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

EMIR DINI,

Plaintiff,

v.

STATE OF WISCONSIN,
WISCONSIN LEGISLATIVE REFERENCE BUREAU,
RICHARD CHAMPAGNE,
and CATHLENE HANAMAN,

Defendants.

OPINION AND ORDER

20-cv-87-wmc

Pro se plaintiff Emir Dini seeks to proceed against the State of Wisconsin and the Wisconsin Legislative Reference Bureau ("LRB"), as well as LRB Chief Richard Champagne and Deputy Chief Cathelene Hanaman in their official capacities. Specifically, Dini claims that he was denied a legislative research analyst position with the LRB because of his race, national origin, and religion in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq*. He further claims an equal protection violation and a civil rights conspiracy claim under 42 U.S.C. § 1985(3) based on this same refusal to hire. Since Dini is proceeding without prepayment of the filing fee, his complaint must be screened to determine whether any portion is frivolous or malicious, fails to state a claim on which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2). For the following reasons, the court will grant Dini leave to proceed against two of the named defendants.[1]

[1] Dini has also filed a letter and two motions for miscellaneous relief asking the court to expedite its screening of his complaint. (Dkt. ##13, 15, 17.) As the court has now screened the complaint, it will also deny those motions as moot, but will grant defendants' request for service of this order, the summons, and the complaint via the court's ECF system, rather than via U.S. Marshal (dkt.

ALLEGATIONS OF FACT[2]

In 2019, the LRB posted a job announcement for three LRB legislative research analyst positions on the State of Wisconsin's "Wiscjobs" website, which instructed applicants to respond via email to a designated point-of-contact, Lynn Emery. (Dkt. #1-2.) Following this process, plaintiff Dini alleges that he was one of 75 applicants initially evaluated on paper by a four-person panel that included defendant Cathelene Hanaman. In deciding which applicants to interview, the panel members assigned a grade of A, B, C, D, or F to the applicants' writing samples. Dini's sample allegedly received a "D" grade. Two unnamed nondefendant panel members then grouped applicants using their own categories, with both categorizing Dini as "no." Ultimately, no panel member recommended interviewing Dini, despite his claiming membership in a "protected class." (Dkt. #1 at 14.) Although Dini does not expressly state which class or classes, the factual allegations in the complaint reference race, national origin, and religion.[3]

Dini further alleges that defendants deviated from statutorily mandated hiring policies and practices by: (1) having applicants email Emery rather than submit their materials through the "Wisconsin Jobs Portal"; (2) not conducting an initial screening of applicants to determine whether they met the minimum qualifications; (3) not using a

---

#10), and in light of the ongoing Covid-19 pandemic, the defendants' agreement to answer, move or otherwise respond within 21 days from the date service via ECF.

[2] For screening purposes, the court assumes the following facts based on the allegations in plaintiff's complaint and attached exhibits, resolving all ambiguities and drawing all reasonable inferences in plaintiff's favor. *Haines v. Kerner*, 404 U.S. 519, 520 (1972).

[3] Moreover, attached to the complaint is a copy of the LRB's response to Dini's EEOC charge, which alleges "national origin, race, and religion discrimination" based on the theory that the LRB deduced he "was foreign-born and Muslim" from his first name. (Dkt. #1-3 at 1, 5.)

required, three- or nine-point scale to evaluate candidates; (4) inappropriately disclosing applicant information to co-workers not involved in the hiring process; (5) convening a hiring panel that included members who personally vouched for some candidates or made recommendations based on membership in associations that, historically, have denied access to racial minorities; and (6) inconsistently applying evaluation criteria. According to Dini, these hiring practices resulted in his and other minority applicants' exclusion from job opportunities at the LRB because of their race and national origin.

In June 2019, Dini also submitted a records request to Emery for the resumes of the three individuals who *were* hired. LRB Deputy Chief Hanaman allegedly responded by providing each individual's name, but she refused to disclose their resumes. In doing so, Dini claims that Hanaman not only improperly relied on Wis. Stat. § 19.36(10), but was "aware that the disclosure of sought records would expose a hiring process marred by cronyism and clearly detached from official state policy." (Dkt. #1 at 10.) Regardless, after evaluating the new hires for himself using their names and "open-source data," Dini concluded that one of the successful candidates "did not meet the stated minimum qualifications" for the job. (Dkt. #1 at 3.)

Convinced that race, national origin, and religion played a role in the hiring process, Dini filed a June 2019 complaint against the LRB with the Equal Employment Opportunity Commission ("EEOC").[4] Dini also emailed LRB Chief Richard Champagne and an LRB

[4] Dini apparently received access to the new hires' resumes and writing samples after filing his EEOC complaint. Attached to the complaint is a copy of a September 2019 email exchange between Dini and a nondefendant assistant attorney general indicating that these documents were available to him via an EEOC portal. (Dkt. #1-4 at 1-2.)

librarian in October 2019 asking whether the LRB had ever employed minorities, but allegedly received no response because he was pursuing a discrimination charge.

On September 13, 2019, the LRB submitted its position statement in response to Dini's EEOC discrimination complaint. After summarizing the factual background, that statement purports to quote from panel members' notes about Dini's application materials, as well as compares his writing sample to those submitted by the new hires, before concluding that Dini's theory of discrimination is "insufficient to allow a finding that the LRB engaged in discriminatory hiring practices." (Dkt. #1-3 at 5.) On November 19, 2019, the EEOC issued Dini a right to sue letter, notifying him that he could "institute a civil action under Title VII of the Civil Rights Act of 1964" against the respondent. (Dkt. #1-1.) This civil lawsuit timely followed.

OPINION

Plaintiff states in his complaint that he brought this lawsuit to remedy his injuries "and to end a century long practice by [defendants] that has obstructed and unfairly excluded the recruitment of African-Americans to the highest echelons of state government." (Dkt. #1 at 4.) Toward those ends, he raises a Title VII discrimination claim, as well as equal protection and civil rights conspiracy claims, based on defendants' alleged hiring practices and on their failure to hire him for a legislative research analyst position. He further seeks declaratory and injunctive relief related to the LRB's allegedly unlawful employment practices and policies, along with costs, "[e]xemplary and punitive damages," and pre- and post-judgment interest. (Dkt. #1 at 15.) The court addresses each of plaintiff's claims in turn below.

I. Title VII Discrimination

Plaintiff appears to be principally claiming that defendants' hiring process was discriminatory and biased against him and similarly situated candidates because of race, national origin, and religion. This claim arises under Title VII of the Civil Rights Act of 1964, which makes it unlawful for an employer to refuse to hire, deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee because of "such individual's race, color, religion, sex, or national origin." 42 U.S.C. § 2000e-2(a). "Title VII prohibits both intentional discrimination (known as 'disparate treatment')" and "in some cases, practices that are not intended to discriminate but in fact have a disproportionately adverse effect on minorities (known as 'disparate impact')." *Ricci v. DeStefano*, 557 U.S. 557, 577 (2009). Said another way, disparate treatment occurs "where an employer has 'treated [a] particular person less favorably than others because of' a protected trait." *Id*. (quoting *Watson v. Fort Worth Bank & Trust*, 487 U.S. 977, 985-986 (1988)). In contrast, disparate impact occurs where: (1) an employment practice that is not related to an employer's legitimate needs operates to exclude minorities; or (2) an employer refuses to adopt an alternative practice that has less disparate impact and still serves its needs. *Id*. at 578 (citation omitted).

Here, plaintiff alleges that the LRB hiring panel members took into account "protected characteristics" when evaluating applicants and denied him the research analyst job in favor of at least one unqualified applicant "because of [plaintiff's] membership in a protected class," apparently involving his race, national origin, and religion. (Dkt. #1 at 3, 12, 14.) Plaintiff further alleges that certain LRB hiring practices do not conform to

state statutory requirements and have the effect of excluding applicants like plaintiff from job opportunities based on their race and national origin by, among other methods, tasking members of these protected classes "with the insurmountable goal" of accessing "closed social networks" in order to be viewed as competitive candidates for employment. (Dkt. #1 at 14-15.)

Although it is obviously too soon to tell whether plaintiff can actually prove this claim under a disparate treatment or impact theory as outlined above, plaintiff has done enough to put defendants on "sufficient notice to enable [them] to begin to investigate and prepare a defense." *Tamayo v. Blagoyevich*, 526 F.3d 1074, 1085 (7th Cir. 2008). Indeed, as the Seventh Circuit recently instructed for "this type of case, a plaintiff need plead only the type of discrimination, when it occurred, and by whom." *Stumm v. Wilkie*, 796 F. App'x 292, 295 (7th Cir. 2019); *see also Freeman v. Metro. Water Reclamation Dist. of Greater Chi.*, 927 F.3d 961, 965 (7th Cir. 2019) ("to proceed against the District under § 1983 or Title VII, Freeman needed only to allege . . . that the District fired him because of his race"); *Tamayo*, 526 F.3d at 1084 ("in order to prevent dismissal under Rule 12(b)(6), a complaint alleging sex discrimination need only aver that the employer instituted a (specified) adverse employment action against the plaintiff on the basis of her sex"); *Bennett v. Schmidt,* 153 F.3d 516, 518 (7th Cir. 1998) ("'I was turned down for a job because of my race' is all a complaint has to say.").

Accordingly, plaintiff may proceed on this claim against the LRB and the State of Wisconsin. Since the appropriate defendant in an action under Title VII is the employer or potential employer, however, plaintiff may not proceed against the individual

defendants in their personal capacities. *United States Equal Emp't Opportunity Comm'n v. AIC Sec. Investigations, Ltd.*, 55 F.3d 1276, 1281 (7th Cir. 1995) (no individual liability under Title VII or the ADA). Finally, to the extent the individual defendants are sued in their official capacity, as proxies for defendants LRB and the State of Wisconsin, their presence is redundant and unnecessary. *Cf. Jungels v. Pierce,* 825 F.2d 1127, 1129 (7th Cir. 1987) (a claim brought against a mayor in his official capacity and against the city were brought against "one defendant . . . not two," meaning that "nothing was added by suing the mayor in his official capacity").

II. Equal Protection

Invoking to 42 U.S.C. § 1983, plaintiff also claims that defendants violated his Fourteenth Amendment equal protection rights. In contrast to Title VII, only "persons" are subject to suit under § 1983, so plaintiff cannot proceed on a § 1983 claim against the LRB or the State of Wisconsin. *Will v. Michigan Dep't of State Police*, 491 U.S. 58, 71 (1989); *see also Williams v. Wisconsin*, 336 F.3d 576, 580 (7th Cir. 2003) ("a state is not a 'person' subject to a damages action under § 1983"). Under § 1983, plaintiff can still bring claims for prospective injunctive relief against high-level LRB officials in their official capacity, *Kentucky v. Graham*, 473 U.S. 159, 165–67 (1985), but to bring a claim for money damages, he needs to name individuals who were "personally involved" in violating his rights, *Gill v. City of Milwaukee*, 850 F.3d 335, 344 (7th Cir. 2017).

Even assuming that plaintiff has alleged sufficient personal involvement to proceed against defendants Champagne or Hanaman, plaintiff's factual allegations do not track the elements of an equal protection claim, which include being: (1) "a member of a protected

class"; (2) "otherwise similarly situated to members of the unprotected class"; and (3) "treated differently from members of the unprotected class." *Brown v. Budz*, 398 F.3d 904, 916 (7th Cir. 2005) (quoting *McNabola v. Chi. Transit Auth.*, 10 F.3d 501, 513 (7th Cir. 1993)). Specifically, plaintiff alleges that defendant Champagne did not respond to plaintiff's request for information about the LRB's history of employing minorities because he was pursuing an EEOC charge, *not* because he was a member of a protected class. Nor does plaintiff allege how he was similarly situated to members of an unprotected class.

If anything, plaintiff's allegations against Champagne sound in retaliation for filing discrimination charges. The Seventh Circuit has held that "the right to be free from retaliation may be vindicated under the First Amendment or Title VII, but not the equal protection clause." *Boyd v. Ill. State Police*, 384 F.3d 888, 898 (7th Cir. 2004). However, even if plaintiff was engaged in protected activity, he does *not* allege that any defendant refused to hire him *in retaliation* for filing his EEOC complaint, nor that he otherwise suffered a materially adverse employment action as a result of pursuing his discrimination charge. Thus, he states no claim under Title VII. *See O'Donnell v. Caine Weiner Co., LLC*, 935 F.3d 549, 553 (7th Cir. 2019) (to make out a *prima facie* case of retaliation under Title VII, a plaintiff must establish, among other requirements, that he suffered an adverse action by his employer); *see also Volling v. Kurtz Paramedic Servs., Inc.*, 840 F.3d 378, 383 (7th Cir. 2016) (discussing the adverse employment action requirement in the failure-to-hire context).

Nor can plaintiff save his § 1983 claim under the First Amendment. First, the court would have to speculate from plaintiff's allegations that the "cold shoulder" he received in

response to a request for information made after filing his charge was an action sufficiently adverse to deter a person of "ordinary firmness" from pursuing such a charge in the future. *Douglas v. Reeves*, 964 F.3d 643, 646 (7th Cir. 2020) (quoting *Surita v. Hyde*, 665 F.3d 860, 878 (7th Cir. 2011)). While this standard is objective (*id.*), any fallout from Champagne's failure to respond has apparently been minimal, as plaintiff does not allege how the failure to obtain this specific employment information undermines his discrimination charge, which the EEOC did not dismiss and on which he is proceeding in this court, or how this request subjects him to the alleged, unspecified "harm or mistreatment." (Dkt. #1 at 11.)

Second, to the extent plaintiff still believes this information would be helpful in proving his discrimination claim, he will have the opportunity to participate in the discovery process in this case. The court cannot reasonably infer in light of these circumstances that a person of ordinary firmness would be deterred from proceeding on a discrimination charge and lawsuit by the inconvenience of having a post-charge request for general employment history information be ignored.[5] *Cf. Eggenberger v. W. Albany Twp.,* 820 F.3d 938, 943 (8th Cir. 2016) (Township did not engage in unconstitutional retaliation for citizen's reporting activities to other government officials by denying him access to information, nor would "the Township's activities . . .have chilled an ordinary person from publicizing any concerns with the Township"); *Bart v. Telford*, 677 F.2d 622, 625 (7th Cir. 1982) ("It would trivialize the First Amendment to hold that harassment for

[5] It appears from the email correspondence attached to the complaint that a nondefendant assistant attorney general *was* willing to respond to this information request, indicating to plaintiff on November 22, 2019, that if he had not retained an attorney, she would "respond to the email . . . you sent to my client." (*See* dkt. #1-5 at 1-2.) For whatever reason, however, plaintiff alleges that he never received a response.

exercising the right of free speech was always actionable no matter how unlikely to deter a person of ordinary firmness from that exercise . . . "). In sum, plaintiff cannot proceed on this claim as currently pled.

III. Conspiracy to Interfere with Civil Rights

Last, Dini alleges that defendants conspired to interfere with his civil rights in violation of 42 U.S.C. § 1985(3) by denying his request for the resumes of the three new hires. To begin, a § 1985(3) claim does not create a claim for just *any* conspiracy. Rather, "an actual denial of a civil right is necessary before a cause of action arises." *Goldschmidt v. Patchett*, 686 F.2d 582, 585 (7th Cir. 1982). Thus, to assert a claim under § 1985(3), a plaintiff must allege, "first, that the defendants conspired; second, that they did so for the purpose of depriving any person or class of persons the equal protection of the laws; and third, that the plaintiff was injured by an act done in furtherance of the conspiracy." *Hartman v. Bd. of Trustees of Cmty. College Dist. No. 508*, 4 F.3d 465, 469 (7th Cir. 1993) (citation omitted).

Plaintiff's allegations falter on two of these three elements. First, plaintiff claims that the LRB, Champagne, and Hanaman conspired to protect themselves by hiding allegedly incriminating information, rather than deny him equal protection of the laws. Second, to the extent there was a conspiracy, it was apparently foiled.

Attached to the complaint is a copy of an email exchange between plaintiff and an assistant attorney general in which the attorney indicates in an email dated September 13, 2019, that "the resumes (with personal contact information redacted) and writing samples for the three hired candidates is available for [plaintiff] to download" from the EEOC

portal. (Dkt. #1-4 at 1-2.) Further, plaintiff does *not* allege that he ultimately never received copies of the resumes he sought, nor does he allege how any delay in receiving those copies was prejudicial to his still-viable discrimination claim. Because it cannot be reasonably inferred that plaintiff has been injured by a delay in obtaining the resumes, or by having to obtain them from a source other than the LRB, plaintiff cannot proceed on a civil rights conspiracy claim under § 1985.

ORDER

IT IS ORDERED that:

1) Plaintiff Emir Dini is GRANTED leave to proceed on Title VII discrimination claims based on race, national origin, and religion against defendants the State of Wisconsin and the Wisconsin Legislative Reference Bureau.

2) Plaintiff is DENIED leave to proceed on any other claim and against defendants Richard Champagne and Cathelene Hanaman, who are both DISMISSED from this lawsuit.

3) Plaintiff's motions for miscellaneous relief (dkt. ##15, 17) are DENIED as moot.

4) Defendants' request to accept service of this order, the summons and complaint via the court's ECF system (dkt. #10) is GRANTED. Defendants shall have 21 days from the date service is made via ECF to answer or otherwise plead to plaintiff's complaint.

5) Plaintiff should serve defendants' lawyer with a copy of every paper or document he files with the court. The court will disregard any documents submitted by plaintiff unless plaintiff shows on the court's copy that he has sent a copy to the defendants' attorney.

6) Plaintiff should keep a copy of all documents for his own files. If plaintiff does not have access to a photocopy machine, he may send out identical handwritten or typed copies of his documents.

7) If plaintiff moves while this case is pending, it is his obligation to inform the court of his new address. If he fails to do this and defendants or the court are unable to locate him, his case may be dismissed for failure to prosecute.

Entered this 17th day of November, 2020.

BY THE COURT:

/s/

_____

WILLIAM M. CONLEY
District Judge