IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

DAVID B. YOUNG, Plaintiff, v. UNIVERSITY OF CENTRAL OKLAHOMA, et al., Defendants.	)	Case No. CIV-22-711-SLP

O R D E R

Before the Court is Defendant's Motion to Dismiss and Brief in Support [Doc. No. 7]. Plaintiff has responded, *see* Pl.'s Obj. [Doc. No. 8], and the time to reply has expired. The motion is at issue.

I. Background[1]

Defendant hired Plaintiff, a Black man, as the Director of Procurement Service on October 20, 2014. *See* Compl. [Doc. No. 1] ¶¶ 7, 25. Prior to making a formal EEO complaint with Defendant, Plaintiff informed his supervisor that he had experienced "incidents of bias and discrimination based on national origin, color (Black) and gender" between 2015 and 2021.[2] *See id.* ¶¶ 11–12. The supervisor did not report Plaintiff's claims

[1] The Court "accept[s] as true all well-pleaded factual allegations in the complaint and view[s] them in the light most favorable to [Plaintiff]." *Safe Streets All. v. Hickenlooper*, 859 F.3d 865, 878 (10th Cir. 2017) (quoting *S.E.C. v. Shields*, 744 F.3d 633, 640 (10th Cir. 2014)). The Court includes only those facts relevant to the Motion to Dismiss.

[2] It is unclear from the language of the Complaint whether Plaintiff made multiple reports to his supervisor across a period of years, or if Plaintiff described several years of harassment to his supervisor in a single conversation.

to his superiors, nor did he take steps to address the discriminatory behavior himself. *See id.* ¶ 11. Plaintiff complained on several other occasions "to different managers and supervisors about [his] hostile work environment." *Id.* ¶ 32.

On May 27, 2021, Plaintiff filed a formal EEO complaint with Defendant, alleging inequitable compensation and discrimination on the basis of race, gender, and color. *See id.* ¶ 12. The resulting investigation detected "a pattern of circumventing [Plaintiff's] involvement, input and authority as Director of Procurement," but concluded this behavior was not based on Plaintiff's "race, color, and/or sex." *Id.* ¶ 16. Defendant issued a list of recommendations for Plaintiff's supervisor and another employee, Lisa Harper, designed to remedy the exclusionary behavior. *See id.* ¶¶ 11, 17. The letter suggested Plaintiff's supervisor should "clearly define expectations and [the] scope of [Plaintiff]'s and Ms. Harper's roles," while Ms. Harper should "refine [her] communications and emotional intelligence." *Id.* ¶ 23. These proposed remedies either did not occur or were unsuccessful. *See id.*

The EEOC granted Plaintiff a Notice of Right to Sue on May 24, 2022, *id.* ¶ 6, and Plaintiff filed this action on August 18, 2022. Plaintiff brings two claims for unlawful discrimination under Title VII of the Civil Rights act of 1964, 42 U.S.C. § 2000e, *et seq.*, and a hostile work environment claim.[3] Defendant moved for dismissal of the Complaint

[3] The Complaint does not specify the legal basis for the hostile work environment claim. Because Plaintiff cites *Harris v. Forklift Systems, Inc.* in his response, *see* Pl.'s Obj. [Doc. No. 8] at 7, the Court assumes Title VII is also the basis of this claim. *See Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 21 (1993) (analyzing a hostile work environment claim pursuant to 42 U.S.C. § 2000e-2(a)(1)).

pursuant to Federal Rule of Civil Procedure 12(b)(6), arguing Plaintiff has failed to state a plausible claim for relief.

II. Pleading Standard

"To survive a motion to dismiss [under Rule 12(b)(6)], a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)); *see also Robbins v. Oklahoma*, 519 F.3d 1242, 1247 (10th Cir. 2008). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678. "Pleadings that do not allow for at least a reasonable inference of the legally relevant facts are insufficient." *Burnett v. Mortg. Elec. Registration Sys., Inc.*, 706 F.3d 1231, 1236 (10th Cir. 2013) (internal quotation marks and citation omitted). And a complaint must contain more than "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements." *Iqbal*, 556 U.S. at 678.

III. Analysis

A Title VII claim that includes only "general assertions of discrimination and retaliation, without any details whatsoever of events leading up to" an adverse employment action, is "insufficient to survive a motion to dismiss." *Khalik v. United Air Lines*, 671 F.3d 1188, 1193 (10th Cir. 2012). "While '[s]pecific facts are not necessary,' some facts are." *Id.* (quoting *Erickson v. Pardus*, 551 U.S. 89, 93 (2007)). In reviewing the sufficiency of the Complaint's allegations, the Court considers the elements of each alleged claim to help determine whether Plaintiff has stated a plausible claim. The Court

recognizes, however, that the Rule 12(b)(6) standard does not require that Plaintiff establish a prima facie case in his Complaint. *Id.* at 1192.

A. Unlawful Discrimination (Claims I, III)

Plaintiff alleges that Defendant discriminated against him on the basis of sex or gender (Claim I) and national origin and color (Claim III). An employer may not "discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin." 42 U.S.C. § 2000e-2(a)(1). Without direct evidence of discrimination, a plaintiff may rely on the burden-shifting framework set forth in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973), to establish a prima facie case of discrimination.

The elements required to establish a prima facie case are flexible and "may vary depending on the context of the claim and the nature of the alleged conduct." *Bennett v. Windstream Commc'ns, Inc.*, 792 F.3d 1261, 1266 n.1 (10th Cir. 2015). Regardless of the precise formulation, "[t]he critical prima facie inquiry in all cases is whether the plaintiff has demonstrated that the adverse employment action occurred 'under circumstances which give rise to an inference of unlawful discrimination.'" *Kendrick v. Penske Transp. Servs., Inc.*, 220 F.3d 1220, 1227 (10th Cir. 2000) (quoting *Tex. Dep't of Cmty. Affs. v. Burdine*, 450 U.S. 248, 253 (1981)).

"The Tenth Circuit liberally defines the phrase 'adverse employment action,'" to include, *inter alia*, any "significant change in employment status, such as hiring, firing, failing to promote, reassignment with significantly different responsibilities, or a decision causing a significant change in benefits." *Jones v. Okla. City Pub. Schs.*, 617 F.3d 1273,

1279 (10th Cir. 2010) (first quoting *Sanchez v. Denver Pub. Schs.*, 164 F.3d 527, 532 (10th Cir. 1998); and then quoting *Hillig v. Rumsfeld*, 381 F.3d 1028, 1032–33 (10th Cir. 2004)). But it is not clear from the face of the Complaint what adverse employment action Plaintiff suffered. The Complaint references unequal pay, *see* Compl. [Doc. No. 1] ¶¶ 12, 15, but later indicates that Defendant's inaction *itself* forms the basis of the adverse action, *see id.* ¶ 26 ("Plaintiff suffered adverse action and discrimination in that Defendant failed to accord Plaintiff with any relief from discrimination based on sex or gender."). Whether such inaction references the supervisor's failure to report Plaintiff's concerns, *see id.* ¶ 11, or Defendant's failure to follow through on certain remedies after the EEO decision, *see id.* ¶¶ 17, 22–23, is similarly unclear.[4]

Even absent this uncertainty, the Complaint does not allege sufficient facts to plausibly support an inference of unlawful discrimination. Though the Complaint generally states Plaintiff experienced "years of incidents of bias and discrimination based on national origin, color (Black) and gender," *id.* ¶ 11, it does not describe any specific instances of discriminatory behavior. The only other description of discrimination included in the Complaint is equally broad:

> "Mr. Young's basis of [his EEO] complaint was race, gender, and other (equitable compensation). Mr. Young presented evidence of discriminatory incidents that occurred from 2015 to 2021 that he experienced at UCO."

[4] The claims in the Complaint should not be premised on "events that occur[ed] after an EEO complaint is filed . . . unless the complainant files a new EEO complaint or amends [his] existing complaint." *Glapion v. Jewell*, 673 F. App'x. 803, 807 (10th Cir. 2016) (unpublished).

Id. ¶ 12. The Complaint mentions "a meeting was held addressing . . . Lisa Harper," *id.* ¶ 11, and quotes the EEO closure letter, which recommended Ms. Harper improve her "soft skills," *id.* ¶ 23. Though some conflict clearly exists between Plaintiff and Ms. Harper, the complete lack of detail regarding Ms. Harper's conduct makes it impossible to discern the basis of the unlawful discrimination allegations. Without these facts, the Court cannot plausibly infer that Defendant discriminated against Plaintiff on the basis of his sex, gender, national origin, or color. *See Khalik*, 671 F.3d at 1194.

Because the Complaint is devoid of factual allegations indicating an "adverse employment action occurred 'under circumstances which give rise to an inference of unlawful discrimination,'" Plaintiff has failed to state a claim on Claims I and III. *Kendrick*, 220 F.3d at 1227 (quoting *Burdine*, 450 U.S. at 253).

B. Hostile Work Environment (Claim II)

The *McDonnell Douglas* burden-shifting framework also applies to Title VII hostile work environment claims. To establish a prima facie case, a plaintiff must show that (1) he belongs to a protected group, (2) he was "subject to unwelcome harassment," (3) the harassment was based on a protected characteristic, and (4) "due to the harassment's severity or pervasiveness, the harassment altered a term, condition, or privilege of the plaintiff's employment and created an abusive working environment." *Lounds v. Lincare, Inc.*, 812 F.3d 1208, 1222 (10th Cir. 2015) (quoting *Harsco Corp. v. Renner*, 475 F.3d 1179, 1186 (10th Cir. 2007) (cleaned up). To satisfy the fourth element, a plaintiff must provide facts establishing that his work environment was "permeated with discriminatory

intimidation, ridicule, and insult." *Brown v. LaFerry's LP Gas Co., Inc.*, 708 F. App'x. 518, 520 (10th Cir. 2017) (unpublished) (quoting *Harris*, 510 U.S. at 21).

As detailed above, the Complaint includes no allegations detailing specific instances of harassment. Without any factual support, the Court cannot determine *whether* unwelcome harassment occurred, let alone its motivation, severity, or pervasiveness. Because the Court cannot plausibly infer that Plaintiff's work environment was hostile, his claim must be dismissed.

IV. Conclusion

For the reasons set forth, Defendant's Motion to Dismiss and Brief in Support [Doc. No. 7] is GRANTED, and Plaintiff's Complaint is DISMISSED against the University of Central Oklahoma.

IT IS SO ORDERED this 13th day of October, 2022.

SCOTT L. PALK
UNITED STATES DISTRICT JUDGE