

United States Court of Appeals for the Fifth Circuit

No. 26-50081
Summary Calendar

United States Court of Appeals
Fifth Circuit
FILED
September 22, 2026

Lyle W. Cayce
Clerk

GREGORY GRIM,

Plaintiff—Appellant,

versus

CONFLUENT MEDICAL TECHNOLOGIES, INCORPORATED,

Defendant—Appellee.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 1:24-CV-360

Before DAVIS, JONES, and RICHMAN, *Circuit Judges*.

PER CURIAM:*

Plaintiff-Appellant Gregory Grim claims his former employer, Defendant-Appellee Confluent Medical Technologies, Inc., discriminated against him because of his disability, denied him reasonable accommodations, and retaliated after he complained. The district court granted Confluent's

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

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summary-judgment motion after finding Grim raised no genuine dispute as to pretext. We AFFIRM.

Confluent hired Grim as an in-office engineer to design medical devices. His March 2020 start date coincided with the onset of the COVID-19 pandemic, so Confluent instructed Grim to work from home. At the end of April, Grim produced a doctor's note explaining his chronic health conditions placed him at higher risk of COVID-19 complications. The parties agreed Grim would continue working remotely. Grim never indicated this accommodation was insufficient or asked to change it. While he and certain Confluent managers discussed his return to the office at different times, Grim worked from home throughout his tenure with Confluent—from March 2020 until his discharge in May 2022.

In November 2020, concerns arose about Grim's performance—his communication, workload balance and prioritization, and alignment on expectations. A performance review delivered in April 2021 raised similar issues. The same month, Confluent placed Grim on a performance-improvement plan (PIP). Grim disputed the PIP's substance and blamed a co-worker for its implementation, but did not relate it to his disability or remote-work accommodation. The PIP did not alter Grim's advancement, "compensation, job training, and other terms, conditions, and privileges of employment,"¹ and was lifted in May 2021.

In November 2021, Grim requested and was granted paid leave for two weeks to undergo spinal surgery. He didn't apprise Confluent of the procedure ahead of time but, afterwards, told Confluent's Senior VP of Product Development, Mitchell Tatum, about it. Tatum asked how long Grim would be "out of commission." Grim responded he'd work as much as

¹ 42 U.S.C. § 12112(a).

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possible while recovering. Grim also invited colleagues to “reach out at any time” while in the hospital and told his supervisor, Gil Jimenez, he’d worked full time between hospital stays.

On January 4, 2022, Grim sent Jimenez a doctor’s note dated December 17, 2021, restricting Grim to part-time work. Jimenez was aware that Grim had been working full time, so sought clarification. Grim responded that the note was “old” and “got lost in all the activity before/around the break.” He assured Jimenez he was “able to work more than full time with breaks.” Jimenez asked for an updated medical approval for full-time work and Grim complied. Because Grim was paid his salary for the entire time he was recovering, he did not request an accommodation for his back surgery.

On February 8, 2022, Tatum issued a second, 60-day PIP for reasons similar to those previously raised—communication, workload balance and prioritization, decision making, and on-time delivery of work. According to this second PIP, Grim had nine late tasks and two customers were frustrated with his work. The PIP provided benchmarks and timelines for Grim to achieve them and identified Confluent’s Director of Business Development, Justin Schomburg, as the point person to assess Grim’s progress. Grim again disputed the PIP’s substance, but did not attribute it to a disability or accommodation.

On April 4, 2022, Tatum extended the PIP for 30 days and removed certain deliverables from Grim’s responsibility. On May 2, 2022, Schomburg reported that Grim’s performance was unsatisfactory. Tatum terminated Grim’s employment on May 9, 2022.

Grim sued Confluent under the Americans with Disabilities Act and Texas Labor Code, alleging discrimination, failure to accommodate, and

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retaliation.² After removal from state court and discovery, Confluent moved for summary judgment. The district court reviewed the evidence and found that Grim failed to show that the termination was a pretext for discrimination.³ Our review is de novo.⁴

Grim's counseled brief to this court repeats verbatim the memorandum he filed in opposition to Confluent's summary-judgment motion. Grim does not grapple with the district court's analysis or otherwise explain how it erred. Having ignored the district court's reasoning, Grim has forfeited any argument that it was wrong.⁵

Even without his forfeiture, Grim's case would fail on the merits. Grim claims Confluent denied an accommodation request related to his spinal surgery, then retaliated against him with the second PIP and termination. But Grim offers no evidence that he sought a surgery-related accommodation beyond the paid time off Confluent provided. This lack of proof defeats his case: there can be no failure to accommodate without proof

² See 42 U.S.C. §§ 12101–12213; TEX. LAB. CODE ANN. §§ 21.001–21.556.

³ If a plaintiff makes out a prima facie case of ADA discrimination or retaliation—something the district court *assumed* in this case—the defendant must produce a legitimate reason for the adverse employment action at issue. Once the legitimate reason is provided, the burden shifts back to the plaintiff to demonstrate the employer's reason for the employment action was a pretext for discrimination or retaliation. See *Brenyah v. Columbia Hosp. Corp. of Bay Area*, 181 F.4th 609, 622, 623 (5th Cir. 2026); see also *Way v. City of Mo. City*, 133 F.4th 509, 516 n.4 (5th Cir. 2025) (analyzing ADA and TCHRA claims concurrently).

⁴ See *Johnson v. PRIDE Indus.*, 7 F.4th 392, 399 (5th Cir. 2021).

⁵ See *Brinkmann v. Dallas Cnty. Deputy Sheriff Abner*, 813 F.2d 744, 748 (5th Cir. 1987).

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that Grim sought *some* change to his work arrangements.⁶ And his retaliation claim requires proof that he engaged in ADA-protected activity—in this context, by seeking a surgery-related accommodation—which the record does not support.⁷ Accordingly, we AFFIRM the district court’s judgment in all respects.

⁶ See *Mueck v. La Grange Acquisitions, L.P.*, 75 F.4th 469, 485 (5th Cir. 2023), as revised (Aug. 4, 2023); *Clark v. Champion Nat’l Sec., Inc.*, 952 F.3d 570, 588 (5th Cir. 2020).

⁷ See *Brenyah v. Columbia Hosp. Corp. of Bay Area*, 181 F.4th 609, 623 (5th Cir. 2026) (“To make a successful retaliation claim, a plaintiff must show that: (1) she engaged in activity protected by the relevant statute; (2) an adverse employment action occurred; and (3) a causal link existed between the protected activity and the adverse employment action.”).