NOT FOR PUBLICATION

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UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

KAREN SHIELDS, Plaintiff - Appellant, v. CREDIT ONE BANK, N.A.; CREDIT ONE FINANCIAL; SHERMAN FINANCIAL GROUP, LLC, Defendants - Appellees.	No. 23-2955 D.C. No. 2:19-cv-00934-JAD-NJK MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
Jennifer A. Dorsey, District Judge, Presiding

Submitted October 11, 2024**
Las Vegas, Nevada

Before: BEA, BENNETT, and MILLER, Circuit Judges.

Karen Shields appeals the district court's grant of summary judgment in favor of her former employer, Credit One Bank, on her single claim of disability

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

discrimination and failure to accommodate under the Americans with Disabilities Act (ADA), 42 U.S.C. § 12112(a). Because the parties are familiar with the facts, we recount them only as relevant to our decision. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

We review de novo the district court's grant of summary judgment, viewing the evidence in the light most favorable to Shields, the nonmoving party, to determine whether there are genuine issues of material fact. *See Csutoras v. Paradise High School*, 12 F.4th 960, 965 (9th Cir. 2021).

1. We analyze Shields's ADA claim under the *McDonnell Douglas* burden-shifting framework. *See Curley v. City of North Las Vegas*, 772 F.3d 629, 632 (9th Cir. 2014) (citing *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802–04 (1973)). First, the plaintiff must establish a prima facie case of discrimination. *McDonnell Douglas*, 411 U.S. at 802. Second, the burden shifts to the employer to "articulate some legitimate, nondiscriminatory reason" for the termination. *Id.* Third, once the employer has done so, "the burden shifts back to the employee to prove that the reason given by the employer was pretextual." *Curley*, 772 F.3d at 632.

Shields suggests that this court should forgo any analysis under *McDonnell Douglas* and instead look to *Humphrey v. Memorial Hospitals Ass'n*, 239 F.3d 1128 (9th Cir. 2001). Contrary to Shields's suggestion, *Humphrey* does not

articulate an alternative framework to *McDonnell Douglas*. Where, as here, the employer "disclaims any reliance on the employee's disability in having taken the employment action," *McDonnell Douglas* provides the appropriate analytical framework. *Snead v. Metropolitan Property & Cas. Ins. Co.*, 237 F.3d 1080, 1093 (9th Cir. 2001) (quoting *Mustafa v. Clark Cnty. School Dist.*, 157 F.3d 1169, 1175–76 (9th Cir. 1998)).

2. We assume that Shields established a prima facie case of disability discrimination and failure to accommodate, namely that (1) she was a disabled person within the meaning of the ADA, (2) she was a qualified individual with a disability who can perform the essential functions of the job, and (3) she was terminated because of her disability. *See Nunes v. Wal-Mart Stores, Inc.*, 164 F.3d 1243, 1246 (9th Cir. 1999) (disability discrimination); *Samper v. Providence St. Vincent Med. Ctr.*, 675 F.3d 1233, 1237 (9th Cir. 2012) (failure to accommodate); 42 U.S.C. § 12112.

Next, we agree with the district court that Credit One "proffered a legitimate, nondiscriminatory reason for Shields's termination." Credit One explains that Shields was terminated because her "HR Generalist position was eliminated as part of an on-going restructuring of the HR department, which was initiated by the hiring of a new head of the department months before Shields even knew that she needed a biopsy." On appeal, Shields does not dispute that "some

employees were hired, fired or transferred after [the new department head] was hired." Instead, she claims that Credit One failed to produce documentary or corroborative evidence to substantiate its restructuring rationale. But an employer is not required to produce such evidence to establish that its rationale is legitimate and nondiscriminatory. *See Texas Dept. of Cmty. Affs. v. Burdine*, 450 U.S. 248, 255 (1981) (requiring only "admissible evidence").

Shields's claim fails at the third step because her various attempts at demonstrating pretext are insufficient to raise a genuine issue of material fact. Her argument that Credit One's restructuring rationale lacks documentation is "[m]erely denying the credibility of the employer's proffered reason[]," which does not defeat summary judgment. *Munoz v. Mabus*, 630 F.3d 856, 865 (9th Cir. 2010). Her assertion that another HR employee absorbed her duties and ultimately replaced her position is not supported by the record, given that Credit One hired the alleged replacement to perform other HR functions two weeks before Shields's original eight-week leave, and Credit One did not hire another HR generalist after Shields's termination. That Shields's job duties were redistributed among other HR employees so that her work could be continued while she was on leave does not create a triable issue of pretext. *See Mendoza v. Roman Cath. Archbishop of Los Angeles*, 824 F.3d 1148, 1149 (9th Cir. 2016) (finding no pretext when the plaintiff's full-time role was eliminated because her boss had taken over some of

her duties during her sick leave). Likewise, the personal messages that Shields received from her coworkers, who did not discuss the elimination of Shields's position, have no bearing on pretext. Finally, the timing of Shields's termination, which took place in close proximity to her request for a leave extension, may be sufficient to establish a prima facie case of discrimination, but as circumstantial evidence of pretext, it is not specific and substantial enough to create a genuine dispute of fact. *See Snead*, 237 F.3d at 1094.

AFFIRMED.

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Information Regarding Judgment and Post-Judgment Proceedings

Judgment

- This Court has filed and entered the attached judgment in your case. Fed. R. App. P. 36. Please note the filed date on the attached decision because all of the dates described below run from that date, not from the date you receive this notice.

Mandate (Fed. R. App. P. 41; 9th Cir. R. 41-1 & -2)

- The mandate will issue 7 days after the expiration of the time for filing a petition for rehearing or 7 days from the denial of a petition for rehearing, unless the Court directs otherwise. To file a motion to stay the mandate, file it electronically via the appellate electronic filing system or, if you are a pro se litigant or an attorney with an exemption from the electronic filing requirement, file one original motion on paper.

Petition for Panel Rehearing (Fed. R. App. P. 40; 9th Cir. R. 40-1) Petition for Rehearing En Banc (Fed. R. App. P. 35; 9th Cir. R. 35-1 to -3)

(1) Purpose

A. Panel Rehearing:

- A party should seek panel rehearing only if one or more of the following grounds exist:
  - A material point of fact or law was overlooked in the decision;
  - A change in the law occurred after the case was submitted which appears to have been overlooked by the panel; or
  - An apparent conflict with another decision of the Court was not addressed in the opinion.
- Do not file a petition for panel rehearing merely to reargue the case.

B. Rehearing En Banc

- A party should seek en banc rehearing only if one or more of the following grounds exist:
  - Consideration by the full Court is necessary to secure or maintain uniformity of the Court's decisions; or
  - The proceeding involves a question of exceptional importance; or

- The opinion directly conflicts with an existing opinion by another court of appeals or the Supreme Court and substantially affects a rule of national application in which there is an overriding need for national uniformity.

(2) Deadlines for Filing:

- A petition for rehearing must be filed within 14 days after entry of judgment. Fed. R. App. P. 40(a)(1).
- If the United States or an agency or officer thereof is a party in a civil case, the time for filing a petition for rehearing is 45 days after entry of judgment. Fed. R. App. P. 40(a)(1).
- If the mandate has issued, the petition for rehearing should be accompanied by a motion to recall the mandate.
- See Advisory Note to 9th Cir. R. 40-1 (petitions must be received on the due date).
- An order to publish a previously unpublished memorandum disposition extends the time to file a petition for rehearing to 14 days after the date of the order of publication or, in all civil cases in which the United States or an agency or officer thereof is a party, 45 days after the date of the order of publication. 9th Cir. R. 40-2.

(3) Statement of Counsel

- A petition should contain an introduction stating that, in counsel's judgment, one or more of the situations described in the "purpose" section above exist. The points to be raised must be stated clearly.

(4) Form & Number of Copies (9th Cir. R. 40-1; Fed. R. App. P. 32(c)(2))

- The petition shall not exceed 15 pages unless it complies with the alternative length limitations of 4,200 words or 390 lines of text.
- The petition must be accompanied by a copy of the panel's decision being challenged.
- An answer, when ordered by the Court, shall comply with the same length limitations as the petition.
- If a pro se litigant elects to file a form brief pursuant to Circuit Rule 28-1, a petition for panel rehearing or for rehearing en banc need not comply with Fed. R. App. P. 32.

- The petition or answer must be accompanied by a Certificate of Compliance found at Form 11, available on our website at www.ca9.uscourts.gov under *Forms*.
- Attorneys must file the petition electronically via the appellate electronic filing system. No paper copies are required unless the Court orders otherwise. If you are a pro se litigant or an attorney exempted from using the appellate ECF system, file one original petition on paper. No additional paper copies are required unless the Court orders otherwise.

Bill of Costs (Fed. R. App. P. 39, 9th Cir. R. 39-1)

- The Bill of Costs must be filed within 14 days after entry of judgment.
- See Form 10 for additional information, available on our website at www.ca9.uscourts.gov under *Forms*.

Attorneys Fees

- Ninth Circuit Rule 39-1 describes the content and due dates for attorneys fees applications.
- All relevant forms are available on our website at www.ca9.uscourts.gov under *Forms* or by telephoning (415) 355-8000.

Petition for a Writ of Certiorari

- The petition must be filed with the Supreme Court, not this Court. Please refer to the Rules of the United States Supreme Court at www.supremecourt.gov.

Counsel Listing in Published Opinions

- Please check counsel listing on the attached decision.
- If there are any errors in a published opinion, please send a letter **in writing within 10 days** to:
    - Thomson Reuters; 610 Opperman Drive; PO Box 64526; Eagan, MN 55123 (Attn: Maria Evangelista, maria.b.evangelista@tr.com);
    - **and** electronically file a copy of the letter via the appellate electronic filing system by using the Correspondence filing category, or if you are an attorney exempted from electronic filing, mail the Court one copy of the letter.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Form 10. Bill of Costs

Instructions for this form: http://www.ca9.uscourts.gov/forms/form10instructions.pdf

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