Pemberton v. Bell's Brewery, Inc.

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UNITED STATES DISTRICT COURT WESTERN DISTRICT OF MICHIGAN

SOUTHERN DIVISION

JAY PEMBERTON,

Plaintiff, v. ,

Defendant. _____/

Case No. 1:22-cv-739 Hon. Hala Y. Jarbou

OPINION This is an employment action brought under the following: the Americans with Disabilities 12101, et seq.; Civil Rights Act et seq.; t-Larsen Civil Rights Act 37.2101, et seq.; and Title VII of the Civil Rights Act, 42 U.S.C. § 2000e, et seq. ; discriminated against him

because of both his disability and his age; and fired him in retaliation for engaging in activity protected under both the ADA and Title VII judgment (ECF No. 80).

I. FACTUAL BACKGROUND A. - He was promoted to packaging manager in 2007. (Pemberton Dep. 56-57, ECF No. 80-1.) In 2010, he agreed to take a pay cut to move into the brewing department. (Id. at 58, 61-62.) He was promoted to senior brewer in 2012. (Id. at 88.) After his 2012 promotion, Pemberton applied for multiple Id. at other brewers; these brewers were younger than Pemberton. (Id.) One such brewer who received a promotion to brewing lead was Josh Pohlmann. 1

B. Id. at 53) that requires, among other . . . up to 55 80-1.) Pemberton injured his back twice while employed first in 2016, and then again in December 2018. (Pemberton Dep. at 27.) His 2018 injury occurred on the job, and he was taken to the emergency room. (Johnson Decl. ¶ 3, ECF No. 80-4.) As a result of his compensation program. (Id.)

refraining from continuous standing and from lifting or pushing greater than ten pounds. (12/31/18

Vayo Treatment Form, ECF No. 80-4, PageID.1153.) These restrictions rendered Pemberton unable to fully perform the essential functions of the senior brewer position. (Johnson Decl. ¶ 7- 8.) To accommodate these restrictions, house that Pemberton could perform. (Id. ¶ 9.) Pemberton reported

that he was satisfied with this

accommodation. (Request for Accommodation ¶ 7, ECF No. 90-4.)

The light duty work ran out beginning in late March 2019. (Johnson Decl. ¶ 10.) As a solution, Pemberton suggested that he be given a new title and position, Marketing Sales Specialist. However, the Company did not have such a position and declined to

1 The deposition transcripts tend to the Court will also use. create it. (Id. ¶ 11.) Instead, Pemberton was placed on an approved leave of absence beginning March 22, 2019. (Id. ¶ 12.) While on leave, Pemberton received two-thirds of his regular pay. (Pemberton Dep. 20.)

he could work for a non-profit partner while still being paid for full time work by the Company.

(Johnson Decl. ¶ 13.) Pemberton accepted the alternative work arrangement. He participated in the program until July 2019, when he requested to be removed. (Id. placed Pemberton on leave while it explored other available work that could be performed within

his restrictions senior safety specialist re-evaluated the physical confirmed that the duties would violate his restrictions. (Id.)

within the brew house by shifting certain work to other employees; he returned to work on October 9, 2019. (Id. ¶ 18.) Pemberton worked under this accommodation until November 26, 2019, when his restrictions were lifted by his treating physician. (Pemberton Dep. 221; see also Kilmer Dep. 21, ECF No. 80-5.)

C. Interactions with Josh Pohlmann Pemberton Dep. 107.) In February 2019 Id. at 68-70, 109-10.) manner of review , an apparently anomalous manner of conducting annual reviews. (Id. at 69; see also Yunker Dep. 47-49, ECF No. 80-2.)

Pohlmann made several disparaging comments about Pemberton. For instance, Pohlmann told

Schuiling Dep. 33, ECF No. 80- his injury. (Pemberton Dep. 102, 125-26.) treatment of Pemberton and for impeding its investigation into the matter. (Yunker Dep. 49.)

Pemberton eventually served as a witness for (Pemberton Dep. 215.)

D. Pemberton applied to several internal positions throughout the course of his career at 80-1, PageID.929.) He was rejected for many of them. In the years following his 2019 injury, he applied for two roles which he ultimately did not receive: Id.)

but Pemberton lacked sales experience. (Schuiling

Id. at 39.)

Similarly, the technical brewer position went to another employee, Scott Lusk, who was Id. at 36.) Lusk held a Bachelor of Science degree in beverage science and had volunteered to assist on projects worked on by technical brewers. (Id. at 37.)

E. In May 2021, another employee, EE-1, 2

various inappropriate comments towards him. (Yunker Dep. 29-30.) EE-1 is a service veteran

who served in the United States Marine Corps and who suffered from suicidal ideation and multiple suicide attempts in the years following his return from active service duty. (EE-1 Dep. 15.) Pemberton allegedly asked EE-1 questions such as how many people he had killed while on duty and how much money his family would receive if he committed suicide. (Yunker Dep. 30; EE-1 Dep. 10, 26-27.)

- a witness told the Company that Pemberton allegedly made a sexually inappropriate comment about another employee, EE-2. 3 the completion of the investigation, although they did not tell Pemberton the precise reason for the suspension. (Schuiling Dep. 57-59.)

During the initial suspension meeting, Pemberton asked if the investigation had anything to do with a recent Facebook post by another employee, EE-3, 4

detailing date rape allegations. (Schuiling Dep. 31, 57, 101-02.) He was told it did not. EE- were not being handled and were instead referred to a third party for investigation. (Id. at 31.)

-1 and EE-2 on June 2, 2021. Pemberton denied the allegations related to EE-2. Regarding EE-1, Pemberton admitted that he asked the

2 Both parties refer to the non-party - will use the same delineation. 3 Both parties refer to the non-party - 4 Both parties refer to the non- - question about insurance in the event of suicide but did not admit to (Schuiling Dep. 96-99; see also Schuiling Notes, ECF No. 90-5, PageID.1476-1477.)

allegations regarding EE-2. (See Schuiling Dep. 118.) However, the Company decided that discipline was necessary - 1. (See Pemberton ; see also Employee Discipline Form, ECF No. 80-1, PageID.977-979.) third-party investigator that Pemberton might have information relevant to the separate date rape

allegations related to EE-3. (Seaborn Decl. ¶¶ 4-5, ECF No. 80-7.)

F. -Investigation

options. (Pemberton Dep. 185-87.) He could choose to either stay and agree to a so-

result in various sanctions, including a demotion from senior brewer to brewer and mandatory

pay, health insurance assistance, and outplacement assistance. The severance package also came with an agreement that Pemberton would participate in the third-party investigation of EE- rape allegations. (Id; see also Proposed Severance Agreement ¶ 10, ECF No. 80-1.)

G. The End of the Employment Relationship Pemberton was reluctant Pemberton Dep. 197-98.) He began negotiating the terms of

the severance agreement, securing at least some improvements, including an increase in the payout Id. at 193-97; see also Brodie Decl. ¶¶ 3-4, ECF No. 80-8.) Nevertheless, Pemberton, through counsel, rejected the severance agreement on July 8, 2021. (See id. at 198; 7/8/2021 Aikens Email, ECF No. 80-8, PageID.1285.)

H. Pemberton filed a Charge of Discrimination with the Equal Employment . He noted the earliest date that discrimination took place as December 1, 2018, and the latest date as May 26, 2021. In the Charge, he explained:

In or around December 2018 I was injured resulting from an unsafe work practice introduced in or around November 2018. I was put on light duty in or around October 2019 as a result from this injury and was sent home until I was completely recovered. Upon my return I was seen as milking it by other co-workers, which caused tension among the workforce. When applying for Technical Brewer in or around December 2020 or January 2021, I was told I was not hungry enough, nor did I possess a four-year degree. In or around May 2021, I had a conversation with [EE-1] regarding suicide and life insurance policies. I was informed by Emily Schuling of Human Resources that this conversation was creating a toxic and hostile work environment and I was told I needed to step down from Senior Brewer to Brewer. I was never fired, nor did I quit. I believe I was discriminated against by being demoted due to my disabilities, and passed up for a promotion because of my age, 43. I believe I was discriminated against because of my disability, and retaliated against for engaging in protected activity, in violation of Title I of the Americans with Disabilities Act of 1990, as amended, and because of my age (43), in violation of the Age Discrimination in Employment Act of 1967, as amended. (Charge of Discrimination, ECF No. 80-1.) Pemberton also laid out more details in his EEOC Inquiry Questionnaire , many of which have been discussed by the Court in the preceding sections. (See EEOC Inquiry Questionnaire, ECF No. 80-1, PageID.918-928.)

The EEOC declined to pursue charges on its own and issued Pemberton a Right to Sue Letter on May 16, 2022. (Pemberton Dep. 104-05.) He then initiated this lawsuit on August 12, 2022.

I. The Complaint his disability his lower back complications to allow him to take light duty work, instead placing him on a temporary leave of absence.

in Count I.

Count III is under the ADA, Count IV is under the PWDCRA.

Counts V and VI repeat the allegations contained in Counts I through IV under the headline

Count VII claims age discrimination in violation of ELCRA. Pemberton alleges that younger employees were treated differently than him and were held to less stringent standards.

Count VIII claims retaliation for engaging in activity protected under Title VII. Pemberton

Count IX claims retaliation for engaging in activity protected under Title VII. Pemberton surrounding the investigation into EE-3.

II. LEGAL STANDARD Anderson v. Liberty Lobby,

Inc. Id. at 249 (citing , 391 U.S. 253, 288-89 (1961)). Further, summary judgment on affirmative defenses is appropriate. Speedeon Data, LLC v. Integrated Direct Marketing, LLC Id.

Summary judgment is not an opportunity for the Court to resolve factual disputes. Anderson view all the facts in the light most favorable to the nonmoving party and draw all justifiable Wyatt v. Nissan N. Am., Inc., 999 F.3d 400, 410 (6th Cir. 2021).

III. ANALYSIS A. ADA Claims (Counts I, III, and V) The ADA prohibits an employer from discriminating against an otherwise qualified individual because of his or her disability. 42 U.S.C. § 12112(a). At its most basic, this prohibition covers - Lewis v. Humboldt Acquisition Corp., Inc., 681 F.3d 312, 321 (6th Cir. 2012) (quoting Gross v. FBL Fin. Servs., Inc., 557 U.S. 167, 176 (2009)). Failing to make a reasonable accommodation for an otherwise qualified individual also falls w Kleiber v. Honda of Am. Mfg., Inc., 485 F.3d 862, 868 (6th Cir. 2007).

The ADA also prohibits discrimination against individuals who complain or file a charge alleging violations of the statute. 42 U.S.C. § statute creating a cause of action for any workplace retaliation, but protects individuals only from

retaliation for engaging in . . . Rorrer v. City of Stow, 743 F.3d 1025, 1046 (6th Cir. 2014).

An ADA plaintiff must first exhaust administrative remedies. Bullington v. Bedford Cnty., 905 F.3d 467, 469- Id. This requirement is satisfied if the plaintiff explicitly sets forth the claim in the charges.

s., 250 F.3d 336, 342 (6th Cir. 2001).

Pemberton filed two documents with the EEOC the Questionnaire and the Charge. The Sixth Circuit has not definitively answered whether charges contained only in an EEOC intake questionnaire may be considered for exhaustion purposes. See Russ v. Memphis Light Gas & Water Div. consider allegations contained within the questionnaire, particularly when there is also a properly filed charge. See, e.g., Sullivan v. Progressive Cas. Ins. Co., No. 221CV02314SHMCGC, 2022 WL 1274429, at *4 (W.D. Tenn. Apr. 28, 2022) (collecting district court cases within the Sixth Circuit). And in Holowecki EEOC should be construed, to the extent consistent with permissible rules of interpretation, to Holowecki, 552 U.S. at 406. Thus, for the purposes of evaluating administrative remedies, the Court will consider the Questionnaire in conjunction with the Charge.

1. Failure to Accommodate (Count I) claim because his Amended Charge contained separate Questionnaire did contain facts which would support an accommodation claim. For

instance, just prior to his March 2019 leave of absence, Pemberton reported,

After several weeks [of working light duty], no more than 4, I was told I could not return to my light duty position and was sent home . . . I have since discovered other employees that have been injured on the job continued light duty for months, so much so that new roles/positions have been created for them. Positions were created to retain them full time without injury risk. (EEOC Inquiry Questionnaire, PageID.923.) Reading the Questionnaire and the Charge together, the Court concludes that Pemberton sufficiently included the accommodation claim in his pursuit of an administrative remedy. He referenced reasonable accommodations that he had previously received and that others had enjoyed for longer. This is sufficient to survive the first exhaustion defense hurdle.

timely violation of the ADA must file a charge of discrimination within 300 days of the alleged

Parry v. Mohawk Motors of Mich., Inc., 236 F.3d 299, 309 (6th Cir. 2000). Pemberton filed his Charge on March 22, 2023; any claims based solely on events taking place before May 26, 2021 are thus untimely.

liberally, the last time Pemberton complains of some sort of failure to accommodate was in 2018. Indeed, Pemberton has failed to establish even during this litigation that he made any reasonable following his physician beginning November 29, 2019. And [p]laintiffs must . . . on an ADA accommodation claim. Tchankpa v. Ascena Retail Group, Inc., 951 F.3d 805, 812 (6th Cir. 2020).

accommodation requested by Pemberton after May 26, 2021, the Court concludes that Pemberton

failed to timely exhaust his accommodation claim. motion related to Count I.

2. Retaliation and Discrimination (Counts III and V) s also contends that Pemberton failed to properly exhaust his administrative remedies as to his ADA discrimination and retaliation claims. Exhaustion on these claims is a closer issue. In his Charge, Pemberton my disabilities . . . . discrimination and retaliation on his Questionnaire. (EEOC Inquiry Questionnaire, PageID.918.)

And in the narrative attached to the Questionnaire, he detailed instances of coworkers viewing him averred that other employees with on-the-job injuries were able to perform light duty work for longer, and generally described an antagonistic environment with his coworkers. Arguably, Pemberton described an uncomfortable work environment in which his disability played at least some role, culminating in an adverse employment action, within the 300- day administrative remedy period.

To be sure, the EEOC documents do not paint a clear picture of how or when Pemberton was either discriminated against because of his disability or was retaliated against for seeking accommodation. But discrimination and retaliation claims often involve some degree of extrapolation as they are typically established with circumstantial evidence rather than direct evidence, unlike accommodation claims. Compare Rorrer, 743 F.3d at 1046, with Kleiber, 485 F.3d at 868. Thus, given a policy of construing docume and the indirect way these claims are resolved on the merits, the Court finds it prudent to pause on the exhaustion issue and turn its focus to the merits. For sake of analysis, the Court will assume without deciding that Pemberton has properly exhausted his administrative remedies as to his ADA discrimination and retaliation claims.

Moving on to the merits, courts analyze these indirect evidence claims under the familiar McDonnell-Douglas burden-shifting framework. Rorrer, 743 F.3d at 1046. facie case . . . Id. For discrimination, a prima facie case involves a showing by

a plaintiff that (1) he is disabled; (2) he is otherwise qualified for the position, with or without reasonable accommodation; (3) the employer knew of his disability; (4) he suffered an adverse employment decision; and (5) there was a causal connection between the disability and the adverse action. See Hedrick v. W. Reserve Care Sys., 355 F.3d 444, 453 (6th Cir. 2004); see also Rorrer, 743 F.3d at 1046.

The prima facie case is similar for retaliation, requiring a showing that (1) Plaintiff engaged in protected activity under the ADA, (2) the employer knew of that activity, (3) Plaintiff suffered an adverse employment action, (4) there was a causal connection between the protected activity and the adverse action. Rorrer, 743 F.3d at 1046.

In either case, if a plaintiff establishes a prima facie case, the burden then shifts to the defendant to offer a legitimate explanation for its action. If the defendant satisfies this burden of production, the plaintiff must then introduce evidence showing that the proffered explanation is pretextual. Id.

Pemberton a chance to keep his job at the same pay (albeit with a loss of title) or, in the alternative,

employment action when he chose to walk away. Further, the causal connections for both the

retaliation claim and the discrimination claim rely on significant logical leaps. Still, the biggest convincing legitimate explanation for any adverse action. Thus, like administrative exhaustion, the Court again finds it prudent to assume without deciding that Pemberton has established his prima facie case.

met its burden of production by proffering a legitimate, nondiscriminatory, and nonretaliatory reason for its actions inappropriate behavior towards EE-1. At this Human Servs., 668 F.3d 826, 839 (6th Cir. 2012). He has failed to do so.

The only response Pemberton gives related to EE-1 is that EE-1 was not intimidated by 90.) First, the Court cannot locate this quote in the deposition transcripts provided by either party. Second, even assuming EE-1 made that comment, the comment would be out of context at best and actively misleading at worst. EE-1 explicitly testified that he found Pemberton intimidating (EE-1 Dep. id. at 9, 24, 73), that id. at 26, 51), and that his . . . id. at 46).

Further, Pemberton does not dispute the veracity of at least some of the comments he made to EE- -1 about the insurance payout in the event of EE- suicide merely because Schuiling Dep. 91-92.) no basis in fact. Nor does Pemberton point to evidence establishing that the proffered reason did not actually motivate the employer

Indeed, the evidence points the other way. The last chance agreement offered to Pemberton

discussion. In that form, the reasons given for the discipline were that:

Jay Pemberton engaged in inappropriate and damaging statements/questions to a health history. After this event, Jay acknowledged that he saw a difference in employee and planned on addressing but failed to do so directly or indirectly. (Employee Discipline Form 2, ECF No. 80-1.) Pemberton acknowledges that he was given the same reason during the discussion. (Pemberton Dep. 189. Human Resources representative, EE-1 were the reason for the investigation and featured prominently in her interview with

Pemberton on June 2, 2021. (Schuiling Dep. 15-16). Pohlmann,] for discussing his medical condition when we told him not to.

Yunker Dep. legitimate reason for taking adverse action against Pemberton and has substantiated that reason

with testimony.

s of his employer, Booker v. Brown & Williamson Tobacco Co., 879 F.2d 1304, 1312 (6th Cir. 1989). Here,

Pemberton was EE- made, disrupted the working environment for EE-1. ways out for Pemberton, one of which would have

allowed him to keep working in the brew house in exchange for a title demotion and employee training. reason for taking adverse action against him

warranted.

B. PWDCRA Claims (Counts II, IV, and VI)

Donald v. Sybra, Inc., 667 F.3d 757, 763 (6th Cir. 2012) (quoting Cotter v. Ajilon Servs., Inc., 287 F.3d 593, 598 (6th Cir. 2002)). Pemberton does not argue that the Court should treat the PWDCRA claims differently than the ADA claims.

unrelated to the See Mich. Comp. Laws § 37.1202(1)(b) (emphasis added). Consequently, because lifting, pushing, and pulling are all related to his ability to perform his duties and therefore he is not disabled under the PWDCRA. But neither Sixth Circuit

definition of disability; indeed, authorities regularly indicate the opposite. See Donald, 667 F.3d at 763; Chmielewski v. Xermac, Inc., 580 N.W.2d 817, 821- se the [PWDCRA] definition [of disability] mirrors that of the ADA, we examine federal law for . But this case can be resolved on summary judgment without interpreting the .

same result as for the related ADA claims. Assuming Pemberton can establish a prima facie case, Pemberton. Pemberton has failed to adduce evidence indicating pretexts and thus summary

also warranted for Counts IV and VI.

The PWDCRA accommodation issue requires further analysis. There is no exhaustion requirement under the PWDCRA; thus, it cannot be said that Pemberton failed to timely exhaust his PWDCRA accommodation claim, unlike his ADA claim. The PWDCRA does, however, carry a three-year statute of limitations. See Garg v. Macomb Cnty. Cmty. Health Servs., 696 N.W.2d 646, 658 (Mich. 2005); Mich. Comp. Laws § 600.5805. The Complaint was filed on August 12, 2022; any claim premised on conduct before August 12, 2019, is time barred.

duty work. But there is no evidence of Pemberton actively requesting light duty work, or any other

accommodation, after August 12, 2019. Nevertheless, assuming to August 12, 2019 (whether light duty work or the creation of a new position) can be viewed as

matter of law.

. . . has no duty to accommodate the plaintiff by recreating the position, adjusting or modifying job duties otherwise required by the job description, Kerns v. Dura Mech. Components, Inc., 618 N.W.2d 56, 64 (Mich. Ct. App. 2000). Here, Pemberton agrees . . . [were] continual lifting, dragging . . . Pemberton Dep. 53.) work as an adjustment or modification of job duties otherwise required by the senior brewer position obligation to offer under the PWDCRA.

did duty work for several months following December 2018 injury. When the light duty see Johnson Decl. ¶ 9-10; Johnson Emails, ECF No. 80-4, PageID.1173-1198), it placed Pemberton on paid medical leave. It then placed Pemberton with a nonprofit partner and funded his full-time salary. When Pemberton no longer wanted to work at the nonprofit, it placed him back on paid medical leave until it located additional light duty work in October of 2019. A month later, his medical restrictions were lifted by his employers.

s of his internal job applications to field service representative and technical brewer in 2020 and 2021 represent further failures to accommodate, his argument is unavailing. First, Pemberton received a release by his physician to return to his full duties in November 2019. There is no record of him explicitly seeking an accommodation after that time, so the Court would need to interpret these job applications as accommodation requests. Second, again, the PWDCRA does not require an employer to place an employee in another position simply because they ask to be reassigned. Kerns, 618 N.W.2d at 64. requirements of those roles it chose an employee with sales experience for the field service

representative position and an employee with a background in beverage science for the technical brewer position. Pemberton lacked both sales experience and relevant post-secondary education. The PWDCRA did not because he characterizes his application as a request for reasonable accommodation.

For the foregoing reasons, summary judgment is also Count VI,

C. ELCRA Age Discrimination Claim (Count VII) He does not specifically cite the ADEA, but the analysis is the same. Geiger v. Tower Auto., 579 F.3d 614, 626 (6th Cir. 2009). For purposes of analysis, the Court will thus construe the Complaint as bringing both an ADEA and an ELCRA claim.

Because ELCRA does not have the same exhaustion requirements as the ADEA and has a first. Like the PWDCRA, ELCRA has a three-year statute of limitations period. See Loffredo v.

Daimler AG 600.5805(1), (10)). Again, the conduct about which Pemberton complains must have occurred after August 12, 2019.

A prima facie case of age discrimination is similar to a prima facie case for disability discrimination and also uses the McDonnell-Douglas framework. Hazle v. Ford Motor Co., 628 N.W.2d 515, 521 (Mich. 2001). Pemberton must offer evidence that (1) he belongs to a protected class, (2) he suffered an adverse employment action, (3) he was qualified for the position, and (4) the job was given to another person under circumstances giving rise to an inference of unlawful may then offer an age-neutral justification for its actions. If fact to conclude

that discrimination was a motivating factor for the adverse action. Id. at 521-22.

Here, Pemberton is over forty years old and is thus covered by ELCRA. Unlike in the

employee. An ELCRA plaintiff need only show replacement by a younger indivi Gibbs v. Voith Indus. Servs., Inc., 60 F. Supp. 3d 780, 793 (E.D. Mich. 2014). Within the statute of limitations period, Pemberton applied for two jobs which he did not receive, and he was ultimately offered the choice between a demotion or a severance package. The Court will assume each of these was an adverse employment action. Although he has not presented evidence of such, the Court will also assume that he was qualified for the positions he sought. In other words, the Court will assume without deciding that Pemberton has established a prima facie case of age discrimination.

nondiscriminatory reasons for all three adverse employment actions have already been discussed. The field service representative and technical brewer jobs went to more qualified individuals. And Pemberton was offered the choice between the last chance agreement and a severance package as a result of his inappropriate behavior towards EE-1. He has failed to offer evidence that suggests these stated reasons were pretext.

Indeed, the only evidence that Pemberton provides suggesting age discrimination is that he regularly felt compelled to compete with younger employers and that he felt that some younger employers were given a pass on behavior that he would be punished for. For instance, he thought that EE- Pemberton Dep. 84). But, as Pemberton acknowledges, he

id.), nor does he suggest that was why he was passed over for the other internal positions.

Hazle, 628 N.W.2d at 471. Although he has invoked several adverse

Pemberton has failed to offer sufficient evidence to create a triable issue for the jury concerning

D. Title VII Retaliation Claims (Counts VIII and IX) him in retaliation for him serving as a witness in two separate employment-related proceedings EE- These claims

fail for several reasons.

McDonnell-Douglas framework. Laster v. City of Kalamazoo, 746 F.3d 714, 730 (6th Cir. 2006).

Pemberton runs into precisely the same issue with his Title VII claims as he did with his disability and age discrimination claims even assuming he can establish a prima facie case of retaliation, proffered legitimate reasons with sufficient evidence of pretext. This is sufficient to grant summary judgm

he failed to properly exhaust his administrative remedies. Neither the Questionnaire nor the Charge indicates that Pemberton complained of retaliation for engaging in activity protected under serving as a witness in either proceeding

eposition, Mark Wilkeson, accused me of being in cahoots with HR (EEOC Inquiry Questionnaire, PageID.926.) Even when reading the documents liberally, it is not clear in either the Questionnaire or the Charge that Pemberton was investigation. Without that clarity, the Court concludes that Pemberton failed to exhaust these

claims.

Third, the premises of the claims themselves do not hold up to scrutiny. With respect to complaint and then fired Pohlmann as a result. Pohlmann then, apparently, initiated a wrongful a witness. Pemberton does lawsuit a lawsuit inst Pemberton. Further, it is unclear whether

participation in that lawsuit was not protected under Title VII anyways. See Barrett v. Whirlpool

Corp., 556 F.3d 502, 516 (6th Cir. 2020) reasonable and based on a good-faith belief that the employer was acting in violation of Title .

With respect to EE-3, the Company actively tried to get Pemberton to engage with the third-party investigators, but Pemberton refused. This was an explicit condition of the last chance agreement that Pemberton rejected. Pemberton testified that he never cooperated in that investigation. (Pemberton Dep. 192.) But even if Pemberton ultimately did participate in some investigation or lawsuit related to EE-3, he has failed to connect the dots to establish this as the rather than his behavior towards EE-1.

retaliation claims in Counts VIII and IX.

IV. CONCLUSION

Pemberton has failed to create a genuine dispute of material fact for any of his claims. The Court

An order will enter consistent with this Opinion.

Dated: March 18, 2024 /s/ Hala Y. Jarbou

HALA Y. JARBOU CHIEF UNITED STATES DISTRICT JUDGE