

**IN THE COURT OF CLAIMS OF OHIO**

MELVIN WILLIAMS

Plaintiff

v.

OHIO DEPARTMENT OF  
REHABILITATION AND CORRECTION

Defendant

Case No. 2022-00092JD

Judge Lisa L. Sadler  
Magistrate Scott Sheets

DECISION

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{¶1} Defendant Ohio Department of Rehabilitation and Correction’s (Defendant) Motion for Summary Judgment is now fully briefed and before the Court for a non-oral hearing pursuant to L.C.C.R. 4(D). Plaintiff Melvin William’s (Plaintiff) Complaint asserts a claim for disparate treatment employment discrimination pursuant to R.C. 4112.02. As evidence, the parties submitted Plaintiff’s deposition as well as exhibits discussed during his deposition. For the following reasons, the Court GRANTS Defendant’s Motion for Summary Judgment.

**STANDARD OF REVIEW**

{¶2} Motions for summary judgment are reviewed under the standard set forth in Civ.R. 56(C), which states, in part:

Summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to summary judgment as a matter of law.

No evidence or stipulation may be considered except as stated in this rule.

“[T]he moving party bears the initial responsibility of informing the trial court of the basis for the motion, and identifying those portions of the record before the trial court which demonstrate the absence of a genuine issue of material fact on a material element of the

nonmoving party's claim." *Dresher v. Burt*, 75 Ohio St.3d 280, 292, 662 N.E.2d 264 (1996). To meet this initial burden, the moving party must be able to point to evidentiary materials of the type listed in Civ.R. 56(C). *Id.* at 292-293.

{¶3} If the moving party meets its initial burden, the nonmoving party bears a reciprocal burden outlined in Civ.R. 56(E), which provides that "an adverse party may not rest upon the mere allegations or denials of the party's pleadings, but the party's response, by affidavit or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial." When considering the evidence, "[a]ny doubt must be resolved in favor of the non-moving party." *Pingue v. Hyslop*, 10th Dist. Franklin No. 01AP-1000, 2002-Ohio-2879, ¶ 15. Summary judgment is not appropriate unless:

construing the evidence most strongly in favor of the nonmoving party:  
(1) there is no genuine issue of material fact; (2) the moving party is entitled to judgment as a matter of law; and (3) reasonable minds can come to but one conclusion, that conclusion being adverse to the nonmoving party.

*Robinette v. Orthopedics, Inc.*, 10th Dist. Franklin No. 97AP-1299, 1999 Ohio App. LEXIS 2038, 7 (May 4, 1999).

## **FACTUAL BACKGROUND**

{¶4} Plaintiff indicates that Defendant's Motion for Summary Judgment "accurately describes the period of [Plaintiff's] employment, the training he received, and the use of force incidents that occurred in February 2020." (Plaintiff's Response p. 2.) The following facts are based on Plaintiff's deposition testimony and are stated in a light most favorable to Plaintiff. Plaintiff is a black male. He began employment with Defendant as a correctional officer in November of 1992 at Defendant's Dayton Correctional Institution and became a lieutenant in 2007. (Melvin Williams Depo. p. 12; 15.) He received use of force and de-escalation training as both a correctional officer and lieutenant. *Id.* at p. 17-18. Plaintiff opined that lieutenants are held to higher standards than corrections officers when it comes to effectuating these and other policies. *Id.* at p. 17.

{¶5} On February 6, 2020, corrections officers requested Plaintiff's presence because an inmate had flooded her cell. *Id.* at p. 37-38. Upon his arrival, Plaintiff directed

the inmate to cease flooding her cell and warned her “that when I come back that I would use OC spray to get her to comply.” Plaintiff left the area and returned to his office. *Id.* at p. 38. Corrections officers removed the inmate from her cell and placed her in a “recreation unit,” so that her cell could be cleaned. The inmate then began destroying property in the recreation unit and corrections officers called Plaintiff, who returned to the area. *Id.* at p. 38-39; 48. Upon his return, the inmate was sitting at a table. By Plaintiff’s own admission, the inmate had ceased destroying property. *Id.* at 48-49. Nonetheless, Plaintiff sprayed the inmate in the face with “OC spray.” He then sprayed the inmate again as she attempted to move away from the first spray. *Id.* at 41-42; 49. After spraying the inmate, Plaintiff delayed removing her from the contaminated recreation unit. *Id.* at p. 50-52. Defendant conducted a use of force investigation and determined that Plaintiff’s use of force was inappropriate. At deposition, Plaintiff did not dispute this determination and did not believe it was based on his race. *Id.* at 52-53.

{¶6} Eight days later, on February 14, 2020, Williams used force on another inmate. *Id.* at p. 54. In this incident, as Plaintiff attempted to speak to an inmate who sat at a table with earbuds in her ears, listening to her tablet. Plaintiff grabbed the inmate’s tablet because she was not listening to him as he spoke to her. The inmate then grabbed Plaintiff’s arm and/or wrist, at which point Plaintiff struck her with an open hand across her face, causing her to fall. *Id.* at p 54-57. Defendant also determined that this second use of force was inappropriate. *Id.* at p. 69.<sup>1</sup>

{¶7} As a result of the two incidents, Defendant placed Williams on paid administrative leave on February 24, 2020. *Id.* at p. 70-71; Exhibit F. After a pre-disciplinary hearing, the hearing officer determined that Plaintiff violated eight work rules including abusing an inmate, exercising poor judgment, and using unauthorized and excessive force. *Id.* at p. 87-89; Exhibit G, p. 5-6. The hearing officer also determined that “[i]t is clear in both incidents that Lt. Williams utilized force that was unjustified and

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<sup>1</sup> There is a dispute of fact as to whether the inmate was seated, beginning to stand, or was standing as she grabbed Plaintiff’s arm. At his deposition, Plaintiff indicated the inmate was standing or beginning to stand. Defendant’s Motion for Summary Judgment and Exhibits related to Defendant’s investigation of the matter reference a video of the incident as depicting the inmate seated at the table when Plaintiff strikes her. However, the video has not been provided to the Court. Nevertheless, as noted, Plaintiff does not dispute Defendant’s recitation of the facts in his response. Moreover, whether the inmate was seated or standing when Plaintiff struck her is immaterial to the Court’s decision.

not necessary. Lt. Williams actions are clearly in violation of the Department's use of force policy." Ex. G, p. 5. Based on these findings, Defendant offered Plaintiff disciplinary options including a demotion. Plaintiff accepted a demotion from lieutenant to corrections officer, which resulted in a reduction in pay, and continued his employment with Defendant. Williams depo. p. 89; 90-92; Exhibit H. Plaintiff appealed his demotion but ultimately withdrew his appeal and continued to work for Defendant as a corrections officer until he retired on December 1, 2021. Williams depo. p. 95-96.

{¶8} Plaintiff deponed that no one made racist comments when disciplinary options were presented to him. He deponed that he never filed a grievance or complaint regarding racial discrimination. *Id.* at p. 73; 90; 110-111. Further, as noted, Plaintiff did not believe that Defendant's determinations as to the February 6, 2020 incident were based on his race. *Id.* at p. 52-53. However, as to the February 14, 2020 incident, Plaintiff pointed to the fact that he is black and the inmate is white as evidence of discrimination. He also indicated that he was unaware of any other corrections officer who had been disciplined for using "reactive force" after an inmate touched them. *Id.* at p. 91.

{¶9} In his deposition, Plaintiff relayed what he believed to be examples of disparate treatment. Plaintiff first described a white captain who slammed a handcuffed black inmate to the ground. However, Plaintiff was not present for this incident, had no part of the use of force committee's review of this incident, does not know what discipline, if any, the employee received, and does not know if the employee was involved in another use of force incident less than two weeks later. *Id.* at p. 22; 101-104.

{¶10} Plaintiff also referenced a white correctional officer who was not disciplined for choking a black inmate. Plaintiff provided no other details, did not know the officer's full name, the name of the inmate involved, when the incident occurred, whether there was a use of force investigation, or whether the officer was disciplined. *Id.* at p. 104-105. Plaintiff did not witness the incident and did not know if the officer was involved in another use of force incident less than two weeks later. *Id.* at p. 106.

{¶11} Plaintiff next described a white corrections officer who struck a black inmate but was not disciplined. Plaintiff did not know the name of the inmate involved or when the incident occurred. He believed that a use of force investigation occurred and

determined that the force was justified. He did not know if the officer involved had another use of force incident less than two weeks after the first. *Id.* at p. 106-108.

{¶12} Plaintiff also described another incident of employee misconduct that did not involve the use of force, when a white commissary manager placed a dead bird in an inmate's cell and received a suspension. *Id.* at p. 108-109.

{¶13} Plaintiff described another incident where an inmate arrived at his institution with visible bruising after throwing water on a white lieutenant and being restrained. Plaintiff indicated that multiple white corrections officers were involved. However, Plaintiff lacked knowledge of the identities of the officers involved, whether a use of force investigation was undertaken, or whether any of the officers were disciplined. *Id.* at p. 128-129. Other than Plaintiff's testimony, there is no evidence before the Court regarding any of the events involving other employees, nor is there detailed evidence of the conduct of the employees and inmates involved.

## LAW AND ANALYSIS

{¶14} As noted, Plaintiff asserts a claim for disparate treatment. More specifically, Plaintiff asserts that, while Defendant demoted him, Defendant did not discipline similarly situated white employees. R.C. 4112.02 provides, in pertinent part, that: "It shall be an unlawful discriminatory practice: (A) For any employer, because of the race \* \* \* of any person, to discharge without just cause, to refuse to hire, or otherwise to discriminate against that person with respect to hire, tenure, terms, conditions, or privileges of employment, or any other matter directly or indirectly related to employment." In Ohio, "federal case law interpreting Title VII of the Civil Rights Act of 1964, Section 2000(e) et seq., Title 42, U.S.Code, is generally applicable to cases involving alleged violations of R.C. Chapter 4112." *Little Forest Med. Ctr. v. Ohio Civil Rights Comm.*, 61 Ohio St.3d 607, 609-610 (1991). "Disparate treatment is the most easily understood type of discrimination; the employer simply treats some people less favorably than others because of their race, color, or other protected characteristics." *Albaugh v. City of Columbus*, 132 Ohio App. 3d 545, 550 (10th Dist., 1995).

{¶15} Defendant argues it is entitled to summary judgment because Plaintiff cannot demonstrate a prima facie case of discrimination and because it has articulated a legitimate, non-discriminatory reason for his demotion that is not pretextual.

**McDonnell-Douglas Framework.**

{¶16} “To prevail in an employment discrimination case, a plaintiff must prove discriminatory intent’ and may establish such intent through either direct or indirect methods of proof.” *Dautartas v. Abbott Labs.*, 10th Dist. Franklin No. 11AP-706, 2012-Ohio-1709, ¶ 25, quoting *Ricker v. John Deere Ins. Co.*, 133 Ohio App.3d 759, 766 (10th Dist.1998).

{¶17} In this case, Plaintiff seeks to establish discriminatory intent through the indirect method, which is subject to the burden shifting analysis established in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973).<sup>2</sup> See *Nist v. Nexeo Solutions, LLC*, 10th Dist. Franklin No. 14AP-854, 2015-Ohio-3363, ¶ 31. “Under McDonnell Douglas, a plaintiff must first present evidence from which a reasonable [trier of fact] could conclude that there exists a prima facie case of discrimination.” *Turner v. Shahed Ents.*, 10th Dist. Franklin No. 10AP-892, 2011-Ohio-4654, ¶ 11-12. “In order to establish a prima facie case, a plaintiff must demonstrate that he or she: (1) was a member of the statutorily protected class, (2) suffered an adverse employment action, (3) was qualified for the position, and (4) was replaced by a person outside the protected class *or that the employer treated a similarly situated, non-protected person more favorably.*” *Nelson v. Univ. of Cincinnati*, 10th Dist. Franklin No. 16AP-224, 2017-Ohio-514, ¶ 33 (emphasis added). “If the plaintiff meets her initial burden, the burden then shifts to the defendant to offer ‘evidence of a legitimate, nondiscriminatory reason for’ the adverse action. \* \* \* If the defendant meets its burden, the burden then shifts back to the plaintiff to demonstrate that the defendant’s proffered reason was actually a pretext for unlawful discrimination.” *Turner* at ¶ 14.

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<sup>2</sup> Defendant asserts that Plaintiff has no direct evidence of discrimination. In his response to the motion for summary judgment, Plaintiff does not assert otherwise. In addition, Plaintiff was asked about examples of direct discrimination at his deposition and could provide none.

{¶18} “To establish pretext, a plaintiff must demonstrate that the proffered reason (1) has no basis in fact, (2) did not actually motivate the employer’s challenged conduct, or (3) was insufficient to warrant the challenged conduct. *Dews v. A.B. Dick Co.*, 231 F.3d 1016, 1021 (6th Cir.2000). Regardless of which option is chosen, the plaintiff must produce sufficient evidence from which the trier of fact could reasonably reject the employer’s explanation and infer that the employer intentionally discriminated against [her]. *Johnson v. Kroger Co.*, 319 F.3d 858, 866 (6th Cir.2003). A reason cannot be proved to be a pretext for discrimination unless it is shown both that the reason was false, and that discrimination was the real reason. *St. Mary’s Honor Ctr. v. Hicks*, 509 U.S. 502, 515 (1993).” *Knepper v. Ohio State Univ.*, 10th Dist. Franklin No. 10AP-1155, 2011-Ohio-6054, ¶ 12. “The ultimate burden of persuading the trier of fact that the defendant intentionally discriminated against the plaintiff remains at all times with the plaintiff.” *Texas Dept. of Comm. Affairs v. Burdine*, 450 U.S. 248, 253 (1981).

### **Plaintiff Cannot Establish a Prima Facie Case**

{¶19} Defendant first asserts that Plaintiff cannot demonstrate that any “similarly situated, nonblack employees \* \* \* were treated more favorably than he was.”<sup>3</sup> (Motion for Summary Judgment p. 11.) As stated in *Hinton v. Ohio Dep’t of Youth Servs.*, 10th Dist. No. 22AP-272, 2022-Ohio-4783, ¶ 23:

Where a plaintiff in a discrimination claim contends his or her employer provided more favorable treatment to a non-protected similarly situated person, “the individual with whom the plaintiff seeks to compare [his or] her treatment must be similar in all relevant respects.” Courts must consider whether the proffered individual dealt with the same supervisor, was subject to the same standards, and engaged in the same conduct without mitigating or differentiating circumstances that would distinguish either their conduct or the employer’s treatment of them. In order to find the plaintiff and the

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<sup>3</sup> Defendant does not address the first three elements of the *McDonnell-Douglas* test. However, it is undisputed that Plaintiff is a black male, who qualified for the lieutenant position and worked in that position for many years before being demoted with a reduction in pay. For the purpose of its summary judgment decision, the Court finds that Plaintiff can demonstrate the first three elements of the *McDonnell-Douglas* test.

proffered individual are similarly situated, the proffered individual's conduct must be of "comparable seriousness" to the conduct predicated the plaintiff's adverse treatment. *Id.*, quoting *Ames* at ¶ 43-44.

In his deposition, Plaintiff described several instances where he believes similarly situated white employees were not disciplined. However, these incidents vary widely and are distinguishable from the incidents involving Plaintiff.

{¶20} Plaintiff offered a scant description of the use of force incidents at his deposition and has offered no other evidence as to the incidents. As to most of the incidents, Plaintiff lacked details regarding when the incidents occurred or who was involved. Most importantly, as to all of the incidents, Plaintiff could not say whether the employees involved were disciplined or whether these employees had been involved in two use of force incidents within eight days. As to the incidents involving corrections officers, Plaintiff admitted at deposition that lieutenants are held to higher standards. Only the incident involving the restrained inmate who threw water on a lieutenant involved a comparable rank; however, it is not clear from Plaintiff's deposition whether the lieutenant was involved in the use of force or to what extent. Further, there is no evidence that commissary managers and corrections lieutenants are held to the same standards or report to the same supervisors and the incident involving the commissary manager did not involve the use of force.

{¶21} In claiming disparate treatment in this case, Plaintiff must demonstrate that comparable employees used inappropriate force under similar circumstances but faced no discipline. The only evidence before the Court, Plaintiff's deposition, establishes that Plaintiff cannot do so. Accordingly, as Plaintiff cannot demonstrate that similarly situated, non-protected employees were treated more favorably, Defendant is entitled to judgment as a matter of law on Plaintiff's claim of disparate treatment employment discrimination. *See, You v. NE Ohio Med. Univ.*, 10th Dist. No. 17AP-426, 2018-Ohio-4838, ¶ 51 ("For purposes of summary judgment, a plaintiff must submit evidence from which a reasonable jury could conclude that the plaintiff established a prima facie case of discrimination.")

**Defendant has Offered a Legitimate, Non-Discriminatory Reason for Demotion and There is No Evidence of Pretext**

{¶22} Plaintiff's inability to establish a prima facie case merits summary judgment for Defendant. However, assuming *arguendo* that Plaintiff could demonstrate a prima facie case, Defendant has also articulated a legitimate, non-discriminatory reason for Plaintiff's demotion. *You* at ¶ 46. ("The employer meets its burden of production by submitting admissible evidence that 'taken as true, would permit the conclusion that there was a nondiscriminatory reason for the adverse action,' and in doing so rebuts the presumption of discrimination that the prima facie case establishes.")

{¶23} As to the first use of force, Plaintiff conceded that it constituted an inappropriate use of force and also indicated he did not believe Defendant's determinations as to this incident were based on his race. The second incident involved Plaintiff delivering an open-handed smack to an inmate's face, hard enough to knock her to the ground. After reviewing video of the incident and conducting an investigation, Defendant determined that this second incident also involved an inappropriate use of force. As a result of both incidents and after a hearing, Defendant determined that Plaintiff violated numerous work rules including abusing an inmate, exercising poor judgment, and using unauthorized and excessive force. The hearing officer found that Plaintiff's use of force was "unjustified and not necessary." There is no dispute regarding these facts, which are supported by both Plaintiff's deposition and the exhibits.

{¶24} In the face of a legitimate, non-discriminatory reason for his demotion, Plaintiff must be able to point to evidence of pretext to avoid summary judgment. *Id.* at ¶ 61. Plaintiff does not address pretext in his response to Defendant's Motion for Summary Judgment. There is no evidence of pretext in this case, nothing to which Plaintiff could point to demonstrate that Defendant's reason for demoting Plaintiff had no basis in fact, did not motivate Plaintiff's demotion, or was insufficient to warrant demotion. Defendant investigated and disciplined Plaintiff because he inappropriately used force twice in eight days and demoted him after it found that his conduct violated several work rules and because his uses of force were both unnecessary and excessive. There is no evidence that Plaintiff's race played a role in his demotion. Accordingly, in addition to being unable to establish a prima facie case, Plaintiff cannot meet his burden to demonstrate pretext.

## **Conclusion**

{¶25} For the foregoing reasons, the Court finds that there are no genuine issues of material fact and that Defendant is entitled to judgment as a matter of law.

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LISA L. SADLER  
Judge

[Cite as *Williams v. Ohio Dept. of Rehab. & Corr.*, 2023-Ohio-4635.]

MELVIN WILLIAMS

Plaintiff

v.

OHIO DEPARTMENT OF  
REHABILITATION AND CORRECTION

Defendant

Case No. 2022-00092JD

Judge Lisa L. Sadler  
Magistrate Scott Sheets

JUDGMENT ENTRY

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**IN THE COURT OF CLAIMS OF OHIO**

{¶26} For the reasons set forth in the decision filed concurrently herewith, Defendant's motion for summary judgment is GRANTED and judgment is rendered in favor of Defendant. All previously scheduled events are VACATED. Court costs are assessed against Plaintiff. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

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LISA L. SADLER  
Judge

Filed November 1, 2023  
Sent to S.C. Reporter 12/20/23