

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 26-1070

JACK KAHRIGER,
Appellant
v.

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(E.D. Pa. Civil Action No. 2:23-cv-04384)
District Judge: Honorable Gerald J. Pappert

Submitted Pursuant to Third Circuit LAR 34.1(a)
October 21, 2026
Before: BIBAS, CHUNG, and BOVE, *Circuit Judges*

(Opinion filed: October 22, 2026)

OPINION*

PER CURIAM

Pro se appellant Jack Kahriger appeals from the District Court's grant of summary judgment on his sex discrimination and retaliation claims against his employer, the U.S.

* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

Department of Health and Human Services (“HHS”). For the reasons that follow, we will affirm the District Court’s judgment.

I.

Kahriger began his employment at HHS’s Office of Inspector General (“OIG”) in 1989 as an Auditor.¹ He was promoted to Senior Auditor in 1998, and then in 2017, he was promoted again to Assistant Regional Inspector General for Audit Services (“ARIGAS”) at the GS-14 level. In that position, Kahriger led a team of seven people. At the time relevant to this lawsuit, Kahriger and the other four ARIGAS positions in the Philadelphia office reported to Jason Jelen, the Regional Inspector General for Audit Services (“RIGAS”).

From July 2012 to October 2014, Kahriger dated Denise DeLeon, who worked in the same office as an Administrative Officer. Kahriger has maintained that, after their break-up, DeLeon posted Kahriger’s personal information and a photograph of him on dontdateaplayer.com.

In the summer of 2017, Kahriger exchanged disparaging text messages about DeLeon with Sheila Warriner, one of the auditors on his team.² Warriner and DeLeon

¹ Because we write primarily for the parties, we will recite only the facts necessary for this discussion, which are undisputed unless otherwise noted.

² For example, Kahriger expressed his belief that DeLeon was playing “games” with people, was “pathological,” had “the mentality of an armed shooter who has hostages,” had “lunatic reactions,” and was an “office terrorist”; he also compared her to a serial killer. *See* Def.’s Ex. 7 to Summ. J. Mot. at ECF p. 3, 7, 9, 13, 18, 32-33. Warriner agreed with many of Kahriger’s statements and made additional comments about DeLeon, including stating that DeLeon was acting like a child and that DeLeon was

later reconciled, and when Kahriger learned about this in September 2017, he suggested that Warriner transfer to a different team. The next day, both Warriner and DeLeon sent complaints about Kahriger to HR Director Cynthia Stasch and Office of Counsel Attorney Susie King. Less than a week later, auditors Velena Flores and Lynne Pohler submitted complaints about Kahriger as well. On October 10, 2017, after Warriner submitted screenshots of her text messages with Kahriger to King and Stasch, Kahriger was informed that he was to telework until further notice.

King and Stasch conducted interviews with Kahriger and six members of his office between October 18 and November 8, 2017, as part of their investigation into these complaints. Around this time, Kahriger told Jelen that DeLeon had sent him offensive texts about another coworker, ARIGAS Robert Baiocco, in 2014. Baiocco filed a complaint against DeLeon on November 27, 2017, and listed Kahriger as a witness.

On December 13, 2017, Kahriger was demoted to Senior Auditor at the GS-13 level and transferred to the Trenton office, where he continues to work. Kahriger's demotion letter stated that his actions "undermined the agency's ability to manage the workplace efficiently and in [a] professional manner," and that his "demonstrated actions do not reflect the skills needed to be successful" as a supervisor. *See* Def.'s Ex. 6 to Summ. J. Mot. at ECF p. 7.

"certifiably nuts" and "crazy." *Id.* at ECF p. 16, 24, 26. Warriner later represented to management that Kahriger manipulated her into believing that DeLeon did not like her or had something against her.

Kahriger filed an EEO complaint in 2018, and initiated the underlying federal lawsuit in 2023, claiming sex discrimination and retaliation under Title VII of the Civil Rights Act. HHS moved for summary judgment, which was granted after a hearing, and Kahriger timely appealed.

II.

We have jurisdiction pursuant to 28 U.S.C. § 1291. We exercise plenary review over the District Court’s grant of summary judgment for HHS. *See Blunt v. Lower Merion Sch. Dist.*, 767 F.3d 247, 265 (3d Cir. 2014). Summary judgment is appropriate “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.” Fed. R. Civ. P. 56(a). A genuine dispute of material fact exists if the evidence is sufficient for a reasonable factfinder to return a verdict for the nonmoving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

III.

We agree with the District Court’s grant of summary judgment. Kahriger brought two claims in his operative complaint, claiming discrimination due to disparate treatment and a hostile work environment, as well as retaliation for his participating in Baiocco’s EEO complaint process.

To state a prima facie case of sex discrimination relying on a theory of disparate treatment under Title VII, a plaintiff must allege four elements, the last of which is that he suffered an adverse employment action under circumstances that give rise to an

inference of unlawful discrimination, such as where the employer treated a similarly situated employee who was not a member of the plaintiff's protected class more favorably.³ See *St. Mary's Honor Ctr. v. Hicks*, 509 U.S. 502, 506-07 (1993); *Tex. Dep't of Cmty. Affairs v. Burdine*, 450 U.S. 248, 253 (1981); *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802 (1973). The record does not support that inference here.

On appeal, Kahriger first contends that he can show an inference of unlawful discrimination because Warriner participated in the text message exchange with him but was not disciplined for her participation. But as the District Court determined, Warriner is not an appropriate comparator for Kahriger. Kahriger was Warriner's supervisor, held a position at a grade above Warriner (GS-14 vs. GS-13, respectively), and was paid significantly more than Warriner. Kahriger served as the acting RIGAS when Jelen was unavailable, attended management meetings, and supervised an entire team, while Warriner did not oversee any staff. Kahriger's Supervisory Auditor job description included planning work schedules for subordinates, interviewing candidates for positions, recommending promotions or reassignments, implementing minor disciplinary measures such as warnings, reviewing leave requests and expenses for subordinates, and recommending awards and bonuses, among other responsibilities. Warriner had no comparable responsibilities in her role as a Senior Auditor.

Kahriger primarily argues that his position was not truly supervisory because he

³ The remaining elements of Kahriger's prima facie case are not disputed here.

could not fire or hire employees, but that does not diminish the other substantial differences between his position and Warriner's. Under these circumstances, no reasonable factfinder could conclude that Kahriger and Warriner were similarly situated. *See Patterson v. Avery Dennison Corp.*, 281 F.3d 676, 680 (7th Cir. 2002) (explaining that, to be similarly situated, a comparator must be someone "directly comparable to [the plaintiff] in all material respects"); *cf. Mandel v. M & Q Packaging Corp.*, 706 F.3d 157, 170 (3d Cir. 2013) ("[A]n employee who holds a different job in a different department is not similarly situated.").

Next, Kahriger argues that an agency human resources specialist told him in August 2017 at a conference that she did not believe the agency treated men fairly, in response to Kahriger asking a question about an earlier investigation. But Kahriger does not explain how this supported an inference that Kahriger was subject to disparate treatment based on sex in the course of this specific investigation, as this individual did not participate in Kahriger's disciplinary process, and she allegedly made this comment well before any complaints were made against Kahriger or before the decision was made to demote and transfer him. *Cf. Ezold v. Wolf, Block, Schorr & Solis-Cohen*, 983 F.2d 509, 545 (3d Cir. 1992) ("Stray remarks by non-decisionmakers or by decisionmakers unrelated to the decision process are rarely given great weight, particularly if they were made temporally remote from the date of decision.").

Kahriger also argues that he and other male managers were disciplined due to complaints of female subordinates, suggesting that disciplinary decisions were based on

sex, but the record does not show that any other male manager in Kahriger's former office was disciplined during the time relevant to this lawsuit.

There is also no record evidence to support Kahriger's belief that any decisionmaker was biased against him due to his sex. Kahriger asserts that King was biased against him because she failed to sufficiently investigate his complaints about the dontdateaplayer.com website, but she reported the issue for investigation to the Office of Investigations, Special Investigations Branch, which ultimately declined to open an investigation. Additionally, Kahriger has raised speculative concerns about King's communications with the complainants as part of the investigative process, but none of the communications in the record suggest bias against Kahriger due to his sex.⁴ Thus, Kahriger cannot state a prima facie case of disparate treatment.

Next, to state a prima facie claim of retaliation, a plaintiff must establish that “ (1) [he] engaged in activity protected by Title VII; (2) the employer took an adverse employment action against [him]; and (3) there was a causal connection between [his] participation in the protected activity and the [retaliatory] adverse employment action.” *Lynn v. Bank of New York Mellon*, 180 F.4th 133, 143 (3d Cir. 2026) (citation modified). Kahriger has argued that HHS demoted and transferred him in retaliation for supporting

⁴ To the extent that Kahriger made additional arguments in the District Court, he has not raised them in his appellate brief and has thus forfeited them. *See In re Wettach*, 811 F.3d 99, 115 (3d Cir. 2016). We do not consider any arguments that Kahriger makes for the first time on appeal, *see Jenkins v. Superintendent of Laurel Highlands*, 705 F.3d 80, 88 n.12 (3d Cir. 2013), or any issues he discusses for the first time in his reply brief, *see Barna v. Bd. of Sch. Dirs. of Panther Valley Sch. Dist.*, 877 F.3d 136, 146 (3d Cir. 2017).

Baiocco's EEO complaint against DeLeon and that temporal proximity supports his claim. *See Carvalho-Grevious v. Del. State Univ.*, 851 F.3d 249, 260 (3d Cir. 2017) (explaining that temporal proximity that is "unusually suggestive of retaliatory motive" can sufficiently demonstrate a causal link between protected activity and an adverse employment action) (citation modified).

The record does not show a causal connection between Kahriger's involvement in Baiocco's complaint process and Kahriger's demotion and transfer. The record makes clear that Assistant Inspector General for Audit Services Amy Frontz made the decision to demote and transfer Kahriger, with input from the investigation conducted by King and Stasch. Frontz, King, and Stasch met in late November 2017 to discuss the investigation, after King circulated a legal memorandum discussing conduct unbecoming a supervisor. On December 1, 2017, King sent Frontz a draft of a document titled "Removal from Supervisory Position Prior to Completion of Probationary Period," based on their earlier meeting about Kahriger; this was also the document title of the ultimate demotion and reassignment letter that Kahriger received. *See* Def.'s Ex. 39 to Summ. J. Mot. at ECF p. 2. Later that day, Stasch forwarded Frontz an email about the Baiocco complaint, which did not mention Kahriger.

Kahriger ultimately received his demotion and transfer letter on December 13, 2017, but Frontz has stated in an affidavit and in testimony that she was unaware of Kahriger's involvement with Baiocco's EEO complaint prior to making her decision about Kahriger. Kahriger points to emails from King and Stasch to support his belief that

no decision had yet been made on December 6 or December 7, 2017, but these emails merely informed Warriner and DeLeon that no information could be shared at that time about the investigation as the process had not yet fully concluded. Accordingly, because the record evidence does not support a causal connection between Kahriger's involvement as a witness to Baiocco's complaint and his demotion and transfer, he cannot state a prima facie case of retaliation.

Finally, Kahriger cannot state a hostile work environment claim, as he has not explained how the evidence shows that his workplace was “permeated with *discriminatory* intimidation, ridicule, and insult . . . that is sufficiently severe or pervasive to alter the conditions of [his] employment and create an abusive working environment.” *See Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 21 (1993) (citation modified) (emphasis added). Kahriger presents only conclusory statements on appeal that do not meaningfully challenge the District Court's conclusion that he could not show that he experienced severe or pervasive harassment due to his sex. For substantially the reasons provided by the District Court, we agree that summary judgment was appropriately granted for HHS on this claim.

For these reasons, we will affirm the judgment of the District Court.