UNITED STATES COURT OF APPEALS
For the Fifth Circuit

No. 97-50680
Summary Calendar

DONALD M. VALCHER,

Plaintiff-Appellant,

VERSUS

TOGO D. WEST, JR., Secretary of the United States Army,

Defendant-Appellee.

Appeal from the United States District Court
For the Western District of Texas
(SA-97-CV-389)

March 10, 1998

Before WISDOM, WIENER, and DENNIS, Circuit Judges.

PER CURIAM:[*]

Donald M. Valcher, an employee with the Operation Maintenance
Division of the United States Army Medical Department Center at
Fort Sam Houston, Texas, filed a lawsuit against the Secretary of
the Army in which he alleged that the Army retaliated against him,
in violation of Title VII, for filing a prior Equal Employment

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[*]Pursuant to 5TH CIR. R. 47.5, the Court has determined that
this opinion should not be published and is not precedent except
under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

Opportunity grievance. The alleged retaliation consisted of a five-day suspension from duty under a pretext of unacceptable workplace misconduct. The district court dismissed Valcher's complaint because he failed to exhaust administrative remedies, and, in the alternative, granted summary judgment in favor of the Army because Valcher failed to raise a genuine issue of material fact as to his contention that his suspension was driven by improper retaliatory motive. We affirm.

Even if we were to determine that Valcher exhausted his administrative remedies, a <u>de novo</u> review of the record reveals that summary judgment was appropriate. The defendant articulated legitimate, non-retaliatory reasons for suspending Valcher.[2] Because Valcher has not made a colorable showing that the defendant's proffered reasons are pretextual, he cannot escape summary judgment.

AFFIRMED.

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[2] <u>See</u> *Long v. Eastfield College*, 88 F.3d 300, 304 (5th Cir. 1996). The evidence in this case showed that Valcher verbally abused fellow employees and attempted to provoke physical altercations.