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U.S. COURT OF APPEALS

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UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MARGARITA Q. TAITANO, Plaintiff - Appellant, v. RAY MABUS,** Secretary of the Navy, Defendant - Appellee.	No. 07-17313 D.C. No. CV-05-00028-FMT MEMORANDUM*

Appeal from the United States District Court
for the District of Guam
Frances M. Tydingco-Gatewood, Chief District Judge, Presiding

Submitted November 17, 2009***

Before: ALARCÓN, TROTT, and TASHIMA, Circuit Judges.

Margarita Q. Taitano appeals pro se from the district court's summary judgment for the Secretary of the United States Navy in her 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.

** Ray Mabus is substituted for his predecessor, Gordon R. England, as Secretary of the Navy, 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).

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discrimination action. We have jurisdiction pursuant to 28 U.S.C. § 1291. We review de novo, *Lyons v. England*, 307 F.3d 1092, 1103 (9th Cir. 2002), and affirm.

The district court properly granted summary judgment on Taitano's Title VII retaliation claims because she failed to establish a prima facie case. *See id*. at 1118 (affirming summary judgment for the Navy on retaliation claim where plaintiff failed to make out a prima facie case that (1) she engaged in a protected activity, (2) she suffered an adverse employment decision, and (3) there was a causal link between plaintiff's activity and the employment decision).

Taitano's above-average evaluation did "not rise to the level of an adverse employment action by the employer." *Id*. (explaining that a "performance evaluation that [is] mediocre (rather than 'sub-average') and that [does] not give rise to any further negative employment action [does] not violate Title VII").

Taitano's temporary re-assignment to another section within her department also did not constitute an adverse employment decision, because the record indicates that Taitano preferred the re-assignment given that she did not have to report to the supervisor with whom she had a strained relationship. *See Burlington N. and Santa Fe Ry. Co. v. White*, 548 U.S. 53, 67 (2006) ("The antiretaliation

provision [of Title VII] protects an individual not from all retaliation, but from retaliation that produces an injury or harm.").

The determination that Taitano's position was "excess," and would be eventually phased-out, was made before Taitano engaged in protected activity, and therefore there can be no causal link between the two. *See Lyons*, 307 F.3d at 1118 (explaining that a causal link between plaintiff's activity and the employment decision is a necessary element of a successful retaliation claim).

We do not consider the district court's disposition of Taitano's disparate treatment or hostile work environment claims, because Taitano develops no argument as to those rulings. *See Indep. Towers of Wash. v. Washington*, 350 F.3d 925, 929 (9th Cir. 2003) (explaining that issues not argued on appeal are deemed abandoned); *see also Pierce v. Multnomah County*, 76 F.3d 1032, 1037 n.3 (9th Cir. 1996) (applying rule to pro se litigants).

Nor do we consider issues Taitano raises for the first time on appeal. *See MacDonald v. Grace Church Seattle*, 457 F.3d 1079, 1086 (9th Cir. 2006).

Taitano's remaining contentions are unpersuasive.

AFFIRMED.