

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

AUG 19 2026

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

HEIDI H. PECK,

Plaintiff - Appellant,

v.

UNITED PARCEL SERVICE, INC.
(DELAWARE), An Ohio Corporation,

Defendant - Appellee.

No. 25-215

D.C. No.

4:22-cv-00381-AKB

MEMORANDUM*

Appeal from the United States District Court
for the District of Idaho
Amanda K. Brailsford, District Judge, Presiding

Argued and Submitted March 13, 2026
Portland, Oregon

Before: COLLINS and LEE, Circuit Judges, and FITZWATER, District Judge.**

Heidi Peck (“Peck”) appeals from the district court order granting summary judgment to the United States Parcel Service (“UPS”) and denying Peck’s motion for partial summary judgment. We have jurisdiction under 28 U.S.C. § 1291, and

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

** The Honorable Sidney A. Fitzwater, United States District Judge for the Northern District of Texas, sitting by designation.

we affirm.

UPS terminated Peck's employment following two internal investigations concerning misreported "service failures" at locations Peck managed. Peck filed a complaint alleging that UPS (1) engaged in unlawful sex discrimination in violation of Title VII of the 1964 Civil Rights Act; (2) breached its contract, breached the implied covenant of good faith and fair dealing, and violated the Idaho Wage Claim Act by not paying Peck a year-end performance bonus pursuant to UPS's Manager Incentive Program; and (3) breached its contract by failing to follow certain aspects of UPS's Employee Dispute Resolution ("EDR") program. The district court granted UPS's motion for summary judgment on all of Peck's claims and denied Peck's motion for partial summary judgment. It also denied Peck's embedded motion to strike the declaration of a UPS Human Resources Business Partner.

This court reviews de novo an order granting summary judgment. *Ochoa v. City of Mesa*, 26 F.4th 1050, 1055 (9th Cir. 2022). "Applying the same standards as the district court," we will affirm a grant of summary judgment "if there is no genuine dispute as to any material fact when viewing the record in the light most favorable to the nonmoving party, such that the moving party is entitled to judgment as a matter of law." *Id.* (internal citations and quotation marks omitted). We review for abuse of discretion the denial of a party's motion to strike a declaration pursuant to the sham affidavit rule. *See Yeager v. Bowlin*, 693 F.3d 1076, 1079 (9th Cir.

2012).

1. Title VII claim. The district court did not err in granting UPS summary judgment on Peck's Title VII sex discrimination claim. We analyze a plaintiff's Title VII claims through the burden-shifting framework of *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973). *See also* 42 U.S.C. § 2000e–2(a). Under this framework, Peck was required to “produce sufficient evidence to raise a genuine issue of material fact” as to whether UPS's “proffered nondiscriminatory reason” for terminating her employment was “merely a pretext for discrimination.” *Dominguez-Curry v. Nev. Transp. Dept.*, 424 F.3d 1027, 1037 (9th Cir. 2005) (citing *Coleman v. Quaker Oats Co.*, 232 F.3d 1271, 1282 (9th Cir. 2000)). Peck failed to do so.

First, Peck's evidence that UPS purportedly treated some male employees more favorably than her was not sufficient to raise a genuine issue of material fact as to whether UPS's nondiscriminatory reason for terminating her employment was pretextual. A showing that an employer “treated similarly situated employees outside [the plaintiff's] protected class more favorably” can be “probative of pretext.” *Vasquez v. County of Los Angeles*, 349 F.3d 634, 641 (9th Cir. 2003). Here, Peck presented evidence that two male colleagues were not fired by UPS despite managing centers that were investigated for the same misconduct as Peck's centers. But the male colleagues Peck proffered for comparison were not similarly situated to her “in all material respects.” *See Moran v. Selig*, 447 F.3d 748, 755 (9th

Cir. 2006) (noting that to be “similarly situated” a comparator must be similar “in all material respects”). Among other things, Peck’s male comparators were each implicated in only one investigation relating to misconduct, while Peck was implicated in two separate investigations, approximately three months apart. This difference is material because the record shows that Peck, like her male colleagues, *retained* her job after she was implicated in a single investigation. *See Hawn v. Exec. Jet Mgmt. Inc.*, 615 F.3d 1151, 1157 (9th Cir. 2010) (“Materiality will depend on context and the facts of the case.”); *Vasquez*, 349 F.3d at 641 (noting that a comparator may not be similarly situated to a plaintiff if the comparator did not “engage in problematic conduct of comparable seriousness”).¹

Peck’s evidence that a UPS investigator “falsified” his investigation report was also not sufficient to raise a genuine issue of material fact as to pretext. Peck argues that UPS’s proffered reason for terminating her employment is not worthy of credence because a UPS investigator “falsified” his investigation report concerning a center Peck managed. She alleges that the UPS investigator stated he spoke to Peck for over thirty minutes even though the conversation lasted less than five

¹ We reject Peck’s argument that UPS prevented Peck from establishing “similarly situated” male employees were treated more favorably by failing to produce certain employee documents. There is no evidence that Peck diligently pursued such discovery. *See* Fed. R. Civ. P. 37(a)(3)(B) (noting a party may file a motion for an order compelling production); *Stevens v. Corelogic, Inc.*, 899 F.3d 666, 678 (9th Cir. 2018) (noting a party can seek “to delay summary judgment for further discovery” under Federal Rule of Civil Procedure 56(d)).

minutes. But even if Peck could prove the investigation report was “falsified,” this would not show that UPS’s proffered reason for terminating her employment was pretextual. *See Villiarimo v. Aloha Island Air, Inc.*, 281 F.3d 1054, 1063 (9th Cir. 2002) (holding that so long as an employer “honestly believed its reason” for terminating an employee, it does not matter if the reason was “baseless” (internal citation and quotation marks omitted)). Peck has offered no evidence that UPS had reason to question the integrity of the report or that it did not “honestly believe” it.

Peck’s additional evidence is also not sufficient. Peck argues that UPS’s proffered reason for terminating her employment is not worthy of credence because (1) she was not fired until approximately six weeks after her manager received the second investigation report, (2) her manager stated he did not review anything other than the investigation report before deciding to fire her, and (3) UPS did not reinstate Peck at a new location as recommended by a UPS EDR panel, but rather offered her a demotion. Although such allegations suggest UPS’s termination process may have been less than optimal, they are not sufficient to “raise a genuine factual question” as to whether UPS’s proffered reason for terminating Peck’s employment was “pretextual.” *See Lindahl v. Air France*, 930 F.2d 1434, 1437 (9th Cir. 1991) (citation omitted). We therefore affirm.

2. Year-end performance bonus. The district court did not err in granting UPS summary judgment on Peck’s claims relating to UPS’s failure to pay her a year-end

performance bonus. Peck alleged that UPS breached its contract, breached the implied covenant of good faith and fair dealing, and violated the Idaho Wage Claim Act, Idaho Code § 45-606(1), by not paying her a year-end performance bonus for 2019. But as Peck conceded at oral argument, these year-end bonus claims rise and fall with her Title VII claim. Because the district court properly granted UPS summary judgment as to Peck’s Title VII claim, it also properly granted UPS summary judgment as to these claims. We thus affirm.

3. Breach of contract claim. The district court also did not err in granting UPS summary judgment on Peck’s breach of contract claim relating to UPS’s alleged failure to follow certain aspects of its EDR program. To survive summary judgment, Peck had to first establish that a contract regarding dispute resolution existed between herself and UPS—or, more accurately, Peck had to establish that there was a dispute of material fact concerning whether such a contract “in fact exists.” *See Nix v. Elmore County*, 346 P.3d 1045, 1049 (Idaho 2015) (citation omitted). But UPS’s EDR Manual explicitly states that “nothing in the EDR process or [the EDR Manual] creates a contract of employment, express or implied, for any period of time” nor does the EDR Program “alter UPS’s at-will employment policy.” Accordingly, the EDR Manual did not become part of Peck’s employment contract. *See id.* at 1024 (“Whether an employee manual constitutes an element of an employment contract is generally a question of fact *unless the handbook specifically*

negates any intention on the part of the employer to have it become a part of the employment contract.” (emphasis added) (internal citation and quotation marks omitted)).

Furthermore, Peck’s declaration that she “was informed that UPS was required to participate in the first four steps of the process but that arbitration [the fifth step] was optional” is not sufficient to create a triable issue as to the existence of an implied contract without evidence concerning *how* she was informed, *when* she was informed, or even *by whom* she was informed. *See Bollinger v. Fall River Rural Elec.*, 272 P.3d 1263, 1269–70 (Idaho 2012) (holding that an employee failed to create a triable issue as to the existence of an “implied-in-fact limitation on her at-will employment status” where she failed to “pinpoint any particular statement,” “affirmative conduct,” or “any other specific circumstances that could reasonably cause her to believe her employment was protected”). We therefore affirm.

4. Motion to strike declaration. The district court did not abuse its discretion in denying Peck’s motion to strike the declaration of a UPS Human Resources Business Partner under the sham affidavit rule. “The rationale underlying the sham affidavit rule is that a party ought not be allowed to manufacture a bogus dispute with *himself* to defeat summary judgment.” *Nelson v. City of Davis*, 571 F.3d 924, 928 (9th Cir. 2009). “In order to trigger the sham affidavit rule, the district court must make a factual determination that the contradiction is a sham, and the

inconsistency between [the] party's deposition testimony and subsequent affidavit must be clear and unambiguous to justify striking the affidavit." *Yeager*, 693 F.3d at 1080 (citation and internal quotation marks omitted).

Although there is evidence that the Human Resources Business Partner may have been evasive during her deposition about topics she later addressed in her declaration, the district court did not abuse its discretion in concluding Peck failed to identify a *contradiction* that would warrant striking the declaration. *See id.*

AFFIRMED.