[Cite as *Bryant v. Ohio Dept. of Taxation*, 2025-Ohio-1055.]

IN THE COURT OF CLAIMS OF OHIO

STACEY BRYANT Plaintiff v. OHIO DEPARTMENT OF TAXATION Defendant	Case No. 2023-00301JD Judge Lisa L. Sadler Magistrate Robert Van Schoyck DECISION

{¶1} Plaintiff, formerly an employee of Defendant, brings this action claiming that Defendant unlawfully retaliated against her in violation of R.C. 4112.02(I) after she filed charges of discrimination with the Ohio Civil Rights Commission (OCRC).

{¶2} On September 30, 2024, Defendant filed a Motion for Summary Judgment pursuant to Civ.R. 56(B). Plaintiff filed a response on November 4, 2024, 35 days after Defendant filed its motion. The Court has considered the response, even though it was not timely filed. *See* Civ.R. 6(C)(1) ("Responses to motions for summary judgment may be served within twenty-eight days after service of the motion."). Defendant filed a reply on November 12, 2024. The motion is now before the Court for a non-oral hearing pursuant to Civ.R. 56 and L.C.C.R. 4. For the reasons explained below, the motion shall be granted.

Standard of Review

{¶3} Civ.R. 56(C) states, in part, as follows:

{¶4} "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 judgment as a matter of law. No evidence or stipulation may be considered except as stated in this rule. A summary judgment shall not be rendered unless it appears from the evidence or

stipulation, and only from the evidence or stipulation, that reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, that party being entitled to have the evidence or stipulation construed most strongly in the party's favor." *See also Gilbert v. Summit Cty*., 2004-Ohio-7108, ¶ 6, citing *Temple v. Wean United, Inc.,* 50 Ohio St.2d 317 (1977).

{¶5} "The party moving for summary judgment bears the initial burden of informing the trial court of the basis for the motion and identifying those portions of the record that demonstrate the absence of a genuine issue of material fact." *Starner v. Onda*, 2023-Ohio-1955, ¶ 20 (10th Dist.), citing *Dresher v. Burt*, 75 Ohio St.3d 280, 293 (1996). "The moving party does not discharge this initial burden under Civ.R. 56 by simply making conclusory allegations." *Id.* "Rather, the moving party must affirmatively demonstrate by affidavit or other evidence allowed by Civ.R. 56(C) that there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law." *Id.* "Once the moving party discharges its initial burden, summary judgment is appropriate if the non-moving party does not respond, by affidavit or as otherwise provided in Civ.R. 56, with specific facts showing that a genuine issue exists for trial." *Hinton v. Ohio Dept. of Youth Servs.*, 2022-Ohio-4783, ¶ 17 (10th Dist.), citing *Dresher* at 293; *Vahila v. Hall*, 77 Ohio St.3d 421, 430 (1997); Civ.R. 56(E).

Factual Background

{¶6} The following facts are taken from Plaintiff's Amended Complaint and the affidavits and other evidence submitted by Defendant in support of its Motion for Summary Judgment. Plaintiff did not submit an affidavit, and although she attached various documents to her response to the motion, they are not authenticated by way of affidavit.

{¶7} Plaintiff was employed with Defendant as a Tax Examiner Associate in the Taxpayer Services, Personal and School District Income Tax Division. (Amended Complaint, ¶ 12; Hardesty Affidavit, ¶ 2.) Plaintiff's claim is predicated upon allegations that Defendant retaliated against her for making one or more charges of discrimination with the OCRC, the first of which she made on or about March 18, 2022. (Amended Complaint, ¶ 49-51.) Plaintiff alleged that she made that charge of discrimination after

receiving a promotion and pay raise, but learning that the promotion would require her to change her existing fixed work schedule of 7:30 a.m. to 4:00 p.m. (Amended Complaint, ¶ 20-26.)

{¶8} Defendant, in support of its Motion for Summary Judgment, submitted an affidavit from a now-retired former employee, Labor Relations Administrator Teri Fowler. Fowler explained that although Plaintiff had a fixed schedule as a Tax Examiner Associate, employees in the position to which she was promoted, Tax Examiners, "rotate schedules to ensure the division is adequately staffed to answer questions from Tax Examiner Associates, other Tax Examiners, and from taxpayers and their representatives." (Fowler Affidavit, ¶ 2.) Fowler averred that "[a]fter Plaintiff learned that she could not keep the same work schedule she had as a Tax Examiner Associate," she sent Fowler and a union steward an email "withdrawing her acceptance of the promotion . . ." (Fowler Affidavit, ¶ 2.)

{¶9} There is no dispute that about five months after Plaintiff made the charge of discrimination over that matter, her supervisor at the time, Brandon Morant, issued her a written reprimand on August 18, 2022, on the grounds that she failed to perform a task as directed by Morant on August 15, 2022. Morant avers in an affidavit submitted by Defendant that the written reprimand resulted from the fact that Plaintiff was instructed, as were other subordinates of Morant, to work on "t610 correspondence training" on August 15, 2022, and while Plaintiff "may have participated in the t610 correspondence training for some part of the day, she eventually ignored the repeated direction to follow the schedule to be performed on August 15, 2022, and instead unilaterally started taking phone calls again, without informing me." (Morant Affidavit, ¶ 5.) Fowler avers that she authorized the written reprimand "in accordance with Department work rules and discipline grid." (Fowler Affidavit, ¶ 6.)

{¶10} According to the Amended Complaint, "[o]n September 18, 2022, [Plaintiff] filed another Charge of Discrimination, which addressed the August and September 2022 conduct." (Amended Complaint, ¶ 42.)

{¶11} There is no dispute that Tax Commissioner Jeffrey McClain issued Plaintiff a one-day working suspension, effective December 6, 2022, on the basis that she failed to comply with department policy relating to the disclosure of taxpayer account

information. (Fowler Affidavit, Exhibit F.) Fowler explains that, based upon Morant's reviews of randomly selected phone calls taken by Plaintiff in August 2022 and September 2022, subsequent investigation by the human resources department, and a pre-disciplinary hearing, it was determined that Plaintiff failed to comply with department policy regarding disclosure of taxpayer account information during several phone calls. (Fowler Affidavit, ¶ 8.)

{¶12} In an affidavit submitted by Defendant, Evan Robinson avers that he is employed by Defendant and began supervising Plaintiff in October 2022 after Morant left the department. (Robinson Affidavit, ¶ 1.) Robinson explains how he too determined Plaintiff was not following department policy relating to the disclosure of taxpayer account information and, in December 2022, he decided to refer the matter to Defendant's human resources office. (Robinson Affidavit, ¶ 3-5.) Fowler avers that, following a pre-disciplinary hearing, this resulted in Tax Commissioner Sarah O'Leary issuing Plaintiff a three-day working suspension, effective February 6-8, 2023. (Fowler Affidavit, ¶ 11, Exhibit J.)

{¶13} Fowler explains that Tax Commissioner Patricia Harris terminated Plaintiff's employment effective May 19, 2023, in accordance with the applicable collective bargaining agreement and progressive discipline policy, following a pre-disciplinary hearing. (Fowler Affidavit, ¶ 14, Exhibit M.) In a letter to Plaintiff dated May 18, 2023, Harris set forth the reasons for the termination, which Fowler summarizes as follows:

> because, during the period of August 18, 2022 through January 20, 2023, she used her State email account for her own personal [use], sending dozens and dozens of emails to [her] own personal email account, at times copying others that were not part of Department's secured network. Plaintiff included in those emails sensitive taxpayer information and copies of many of the job aids, tools, resources and network paths where information is saved. Additionally, Plaintiff sent dozens of emails from more than one personal email account to her State email, for reference to personal matters and as a resource to print personal documents. None of this activity was related to [her] official duties as an employee of the Department. Her actions violated Departmental Work Rule #62 (similar to ORC § 124.34) and

> Department policies, divisional policies, and business rules: ODT-300, Data Security: Use of Internet, Email, and Other IT Resources; ODT-101-Taxpayer Confidentiality and Accessing Confidential Information; ODT-002, Standards of Conduct; State policy (policy #100-11, policy on protecting privacy), ORC §§5703.21 and 1347.15 and Ohio Administrative Code rules 123-4-01 and 123-4-03.

(Fowler Affidavit, ¶ 13.) The letter from Harris also noted that plaintiff had previously been issued a written reprimand, a one-day working suspension, and a three-day working suspension "in an effort to correct similar problems". (Fowler Affidavit, Exhibit M.)

{¶14} Defendant's Human Resources Administrator, Rachel Hardesty, avers in an affidavit submitted by Defendant that Plaintiff's union, Ohio Civil Service Employees Association, Local 11, AFSCME ("OCSEA"), filed a grievance on her behalf and "[o]n July 13, 2023, Ms. Bryant, OCSEA and the Department entered into a Grievance Settlement Agreement, attached as Exhibit H, whereby Ms. Bryant's suspensions were removed from her file and her removal was changed to a resignation." (Hardesty Affidavit, ¶ 7.)

{¶15} On April 18, 2023, approximately one month after the termination, and before entering into the Grievance Settlement Agreement with Defendant and the OCSEA, Plaintiff initiated this action. On May 30, 2023, Plaintiff filed her Amended Complaint, which still preceded the Grievance Settlement Agreement.

{¶16} Plaintiff asserts one cause of action in her Amended Complaint: Retaliation under R.C. Chapter 4112. (Amended Complaint, p. 6.) Specifically, Plaintiff claims that "[b]ased solely on that protected activity [of filing OCRC charges], Ms. Bryant was retaliated against 1) by being given a written reprimand; 2) being denied the opportunity to seek other employment in state agencies, including an opportunity to interview for an Accountant Examiner 3 position in the Department of Commerce in December 2022; and 3) being terminated on May 19, 2023, all of which constitute adverse employment actions." (Amended Complaint, ¶ 51.)

Analysis

{¶17} "R.C. 4112.02(I) makes it an unlawful discriminatory practice for 'any person to discriminate in any manner against any other person because that person has opposed

any unlawful discriminatory practice defined in this section' or 'because that person has made a charge, testified, assisted, or participated in any manner in any investigation, proceeding, or hearing under sections 4112.01 to 4112.07 of the Revised Code.'" *Tanksley v. Howell*, 2020-Ohio-4278, ¶ 20 (10th Dist.). "Because of the similarities between R.C. 4112.02(I) and Title VII of the Civil Rights Act of 1964, Ohio courts look to federal case law for assistance in interpreting retaliation claims under R.C. 4112.02(I)." *Moody v. Ohio Dept. of Mental Health & Addiction Servs.*, 2021-Ohio-4578, ¶ 35 (10th Dist.).

{¶18} "Absent direct evidence of retaliatory intent, Ohio courts analyze retaliation claims using the evidentiary framework established by the United States Supreme Court in *McDonnell Douglas Corp. v. Green* (1973), 411 U.S. 792, 93 S.Ct. 1817, 36 L. Ed. 2d 668, a case involving claims of racial discrimination under Title VII of the Civil Rights Act of 1964, Title 42 U.S.C. 2000e, et seq." *Veal v. Upreach LLC*, 2011-Ohio-5406, ¶ 16 (10th Dist.); *see also Mickey v. Zeidler Tool & Die Co.*, 516 F.3d 516, 523 (6th Cir. 2008) ("The *McDonnell Douglas* framework governs claims of retaliation based on circumstantial evidence.").

{¶19} "To establish a prima facie case of retaliation under R.C. 4112.02(I), a plaintiff must establish that (1) they engaged in protected activity; (2) the defending party knew the plaintiff engaged in protected activity; (3) the defending party took an adverse employment action against the plaintiff; and (4) a causal connection between the protected activity and the adverse action." *Childs v. Kroger Co.*, 2023-Ohio-2034, ¶ 99 (10th Dist.). "Once a plaintiff establishes a prima facie case, the burden then shifts to the employer to 'articulate some legitimate, nondiscriminatory reason' for its actions." *Veal* at ¶ 17, quoting *McDonnell Douglas*, 411 U.S. at 802. "If the employer satisfies this burden, the burden shifts back to the complainant to demonstrate 'that the proffered reason was not the true reason for the employment decision.'" *Id.*, quoting *Texas Dept. of Community Affairs v. Burdine*, 450 U.S. 248, 256 (1981).

{¶20} In its Motion for Summary Judgment, Defendant argues that Plaintiff cannot establish a prima facie case of retaliation because she cannot show that Defendant took an adverse employment action against her.

A. Adverse Employment Action

1. Termination

{¶21} With respect to the termination of Plaintiff's employment on May 19, 2023, Defendant asserts that plaintiff waived the right to seek relief over the termination in the Grievance Settlement Agreement between herself, the OCSEA, and Defendant. As support, Defendant cites an affidavit from its Human Resources Administrator, Rachel Hardesty. Hardesty avers, among other things, that after the termination of Plaintiff's employment, the OSCEA filed a grievance on her behalf and on July 13, 2023, a Grievance Settlement Agreement was reached in which Plaintiff's termination was changed to a resignation. (Hardesty Affidavit, ¶ 7.) Defendant submitted a copy of that agreement, authenticated by Hardesty, which states, in part:

> Employee agrees:
>
> To waive any and all rights they may currently or subsequently poses [sic] to receive any reparation, restitution or redress for the events which formed the basis of the aforementioned grievance, including the right to resort to administrative appeal or through the institution of legal action.

(Hardesty Affidavit, ¶ 7, Exhibit H.)

{¶22} Thus, according to the plain language of the Grievance Settlement Agreement, which Plaintiff signed on July 13, 2023, Plaintiff agreed to waive any right to redress over the termination of her employment, including through the institution of legal action.

{¶23} Defendant also submitted a copy of its requests for admission served to Plaintiff, including Request No. 10 in which Plaintiff was asked to "Admit that by signing the OCSEA Grievance Settlement Agreement (Bates Stamped 001256-001257) on July 13, 2023, you agreed to waive any and all rights you currently had or subsequently possessed to receive any reparation, restitution or redress for your removal, including the right to institute a legal action over the removal." (Requests for Admission, No. 10.) Defendant asserts that Plaintiff failed to respond or object to the requests for admission, and that the requests are consequently deemed admitted under Civ.R. 36(A) ("The matter is admitted unless, within a period designated in the request, not less than twenty-eight days after service of the request or within such shorter or longer time as the court may

allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by the party's attorney.").

{¶24} Plaintiff opposes the Motion for Summary Judgment on the basis that there are "factual disputes as to the termination, and the Department's motivations regarding that termination . . . ." (Response, p. 9.) Stated differently, Plaintiff argues that "[b]ecause she was terminated, there can be no dispute that she was subjected to an adverse employment action . . . ." (Response, p. 6.) But Plaintiff does not address the threshold argument raised by Defendant as to whether she waived the right to seek legal relief over her termination, nor does Plaintiff address whether she admitted as much by failing to respond to Defendant's requests for admission.

{¶25} "'It is axiomatic that a settlement agreement is a contract designed to terminate a claim by preventing or ending litigation and that such agreements are valid and enforceable by either party.'" *Zinsmeister v. Ohm*, 2022-Ohio-4787, ¶ 9 (10th Dist.), quoting *Associated Estates Realty Corp. v. Roselle*, 1999 Ohio App. LEXIS 2831, *9 (10th Dist. June 22, 1999). "The trial court construes the written . . . agreements of the parties using traditional contract principles." *Gardner v. Das*, 2024-Ohio-2429, ¶ 23 (10th Dist.). "A court construing a contract attempts to discover and effectuate the intent of the parties, which is presumed to reside in the language chosen by the parties in the agreement." *Moody v. Ohio Rehab. Servs. Commn.*, 2002-Ohio-6965, ¶ 8 (10th Dist.). "Common words appearing in a written instrument are to be given their plain and ordinary meaning unless manifest absurdity results, or unless some other meaning is clearly intended from the face or overall contents of the instrument." *Id.*

{¶26} According to the Grievance Settlement Agreement, the parties agreed, among other things, that the termination or "removal issued 5/19/2023 will be changed to reflect a resignation, effective 5/19/2023". Plaintiff, for her part, agreed to "waive any and all rights . . . to receive any reparation, restitution or redress for the events which formed the basis of the aforementioned grievance, including . . . through the institution of legal action." There is no dispute that the events which formed the basis of the grievance included the termination of her employment on May 19, 2023. Under the plain language of the Grievance Settlement Agreement, then, plaintiff waived the right to institute legal

action to seek redress for the termination of her employment. *See Toumany Sayon Sako v. Ohio Dept. of Admin. Servs.*, 278 Fed.Appx. 514 (6th Cir. 2008) (former employee waived right to bring suit under Title VII as part of grievance settlement agreement with state agency and OCSEA); *Campbell v. Dept. of Rehab. & Corr.*, 2011-Ohio-3897, ¶ 7 (Ct. of Cl.) ("plaintiff's claims arising from her termination in 2006 are barred by the April 2007 'grievance settlement agreement' and defendant is entitled to summary judgment on the same."), reversed in part on other grounds, *Whatley v. Ohio Dept. of Rehab. & Corr.*, 2012-Ohio-944 (10th Dist.); *Wright v. Apple Creek Dev. Ctr.*, 2008 U.S. Dist. LEXIS 22823, *8 (N.D.Ohio Mar. 24, 2008) ("The waiver language in the OCSEA grievance settlement agreement Wright signed has been in use for many years. It has been routinely (and so far, unanimously) enforced by Ohio federal courts.").

{¶27} Therefore, because Plaintiff waived the right to sue over the termination of her employment as part of the July 13, 2023 Grievance Settlement Agreement, the termination cannot serve as a basis for Plaintiff's claim of retaliation.

2. Written Reprimand

{¶28} Defendant argues that the written reprimand Plaintiff received for not participating in a training program on August 15, 2022, as instructed by her supervisor, does not qualify as an adverse employment action.

{¶29} "For a claim of retaliation under R.C. 4112.02(I), an adverse employment action includes any action that 'might well have dissuaded a reasonable worker from making or supporting a charge of discrimination.'" *Childs*, 2023-Ohio-2034, at ¶ 103, quoting *Smith v. Superior Prod., LLC*, 2014-Ohio-1961, ¶ 34 (10th Dist.). "Plaintiff's burden of establishing a materially adverse employment action is 'less onerous in the retaliation context than in the anti-discrimination context.'" *Laster v. Kalamazoo*, 746 F.3d 714, 730 (6th Cir.2014), quoting *Michael v. Caterpillar Fin. Servs. Corp.*, 496 F.3d 584, 595-596 (6th Cir.2007). The Sixth Circuit Court of Appeals has held in retaliation cases, however, that a "'written reprimand without evidence that it led to a materially adverse consequence such as lowered pay, demotion, suspension, or the like, is not a materially adverse employment action.'" *Davis v. Metro Parks & Recreation Dept.*, 854 Fed.Appx.

707, 716 (6th Cir. 2021), quoting *Creggett v. Jefferson Cty. Bd. of Ed.*, 491 Fed.Appx. 561, 566 (6th Cir. 2012).

{¶30} Teri Fowler, Defendant's now-retired Labor Relations Administrator, avers in her affidavit that in her former role with Defendant she "worked in the Human Resources Department, and my duties included coordinating and advising management on labor management concerns, problems and possible resolutions for all activities involving Department work rules and policies. That involved recommendations for administrative action that can include discipline and discipline-related activities as required by the collective bargaining agreements-to include pre-disciplinary hearings and employee grievances." (Fowler Affidavit, ¶ 1.) In this instance, Fowler explains, "[b]ased upon the objective facts relayed to me by Mr. Morant and Mr. Boberg, I authorized a written reprimand in accordance with Department work rules and discipline grid." (Fowler Affidavit, ¶ 6.) Fowler avers that "[t]he written reprimand did not change the terms and conditions of Plaintiff's employment with the Department. Rather, her pay, benefits, status, and opportunities remained unchanged after the reprimand. Further, written reprimands do not appear on an employee's history report at the state level, and therefore, it would not be visible to another state agency." (Fowler Affidavit, ¶ 5.)

{¶31} Defendant thus submitted evidence showing that the written reprimand did not cause Plaintiff to lose any pay or endure any other materially adverse consequence.

{¶32} In her response, Plaintiff does not address the merits of Defendant's argument that the written reprimand was not an adverse employment action. Plaintiff asserts, rather, that "[b]ecause of the factual disputes as to the *termination*, and the Department's motivations regarding that *termination*, genuine issues remain as to whether or not the proffered reasons for the *termination* were a pretext" and the Motion for Summary Judgment should therefore be denied. (Emphasis added.) (Response, p. 9.) Plaintiff points to the termination as the adverse employment action on which her case rests, but as previously explained, Plaintiff waived the right to file suit over her termination. As to the written reprimand, Plaintiff fails to meet her burden of pointing to evidence demonstrating a genuine issue of material fact on the question of whether the written reprimand was an adverse employment action. Plaintiff has not pointed to

evidence that the written reprimand had any impact on her pay or benefits or otherwise impacted her employment.

{¶33} The uncontroverted evidence submitted by Defendant regarding the written reprimand demonstrates that the written reprimand would not have dissuaded a reasonable employee from making a claim of discrimination. *See Taylor v. Geithner*, 703 F.3d 328, 338 (6th Cir. 2013) ("Although certain written reprimands could rise to the level of an adverse employment action, the written reprimands given here would not have dissuaded a reasonable worker from making a claim of discrimination.").

{¶34} Finally, it is noted that the Amended Complaint appears to identify one additional alleged adverse employment action: "being denied the opportunity to seek other employment in state agencies, including an opportunity to interview for an Accountant Examiner 3 position in the Department of Commerce in December 2022 . . ." (Amended Complaint, ¶ 51.) But in opposing summary judgment, Plaintiff does not assert that this was an adverse employment action, let alone point to evidence establishing that Defendant denied her an opportunity to seek other employment in state agencies. Moreover, as previously stated, Defendant's now-retired Labor Relations Administrator, Teri Fowler, averred that Plaintiff's "opportunities remained unchanged after the reprimand" and that "written reprimands do not appear on an employee's history report at the state level, and therefore, it would not be visible to another state agency." (Fowler Affidavit, ¶ 5.) And whether or not Plaintiff's one-day working suspension was visible to another state agency in December 2022, Plaintiff waived any right to redress over both the one-day and three-day suspensions under the terms of the July 13, 2023 Grievance Settlement Agreement between the parties and the OCSEA, as the suspensions together with the termination formed the basis of the underlying grievances. (Hardesty Affidavit, ¶ 7, Exhibit H.)

{¶35} In sum, Defendant met its burden of coming forward with evidence affirmatively demonstrating that Plaintiff cannot establish that she was subject to an adverse employment action as necessary to establish a prima facie case of unlawful retaliation. Plaintiff, in turn, did not respond by affidavit or other Civ.R. 56 evidence with specific facts showing that a genuine issue exists for trial. Even when making all

reasonable inferences in Plaintiff's favor, reasonable minds can only conclude that Plaintiff cannot prove her prima facie case.

B. Legitimate, Non-Discriminatory Reasons/Pretext

{¶36} Defendant additionally argues that even if Plaintiff were able to establish the elements of a prima facie case, there were legitimate, non-discriminatory reasons for her written reprimand, working suspensions, and termination. As set forth above, the affidavits and supporting documents submitted by Defendant identify legitimate, non-discriminatory reasons why Defendant issued the written reprimand and working suspensions and ultimately terminated Plaintiff's employment. To summarize, the affidavits of Fowler and Brandon Morant demonstrate that the written reprimand resulted from Plaintiff not following Morant's direction to participate in a particular training program. (Morant Affidavit, ¶ 5; Fowler Affidavit, ¶ 6.) The affidavits of Fowler and Evan Robinson demonstrate that the suspensions resulted from Plaintiff failing to comply with department policy regarding disclosure of taxpayer account information during phone calls. (Fowler Affidavit, ¶ 8; Robinson Affidavit, ¶ 3-4.) And Fowler's affidavit demonstrates that the termination resulted from Plaintiff sending numerous emails to her personal email account, at times copying others that were not part of Defendant's secured network, and including in those emails "sensitive taxpayer information and copies of many of the job aids, tools, resources and network paths where information is saved", in violation of several department policies and rules. (Fowler Affidavit, ¶ 13.)

{¶37} Plaintiff's failure to follow a supervisor's directions and follow Defendant's policies and rules constitute legitimate, non-discriminatory reasons for the actions taken by Defendant. *See Yazdian v. ConMed Endoscopic Techs., Inc.*, 793 F.3d 634, 652 (6th Cir. 2015) ("We have long held that an employer has legitimate cause to discipline or terminate an employee who refuses to follow through on an employer's expressed directions."); *Goldblum v. Univ. of Cincinnati*, 62 F.4th 244, 252 (6th Cir. 2023) ("an employee's insubordination and her failure to follow company policies constitute legitimate, nonretaliatory reasons to terminate employment."). Therefore, the burden shifts to Plaintiff to demonstrate that there is a genuine issue of material fact as to whether the reasons identified by Defendant were merely pretext for retaliation.

{¶38} "A plaintiff can demonstrate pretext by showing that the proffered reason (1) has no basis in fact, (2) did not actually motivate the defendant'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). "At the summary judgment stage, the issue is whether the plaintiff has produced evidence from which a jury could reasonably doubt the employer's explanation." *Chen v. Dow Chem. Co.*, 580 F.3d 394, 400, fn.4 (6th Cir. 2009).

{¶39} Plaintiff did not respond to the Motion for Summary Judgment with an affidavit or point to any other Civ.R. 56 evidence with specific facts showing that a genuine issue exists for trial on the question of pretext. While Plaintiff attached various documents to her response, they are not authenticated by way of affidavit and Plaintiff provides little explanation as to how they support her claim.

{¶40} Plaintiff nevertheless argues that the written "reprimand had no basis in fact". (Response, p. 4.) Brandon Morant, the supervisor who issued the written reprimand, explained in an affidavit that it was based upon Plaintiff not following his direction to work on "t610 correspondence training" on August 15, 2022. (Morant Affidavit, ¶ 3-5.) It is not disputed that Plaintiff was asked in a request for admission to admit that on August 15, 2022, she received instructions from Morant that included working on t610 correspondence training, nor is there any dispute that this request is deemed admitted because Plaintiff failed to respond. (Request for Admission No. 4.) *See* Civ.R. 36(A). Plaintiff also admits in her response to the Motion for Summary Judgment that she "did not participate in the August 15th classes". (Response, p. 4.) Accordingly, reasonable minds can only conclude that Plaintiff did not follow Morant's direction to work on t610 correspondence training on August 15, 2022, which was the factual basis for the written reprimand.

{¶41} Citing the temporal proximity of the most recent charge of discrimination that she filed with the OCRC, in September 2022, and the termination of her employment eight months later, in May 2023, Plaintiff also argues that the "timeline is evidence that the adverse action was in retaliation for the protected activity". (Response, p. 7.) "However, temporal proximity alone is insufficient to show pretext" for purposes of a retaliation claim under R.C. 4112.02(I). *Jiashin Wu v. Northeast Ohio Med. Univ.*, 2019-Ohio-2530, ¶ 33 (10th Dist.).

{¶42} Accordingly, even when making all reasonable inferences in Plaintiff's favor, reasonable minds can only conclude that Plaintiff did not meet her burden of producing evidence from which a factfinder could reasonably doubt Defendant's explanation for its actions.

Conclusion

{¶43} Based upon the foregoing, the Court concludes that there are no genuine issues of material fact and that Defendant is entitled to judgment as a matter of law. Accordingly, Defendant's Motion for Summary Judgment shall be granted, and judgment shall be rendered in favor of Defendant.

LISA L. SADLER
Judge

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STACEY BRYANT Plaintiff v. OHIO DEPARTMENT OF TAXATION Defendant	Case No. 2023-00301JD Judge Lisa L. Sadler Magistrate Robert Van Schoyck JUDGMENT ENTRY

IN THE COURT OF CLAIMS OF OHIO

{¶44} A non-oral hearing was conducted in this case upon Defendant's Motion for Summary Judgment. For the reasons set forth in the decision filed concurrently herewith, the Court concludes that there are no genuine issues of material fact and that Defendant is entitled to judgment as a matter of law. As a result, Defendant's Motion for Summary Judgment is GRANTED and judgment is rendered in favor of Defendant. All other pending motions are DENIED as moot. 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.

LISA L. SADLER
Judge

Filed February 12, 2025
Sent to S.C. Reporter 3/27/25