IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

RONALD FLORES, *Plaintiff*	§	
-vs-	§	**CIVIL ACTION NO. 1:21-cv-00719**
TEXAS DISPOSAL SYSTEMS, INC. *Defendant*	§	

ORDER

Before the Court in the above-entitled and styled case is Defendant's Amended Motion for Summary Judgment (Dkt. 18). For the reasons explained herein, the Court finds that the Motion for Summary Judgment as relevant to Plaintiff's ADA claim and FMLA Retaliation claim should be **DENIED** and as relevant to Plaintiff's FMLA Interference claim should be **GRANTED**.

I. BACKGROUND

Plaintiff Ronald Flores was hired on August 4, 2010 as a Lead Painter for Defendant Texas Disposal Systems, Inc ("TDS"). Over the proceeding ten-year period, Plaintiff received salary increases and was eventually promoted to Container Maintenance Manager. In that position he was responsible for supervising and managing a team that performed on- and off-site welding, fabrication, and painting of company- and customer-owned assets in compliance with company and federal safety regulations. In 2016 and 2018, Plaintiff took intermittent leave under the Family and Medical Leave Act ("FMLA") in connection with medical issues with his children. Neither instance of leave was contested by Defendant.

In late December of 2019, Plaintiff was unexpectedly hospitalized with a heart condition for three days. Plaintiff quickly notified his direct superior, Harold Graves, of his potential need

for leave and proceeded to organize and submit the proper paperwork to the Benefits Department as instructed. On February 4, 2020, Plaintiff was notified that his request for leave was approved. However, the very next day Plaintiff was terminated by Defendant. Defendant alleges that Plaintiff permitted an employee under his supervision, Sonny Garcia, to operate a company vehicle without a valid driver's license—an action that Defendant contends is a violation of company safety protocol and one that resulted in a car accident and injuries to another driver. Plaintiff asserts a disability discrimination claim, a FMLA retaliation claim, and a FMLA interference claim against Defendant. On January 24, 2023, Defendant TDS filed a summary judgement motion. On February 3, 2023, Plaintiff Flores filed his response, and on February 10, 2023, Defendant TDS filed its reply.

II. LEGAL STANDARD

"Summary judgment is appropriate only if 'the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.'" *Tolan v. Cotton*, 572 U.S. 650, 656–57 (2014) (quoting Fed. R. Civ. P. 56(a)). A dispute about a material fact is "genuine" if the evidence, taken as a whole, could lead a rational trier of fact to find for the nonmoving party. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp*., 475 U.S. 574, 587 (1986); *Kariuki v. Tarango*, 709 F.3d 495, 501 (5th Cir. 2013). On a motion for summary judgment, "a court must view the evidence 'in the light most favorable to the opposing party.'" *Tolan*, 572 U.S. at 657 (quoting *Adickes v. S.H. Kress & Co*., 398 U.S. 144, 157 (1970)). The nonmoving party's evidence must be accepted as true, and all reasonable inferences must be drawn in that party's favor. *Anderson*, 477 U.S. at 255; *Chaplin v. NationsCredit Corp*., 307 F.3d 368, 372 (5th Cir. 2002); *Richardson v. Oldham*, 12 F.3d 1373, 1379 (5th Cir. 1994). "If reasonable minds could differ on the inferences arising from undisputed facts, then a court

should deny summary judgment." *Carlson v. FedEx Ground Package Sys., Inc*., 787 F.3d 1313, 1318 (11th Cir. 2015) (quoting *Allen v. Tyson Foods, Inc*., 121 F.3d 642, 646 (11th Cir. 1997)); *accord Askanase v. Fatjo*, 130 F.3d 657, 665 (5th Cir. 1997) ("Summary judgment is inappropriate when conflicting inferences and interpretations may be drawn from the evidence."); *see also Byrd v. Roadway Express, Inc*., 687 F.2d 85, 87 (5th Cir. 1982) ("That the movant appears more likely to prevail at trial is no reason to grant summary judgment; it is not the province of the court on a motion for summary judgment to weigh the evidence, assess its probative value, or decide factual issues.")

III. DISCUSSION

a. PLAINTIFF'S ADA CLAIM

The Americans with Disabilities Act ("ADA") prohibits an employer from discriminating against a 'qualified individual with a disability on the basis of that disability.' " *E.E.O.C. v. LHC Grp., Inc*., 773 F.3d 688, 694 (5th Cir.2014) (quoting 42 U.S.C. § 12112(a)). "When a plaintiff can offer only circumstantial evidence to prove a violation of the ADA, this court applies the McDonnell Douglas burden-shifting framework." *E.E.O.C. v. Chevron Phillips Chem. Co*., LP, 570 F.3d 606, 615 (5th Cir.2009). Under this framework, the plaintiff must make a *prima facie* showing of discrimination. *Id*. Once the showing is made, a presumption of discrimination arises, and the employer must "articulate a legitimate non-discriminatory reason for the adverse employment action." *See id*. The burden then shifts to the plaintiff to show the articulated reason is pretextual. *Id*.

Here, Defendant maintains it is entitled to summary judgment on Plaintiff's ADA claim on two grounds. First, Defendant argues that Plaintiff fails to establish a *prima facie* case of disability discrimination. Second, Defendant argues that even if Plaintiff does establish a *prima*

facie case, Plaintiff fails to prove that Defendant's explanation for Plaintiff's termination is pretextual. In support of its motion, Defendant argues that Plaintiff fails to meet the very first element of a *prima facie* case of disability discrimination: that the plaintiff suffered from a disability. The Court agrees with Plaintiff and finds that the ADA defines a person with a "disability" as one who: (1) has an actual physical or mental impairment that substantially limits one or more major life activities or major bodily functions of such individual; (2) a record of such an impairment; or (3) being *regarded* as having such an impairment. 42 U.S.C. § 12102(1) (emphasis added).

The Court finds that the determination of whether Plaintiff establishes the first element of a *prima facie* case for disability discrimination, depends on whether Plaintiff can show that Defendant perceived Plaintiff as having an impairment—with no requirement that Plaintiff show the severity of his impairment. 29 U.S.C. 1630.2(G) (citing Joint Hoyer-Sensenbrenner Statement at 4); *see also Burton v. Freescale Semiconductor, Inc.*, 798 F.3d 222, 230 (5th Cir. 2015). Defendant argues Plaintiff fails to establish that Defendant regarded him as impaired. In support, Defendant argues that it was not even "aware of any specific medical condition or disability prior to [Plaintiff's] termination." (Dep. Graves, 17:3-18:20). Defendant argues that without knowledge of any medical condition, it is impossible for Defendant to have discriminated against Plaintiff.

Such an argument would hold great weight, if not for the Plaintiff's evidence providing to the contrary. In support of his reply to Defendant's Motion for Summary Judgment, Plaintiff cites several deposition excerpts showing exactly what knowledge Defendant had regarding his medical conditions. Plaintiff shows that Defendant knew he was suffering from weight issues and shortness of breath, that doctors were concerned about his heart, that the back muscle in his

heart stiffened, and that it was not pumping correctly. Graves Dep. at 15:5-17; 68:2-7; 54:16-55:24; 57:10-12; 72:15-24. Defendant knew that Plaintiff was hospitalized as a result of that condition for three days in 2019 and that following Plaintiff's return to work, that doctors warned of the possible need for open heart surgery.

Defendant asserts this evidence it is not sufficient to prove that Defendant regarded Plaintiff as disabled. In support, Defendant cites *Burton v. Freescale Semiconductor, Inc.*, where the court was persuaded by an employer's e-mails that "extensively discuss[ed]" an employee's health condition. *Burton*, 798 F.3d at 231. Defendant appears to relay that this holding implements a requisite amount of employer-authored evidence to establish that it regarded an employee as disabled. The Court finds no such indication or that anything less than equivalent levels of evidence as found in *Burton* precludes raising an issue that an employer regarded an employee as disabled. *See generally* Burton, 798 F.3d at 230-31 (discussing that there was ample evidence, not sufficient evidence, to show that an employer had knowledge of the plaintiff's disability after alleging it was not aware of it). Thus, the Court finds that a reasonable jury could find that Defendant regarded Plaintiff as disabled.

Nonetheless, Defendant argues it is entitled to summary judgment even if Plaintiff establishes a *prima facie* case, because Plaintiff fails to prove that Defendant's explanation for Plaintiff's termination is pretextual. Defendant states that Plaintiff was terminated for failing to ensure compliance with and enforcement of company policy—namely, that Plaintiff permitted an employee under his supervision to operate a company vehicle without a valid driver's license resulting in a collision with another driver. The Court agrees with Plaintiff that the pretext inquiry requires a sufficient showing of the falsity of an employer explanation that would allow the fact finder to determine that discrimination was the but-for cause of the termination.

Goudeau v. Nat'l Oilwell Varco, L.P., 793 F.3d 470, 478 (5th Cir. 2015). The Court further agrees that it is not enough that an employer was wrong about underlying facts that motivated the adverse employment action, but rather the employer must have had a good-faith belief that those facts were true. *See Arrieta v. Yellow Transp., Inc.*, 2008 WL 5220569, at *9.

However, the Court disagrees with Defendant's assertion that there is not evidence that it did not act with good-faith beliefs. Plaintiff provides several facts to support its argument that Defendant did not have a good-faith belief in the facts underlying its decision to terminate Plaintiff. First, Plaintiff shows that following Defendant's internal investigation, Defendant did not know who instructed the employee under Plaintiff's supervision to operate the vehicle without a license, whether Plaintiff even knew who drove the vehicle on the day of the collision, and that the status of that employee's drivers license "was an on and off thing." Under these facts, the Court holds that a reasonable jury could find that Defendant's cited reason for Plaintiff's termination was pretextual.

b. PLAINTIFF'S FMLA RETALIATION CLAIM

Defendant argues it is entitled to summary judgment on Plaintiff's FMLA retaliation claim on two main grounds. First, Defendant argues that Plaintiff fails to establish a *prima facie* case of retaliation. Second, even if Plaintiff can establish a *prima facie* case of retaliation, Defendant argues that Plaintiff cannot show that Defendant's stated reason for termination was pretextual. Defendant rests most of its efforts to dismiss the FMLA retaliation claim upon Plaintiff's lack of a comparator. Defendant argues that a *prima facie* case of retaliation requires that Plaintiff present an individual with the "same job or responsibilities as the plaintiff, [who] shared the same supervisor or had their employment status determined by the same person, and [who] had essentially comparable violation histories." (Dkt. 18, pg. 8)

The Court finds that Defendant incorrectly states the *prima facie* case requirements under the FMLA. Had Plaintiff instead attempted to prove disparate treatment, such an element would be required. *See Bryant v. Compass Group USA, Inc*., 413 F.3d 471, 478 (5th Cir. 2005). While disparate treatment is one method of establishing a causal connection in a *prima facie* case for retaliation, it is not the only method, nor does it appear to be the one pursued by Plaintiff. To state a prima facie case of retaliatory discharge under the FMLA, Plaintiff must show (1) protected activity by the plaintiff; (2) discharge; and (3) causal connection between the protected activity and the discharge. *Chaffin v. John H. Carter Co.,* 179 F.3d 316, 319 (5th Cir.1999). Plaintiff correctly argues that causation may be established partly by temporal proximity and by showing that Defendant's articulated reason for terminating Plaintiff is pretextual. Accordingly, the Court analyzes the causal element of the *prima facie* case and the argument for pretext simultaneously.

Plaintiff supports his retaliation claim by asserting the temporal proximity of Plaintiff's protected conduct and his termination establishes a *prima facie* case of causation. Defendant relies on *Jarjoura v. Ericsson*, *Inc.,* to show that temporal proximity alone is insufficient to establish pretext. In Jarjoura, that court held that timing alone was not enough to support retaliation when evidence showed that the employer's actions were *justified*. *Jarjoura v. Ericsson*, *Inc*., 266 F. Supp. 2d 519, 532 (N.D. Tex. 2003), *aff'd*, 82 F. App'x 998 (5th Cir. 2003) (emphasis added). While it is true that under those stated circumstances temporal proximity alone would be insufficient, this case is distinguishable from *Jarjoura*. There, there was "no question that [the employee] violated [company] policy." *Id*. at 531. Defendant misconstrues the court's holding in *Jarjoura* by eliminating the difference between the insufficiency of temporal proximity when an employer's actions are justified, versus its

sufficiency when there is proof of subsidiary facts to support a finding of retaliatory discrimination. Here, as apart of Plaintiff's argument for pretext in his ADA claim, there are challenges as to whether Plaintiff ever did violate company policy. Accordingly, the Court holds that a reasonably Jury could find in favor of Plaintiff.

c. PLAINTIFF'S FMLA INTERFERENCE CLAIM

Lastly, Defendant asserts it is entitled to summary judgement regarding Plaintiff's interference claim based upon duplicity. Notably, Plaintiff's response filed February 3, 2023, lacks any mention of the claim and fails to address the arguments presented by Defendant. The Court agrees with Defendant that when the plaintiff repeatedly disavows the theory that he was terminated because he took leave, and that the true crux of his claim is that he was not restored to his job, that the proper claim to pursue is an interference claim. *Nero v. Industrial Molding Corp.*, 167 F.3d 921, 927 (5th Cir. 1999). The Court finds no evidence that Plaintiff claims any interference by TDS other than that he was terminated after being granted intermittent leave under FMLA. Accordingly, the Court agrees that the claims are essentially identical, that the primary focus of Plaintiff's complaint is his termination, and that the FMLA interference claim should be dismissed.

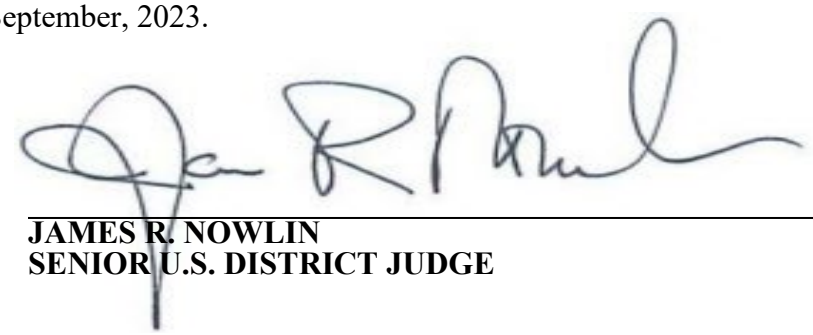
IV. CONCLUSION

For the reasons explained herein, the Court enters the following order:

IT IS ORDERED that Defendant TDS's Amended Motion for Summary Judgment (Dkt. 18) is **GRANTED** in part and **DENIED** in part.

IT IS FURTHER ORDERED that Plaintiff Ronald Flores' FMLA interference is claim is **DISMISSED**.

SIGNED this 22nd day of September, 2023.



JAMES R. NOWLIN
SENIOR U.S. DISTRICT JUDGE