No. 24-CV-426

IN THE DISTRICT OF COLUMBIA COURT OF APPEALS

YOSHIE S. DAVISON

Appellant,

v.

AMERICAN PSYCHIATRIC ASSOCIATION, *et al.*,

Appellees.

ON APPEAL FROM A JUDGMENT OF THE SUPERIOR
COURT FOR THE DISTRICT OF COLUMBIA
No. 2022-CAB-005715

APPELLANT'S REPLY BRIEF

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CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

Pursuant to D.C. Circuit Rule 28(a)(1), Appellant makes the following certificate of counsel:

(A) Parties and Amici. Appellant Yoshie Davison and Appellee American Psychiatric Association, et al.[1], are the only parties who appeared before the district court. Both parties are appearing in this Court related to this matter.

(B) Rulings Under Review. Order and Memorandum Opinion of the Superior Court of the District of Columbia, entered April 1, 2024, granting Defendant's Motion for Summary Judgment.

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[1] Appellees will be identified as "APA" and "Dr. Levin" and collectively as "Appellees."

TABLE OF AUTHORITIES

Cases

Corning Glass Works v. Brennan, 417 U.S. 188, 195 (1974)

Faragher v. City of Boca Raton, 524 U.S. 775 (1998)

Green v. Brennan, 578 U.S. 547, 555 (2016)

Hamilton v. Geithner, 666 F.3d 1344, 1357 (D.C. Cir. 2012)

Harris v. Forklift Sys., Inc., 510 U.S. 17, 23 (1993)

Jones v. Bernanke, 557 F.3d 670, 679 (D.C. Cir. 2009)

McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973)

Parker v. District of Columbia, 850 F.2d 708, 713 (D.C. Cir. 1988)

Reeves v. Sanderson Plumbing Prods., Inc., 530 U.S. 133, 150-51 (2000)

Singletary v. District of Columbia, 351 F.3d 516 (D.C. Cir. 2003)

Smothers v. Solvay Chemicals, Inc., 740 F.3d 530, 538 (10th Cir. 2014)

Statutes and Rules

28 U.S.C. § 1291

INTRODUCTION

In this Reply Brief, Appellant Yoshie S. Davison responds to Appellees' arguments, demonstrating that the Superior Court erred in granting summary judgment on her claims. Appellees contended that Ms. Davison's Family and Medical Leave Act (FMLA) interference and retaliation claims failed because she cannot establish a *prima facie* case, specifically lacking an adverse employment action, a causal connection, and evidence of pretext. They further asserted that her race- and sex-based harassment claims are deficient, arguing that Dr. Levin's alleged statements were not tied to her protected characteristics and that the behavior was not sufficiently severe or pervasive. Appellees also maintained that Ms. Davison voluntarily resigned and therefore cannot establish constructive discharge, and that her race/sex termination claims are invalid. Finally, they argued that Ms. Davison's disparate pay claim lacks a *prima facie* showing and evidence of discriminatory intent regarding stipend decisions.

Conversely, Appellant will show that the Superior Court's grant of summary judgment was erroneous across all claims. Appellant maintains that she has presented ample evidence to establish a *prima facie* case for her DCFMLA retaliation and interference claims, demonstrating a clear adverse employment action, a causal connection, and compelling evidence of pretext. She will further

argue that Dr. Levin's statements and conduct were directly tied to her protected characteristics, creating a work environment that was severe and pervasive enough to constitute actionable harassment. Appellant will also demonstrate that she did not voluntarily resign but was constructively discharged due to intolerable working conditions, validating her race/sex termination claims. Moreover, Appellant will establish that the Superior Court erred in dismissing her general retaliation claim, as the record supports a retaliatory motive. Finally, Appellant will show that she has established a *prima facie* case of disparate pay, supported by evidence that Dr. Levin's stipend decisions were based on race or gender, thereby warranting reversal of summary judgment on all counts.

ARGUMENT

I. The Trial Court Erred When It Granted Summary Judgment on Appellant's FMLA Interference and Retaliation Claims

The Appellee argued that Appellant cannot establish a prima facie case of retaliation under the D.C. Family and Medical Leave Act (DCFMLA), which is analyzed using the burden-shifting framework of *McDonnell Douglas Corp. v. Green* , 411 U.S. 792 (1973*)*. To support this, they contended that Appellant failed to satisfy two critical elements: she did not suffer an adverse employment action, and there is no causal connection between any protected activity and the end of her employment.

The Appellees' arguments failed on both factual and legal grounds. First, Appellant did not resign. During the February 15, 2022, meeting in which resignation was discussed, the discussion was highly charged and coercive. Dr. Levin became irate, berated Appellant's performance despite a 97.5% achievement on performance metrics, and told her that her role was to "serve" him. See JA 00494–495. Appellant, emotionally distressed, mentioned two potential departure dates with severance but did not officially resign. Her statements during this meeting were conditional and clearly made under duress. Appellant later explicitly told Dr. Levin via email that she had not formally resigned and that she had already initiated the FMLA process with HR. See JA

00497.

Next, the record established that Dr. Levin's claim that he lacked knowledge of Appellant's FMLA request is without merit. Appellees' claim that Dr. Levin's actions were taken before he had knowledge of Appellant's FMLA request is clearly contradicted by circumstantial evidence and deposition testimony. Appellant began the FMLA process on the morning of February 18, 2022, with APA's Human Resources department. See JA 00495. That same evening—after business hours on a holiday weekend—Dr. Levin emailed Appellant to confirm her "resignation," despite knowing a meeting to follow up on the evaluation and FMLA discussion was already scheduled for February 22. See JA 00498. Appellant had communicated with HR personnel, who in turn would have been expected to inform APA's legal counsel and senior leadership, including Dr. Levin about Appellant's FMLA request. See JA 00495–496. Dr. Levin later claimed he had "no idea" about her FMLA request, but in his deposition, he conceded he could not recall whether anyone informed him about it. See JA 00496. Appellant had communicated with HR, who typically notified legal counsel and senior executives, including Dr. Levin, about leave requests. See JA 00495–96. That equivocation, combined with the timing of the email and his dismissive statement that "FMLA is not relevant," strongly suggests retaliatory intent and knowledge. At minimum, this conflicting testimony and

circumstantial evidence both raise a genuine dispute of material fact that cannot be resolved on summary judgment.

Courts recognize that a causal connection between an FMLA-protected activity and a subsequent adverse action may be inferred from temporal proximity, inconsistent explanations, and evidence of knowledge. In *Parker v. District of Columbia*, 850 F.2d 708, 713 (D.C. Cir. 1988). Here, Appellant initiated her FMLA request on the morning of February 18 and was terminated that same evening—facts that mirror the type of temporal and contextual link recognized in *Parker*. Additionally, Appellant was a long-tenured employee with strong performance metrics, and the abrupt shift in how her employment was handled following her protected activity raises a permissible inference of retaliation. See JA 00489, 00494–496.

The Appellees contended that Appellant's DCFMLA interference claim fails as a matter of law because she cannot meet the two required elements: (1) that the employer interfered with her exercise of FMLA rights and (2) that she suffered prejudice as a result. They argued that the undisputed record shows Dr. Levin was unaware of Ms. Davison's FMLA request when he accepted what they characterize as her resignation.

Contrary to Appellees' assertion, there is substantial evidence in the record

to support a *prima facie* case of DCFMLA interference and to rebut the claim that Dr. Levin lacked knowledge of Appellant's FMLA activity, as explained above. In her email response to Dr. Levin, Appellant explicitly stated that she had "not submitted a formal resignation" and that she had "already started the FMLA process with HR earlier today." See JA 00497. Dr. Levin nevertheless ignored this clarification and insisted on proceeding with what he unilaterally framed as her resignation. This sequence of events—beginning with a hostile and coercive performance evaluation, followed by a distressed employee seeking FMLA leave, and culminating in a late-evening rejection of her employment without regard to her stated medical needs—strongly supports an inference that Appellee's actions interfered with Appellant's statutory rights. Appellant's termination, before the final submission of physician certification does not negate her rights under the DCFMLA, as employees are entitled to initiate the process and complete documentation within a reasonable timeframe—here, by March 4, 2022.

A jury could certainly find that Dr. Levin knew, or deliberately avoided knowing, about the pending FMLA request and proceeded to terminate Appellant in order to preempt her leave. This is not a case where an employer acted entirely unaware of protected activity. Rather, it is one where there is evidence—both circumstantial and testimonial—that the employer knew or should have known

about Appellant's attempt to exercise her FMLA rights and moved to cut it off.

II. Appellant Can Show Pretext for DCFMLA Violations

The Appellees argued that even if Appellant had made out a *prima facie* case of DCFMLA retaliation or interference, her claim still failed because she cannot show that the legitimate, non-discriminatory reason for her termination—Dr. Levin accepting her offered resignation—was a pretext for retaliation.

The claim that Appellant voluntarily resigned and that Dr. Levin simply selected one of her proposed end dates is directly contradicted by the record, which demonstrated that her statement about a possible resignation was made during a coercive and hostile performance evaluation meeting and was not a definitive resignation. The February 15, 2022, evaluation meeting was emotionally charged and included discriminatory and humiliating remarks from Dr. Levin, such as telling Appellant she was there to "serve" him and comparing her unfavorably to a former white male colleague. Dr. Levin's tone was aggressive, and Appellant's suggestion of departure dates came in the context of being demeaned and berated—not as a formal resignation. She left the meeting distressed and confused and later followed up with an email clarifying that she had not resigned. In fact, she explicitly stated, "I did not submit a formal resignation," and that she had begun the FMLA process earlier that day. Despite

this clarification, Dr. Levin disregarded her statement and declared her resigned.

Again, Dr. Levin's later claimed in his deposition that he did not "recall" whether anyone informed him of the request further undermines the claim that he had no knowledge. Moreover, the timing of his response—an email after business hours on a Friday, before a holiday weekend—suggested a deliberate attempt to finalize Appellant's departure before the FMLA paperwork could be completed and processed. Dr. Levin's claim of ignorance is not dispositive on summary judgment. Credibility determinations are for a jury, not the court. See *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 150-51 (2000). Appellant also pointed to shifting explanations for her departure, which further supported pretext See JA00359; JA00346. See *Smothers v. Solvay Chemicals*, Inc., 740 F.3d 530, 538 (10th Cir. 2014) (inconsistent explanations may establish pretext).

Moreover, the fact that Dr. Levin sent a separation letter days later stating that the FMLA request was "not relevant" and that her resignation would proceed, despite her explicit notice that she was invoking her leave rights, strongly supports the conclusion that retaliation—not a legitimate business reason—was the real and determinative factor in the adverse action. Appellant's argument does not merely restate her *prima facie* case; it is supported by concrete, independent facts and inconsistencies in the Appellees' narrative.

III. The Superior Court Erred in Granting Summary Judgment on Appellant's Race-Based and Sex-Based Harassment Claims

The Appellees argued that Appellant's claims of a hostile work environment based on race and sex under the D.C. Human Rights Act (DCHRA) failed because she cannot meet the third and fourth elements of the legal test: that the alleged harassment was based on her protected characteristics and that it was sufficiently severe or pervasive to affect a term or condition of employment.

The Appellees boldly claimed that Dr. Levin's "serve him" comment was merely a reference to customer service expectations, not an expression of discriminatory bias and that it was correctly construed as not having any direct linkage to race or sex. See JA 00495. Therefore, these comments could not support a hostile work environment claim. The Appellees' characterization of the record underplayed the severity and the discriminatory nature of Dr. Levin's conduct and ignored the broader context that makes Appellant's experience actionable under the DCHRA.

Dr. Levin's conduct toward Appellant was not merely the product of a difficult management style or personal conflict but was imbued with racial and gender-based animus. Appellant was a long-serving, high-performing Asian American woman who worked at the APA for over two decades and was repeatedly subjected to degrading treatment that her male and non-Asian

colleagues did not experience. Among the most egregious examples is Dr. Levin's repeated instruction that Appellant retrieve donuts and breakfast for staff events—a task well beneath the role of Chief of Staff and one not imposed on her male counterparts. Dr. Levin's comments referring to Appellant and other women as "honey" or "hon" further reveal a gendered double standard that infantilized and demeaned female staff members.

Most significantly, during her 2021 performance review, Dr. Levin told Appellant that she was there "to serve him," language that Appellant, with justification, understood as both sexist and racially charged given her role and background. Appellant provided specific evidence of discriminatory patterns in compensation. Appellant was asked to assume interim executive responsibilities without additional compensation, while male colleagues who held interim roles received stipends. See JA 00491. These disparities aligned with Dr. Levin's documented preference for white male colleagues, as evidenced by his comparison of Appellant to a former white male employee during her evaluation.

Finally, the record demonstrated that Dr. Levin's bias extended to broader institutional actions. He expressed skepticism about whether Asians should be considered part of the BIPOC community and resisted efforts to include Asian American staff in diversity-related initiatives, despite national attention on anti-

Asian violence. His refusal to acknowledge the legitimacy of Appellant's identity within discussions of racial equity further contextualized his treatment of her. This is not speculation—it is supported by Dr. Levin's own admissions in deposition testimony and corroborated by the experiences of other staff members.

The Appellees argued that Appellant's claims of a hostile work environment based on race and sex also fail because the conduct she alleged was not "severe and pervasive" enough to meet the legal threshold under *Faragher v. City of Boca Raton* and *Harris v. Forklift Systems*. They contended that none of the incidents Appellant described—including being called "hon" or "honey," being asked to bring in breakfast, and the February 15, 2022, performance evaluation meeting—rises to the level of altering the conditions of her employment or creating an abusive environment.

The February 15, 2022, performance evaluation was not an isolated occurrence, but rather the culmination of years of discriminatory and degrading treatment based on both race and sex. Appellant endured repeated humiliation, including being required to serve in subordinate, gendered roles such as fetching donuts for the office—a task she was asked to perform as a high-ranking Chief of Staff, while similarly situated male employees were not. These were not benign office rituals; they reinforced Dr. Levin's perception that Appellant, an

Asian American woman, was there to "serve" him, as he explicitly stated during her performance evaluation. That he made this statement in the formal context of a performance evaluation—one that directly impacted her employment—elevated it from an offensive comment to severe or pervasive conduct. That meeting included aggressive behavior, discriminatory statements, and threats to her position. See JA 00495.

Courts have long recognized that conduct need not be overtly threatening or physically abusive to create a hostile work environment. A sustained pattern of demeaning, unequal treatment—especially from a direct supervisor—can unreasonably interfere with an employee's ability to perform her job and alter the terms of employment. *Harris v. Forklift Systems, Inc.*, 510 U.S. 17, 21–23 (1993)

IV. The Superior Court Erred in Finding that Appellant Resigned and Was Not Constructively Discharged

A. Ms. Davison Can Show Constructive Discharge as a Matter of Law

The Appellees' assertion that Appellant voluntarily resigned ignores the context and coercive environment in which that alleged resignation took place. Any discussion of resignation during that meeting was not a voluntary act but a reaction to the extreme emotional and professional pressure Appellant was under. She left the meeting distraught and later sent an email explicitly stating that she had not submitted a formal resignation and that she was initiating FMLA leave

due to stress and mental health issues. The fact that she attempted to initiate protected medical leave rather than walk away from the job indicated her intent to continue employment, not abandon it.

Appellant testified that after she raised concerns and engaged in protected activity, she faced escalating scrutiny, criticism, and a loss of responsibilities. See JA00347; JA00359–60. Constructive discharge claims require a showing that the work environment was so intolerable that a reasonable employee would feel compelled to resign. See *Green v. Brennan*, 578 U.S. 547, 555 (2016). Appellant has more than satisfied that standard.

Temporal proximity also supports an inference of causation, particularly when adverse treatment follows closely after protected activity. See *Hamilton v. Geithner*, 666 F.3d 1344, 1357 (D.C. Cir. 2012). See, *e.g., Singletary v. District of Columbia*, 351 F.3d 516 (D.C. Cir. 2003) (discussing temporal proximity and causation: causation was inferred despite a time gap between the protected activity and the adverse action.)

Finally, the Appellees' claim that Appellant previously endured similar conflicts with Dr. Levin and remained in her job overlooked the cumulative nature of constructive discharge. A toxic work environment often wears down employees over time, and the law recognizes that a final act can be the tipping

point after years of escalating hostility. *Singletary* (the D.C. Circuit acknowledged that constructive discharge can arise from a "pattern of adverse action" and that earlier events remain relevant even if not individually actionable). The February 15 meeting, following years of discriminatory conduct, was that tipping point for Appellant. Her attempt to take leave rather than resign—and the employer's swift move to force her out—created a triable issue of fact on whether she was constructively discharged

B. Appellant's Race/Sex Termination Claims are Valid as a Matter of Law

The Appellees argued that even assuming Appellant's separation was an adverse employment action, she has failed to produce any evidence suggesting that her race or sex[2] played a role in the APA's decision to accept her resignation.

The February 15, 2022, evaluation was not a good-faith attempt to improve communication, but a humiliating and degrading encounter in which Dr. Levin berated Appellant, accused her of not performing her job despite strong metrics, and stated that she was there "to serve him." These comments cannot be divorced from their racial and gendered undertones—particularly given Dr. Levin's pattern

[2] Appellant's brief is replete with examples of racially and sexually biased treatment: her exclusion from diversity discussions, Dr. Levin's refusal to acknowledge Asian American identity in BIPOC contexts, his directive that she "serve" him, and his pattern of gendered language and unequal compensation. These facts, viewed collectively, would allow a reasonable jury to infer that race and sex were motivating factors in Dr. Levin's decision to finalize her separation rather than accommodate her FMLA request or address her concerns.

of referring to female employees as “hon” or “honey,” his minimization of Asian identity within the APA’s diversity efforts, and his preferential treatment of white male colleagues.

V. The Superior Court Erred in Granting Defendants Summary Judgment on Appellant’s Retaliation Claim

The Appellees asserted that because APA offered a legitimate, non-retaliatory reason for Appellant’s departure—namely, that she resigned voluntarily—she must produce evidence showing that reason was a pretext for retaliation. They further contended that there is no evidence linking Appellant’s alleged protected activity in December 2020 to her separation in February 2022, emphasizing that the 15-month gap between the two events eliminates any inference of retaliatory intent based on temporal proximity.

The passage of 15 months between the protected activity and the eventual separation does not negate retaliation, particularly where the adverse action is the culmination of ongoing retaliation. In *Jones v. Bernanke,* 557 F.3d 670, 679 (D.C. Cir. 2009), the D.C. Circuit reinforced the understanding that causation in retaliation cases can be established even when there is a significant time lag between the protected activity and the adverse action. This is particularly true when there is "evidence of a pattern of antagonism or retaliatory conduct" that continued over time.

VI. Appellant Established a *Prima Facie* Case of Pay Disparity and Presented Evidence that Dr. Levin's Stipend Decisions Were Based on Race or Gender

The Appellees argued that Appellant's pay disparity claims under the D.C. Human Rights Act (DCHRA) fail because she didn't establish a *prima facie* case of unequal pay.

Appellant has argued, the crux of her Equal Pay Act and DCHRA claims lied in the Appellees' discriminatory pattern of compensating white male executives with stipends when they assumed temporary executive duties, while denying her the same treatment when she performed comparable work. See JA 00378–80. While the Appellees emphasized that Ms. Coyle and Mr. Madden, both white, were not paid stipends for covering HR, it omitted that Appellant simultaneously oversaw both the HR department and the Chief Strategy Office, a combination of roles that significantly expanded her workload and responsibility. See JA 00491. This dual assumption of duties distinguished her situation and supported an inference of unequal treatment. Moreover, the Appellees' insistence that Appellant's comparators must hold identical job titles and qualifications misread the standard. The law does not require that comparators be in the same position, but only that their work be substantially equal in terms of skill, effort, and responsibility. *Corning Glass Works v. Brennan*, 417 U.S. 188, 195 (1974). The record supported that the interim duties

taken on by Dr. Gorrindo and Mr. McDuffie, which were compensated with stipends, were at least as significant as those performed by Appellant. See JA 00491–492.

The Appellees mischaracterized Appellant's legal theory as one of "comparable worth." Appellant does not argue that her work was more valuable in the abstract but that she was treated differently than similarly situated employees who received extra pay for similar temporary duties. This was a straightforward disparate pay claim grounded in well-established law. The DCHRA, interpreted harmoniously with the Equal Pay Act, prohibits precisely the type of discriminatory pay practices that Appellant has documented. sufficiency, and summary judgment was improperly granted.

The Appellees contended that even if Appellant could establish a *prima facie* case of pay disparity, her claim would still fail because she cannot show that the legitimate, nondiscriminatory reasons offered by Dr. Levin for denying her a stipend were pretext for discrimination. This argument failed under closer scrutiny of the factual record presented. Appellant was not only required to take on the interim Chief Strategy Officer role for over a year without compensation, but she also absorbed responsibilities from a long-vacant Special Assistant position, which compounded her workload beyond that of her comparators. These

duties included reviewing timesheets, performance evaluations, multiple reports, and managing time-sensitive deliverables—tasks that plainly went beyond the typical expectations of a Chief of Staff. See JA 00491. In contrast to the APA's assertion, Appellant was not performing merely overlapping tasks; rather, she assumed roles ordinarily carried out by high-level executives who had previously received stipends for comparable interim service. Moreover, Dr. Levin's assertion that Appellant did not deserve a stipend because her temporary assignment was not a "heavy lift" is itself probative of pretext. See JA 00380. Appellant did not simply perform temporary HR oversight; she simultaneously managed dual interim executive-level functions, unlike Ms. Coyle and Mr. Madden, who only filled in for HR and received no added responsibilities. See JA 00491–92. Further, the APA ignored that Appellant was among the very few, if not the only, Asian executive-level employee required to assume extended interim duties without a stipend, while others outside her protected class were compensated for temporary leadership roles. See JA 00491. This differential treatment strengthened the inference of discriminatory animus.

CONCLUSION

For the foregoing reasons, Appellant respectfully asks this Court to reverse the Judgement and Order of the Superior Court that was entered for the Appellees.

Date: May 20, 2025

Respectfully submitted,

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I hereby certify that on this 20 day of May 2025 a copy of the foregoing was served on counsel for Appellee below through the Court's electronic filing system.

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