

JUN 17 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ROBERT BROWN,

Plaintiff - Appellant,

v.

ERIC K. SHINSEKI, Secretary of The  
Department of Veterans Affairs,\*

Defendant - Appellee.

No. 08-15405

D.C. No. CV-06-00370-LRH

MEMORANDUM\*\*

Appeal from the United States District Court  
for the District of Nevada  
Larry R. Hicks, District Judge, Presiding

Submitted June 1, 2009\*\*\*  
San Francisco, California

Before: HUG, B. FLETCHER and HAWKINS, Circuit Judges.

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\* Eric K. Shinseki is substituted for his predecessor, R. James Nicholson, as Secretary of the Department of Veterans Affairs, pursuant to Fed. R. App. P. 43(c)(2).

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

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

Robert Brown appeals the district court's summary judgment in favor of the Secretary of the Department of Veterans Affairs ("VA"). We affirm the district court.

The district court did not err in granting summary judgment on Brown's discrimination claim. The Rehabilitation Act ("RA") prohibits employment discrimination on the basis of disability. 29 U.S.C. § 791 *et seq.* To establish a *prima facie* case under the RA, a plaintiff must show: (1) that he has a disability, (2) is otherwise qualified for employment, and (3) suffered discrimination because of his disability. *Walton v. U.S. Marshals Serv.*, 492 F.3d 998, 1005 (9th Cir. 2007). Where the employer provides a legitimate, non-discriminatory reason for its adverse decision, the plaintiff must then show that this "explanation for their discharge was a pretext for disability discrimination." *Collings v. Longview Fibre Co.*, 63 F.3d 828, 833 (9th Cir. 1995).

Brown's discrimination claim fails because the VA has offered a wholly legitimate reason for Brown's termination – he physically and verbally threatened his wife's supervisor – and Brown has not introduced adequate evidence that this reason was pretextual.

Likewise, the district court did not err in granting summary judgment on Brown's retaliation claim. "A *prima facie* case of retaliation requires a plaintiff to

show: (1) involvement in a protected activity, (2) an adverse employment action, and (3) a causal link between the two.” *Coons v. Sec’y of U.S. Dept. of Treasury*, 383 F.3d 879, 887 (9th Cir. 2004) (internal quotations and citation omitted). Once the plaintiff establishes a prima facie case of retaliation, if the employer carries the burden of presenting a legitimate, non-retaliatory reason for the adverse employment action, the plaintiff must demonstrate “a genuine issue of material fact as to whether the reason advanced by the employer was a pretext” for the retaliation case to proceed beyond the summary judgment stage. *Id.* (internal quotation and citation omitted).

As with Brown’s discrimination claim, the VA has asserted a legitimate reason for his termination and Brown has failed to introduce adequate evidence that this reason was pretextual.

Therefore, the judgment of the district court is AFFIRMED.