NOT FOR PUBLICATION

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U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CHAD FARHAD KHORASANI, AKA Farhad Khorasani, Plaintiff - Appellant, v. ALEJANDRO MAYORKAS, Secretary, United States Department of Homeland Security, Defendant - Appellee.	No. 23-2772 D.C. No. 8:22-cv-00778-DOC-DFM MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
David O. Carter, District Judge, Presiding

Submitted September 9, 2024**
Pasadena, California

Before: R. NELSON, MILLER, and DESAI, Circuit Judges.

Chad Farhad Khorasani appeals from the district court's order dismissing his complaint with prejudice under Federal Rule of Civil Procedure 12(b)(6). We have

* 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).

jurisdiction under 28 U.S.C. § 1291. We affirm.

"We review *de novo* the district court's grant of a motion to dismiss under Rule 12(b)(6), accepting all factual allegations in the complaint as true and construing them in the light most favorable to the nonmoving party." *Skilstaf, Inc. v. CVS Caremark Corp.*, 669 F.3d 1005, 1014 (9th Cir. 2012). To survive a motion to dismiss under Rule 12(b)(6), "a complaint must contain sufficient factual matter . . . to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). The district court correctly held that none of Khorasani's claims meet that standard.

1. Khorasani alleged that his employer, United States Citizenship and Immigration Services (USCIS), did not reasonably accommodate his attention-deficit/hyperactivity disorder. Khorasani requested and received an accommodation in the form of a change in workspace. But he asserts that USCIS should have provided a further accommodation in response to his misconduct, which was allegedly caused by his disability. Although he did not request such an accommodation, "[a]n employer should initiate the reasonable accommodation interactive process without being asked if the employer: (1) knows that the employee has a disability, (2) knows, or has reason to know, that the employee is experiencing workplace problems because of the disability, and (3) knows, or has

reason to know, that the disability prevents the employee from requesting a reasonable accommodation." *Barnett v. U.S. Air, Inc.*, 228 F.3d 1105, 1112 (9th Cir. 2000) (quotation marks omitted), *abrogated on other grounds by US Airways, Inc. v. Barnett*, 535 U.S. 391 (2002).

Khorasani did not plausibly allege that the second or third prongs of that test were met. Although he claimed that USCIS "had reason to know that [his] alleged [workplace] problems were due to [his] disability," Khorasani did not plead any facts suggesting that USCIS should have connected his misconduct, particularly his Covid-19 protocol violations, to his disability. As to the third prong, Khorasani did not plead facts supporting his assertion that USCIS had "reason to know that [his] disability prevented him from requesting a reasonable accommodation." To the contrary, Khorasani conceded that he had previously "submitted a request for reasonable accommodation" to USCIS, suggesting that USCIS had reason to believe his disability did *not* impede his ability to request an accommodation.

2. Khorasani also alleged that his termination was because of his disability, in violation of the Rehabilitation Act. One element of a claim under the Rehabilitation Act is that the plaintiff suffered discrimination because of his disability. *See Zukle v. Regents of Univ. of California*, 166 F.3d 1041, 1045 (9th Cir. 1999). Khorasani's complaint does not support a reasonable inference that the misconduct that led to his termination was the result of his ADHD, nor that USCIS

knew his misconduct stemmed from his disability. Thus, Khorasani failed to allege that he was fired because of his disability.

3. Khorasani further alleged that he was fired in retaliation for his request for a reasonable workspace accommodation, in violation of the Rehabilitation Act, or in retaliation for his request for leave under the Families First Coronavirus Response Act, in violation of that statute. But Khorasani failed to allege the requisite causal link between his protected activities and his termination. *See Cohen v. Fred Meyer, Inc.*, 686 F.2d 793, 796 (9th Cir. 1982).

4. Khorasani also did not state a plausible claim for discrimination under Title VII. To survive a motion to dismiss, a plaintiff need not necessarily establish a prima facie case of discrimination. *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 510–12 (2002). Nevertheless, "the ordinary rules for assessing the sufficiency of a complaint apply." *Id.* at 511. Under Title VII, one element of a claim is that the plaintiff experienced an adverse employment action. *Davis v. Team Elec. Co.*, 520 F.3d 1080, 1089 (9th Cir. 2008). Here, Khorasani failed to plead facts plausibly showing that he experienced an adverse employment action. That Khorasani had to request a reasonable accommodation to move offices does not "materially affect the compensation, terms, conditions, or privileges of . . . employment." *Id.* (quoting *Chuang v. Univ. of California Davis, Bd. of Trustees*, 225 F.3d 1115, 1126 (9th Cir. 2000)).

AFFIRMED.