

United States Court of Appeals  
for the Fifth Circuit

United States Court of Appeals  
Fifth Circuit

**FILED**

September 11, 2026

Lyle W. Cayce  
Clerk

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No. 25-30700

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JENNIFER PAYNE,

*Plaintiff—Appellant,*

*versus*

HAMMOND CITY,

*Defendant—Appellee.*

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Appeal from the United States District Court  
for the Eastern District of Louisiana  
USDC No. 2:24-CV-1857

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Before WILLETT, ENGELHARDT, and DOUGLAS, *Circuit Judges*.

PER CURIAM:\*

Appellant Jennifer Payne, a former employee of the Hammond Police Department, filed suit against Appellee City of Hammond, alleging employment discrimination, disability discrimination, retaliatory demotion and discharge, and wrongful discharge under Title VII of the Civil Rights Act (“Title VII”), 42 U.S.C. § 2000e *et seq.*; Title I of the Americans with Disabilities Act (“ADA”), 42 U.S.C. § 12101 *et seq.*; and the Louisiana

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\* This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

No. 25-30700

Employment Discrimination Law (“LEDL”), La. R.S. § 23:301 *et seq.* Because Payne has failed to allege any genuine disputes of material fact, we AFFIRM the district court’s grant of summary judgment in favor of the City on all claims.

I

Payne was hired by the Hammond Police Department (“HPD”) as a Communications Officer in 2000, reclassified as a Police Officer in 2002, promoted to Sergeant in 2017, and promoted again to probationary Lieutenant in February 2022. Payne was moved from the Records and Communications Division to the Patrol Division in May 2022. She was on extended sick leave, with full pay, from September 2, 2022, through December 31, 2023. Payne’s working test period to achieve the permanent rank of Lieutenant was paused while she was on extended sick leave, and she never achieved that rank.

On September 1, 2022, Payne received a cervical injection that caused her to miss work that day and the next. Her absence was designated as “sick leave.” Because this absence marked Payne’s seventh non-consecutive sick-leave absence, the City’s policy mandated that she visit the City doctor to receive return-to-work authorization. Pending that appointment, Payne would remain on designated sick leave. From Monday, September 5 through Saturday, September 10, Payne took a previously scheduled trip to Mexico, intending to see the City doctor upon her return. However, under the City’s sick-leave policy (“Sick-Leave Policy” or the “Policy”) found in HPD General Order No. 140, an employee may leave her residence during sick leave only for reasons enumerated in the Policy or for additional reasons as authorized by management on an ad hoc basis. An internal investigation, launched on September 9, determined that Payne had violated the Policy by going on vacation while on sick leave.

No. 25-30700

On September 15, Payne had a second cervical injection. She was scheduled to see the City doctor on September 19 but, having overslept, missed the appointment. She eventually visited the City doctor on October 5, but was not approved to return to work pending MRI results. On December 28, 2022, Payne underwent lumbar-fusion surgery. Thereafter, although Payne requested to return to work on light duty throughout her extended sick leave, Payne remained ineligible to return until she received clearance from the City doctor and completed fit-for-duty testing. Nearly one year after her first spinal procedure, Payne's doctors still had not cleared her to participate in fit-for-duty testing. In fact, Payne's medical team did not provide a date by which she might be able to submit for fit-for-duty testing, and her neurosurgeon indicated that she had "likely permanent" restrictions.

On May 4, 2023, Payne filed an Equal Employment Opportunity Commission ("EEOC") charge of discrimination against the City. That same day, HPD officials met with the Office of State Examiner ("OSE"), the governing civil service agency, to discuss an appropriate remedy for Payne's September 2022 Sick Leave Policy violation. The OSE recommended either demotion or discharge. Five days later, the HPD received notice, dated May 9, 2023, of the EEOC Charge. On May 25, 2023, Payne was demoted from the rank of Sergeant, the last permanent rank she held, to the rank of patrol officer, the next lowest rank, for that violation of the Policy.

In November 2023, the City conducted a hearing with Payne, along with her legal and union representatives, to discuss her ability to return to work. Payne admitted that she could no longer perform the essential duties of her position. Payne was removed from service on December 18, 2023, pursuant to La. R.S. § 33:2560(A)(13), which permits removal from service

No. 25-30700

due to the “development of any defect or physical condition which precludes the employee from properly performing the duties of his position.”

The district court granted the City’s motion for summary judgment on all claims. Payne timely appealed. *See* FED. R. APP. P. 4(a).

## II

We review a district court’s summary-judgment decision de novo. *Saketkoo v. Adm’rs of Tulane Educ. Fund*, 31 F.4th 990, 997 (5th Cir. 2022). “The court shall grant summary judgment 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 fact is material if it might affect the outcome of the suit and a factual dispute is genuine if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” *Thompson v. Microsoft Corp.*, 2 F.4th 460, 467 (5th Cir. 2021) (citation omitted). “Although we view all facts and draw all reasonable inferences in favor of the nonmovant, a party cannot defeat summary judgment with conclusory allegations, unsubstantiated assertions, or only a scintilla of evidence.” *Ayorinde v. Team Indus. Servs. Inc.*, 121 F.4th 500, 506 (5th Cir. 2024) (citation modified).

## III

Payne raises five sets of issues on appeal: (A) claims of Title VII sex discrimination; (B) failure-to-accommodate claims under the ADA and the LEDL; (C) a Title VII retaliatory-demotion claim, and Title VII and LEDL retaliatory-discharge claim; (D) Title VII and LEDL wrongful-termination claims; and (E) a claim that summary judgment was improperly entered. We address each set of claims in turn.

No. 25-30700

A

Payne alleges Title VII sex discrimination based on the City’s refusal to accommodate her requests for a light-duty work assignment, modifications to the Sick Leave Policy, and disciplinary action taken for her alleged violations of the Policy in both 2022 and 2023. The district court found that she had failed to establish a prima facie case of sex discrimination because she did not identify an adequate comparator for each claim. We agree.

To establish a prima facie case of Title VII sex discrimination based on circumstantial evidence, an employee must show that “(1) she is a member of a protected class; (2) she was qualified for [her job]; (3) she suffered an adverse employment action; and (4) others similarly situated but outside the protected class were treated more favorably.” *Saketkoo*, 31 F.4th at 997–98 (citation omitted). An employee satisfies the “similarly situated” prong by comparing her treatment to that of a comparator, “a similarly situated employee outside of her protected class in nearly identical circumstances.” *Id.* at 998; *see also Lee v. Kan. City S. Ry. Co.*, 574 F.3d 253, 259–60 (5th Cir. 2009). Even at the summary-judgment stage, the plaintiff must demonstrate that the alleged comparator’s situation is “nearly identical” to hers. *Saketkoo*, 31 F.4th at 997–98.

First, regarding Payne’s light-duty request, it is undisputed that she was ineligible to return to work, in any capacity, until she visited the City doctor, which she had not done when her initial requests for light duty were denied. When Payne visited the City doctor on October 5, 2022, the City doctor did not approve her to return to work; nor did the City doctor authorize her to return to work at any point thereafter. As we have noted, the employee’s “conduct that drew the adverse employment decision must have been ‘nearly identical’ to that of the proffered comparator who allegedly drew dissimilar employment decisions.” *Lee*, 574 F.3d at 260 (citation

No. 25-30700

omitted) (noting that a comparator is not similarly situated when the difference in conduct “*accounts for*” the difference in treatment (citation omitted)). Payne claims that the HPD offered light-duty assignments to certain male officers but denied her the same opportunity. Payne, however, presents no facts indicating that these male officers were ineligible to work when they were allegedly assigned light duty. *See Ragas v. Tenn. Gas Pipeline Co.*, 136 F.3d 455, 458 (5th Cir. 1998) (observing that Rule 56 does not require the court to comb through the record for evidence supporting a party’s assertions).

Turning to Payne’s complaints related to the Sick Leave Policy, Payne offers a glaring lack of argument or record citation to support her claim. The Policy permits employees on sick leave to leave their homes only for enumerated reasons or for additional reasons upon management’s approval. Payne asserts that she was treated differently from certain male colleagues who were allegedly permitted to leave their homes as they wished during sick leave. However, Payne has failed to present evidence showing that her male colleagues were afforded opportunities to leave their homes that she was not. *See id.*; *see also Ayorinde*, 121 F.4th at 508 (holding that litigant “cannot defeat summary judgment with conclusory allegations, unsubstantiated assertions, or only a scintilla of evidence” (citation modified)).

Finally, regarding Payne’s claim that she was punished disparately for her Policy violations, Payne has not provided any competent summary-judgment evidence to demonstrate that she was treated differently from similarly situated male colleagues. *See Miller v. Michaels Stores, Inc.*, 98 F.4th 211, 218 (5th Cir. 2024) (finding that “[h]earsay is not competent summary judgment evidence unless its proponent can show that the statement can be presented in an admissible form at trial” (citations omitted)).

No. 25-30700

## B

The district court also granted summary judgment in favor of the City on Payne's disability-discrimination claims under the ADA and the LEDL. The district court found that Payne's failure-to-accommodate claims failed because her requested accommodations were not reasonable. Payne alleges that the HPD failed to accommodate her requests for (1) indefinite leave; (2) light-duty assignment; (3) modifications to the Sick Leave Policy's requirements; and (4) reassignment to alternate duty. She also alleges that (5) the HPD failed to engage in an interactive process to address her accommodation requests.

Claims under the ADA and the LEDL are judged under the same standard; therefore, we discuss the two claims in tandem. *See Jenkins v. Cleco Power, LLC*, 487 F.3d 309, 311, 315 (5th Cir. 2007) (analyzing ADA and LEDL claims together under the ADA standard for disability discrimination). To establish a prima facie failure-to-accommodate claim, an employee must demonstrate that "(1) [s]he is a qualified individual with a disability; (2) the disability and its consequential limitations were known by the covered employer; and (3) the employer failed to make reasonable accommodations for such known limitations." *Thompson*, 2 F.4th at 467.

The employee bears the burden of proving the reasonableness of her requested accommodation. *Riel v. Elec. Data Sys. Corp.*, 99 F.3d 678, 683 (5th Cir. 1996). "The ADA does not require an employer to relieve an employee of any essential functions of his or her job, modify those duties, reassign existing employees to perform those jobs, or hire new employees to do so." *EEOC v. LHC Grp., Inc.*, 773 F.3d 688, 698 (5th Cir. 2014) (citation modified). "Once the employee presents a request for an accommodation, the employer is required to engage in an interactive process so that together

No. 25-30700

they can determine what reasonable accommodations might be available.” *Id.* at 699 (citation modified).

First, Payne has not shown that the HPD’s failure to accommodate her request for indefinite leave constituted discrimination. Her doctors were unable to provide an estimate regarding when Payne might be eligible for fit-for-duty testing necessary to return to work and indicated that her restrictions were “likely permanent.” “[A]n employer is not required to provide a disabled employee with indefinite leave.” *Delaval v. PTech Drilling Tubulars, L.L.C.*, 824 F.3d 476, 481 (5th Cir. 2016); *see also Silva v. City of Hidalgo*, 575 F. App’x. 419, 423 (5th Cir. 2014) (per curiam) (unpublished) (“Reasonable accommodation does not require an employer to wait indefinitely for the employee’s medical conditions to be corrected.” (quoting *Rogers v. Int’l Marine Terminals, Inc.*, 87 F.3d 755, 760 (5th Cir. 1996))).

Second, Payne failed to demonstrate that the City discriminated against her by denying her request for a light-duty assignment. There is no material dispute regarding Payne’s completion of the necessary steps to return to work in *any* capacity in the Patrol Division; thus, summary judgment regarding her claim that the City failed to accommodate her light-duty request was proper.

Third, Payne cannot show that the City failed to accommodate her request to leave her home, without notification, for reasons other than those enumerated in the Policy.<sup>1</sup> The City accommodated Payne’s November 2023 request to leave her home for additional reasons, without notification, and there is no evidence that she explicitly requested to leave her home, without notification, for other reasons prior to that time. The employee

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<sup>1</sup> The Policy allows employees to leave their residences, for reasons other than those enumerated therein, after notification to and permission from management.

No. 25-30700

bears the burden of requesting a reasonable accommodation, *see LHC Grp.*, 773 F.3d at 699 ; *see also Riel*, 99 F.3d at 683; thus, summary judgment was warranted.

Fourth, Payne unsuccessfully argues that the City discriminatorily denied her an opportunity to return to work as a Sergeant or Lieutenant or, alternatively, as an employee in the Communications division—roles that, unlike a patrol officer, involve primarily sedentary work. While reassignment may be a reasonable accommodation under some circumstances, the employee must show that the position exists, is available, and that she is qualified for it. *See Foreman v. Babcock & Wilcox Co.*, 117 F.3d 800, 810 (5th Cir. 1997). Payne has not pointed to any facts indicating that she was eligible to work in *any* capacity within the Patrol Division because she had not received return-to-work authorization from the City doctor. Furthermore, it was not possible for her to be reassigned to the Communications Division because, under the HPD’s policies, she would have had to apply and be hired for that position, which involved duties outside the scope of an officer in the Patrol Division. Therefore, the district court’s grant of summary judgment to the City was appropriate.

Fifth, and finally, Payne has not shown that the City failed to engage in the “interactive process.” “Once an accommodation is requested, an employer must engage in the ‘interactive process,’ or a flexible dialogue, with the employee with the goal of finding an appropriate accommodation for the limitation.” *Delaval*, 824 F.3d at 481. Payne presents no facts that could lead a reasonable jury to find that the City failed to engage in the interactive process; to the contrary, the HPD solicited information from Payne’s physician, requested a second opinion from the City doctor, and engaged Payne and her counsel in a hearing to discuss her disability accommodations. Accordingly, summary judgment in favor of the City was proper.

No. 25-30700

C

Payne unsuccessfully argues that her demotion and discharge from service were instigated by her request for disability accommodations and her filing of the EEOC Charge.

To establish a prima facie retaliation case under Title VII or the LEDL, an employee must demonstrate “that (1) she participated in an activity protected under the statute; (2) her employer took an adverse employment action against her; and (3) a causal connection exists between the protected activity and the adverse action.” *Feist v. La., Dept. of Just., Off. of the Atty. Gen.*, 730 F.3d 450, 454 (5th Cir. 2013). If an employee can establish a prima facie case, the burden shifts to the employer to demonstrate a non-retaliatory, legitimate purpose for the adverse employment action. *Id.* Upon such a showing by the employer, the burden then shifts back to the employee who must show that the employer’s stated reason is pretextual. *Id.* At summary judgment specifically, this requires the employee to “show ‘a conflict in substantial evidence’ on the question of whether the employer would not have taken the action ‘but for’ the protected activity.” *Id.* (quoting *Long v. Eastfield Coll.*, 88 F.3d 300, 308 (5th Cir. 1996)).

It is uncontested that Payne established the first two elements of her prima facie case for both retaliatory demotion and retaliatory discharge. Regarding Payne’s retaliatory-demotion claim, Payne also established prong three, causal connection, due to the close temporal proximity (*i.e.*, less than one month) between her filing the EEOC Charge and the City’s decision to demote her. *See Lyons v. Katy Indep. Sch. Dist.*, 964 F.3d 298, 306–07 (5th Cir. 2020) (observing that close temporal proximity alone may establish a prima facie causal connection). But Payne’s claim ultimately fails because she did not offer any evidence rebutting the City’s non-retaliatory motive for demoting her. *Id.* (recognizing that close proximity, alone, “is insufficient to

No. 25-30700

demonstrate *pretext*” (emphasis added)). The City argues that it demoted Payne due to her Policy violation, as recommended by the OSE prior to the City’s receiving notice that Payne had filed the EEOC Charge. Payne offered no evidence to demonstrate that this motive was pretextual. Thus, the district court properly granted summary judgment to the City on Payne’s retaliatory-demotion claim because she failed to “show a conflict in substantial evidence” demonstrating that the HPD “would not have taken the action but for the protected activity.” *Feist*, 730 F.3d at 454 (citation modified).

Turning to Payne’s retaliatory-discharge claim, Payne failed to establish a causal connection between the May EEOC Charge and her December discharge. *See Raggs v. Miss. Power & Light Co.*, 278 F.3d 463, 471–72 (5th Cir. 2002) (finding that a five-month span between protected activity and retaliation, alone, does not establish a causal connection). Summary judgment was warranted as to both claims.

## D

We likewise agree with the district court that Payne failed to demonstrate a factual issue that could lead a reasonable jury to find that the City wrongfully terminated her under Title VII or the LEDL. To establish a *prima facie* case for Title VII and LEDL wrongful termination, an employee must demonstrate, among other requirements, that she “was qualified for the position at issue.” *Willis v. Cleco Corp.*, 749 F.3d 314, 320 (5th Cir. 2014); *see also Clark v. City of Alexandria*, 116 F.4th 472, 486 (5th Cir. -2024) (applying Title VII framework to LEDL claim). The record is devoid of facts indicating that Payne was physically able to return to duty as a police officer in December 2023, when the HPD determined that she should be removed from service under La. R.S. § 33:2560(A)(13) due to her inability to perform essential duties. At her November 2023 hearing, Payne,

No. 25-30700

herself, acknowledged that she was unable to perform the essential duties of a police officer. Payne has submitted no evidence indicating that she was qualified to return for duty, and she “cannot defeat summary judgment with conclusory allegations, unsubstantiated assertions, or only a scintilla of evidence.” *Ayorinde*, 121 F.4th at 508 (citation modified). Due to Payne’s failure to meet her prima facie burden, summary judgment in favor of the City was proper.

#### E

Finally, Payne argues that the district court improperly disposed of the case on summary judgment without a hearing on the merits. As we have noted, “[i]f a trial on the merits will not enhance the court’s ability to draw inferences and conclusions, then a district judge properly should draw his inferences without resort to the expense of trial.” *In re Placid Oil Co.*, 932 F.2d 394, 398 (5th Cir. 1991) (citation modified). The district court properly evaluated competent summary-judgment evidence and disposed of the claims.

#### IV

For the foregoing reasons, we hereby AFFIRM the district court’s grant of summary judgment.