

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

GREGORY HOWARD,

Plaintiff,

v.

OPINION and ORDER

MR. BROADBENT, Unit Mgr.,

21-cv-419-jdp

Defendant.

Pro se plaintiff and prisoner Gregory Howard has filed a complaint in which he alleges that defendant Broadbent, a unit manager at Wisconsin Secure Program Facility, retaliated against him for filing a grievance and discriminated against him because of his race. The case is before the court for screening to determine whether Howard's complaint states a claim upon which relief may be granted. *See* 28 U.S.C. § 1915(e)(2) and § 1915A. I conclude that Howard may proceed on claims under both the First Amendment and the Fourteenth Amendment to the U.S. Constitution.

Howard's allegations are straightforward. He says that he filed a grievance against Broadbent for locking him in a closet, and shortly thereafter, Broadbent retaliated against him by giving him a conduct report for loitering and then firing him from his prison job. He also says that he and other "inmates of color" are consistently removed from their job assignments for conduct reports, but white prisoners are not. He identifies one white prisoner who Broadbent didn't remove from his job assignment after receiving a conduct report.

To prevail on a retaliation claim, a plaintiff must prove three things: (1) he was engaging in activity protected by the Constitution; (2) the defendant's conduct was sufficiently adverse to deter a person of 'ordinary firmness' from engaging in the protected activity in the future;

and (3) the defendant subjected the plaintiff to adverse treatment because of the plaintiff's constitutionally protected activity. *Gomez v. Randle*, 680 F.3d 859, 866–67 (7th Cir. 2012); *Bridges v. Gilbert*, 557 F.3d 541, 555–56 (7th Cir. 2009). Howard's allegations state a claim under this standard.

First, prison grievances are generally protected conduct under the Constitution. *See Gomez*, 680 F.3d at 866. Second, a conduct report and termination from a job can be sufficiently adverse to deter a person of ordinary firmness from engaging in protected activity. *See McElroy v. Lopac*, 403 F.3d 855, 858 (7th Cir. 2005) (loss of prison job); *Berg v. Babcock*, No. 18-cv-842-jdp, 2019 WL 3083070, at *4 (W.D. Wis. May 29, 2019) (conduct report). Third, Howard alleges that Broadbent gave him the conduct report and terminated him because of his grievance. *See Higgs v. Carver*, 286 F.3d 437, 439 (7th Cir. 2002) (a conclusory allegation that the defendant acted adversely because of protected conduct is sufficient to state a claim for retaliation); *Henderson v. Wilcoxon*, 802 F.3d 930, 933 (7th Cir. 2015) (reaffirming *Higgs* standard). So I will allow Howard to proceed on a retaliation claim.

To state a claim for race discrimination under the Equal Protection Clause, all a plaintiff must do is allege that he was treated less favorably because of his race. *See Antonelli v. Sheehan*, 81 F.3d 1422, 1433 (7th Cir. 1996). *See also Lavalais v. Vill. of Melrose Park*, 734 F.3d 629, 633 (7th Cir. 2013) (“A complaint alleging race discrimination need only aver that the [defendant] instituted a[n] adverse . . . action against the plaintiff on the basis of his race.” (internal quotation marks and alterations omitted)). Howard has satisfied that standard by alleging that Broadbent terminated him from his prison job but allowed a similarly situated white prisoner to keep his job. I will allow Howard to proceed on a discrimination claim as well.

At summary judgment or trial, Howard will not be able to rest on the allegations in his complaint. He will have to come forward with admissible evidence based on specific facts showing that Broadbent issued a conduct report because of his grievance and terminated him from his prison job because of his grievance or because of his race. *See Bouman v. Robinson*, 324 F. App'x 523, 527 (7th Cir. 2009) (affirming dismissal of retaliation claim for insufficient evidence); *Howland v. Kilquist*, 833 F.2d 639, 642 (7th Cir. 1987) (“When the facts are disputed, the parties must produce proper documentary evidence to support their contentions, and may not rest on mere allegations in the pleadings, or upon conclusory statements in affidavits.” (citations omitted)).

ORDER

IT IS ORDERED that:

1. Plaintiff Gregory Howard is GRANTED leave to proceed on his claims that: (1) defendant Broadbent retaliated against Howard for filing a grievance by giving him a conduct report and firing him from his prison job; and (2) defendant Broadbent fired Howard from his prison job because of his race.
2. Pursuant to an informal service agreement between the Wisconsin Department of Justice and this court, copies of Howard's complaint and this order are being sent today to the Attorney General for service on Broadbent. Howard should not attempt to serve Broadbent on his own at this time. Under the agreement, the Department of Justice will have 60 days from the date of the Notice of Electronic Filing of his order to answer or otherwise plead to Howard's complaint if it accepts service for Broadbent.
3. For the time being, Howard must send Broadbent a copy of every paper or document that he files with the court. Once Howard learns the name of the lawyer who will be representing Broadbent, he should serve the lawyer directly rather than Broadbent. The court will disregard documents Howard submits that do not show on the court's copy that he has sent a copy to Broadbent or to Broadbent's attorney.
4. Howard should keep a copy of all documents for his own files. If he is unable to use a photocopy machine, he may send out identical handwritten or typed copies of his documents.

5. If Howard is transferred or released while this case is pending, it is his obligation to inform the court of his new address. If he fails to do this and Broadbent or the court are unable to locate him, his case may be dismissed for failure to prosecute.

Entered October 4, 2021.

BY THE COURT:

/s/

JAMES D. PETERSON

District Judge