

United States Court of Appeals
for the Fifth Circuit

No. 24-20469

United States Court of Appeals
Fifth Circuit

FILED

October 8, 2025

Lyle W. Cayce
Clerk

JOSEPH CHHIM,

Plaintiff—Appellant,

versus

CITY OF HOUSTON, HUMAN RESOURCES-PUBLIC WORKS;
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION; RAYFORD O.
IRVIN; MICHAEL LIGHTNER,

Defendants—Appellees.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:23-CV-4850

Before DENNIS, GRAVES, and DUNCAN, *Circuit Judges*.

PER CURIAM:*

Joseph Chhim is a seventy-nine-year-old Asian man of Cambodian descent. He began working for the City of Houston in the 1990s. In October 1994, Chhim settled employment discrimination claims against the City. After the settlement, the City continued to employ Chhim until his termination in July 1995. Chhim has filed multiple lawsuits against the City

* This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

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since then. Chhim’s present suit alleges that, from July to September 2023, he applied for various custodial and mechanical positions with the City but was neither interviewed nor hired. He instituted suit against the City,¹ asserting claims of national origin discrimination, age discrimination, and retaliation under Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act (ADEA), and Chapter 21 of the Texas Labor Code (TCHRA).² Following Chhim’s filing of an amended complaint, the district court dismissed all claims with prejudice pursuant to Federal Rule of Civil Procedure 12(b)(6). This timely appeal followed.³

First, as to Chhim’s discrimination claims, the district court observed that he failed to plead facts sufficient to make a plausible claim that the City rejected him because of his race, national origin, or age:

“Although Chhim’s claims can be somewhat difficult to discern, he seems to aver that because of his Cambodian origin, race, and [age], Houston hired [someone else] instead of

¹ Chhim also sued the Equal Employment Opportunity Commission, EEOC Director Rayford Irvin, and EEOC Investigator Michael Lightner. The district court found that it lacked jurisdiction over those defendants, and Chhim does not dispute that point on appeal. *See Rollins v. Home Depot USA, Inc.*, 8 F.4th 393, 397 (5th Cir. 2021) (“A party forfeits an argument . . . by failing to adequately brief the argument on appeal.”).

² The Supreme Court of Texas has held that the TCHRA “is effectively identical to Title VII, its federal equivalent,” and therefore “analogous federal statutes and the cases interpreted them guide [courts’] reading of the TCHRA.” *Mission Consol. Indep. Sch. Dist. v. Garcia*, 372 S.W.3d 629, 633–34 (Tex. 2012).

³ We review a Rule 12(b)(6) dismissal de novo. *Meador v. Apple, Inc.*, 911 F.3d 260, 264 (5th Cir. 2018). We accept Chhim’s version of the facts as true and view those facts in the light most favorable to him. *Id.* Because Chhim represents himself, we hold his complaint to a less strict standard than we would if it were written by a lawyer. *See Haines v. Kerner*, 404 U.S. 519, 520–21 (1972). His complaint still must satisfy the requirement that we impose on all complaints in federal court: it must contain enough facts to state a claim for relief that is plausible on its face. *In re S. Scrap Material Co.*, 541 F.3d 584, 587 (5th Cir. 2008) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)).

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Chhim.” *Chhim v. Univ. of Tex. at Austin*, 836 F.3d 467, 470 (5th Cir. 2016). While “Chhim did not have to submit evidence to establish a prima facie case of discrimination at this stage, he had to plead sufficient facts on all of the ultimate elements of a disparate treatment claim to make his case plausible.” *Id.* “Ultimately, Chhim fails to plead sufficient facts to make a plausible claim that the [City] rejected his application[s] . . . because of his race, color, or national origin.” *Id.* at 470–71.

In other cases, Chhim has at least alleged that an employer “hired a less qualified, similarly situated applicant over Chhim.” *Id.* at 471. Here, however, Chhim concedes that he does not know anything about the people ultimately selected for the positions to which he applied and was not interviewed or hired. *See* Dkt. 7 at 2 (“Plaintiff did not know the person whom was filled for custodian.”). Because “Chhim pleads no facts that suggest the applicant hired by the [City] was less qualified than Chhim or was similarly situated,” Chhim necessarily fails to state a prima facie discrimination claim. *Chhim*, 836 F.3d at 471 (affirming “dismissal of Chhim’s Title VII claim”); *see also Chhim v. Univ. of Hous. Clear Lake*, 129 F. Supp. 3d 507, 513 (S.D. Tex. 2015) (affirming dismissal of Chhim’s Title VII discrimination claim because he “has not alleged facts showing that similarly situated individuals outside of his protected class were treated more favorably under nearly identical circumstances”). Accordingly, Chhim’s discrimination claims must be dismissed.

Chhim v. City of Houston, No. 4:23-cv-04850, 2024 WL 4446515, at *4 (S.D. Tex. Oct. 8, 2024).

Second, as to Chhim’s retaliation claims, the district court observed that he failed to plead facts showing that any decisionmaker knew of his protected activity or, in the alternative, that the City’s refusal to interview him was causally connected to that activity, and thus he failed to state a plausible retaliation claim:

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To plead a prima facie retaliation claim under either “Title VII, the ADEA, [or] the TCHRA . . . requires a showing that (1) [Chhim] engaged in a protected activity pursuant to one of the statutes, (2) an adverse employment action occurred, and (3) there exists a causal link connecting the protected activity to the adverse employment action.” *Munoz v. Seton Healthcare, Inc.*, 557 F. App’x 314, 321 (5th Cir. 2014). “The ultimate determination in an unlawful retaliation case is whether the conduct protected by Title VII [or the ADEA or the TCHRA] was a ‘but for’ cause of the adverse employment decision.” *Long v. Eastfield Coll.*, 88 F.3d 300, 305 n.4 (5th Cir. 1996).

Chhim contends that he “met his initial burden with respect to causation” because he “alleges that the City declined to rehire him . . . because he filed [a] previous complaint with the EEOC [and his appeal was] denied February 23, 2023 by the U.S. Supreme Court.” Dkt. 7 at 11. In other words, Chhim contends that the “temporal proximity” between his February 15, 2023 letter to the United States Supreme Court—regarding a case that was closed on October 31, 2022—and the City’s refusal to interview him between July and September 2023 is “enough circumstantial evidence to suggest a retaliatory motive.” *Id.* This argument fails in several respects.

To start, Chhim does not allege that the City had any knowledge of his February 15, 2023 letter to the Supreme Court, and the letter does not show that the City was copied on the communication. *See id.* at 19. “A ‘causal link’ is established when the evidence demonstrates that the employer’s decision to terminate was based in part on *knowledge* of the employee’s protected activity.” *Medina*, 238 F.3d at 684 (emphasis added) (quotation omitted). “Thus, an employer cannot retaliate against an employee if the employer’s decisionmaker for the adverse employment decision did not know that the employee had engaged in protected activity at the time of the alleged retaliatory actions.” *Normore v. Dallas Indep. Sch. Dist.*, 677 F.

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Supp. 3d 494, 531 (N.D. Tex. 2023). Chhim does not even identify the decisionmaker for the adverse employment decisions of which he complains, much less allege that this unidentified decisionmaker knew about his February 15, 2023 letter to the Supreme Court. For this reason alone, Chhim fails to state a prima facie retaliation claim.

I will assume, however, for the sake of argument, that some unidentified decisionmaker with the City had knowledge of Chhim's February 15, 2023 letter to the Supreme Court regarding a case on which the City had ultimately prevailed in October 2022. Even so, the "five[-]month lapse" between Chhim's February 2023 letter and the City's refusal to interview Chhim in July 2023 "is not close enough . . . to establish the 'causal connection' element of a prima facie case of retaliation." *Lyons v. Katy Indep. Sch. Dist.*, 964 F.3d 298, 305 (5th Cir. 2020). Thus, Chhim fails to plead a retaliation claim.

Chhim, 2024 WL 4446515, at *4–5.

On appeal, even construing his briefs "liberally," as we must for a pro se litigant, *see Grant v. Cuellar*, 59 F.3d 523, 524 (5th Cir. 1995), Chhim does not address the district court's analysis or explain how it erred. By failing to raise a challenge to the district court's analysis on appeal, it "is the same as if he had not appealed that judgment." *Brinkmann v. Dall. Cnty. Deputy Sheriff Abner*, 813 F.2d 744, 748 (5th Cir. 1987) (concluding that appellant forfeited an argument by failing to address the district court's analysis and explain how it erred).

AFFIRMED.