NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

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

ALDO DAVICO, JR., also known as Seal 15, Plaintiff - Appellant, v. GLAXOSMITHKLINE PHARMACEUTICALS, Defendant - Appellee.	No. 07-35957 D.C. No. CV-05-06052-TC (**ala**) MEMORANDUM*

Appeal from the United States District Court
for the District of Oregon
Anne L. Aiken, District Judge, Presiding

Argued and Submitted March 5, 2009
Portland, Oregon

Before: GRABER, FISHER, and M. SMITH, Circuit Judges.

Plaintiff Aldo Davico, Jr., appeals the district court's decision to grant Defendant GlaxoSmithKline Pharmaceuticals' motion for summary judgment in

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

this employment-related diversity case. He also appeals the award of costs to Defendant in the amount of $6,205.15.

We review de novo the district court's grant of summary judgment. Dietrich v. John Ascuaga's Nugget, 548 F.3d 892, 896 (9th Cir. 2008). "'We must determine, viewing the evidence in the light most favorable to the nonmoving party, whether there are any genuine issues of material fact and whether the district court correctly applied the relevant substantive law.'" Id. (quoting ACLU of Nev. v. City of Las Vegas, 333 F.3d 1092, 1097 (9th Cir. 2003)).

In a diversity case involving summary judgment motions in an employment discrimination context arising under state law, we apply the burden-shifting analysis set forth in McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802-04 (1973). Snead v. Metro. Prop. & Cas. Ins. Co., 237 F.3d 1080, 1094 (9th Cir. 2001). Under that framework, the plaintiff must first establish a prima facie case of employment discrimination, and then the burden shifts to the employer "to articulate some legitimate, nondiscriminatory reason for the employee's [non-promotion and termination]." McDonnell Douglas, 411 U.S. at 802.

The district court held that Plaintiff failed to establish a prima facie case because Defendant's employment actions against Plaintiff were not close enough in time to his report to the FDA to support an inference that Defendant acted "for

the reason that" Plaintiff was a whistleblower. See Or. Rev. Stat. § 659A.230; Clark County Sch. Dist. v. Breeden, 532 U.S. 268, 273-74 (2001) (per curiam) (holding that the temporal proximity between the protected activity and the adverse action must be "very close"). Five months passed between the date that Plaintiff sent his letter to the FDA and the date on which Defendant terminated his employment. That length of time is too great to demonstrate a causal nexus. Villiarimo v. Aloha Island Air, Inc., 281 F.3d 1054, 1065 (9th Cir. 2002). Plaintiff also alleges, however, that Defendant denied him a promotion three months after he contacted the FDA and that Defendant reprimanded Plaintiff and sent a letter warning him of the consequences of failing to cooperate with Defendant's internal investigation of Plaintiff's allegations four months after he contacted the FDA.

Although those alleged actions were closer in time to Plaintiff's protected behavior and therefore may cast doubt on the district court's conclusion, we need not decide whether Plaintiff failed to establish a prima facie case because we agree that Defendant presents several reasons for taking these actions against Plaintiff, none of which is pretextual. Those reasons include: seeking reimbursements for personal expenses, knowing that doing so was against company policy; using profanity toward hotel employees while on a business trip for Defendant; violating Defendant's marketing and gift policies; refusing to complete mandatory training;

and disrespecting his supervisors repeatedly. Moreover, Defendant fired Plaintiff very shortly after he engaged in insubordinate behavior toward his immediate supervisor. See Unt v. Aerospace Corp., 765 F.2d 1440, 1446 (9th Cir. 1985) (holding that adverse employment actions were not pretextual when plaintiff violated legitimate company rules and knowingly disobeyed orders).

Finally, the district court did not abuse its discretion in awarding costs to Defendant. See Miles v. California, 320 F.3d 986, 988 (9th Cir. 2003). The district court also did not abuse its discretion in requesting Defendant's response after the deadline under Local Rule 54.1(b).

AFFIRMED.