

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

SEP 3 2026

FOR THE NINTH CIRCUIT

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

LAUREL P. COLESTOCK,

Plaintiff - Appellant,

v.

LOUIS DEJOY, Postmaster General, United
States Postal Service,

Defendant - Appellee.

No. 25-2941

D.C. No.

2:22-cv-00329-LK

MEMORANDUM*

Appeal from the United States District Court
for the Western District of Washington
Lauren J. King, District Judge, Presiding

Argued and Submitted August 4, 2026
Seattle, Washington

Before: HAWKINS, McKEOWN, and CHRISTEN, Circuit Judges.

Plaintiff Laurel Colestock (“Colestock”) appeals the summary judgment grant to defendant, the United States Postal Service (“USPS”), in her Title VII action which alleged disparate treatment and wrongful termination on the basis of sex, a

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

hostile work environment, and retaliation. Applying de novo review, *MacIntyre v. Carroll College*, 48 F.4th 950, 954 (9th Cir. 2022), we affirm.

I.

There was no error in granting summary judgment to USPS on Colestock's retaliation claim. Colestock alleged that she was fired in retaliation for filing a sexual harassment complaint against her former supervisor at the Eastsound post office, Bruce Cowen. To establish a prima facie claim of retaliation under Title VII, she needed to show that "(1) she engaged in a protected activity; (2) she suffered an adverse employment action; and (3) there was a causal connection between the two." *Lui v. DeJoy*, 129 F.4th 770, 782 (9th Cir. 2025) (quoting *Surrell v. California Water Serv. Co.*, 518 F.3d 1097, 1108 (9th Cir. 2008)). Once a prima facie case is established, the burden shifts to the defendant to articulate "a legitimate, non-retaliatory reason" for the challenged action, and Colestock then bears the burden of showing "that the stated reasons were a pretext for retaliation." *Id.* (quoting *Surrell*, 518 F.3d at 1108).

USPS issued her August 2021 removal notice only a few weeks after she participated in the internal investigations and filed her EEO complaint. Assuming without deciding that the temporal proximity between Colestock's complaint and her termination is sufficient to make a prima facie case of retaliation, her claim nonetheless fails because USPS identified at least three legitimate and non-

retaliatory reasons for her removal, including drinking alcohol on the work premises, having sex with Cowen on the premises and while on the clock, and accepting improper higher-level pay for months. The burden thus shifted back to Colestock to prove that these reasons were pretextual. *Campbell v. Hawaii Dep't of Educ.*, 892 F.3d 1005, 1022 (9th Cir. 2018). The proffered reasons were established by Colestock's own admissions; Colestock has not shown that any other employee "had similarly engaged in protected activity" or that other employees "were let off the hook when similar allegations had been raised." *Id.* at 1023. The only employee who committed a similar group of infractions was Cowen, who was also investigated and chose to resign in lieu of termination.

II.

Nor was there error in granting summary judgment to USPS on Colestock's claims for disparate treatment and wrongful termination on the basis of sex. Colestock needed to establish a prima facie case of discrimination by demonstrating that "(1) she belongs to a protected class; (2) she was qualified for the position; (3) she was subjected to an adverse employment action; and (4) similarly situated men were treated more favorably, or her position was filled by a man." *Villiarimo v. Aloha Island Air, Inc.*, 281 F.3d 1054, 1062 (9th Cir. 2002).

Colestock failed to establish a prima facie case of discrimination because she did not identify any similarly situated men who were treated more favorably than

her. Colestock contends two males were similarly situated employees who also drank alcohol on postal service property but were not terminated. However, Colestock's own allegations are the only evidence of this misconduct, and USPS investigated but did not find corroborating evidence to support the allegations. Moreover, even accepting the allegation as true, alleged comparators do not display similar conduct if they were "not involved in the same type of offense" or combination of offenses as the plaintiff, *Vasquez v. County of Los Angeles*, 349 F.3d 634, 641 (9th Cir. 2003), and there was no allegation that these individuals were also involved in infractions such as sex on postal property or receiving improper pay for an extended period of time. Again, the only male who committed a similar combination of offenses was Cowen, who was not treated more favorably than Colestock, but was investigated, suspended without pay, and in the process of termination when he took early retirement.¹

III.

Finally, there was no error in granting summary judgment on Colestock's hostile work environment claim. Here, Colestock's allegations of hostile work

¹ Furthermore, even if Colestock established a prima facie case, as discussed above, USPS articulated several legitimate, non-discriminatory reasons for terminating her employment, including the sexual conduct with Cowen on the premises, consumption of alcohol on the premises, and improperly being paid at the postmaster level in violation of USPS policy. As with her retaliation claim, she has not demonstrated that these justifications were merely pretextual.

environment are based primarily on the actions of Cowen, but her last contact with him was on June 7, 2021, and she did not contact the EEO until 50 days later, on July 27, 2021. Postal employees must contact an EEO counselor “within 45 days of the date of the matter alleged to be discriminatory” to timely exhaust their administrative remedies. 29 C.F.R. § 1614.105(a)(1); *Cherosky v. Henderson*, 330 F.3d 1243, 1245 (9th Cir. 2003).

Colestock contends that the later actions of Senecal and Singh-Minhas during the investigation can constitute “one unlawful employment practice” sufficient to sustain a hostile work environment claim. *Nat’l R.R. Passenger Corp. v. Morgan*, 536 U.S. 101, 118 (2002). A “hostile work environment claim . . . will not be time barred so long as all acts which constitute the claim are part of the same unlawful employment practice and at least one act falls within the time period.” *Morgan*, 536 U.S. at 122. To determine whether the timely acts are sufficiently related to the untimely acts so as to constitute a single unlawful employment practice, we consider whether the acts were “sufficiently severe or pervasive” and whether the earlier and later events amounted to “the same type of employment actions, occurred relatively frequently, [or] were perpetrated by the same managers.” *Porter v. Cal. Dep’t of Corr.*, 419 F.3d 885, 893 (9th Cir. 2005) (alteration in original) (quoting *Morgan*, 536 U.S. at 116). If the timely acts “had no relation” to the prior acts and “was no

longer part of the same hostile environment claim,” then the employee cannot recover by reference to the latter acts. *Morgan*, 536 U.S. at 118.

Colestock alleges that Senecal was condescending and combative when he interviewed her as part of the investigation into her and Cowen’s misconduct; she alleges Singh-Minhas delayed payment of her expense reports and told the Snohomish postmaster about her pending investigation. These actions were not severe and pervasive, not similar to Cowen’s conduct, did not occur frequently, and were not perpetrated by the same managers. *Porter*, 419 F.3d at 893. It was thus proper to conclude that the timely acts were not sufficiently related to Cowen’s actions to form one single unlawful practice and to dismiss the hostile work environment claim as untimely.

AFFIRMED.