UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

JOHN KIRK MATTHEWS,

Plaintiff,

v. CASE NO. 8:23-cv-2277-WFJ-TGW

QUICK FREELANCERS and
JAMIE BAXTER,

Defendants.
_____/

REPORT AND RECOMMENDATION

The plaintiff filed an Application to Proceed in District Court Without Prepaying Fees or Costs pursuant to 28 U.S.C. 1915 (Doc. 9), seeking a waiver of the filing fee for his complaint (Doc. 1). His complaint appeared to assert claims of hostile work environment and retaliation in violation of Title VII of the Civil Rights Act of 1964 (see Doc. 1; Doc. 1-1). I recommended that the complaint be dismissed with leave to amend, which United States District Judge William F. Jung adopted (see Docs. 13, 14). The plaintiff filed an amended complaint (Doc. 17) and new affidavits of indigency (Docs. 18, 19). The amended complaint contains the same substantive and procedural errors as the initial complaint. However, there could be a possible retaliation claim if greater detail about the protected

activity is provided. Thus, I recommend that the motion to proceed in forma pauperis be denied and the complaint be dismissed without prejudice with leave to amend the retaliation claim.

Under 28 U.S.C. 1915(a)(1), the court may authorize the filing of a civil lawsuit without prepayment of fees if the plaintiff submits an affidavit that includes a statement of all assets showing an inability to pay the filing fee and a statement of the nature of the action which shows that he is entitled to redress. Even if the plaintiff proves indigency, the case shall be dismissed if the action is frivolous or malicious or fails to state a claim upon which relief may be granted. 28 U.S.C. 1915(e)(2)(B)(i), (ii). A claim is frivolous when it appears from the face of the complaint that the factual allegations are "clearly baseless" or that the legal theories are "indisputably meritless." Bilal v. Driver, 251 F.3d 1346, 1349 (11th Cir. 2001). "Unsupported conclusory factual allegations also may be 'clearly baseless.'" Craven v. Florida, No. 6:08-cv-80-Orl-19GJK; 2008 WL 1994976 at *4 (M.D. Fla. May 8, 2008), adopted at *2.

In this matter, the plaintiff worked as a "freelancer" for defendant Quick Freelancers.[1] The lawsuit appears to center around a few

[1] The second defendant, Jamie Baxter, appears to have only been named because of his status as "co-founder/CEO" of the defendant company.

oral exchanges that the plaintiff had with a co-worker and at least one manager. Notably, the plaintiff appears to re-assert the same facts and events that he set forth in his initial complaint, however, he has separated those events in separate counts (compare Doc. 1-1, pp. 6–7 with Doc. 17, pp. 2–14).

As I stated in my previous report and recommendation, it appears that the plaintiff's hostile work environment claim stems from his treatment at work, such as being yelled at by a manager and co-workers. To establish a claim of a hostile work environment, the plaintiff must show, "(1) that he is a member of a protected class; (2) that he was subjected to unwelcome racial harassment; (3) that the harassment was based on his race; (4) that the harassment was severe or pervasive enough to alter the terms and conditions of his employment and create a discriminatorily abusive working environment; and (5) that the employer is responsible for the environment under a theory of either vicarious or direct liability." Adams v. Austal, U.S.A., L.L.C., 754 F.3d 1240, 1248–49 (11th Cir. 2014).

Previously, I noted that the plaintiff failed to satisfy several elements, namely that he had not stated that he is a member of a protected class and that he failed to establish that the harassment was "severe or pervasive." The plaintiff has not remedied these issues in his amended

complaint.

As indicated, the plaintiff's amended complaint contains virtually the same facts that were in his initial complaint, with some additional statements. From what can be discerned, the plaintiff appears to try to bolster his hostile work environment claim by stating that (Doc. 17, p. 4):

> The Qwick Freelancer Manager/Supervisor Mike M. knew or should've known that by discussing the complaint with Kayla, without the plaintiff being present to mediate the situation. and initial complaint that was filed would cause hostility in the work environment. and Kayla also retaliated against plaintiff by badgering [sic] him in a hostile manner for making a complaint.

This information does not satisfy the deficient elements for the plaintiff's hostile work environment claim. Thus, the plaintiff provides no additional facts to show that the instances that occurred, namely being yelled at by a manager and co-worker, reached the required level of severity or pervasiveness to state a hostile work environment claim. See McCann v. Tillman, 526 F.3d 1370, 1378 (11th Cir. 2008) (providing that courts examine "'the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance'") (internal citations omitted)). Thus, "'simple teasing,' offhand comments, and

isolated incidents (unless extremely serious) will not amount to discriminatory changes in the 'terms and conditions of employment.'" Faragher v. City of Boca Raton, 524 U.S. 775, 788, (1998). Moreover, the Supreme Court has held that Title VII "does not set forth a general civility code for the American workplace." Burlington N. and Santa Fe Ry. Co. v. White, 548 U.S. 53, 68 (2006) (internal citation omitted). Finally, the plaintiff has still failed to show that he is a member of a protected class. Thus, I recommend that the plaintiff's hostile work environment claim be dismissed with prejudice.

The plaintiff's retaliation claim appears to be based on his termination, which the plaintiff avers was caused by his complaints, but also that he was impermissibly fired for having a felony conviction. To state a claim for retaliation under Title VII, the plaintiff must show that "(1) he engaged in protected activity; (2) he was subjected to adverse action and (3) there existed a causal link between the adverse action and the protected activity." Chandamuri v. Georgetown University, 274 F.Supp. 2d 71, 84 (D.D.C. 2003).

I stated in my prior report and recommendation that the plaintiff's retaliation claim was deficient in his initial complaint. The claim remains deficient in his amended complaint. Namely, the plaintiff has still

failed to show that he engaged in a protected activity and that there was a causal link between the adverse action and the protected activity. The plaintiff made statements such as, "the complaint about being retaliated against by the employee for making a complaint, which was a protected activity" and that "plaintiff engaged in a protected activity by making an informal grievance to the supervisor about the employees acts and omissions" (Doc. 17, pp. 9, 11). However, the plaintiff needs to provide greater detail surrounding the protected activity to support a claim of retaliation. Accordingly, I recommend that the plaintiff's claim of retaliation be dismissed without prejudice.

Like his initial complaint, his amended complaint also does not comply with Federal Rule of Civil Procedure 10(b) which provides that "[a] party must state its claims ... in numbered paragraphs, each limited as far as practicable to a single set of circumstances," and that "each claim founded on a separate transaction or occurrence ... must be stated in a separate count." Fed. R. Civ. P. 10(b). Thus, while he appears to have separated out the facts in his complaint, he does not clearly state for each "count" which cause of action he is asserting that is supported by the facts in that section.

Accordingly, the complaint fails to state a claim on which relief may be granted. §1915(e)(2)(B)(ii). Even though this is the plaintiff's

second opportunity to file a cognizable complaint, it appears there may be a valid claim. Therefore, I recommend that the amended complaint be dismissed without prejudice with leave to amend the retaliation claim.

Respectfully submitted,

THOMAS G. WILSON
UNITED STATES MAGISTRATE JUDGE

DATED: December 20, 2024.

NOTICE TO PARTIES

The parties have fourteen days from the date they are served a copy of this report to file written objections to this report's proposed findings and recommendations or to seek an extension of the fourteen-day deadline to file written objections. 28 U.S.C. 636(b)(1)(C). Under 28 U.S.C. 636(b)(1), a party's failure to object to this report's proposed findings and recommendations waives that party's right to challenge on appeal the district court's order adopting this report's unobjected-to factual findings and legal conclusions.