

NONPRECEDENTIAL DISPOSITION

To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

Submitted December 3, 2025*

Decided December 16, 2025

BeforeDAVID F. HAMILTON, *Circuit Judge*CANDACE JACKSON-AKIWUMI, *Circuit Judge*JOHN Z. LEE, *Circuit Judge*

No. 24-2663

STEPHEN BYRD,
*Plaintiff-Appellant,**v.*BRITTNEE SMITH,
*Defendant-Appellee.*Appeal from the United States District
Court for the Southern District of
Indiana, Terre Haute Division.

No. 2:20-cv-00504-JPH-MKK

James Patrick Hanlon,
*Judge.***ORDER**

Stephen Byrd, who was incarcerated at Wabash Valley Correctional Center, sued Brittnee Smith, alleging that she retaliated against him because of his protected speech.

* We have agreed to decide the case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

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The district court entered summary judgment for Smith. We vacate the judgment and remand for further proceedings.

We review the record in the light most favorable to Byrd as the non-moving party. *See Jones v. Van Lanen*, 27 F.4th 1280, 1284 (7th Cir. 2022). Smith, who was employed by a company contracted by the Indiana Department of Corrections, supervised the prison's kitchen staff. Byrd worked as a sanitation clerk in the prison's dining room, which was well compensated for a prison job. One of Smith's coworkers began a sexual relationship with Byrd in September 2019. Byrd later initiated an investigation under the Prison Rape Elimination Act ("PREA"), 34 U.S.C. §§ 30301-30309. His allegations were substantiated, and Smith's colleague resigned in May 2020.

Byrd attests that Smith then started harassing him. Although Smith oversaw only the kitchen and did not supervise Byrd or other dining-room staff, prisoners were required to follow orders from any employees of a contractor. Under this authority, Smith would come into the dining area and require Byrd to do extra work. For example, Byrd previously helped other prisoners with legal work during his breaks. But after her colleague resigned, Smith began ordering Byrd to clean the trash on the dock during this time. This involved moving approximately 50 trash bags, some of which had been ripped open by cats or birds, into the dumpster. No other sanitation clerks were given similar directives. Smith also ordered Byrd to help kitchen workers clean dishes when the dishwasher broke down. This happened multiple times a month, requiring Byrd, who came to work at 5:30 a.m., to stay until 9:00 p.m., cleaning hundreds of trays. Smith never instructed any other dining-room sanitation clerks to help. And the directives came from a single source: Smith. Byrd worked seven days a week, but he was required to perform additional work outside the dining area only on the five weekdays that Smith worked.

Apart from the extra work, Byrd attested that Smith began making negative comments toward him. Smith once said to him and two others in the dining area, "Byrd wants to go around telling on everyone." Smith's staff also became hostile toward Byrd. Another colleague, who was close friends with both Smith and the former colleague, saw Byrd and said that she was going to "get his ass," which Byrd understood as a threat toward him. Byrd complained about Smith and her staff to his caseworker, who then escalated the issue to the PREA coordinator. The PREA coordinator emailed Smith in June 2020, stating, "Byrd is afraid of retaliation from [the] previous incident" and that staff members should "leave it alone" because Byrd should be promoted to the "Sewing Shop soon." Byrd also filed multiple grievances against Smith for retaliation.

Two days after Smith received the email from the PREA coordinator, Smith approached Byrd and requested that he sign some paperwork. Smith attested that the prison was consolidating all of its dining staff under her supervision and that the prison instructed her to have all dining employees sign reclassification paperwork. Byrd refused to sign because he was not comfortable working under Smith. Smith attested that the prison classification supervisor, a deputy warden, and a sergeant told her to file a work evaluation for Byrd because he refused to sign the appropriate paperwork.

The next day, Byrd received a negative work evaluation from Smith. She wrote that Byrd “violates” rules, is “resentful,” “easily-led,” “inattentive,” “indifferent,” and has “average” initiative. She said that his work was “acceptable,” that he treated the job as “a-job-to-do,” and that he completed his work “as required.” Further, he followed safety protocols and required “moderate” supervision. Smith wrote in the comments that Byrd refused to sign the paperwork because he did not feel comfortable working for her staff. Byrd attested, and Smith does not dispute, that Smith did not discuss the evaluation with Byrd before giving it to him, even though she indicated on the form that she did so.

Smith’s negative evaluation of Byrd was an outlier. Byrd attested, and Smith does not dispute, that less than a month before Smith’s evaluation, his direct supervisors gave him a positive work evaluation. And Byrd had other positive evaluations predating Smith’s as well. He provided an October 2019 evaluation showing that he had “exemplary” conduct, was “helpful,” “self-reliant,” “energetic,” and “stable”; that his work was “conscientious,” “outstanding,” “excellent”; that he was “safety-conscious” and required only “moderate” supervision. The record contains no negative work evaluations of Byrd other than Smith’s.

Because of Smith’s “bad work evaluation,” the prison reclassified Byrd to idle-without-pay status. This meant Byrd could not obtain new employment for 90 days. He was transferred from the workers’ housing to a non-working unit, which he called “disciplinary” and “pretty bad” because it was more violent. Byrd appealed his reclassification, stating that he feared Smith was retaliating against him for his earlier complaints. The appeal was denied because Byrd “refused a work assignment” and so was reclassified “per policy.” Byrd attested, and again Smith does not dispute, that there is another form Smith could have used to reclassify him that would accomplish the reclassification without rendering him idle without pay.

Byrd invoked 42 U.S.C. § 1983 and sued Smith, alleging that she retaliated against him in violation of his First Amendment rights. The district court entered summary judgment for Smith, concluding in relevant part that Byrd provided no

evidence from which a jury could find that Smith's poor evaluation was retaliatory: his refusal to sign the reclassification form justified it.

On appeal, Byrd asserts that the district court gave short shrift to the suspicious timing between his complaints and Smith's evaluation, as well as the discrepancies between Smith's work evaluation and those of his direct supervisors. To survive summary judgment, Byrd needed to provide enough evidence that a reasonable jury could conclude he engaged in protected First Amendment activity, suffered a deprivation that would likely deter future protected activity, and the protected activity was a motivating factor in the defendant's retaliation. *Jones*, 27 F.4th at 1284 (quoting *Walker v. Groot*, 867 F.3d 799, 803 (7th Cir. 2017)). Smith does not dispute that Byrd's PREA complaint and grievances were protected activity. The parties dispute the sufficiency of the evidence with respect to only the second and third elements.

With respect to the second element, Byrd asserts that Smith's bad evaluation prevented him from obtaining employment for 90 days and that this is a consequence that would dissuade "a person of ordinary firmness" from engaging in protected activity. *See FKFJ, Inc. v. Village of Worth*, 11 F.4th 574, 585 (7th Cir. 2021) (quoting *Douglas v. Reeves*, 964 F.3d 643, 646 (7th Cir. 2020)). We agree. Byrd provided evidence of a concrete difference between his pre-evaluation housing assignment and a relatively well-paying job in the prison's dining room, and the post-evaluation reassignment to a non-working housing unit and prohibition from getting another prison job for 90 days. A reasonable jury could find that losing a prison job for three months is itself sufficient to deter First Amendment activity. *See Douglas*, 964 F.3d at 648 (noting denial or removal from a prison job can deter protected speech). But here Byrd was not just barred from employment for three months, he was also transferred to a more violent housing unit—a point Smith does not contest. The withdrawal of physical safety can also be sufficient to chill speech. *See NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 462–63 (1958).

Smith contends that a work evaluation reflecting Byrd's refusal to sign the reclassification paperwork would not deter other prisoners from engaging in protected activity. Smith relies on *Rodriguez v. Briley*, 403 F.3d 952, 952 (7th Cir. 2005), where we concluded there was no violation of a prisoner's Eighth Amendment rights when he was punished for refusing to follow a valid rule. Smith argues that reasoning applies here because Byrd could have simply elected to sign the reclassification paperwork. As an initial matter, conduct sufficient to chill protected speech, even in the prison context, need not rise to the level of cruel and unusual punishment for Eighth Amendment purposes. And, in any event, the mere application of a generally applicable rule, such as

giving out work evaluations, does not necessarily shield prison officials from liability if there is a causal connection between the protected activity and the adverse action. *See, e.g., Whitfield v. Spiller*, 76 F.4th 698, 710–11 (7th Cir. 2023). Smith focuses on the evaluation, but the adverse action included the consequences that flowed from the negative evaluation: Byrd’s disqualification from paid work for three months and transfer to a more violent housing unit. Even considering the “harsh realities of a prison environment,” *Holleman v. Zatecky*, 951 F.3d 873, 880 (7th Cir. 2020), these actions are sufficient to dissuade a person of ordinary firmness from engaging in protected activity.

With respect to the third element, relating to causation, Byrd maintains that there is a dispute of material fact. On this point, Byrd needed to provide evidence that his protected activity was at least a motivating factor in Smith’s decision to write the negative evaluation. *Douglas*, 964 F.3d at 646. Causation may be inferred through circumstantial evidence, such as when the adverse action “follows close on the heels of protected expression” and “the person who decided to impose the adverse action knew of the protected conduct.” *FKFJ, Inc.*, 11 F.4th at 586 (quoting *Lalvani v. Cook Cnty.*, 269 F.3d 785, 790 (7th Cir. 2001)). Here, the reclassification purportedly leading to Byrd’s negative work evaluation occurred only two days after Smith received an email about Byrd claiming retaliation for filing the PREA complaint. Byrd also provided evidence of events leading up to the negative work evaluation that a jury could find bear on Smith’s motivation. Byrd averred that after Smith’s coworker resigned, Smith told other prisoners that Byrd “wants to go around telling on everyone” — which, in the prison context, could be understood as tacitly endorsing violence against him — and that Smith’s friend told Byrd that Smith would “get his ass.”¹ He also gave concrete examples of undesirable and lengthy work assignments that Smith singled him out to perform. *See Valentino v. Village of South Chicago Heights*, 575 F.3d 664, 673–74 (7th Cir. 2009) (singling out of the plaintiff’s work desk to be searched on the same day the defendants learned about her protected activity was one factor among others that created a genuine issue of fact regarding the true reason for the defendants’ actions).

Smith argues that she was motivated only by the instructions of prison officials, who told her to consolidate the dining and kitchen workers through reclassification paperwork and to write a work evaluation for Byrd. Byrd argues that Smith’s proffered reasoning is pretextual because she lied about what she was told to do and what she

¹ The district court concluded that these events in and of themselves did not amount to kinds of retaliation. Because Byrd appeals only the negative work evaluation as the vehicle for Smith’s retaliation, we instead consider them as potential evidence of Smith’s motivation for the negative work evaluation, which, in turn, resulted in the loss of paid work privileges and transfer to a more violent housing unit.

wrote in the evaluation. As supporting evidence, Byrd relies on a prior work evaluation from his direct supervisor that states he is “helpful,” “self-reliant,” “energetic,” “stable,” “conscientious,” and “outstanding,” as well as his own testimony that Smith did not go over the evaluation with him, as she wrote she did, and which she does not contest. Evidence of an “unfairly drafted performance evaluation” strengthens the inference of improper motive, especially when it was written by the person alleged to have committed the retaliation. *Massey v. Johnson*, 457 F.3d 711, 719–20 (7th Cir. 2006). Further, retaliation needs to be only *a* motivating factor, not *the* motivating factor, so a jury could find that Smith followed prison directions by completing an evaluation yet also retaliated against Byrd by writing a negative one that did not accurately reflect his performance of his job duties. Taken together, the suspicious timing, substantive differences with the performance reviews drafted by direct supervisors, incorrect information regarding whether it was discussed with Byrd, and the availability of a different form that would not have resulted in placing Byrd in idle-without-pay status would be sufficient for a jury to conclude that the negative evaluation was at least in part retaliatory. *See Jones*, 27 F.4th at 1284–85.

For these reasons, the district court’s judgment is VACATED and the case is REMANDED for further proceedings.