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U.S. COURT OF APPEALS

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UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JERRY HUDSON, Plaintiff - Appellant, v. MICHAEL CHERTOFF, Secretary of the Department of Homeland Security; et al., Defendants - Appellees.	No. 07-35717 D.C. No. CV-05-01735-RSL MEMORANDUM*

Appeal from the United States District Court
for the Western District of Washington
Robert S. Lasnik, District Judge, Presiding

Argued and Submitted November 19, 2008
Seattle, Washington

Before: KOZINSKI, Chief Judge, B. FLETCHER and RAWLINSON, Circuit Judges.

Jerry Hudson is a former probationary customs inspector for United States Customs and Border Protection (CBP). CBP terminated Hudson's employment just before the end of his probationary period. Hudson sued, alleging employment

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* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

discrimination and retaliation, and the district court granted summary judgment in favor of CBP. Hudson now appeals the district court's decision. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

The district court held that Hudson did not establish a prima facie case for retaliation under the Rehabilitation Act or for disability or race discrimination and that he did not administratively exhaust his Title VII retaliation claim. We need not decide these issues, since Hudson still loses on other grounds.

CBP terminated Hudson because of his failure to immediately report an attempted bribe, which violates CBP policy, and because of Hudson's frequent absences from work. These reasons are legitimate and non-discriminatory. In opposing the motion for summary judgment, Hudson did not identify evidence sufficient to show that CBP's reasons were pretextual or that a discriminatory reason more likely than not motivated CBP. This is fatal to all of Hudson's claims. *See McGinest v. GTE Serv. Corp.*, 360 F.3d 1103, 1122 (9th Cir. 2004); *Aragon v. Republic Silver State Disposal, Inc.*, 292 F.3d 654, 658-59 (9th Cir. 2002). Thus, the district court rightly granted summary judgment in favor of CBP. The decision is **AFFIRMED**.