only points to his refusal to participate in a 4:30 meeting because he had a dry mouth from fasting all day for Ramadan. Defendant contends Sheikh's position was disingenuous given that he previously worked a full shift. Regardless, this one piece of evidence -- contradicted by overwhelming evidence of the individuals involved willingness to meet at a more convenient time and Sheikh's refusal to engage the defendant at *any* stage of the suspension or termination process -- is wholly insufficient for a reasonable jury to infer that GRHC's decision to terminate his employment was motivated by his religious practice.

III. State Law Claims

In the operative complaint, plaintiff alleges that "subject matter jurisdiction is based on 28 U.S.C. § 1331, in that this action arises under Title VII of the Civil Rights Act of 1964 codified at 42 U.S.C. § 2000e et seq. Jurisdiction as to pendent state claims arises under 28 U.S.C. § 1367." (2d Am. Compl. (dkt. #49) ¶ 3.) Having dismissed all of the claims over which this court has original jurisdiction, the court declines to exercise its supplemental jurisdiction over any state law claims -- both Sheikh's claims and GRHC's counterclaim for breach of contract of a forgivable loan. *See* 28 U.S.C. § 1367(c)(3). Dismissing the state law claims is consistent with "the well-established law of this circuit that the usual practice is to dismiss without prejudice state supplemental claims whenever all federal claims have been dismissed prior to trial." *Groce v. Eli Lilly & Co.*, 193 F.3d 496, 501 (7th Cir. 1999).

ORDER

IT IS ORDERED that:

1) Defendant Grant Regional Health Center's motion for summary judgment (dkt. #50) is GRANTED as to all federal claims (Am. Compl. (dkt. #49), Count I);

2) The court declines to exercise its supplemental jurisdiction over the remaining state law claims, and dismisses those claims (Am. Compl. (dkt. #49) Counts II-VII; Counterclaim (dkt. #52) without prejudice; and

3) The clerk of the court is directed to enter judgment in favor of defendant on the federal claims and close this case.

Entered this 2nd day of July, 2013.

BY THE COURT:

/s/

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WILLIAM M. CONLEY
District Judge