

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A22-1184**

Jenny Rhoades,
Appellant,

vs.

The City of Bloomington,
a Minnesota Municipal corporation,
Respondent.

**Filed July 3, 2023
Affirmed
Larson, Judge**

Hennepin County District Court
File No. 27-CV-21-9947

Jenny Rhoades, Plymouth, Minnesota (self-represented appellant)

Susan M. Tindal, Andrew A. Wolf, Iverson Reuvers, Bloomington, Minnesota (for respondent)

Considered and decided by Johnson, Presiding Judge; Gaïtas, Judge; and Larson, Judge.

NONPRECEDENTIAL OPINION

LARSON, Judge

Appellant Jenny Rhoades challenges the district court's order granting summary judgment in favor of respondent City of Bloomington (the city). Appellant argues the district court erred when it granted summary judgment on appellant's disability-

discrimination, retaliatory-discharge, and failure-to-offer-continued-employment claims. We affirm.

FACTS

Appellant began working for the city's utilities division (the division) as the division's only part-time meter reader in 2015.¹ By January 2019, appellant typically worked fewer than 28 hours weekly. Appellant's job duties included driving to residential and commercial customers to take meter readings to measure water consumption. These duties required appellant to climb stairs, bend and kneel, work in inclement weather, and traverse uneven ground.

Appellant shared the meter-reading duty with utility operators (UOs), a different position within the division. UOs were full-time employees who also completed infrastructure inspection, repair, and maintenance activities, and needed to have certain

¹ The district court issued a stipulated protective order permitting the parties to file certain evidentiary materials under seal, and the parties filed certain evidentiary materials under seal according to that order. Those evidentiary materials remain under seal on appeal. See Minn. R. Civ. App. P. 112.01, subd. 1. The parties' appellate briefs are not under seal, and we are not constrained from disclosing information contained in the briefs or appellant's addendum. See Minn. R. Pub. Access to Recs. of Jud. Branch 4; *see also* *Coursolle v. EMC Ins. Grp., Inc.*, 794 N.W.2d 652, 655-56 n. 1 (Minn. App. 2011), *rev. denied* (Minn. Apr. 19, 2011). Accordingly, the facts stated in this opinion are limited to the facts stated in the parties' briefs and other evidentiary materials in the record that are not under seal. We have, of course, reviewed the record in its entirety, including the portions that are confidential and nonpublic, to ensure that the parties' briefs have accurately stated the facts and to decide the issues raised in the appeal.

training and licensure not required for appellant's position. The city described both the part-time meter-reader and UO positions as classified service.²

In January 2019, appellant slipped on a patch of ice while taking a meter reading and injured her knee. Although initial physician consultations resulted in no work restrictions, appellant's condition deteriorated until, in February 2020, appellant's physician placed appellant on light duty work restrictions for approximately one month. The division created light duty work for appellant, which she performed for a time, but at appellant's request, she returned to her meter-reading duties in March 2020.

Also in March 2020, the division predicted substantial financial losses due to the developing COVID-19 pandemic and began internal discussions regarding cost-cutting

² The city's rules defined "[c]lassified service" as:

The group of positions having the entrance requirements, recruiting procedures, formal classification and rights as established by these rules. Includes all regular positions except the city manager, the city attorney, the assistant city manager, and assistant city attorneys are not covered by the merit system. May be full-time or regular part-time positions.

The city's rules provided that:

Each position in the classified service shall be assigned to a classification (or "class") on the basis of the duties and responsibilities, authority, qualifications, and requirements of the position. Positions in the same class shall be *sufficiently similar* to permit the use of a single job title and the same pay range or grade. The class may contain one or more positions.

(Emphasis added.) The city's rules also note, "An appointing authority may layoff an employee in the classified service for lack of work, reduction of funds, elimination of the position, or other material change in duties or organizational needs."

measures. In early April 2020, the division superintendent met with supervisors throughout the division. During these discussions, the superintendent recommended eliminating the part-time meter-reader position. The superintendent and appellant's supervisor agreed that the pandemic had reduced the division's labor needs and that the UOs could absorb the part-time meter-reader position's duties. Around April 20, 2020, appellant's supervisor informed appellant that the division had no more work for her that week. When appellant asked why, her supervisor explained that the division was "running out of work for [full-time employees]." Similarly, the record indicates that the division lacked work to assign appellant on April 30, 2020 because the pandemic had reduced labor needs. The parties agree that appellant's hours remained reduced throughout May 2020.

Appellant had surgery on June 2, 2020, to address her work-related knee injury. Following her surgery, appellant took approximately three weeks off. Despite having some work restrictions into July 2020, appellant completed at least one meter-reading route at the end of June. Around this time, the superintendent told appellant that the division would continue to have reduced labor needs for the foreseeable future.

On July 17, 2020, a human resources (HR) representative emailed the superintendent and appellant's supervisor to summarize a phone call she had with appellant. The HR representative said appellant believed "her job should be held for her" while she recovered from knee surgery, that the HR representative told appellant the lack of work was unrelated to her knee injury, and that appellant "was not seeing how the work has gone away." The HR representative also expressed her "concern[]" about the

timing as this could easily appear to be disability discrimination to permanently reduce [appellant's] hours by so much at this time.”

The city terminated appellant's employment at a meeting on July 24, 2020. The city informed appellant that her discharge was a “direct result of the impacts of the COVID-19 pandemic” on operations and “in no way related to her individual performance.”

Appellant filed a complaint with the district court on October 28, 2021, alleging disability discrimination³ under the Minnesota Human Rights Act (MHRA), Minn. Stat. § 363A.08, subd. 2 (2022), as well as retaliatory discharge and refusal to offer continued employment under the Minnesota Workers' Compensation Act (WCA), Minn. Stat. § 176.82, subds. 1-2 (2022). After a hearing, the district court granted the city's motion for summary judgment on all three claims. The district court determined that appellant failed to raise a genuine issue of material fact that her knee injury qualified as a disability under the MHRA, or that the city's stated nondiscriminatory reason for her termination was pretextual. With regard to the WCA claims, the district court determined that the parties did not dispute that appellant received workers' compensation benefits on certain dates between February and July 2020. But the district court concluded appellant failed to raise a genuine issue of material fact because she “presented no evidence that her termination was related to her receipt of worker's compensation benefits.” The district court finally concluded that even if appellant had raised genuine issues of material fact, it

³ Appellant alleged she had a disability because her knee injury substantially limited her ability to walk and care for herself.

must grant summary judgment because the city enjoyed vicarious official immunity from suit.

Appellant appeals.

DECISION

Appellant argues that the district court erred when it granted summary judgment because she raised genuine issues of material fact on her MHRA and WCA claims. We review the district court's decision to grant summary judgment de novo. *Hanson v. Dep't of Nat. Res.*, 972 N.W.2d 362, 371 (Minn. 2022). "We will affirm a grant of summary judgment if no genuine issues of material fact exist and if the court accurately applied the law." *Id.* at 371-72. "In determining whether there are genuine issues of material fact, we view the evidence in the light most favorable to the nonmoving party and resolve all doubts and factual inferences against the moving parties." *Id.* at 372 (quotation omitted). "Fact issues exist when reasonable persons might draw different conclusions from the evidence presented." *Id.* (quotation omitted).

Employment relationships are generally at-will in Minnesota, so an employer may discharge an employee for any reason or no reason, so long as the reason is not unlawful. *Id.* Statutory exceptions exist that prevent an employer from discharging an employee for improper reasons, including the MHRA, Minn. Stat. §§ 363A.01-.44 (2022), and the WCA, Minn. Stat. §§ 176.001-.862 (2022). The MHRA prohibits employment discrimination based on several protected characteristics, including disability. Minn. Stat. § 363A.08, subd. 2. The WCA prohibits, among other bases, retaliatory discharge

or failure to offer continued employment because an employee seeks workers' compensation benefits. Minn. Stat. § 176.82, subds. 1-2.

When reviewing summary-judgment decisions for the MHRA and WCA claims at issue here, we employ the three-step analysis the United States Supreme Court articulated in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973). See *Hanson*, 972 N.W.2d at 371-72 (MHRA claims); *Schmitz v. U.S. Steel Corp.*, 831 N.W.2d 656, 670-71 (Minn. App. 2013) (WCA claims), *aff'd*, 852 N.W.2d 669 (Minn. 2014).⁴ “At the first step, the employee must establish a prima facie case of discrimination, the elements of which will vary depending on the facts of the case.” *Hanson*, 972 N.W.2d at 373. “At the second step, the burden of production shifts to the employer to provide some legitimate, nondiscriminatory reason to explain why it took the adverse employment action.” *Id.*

⁴ While *Schmitz* discussed *McDonnell Douglas* in the context of a retaliatory-discharge claim brought under Minn. Stat. § 176.82, subd. 1, there is no controlling authority expressly applying *McDonnell Douglas* to failure-to-offer-continued-employment claims under Minn. Stat. § 176.82, subd. 2. For the purpose of this appeal, we conclude it is appropriate to apply *McDonnell Douglas* to appellant's failure-to-offer-continued-employment claim. In *Schmitz*, we concluded that while the district court must apply *McDonnell Douglas* to retaliatory-discharge claims in violation of Minn. Stat. § 176.82, subd. 1, it need not do so for threat-of-discharge claims in violation of the same statutory provision because “[u]nlike the retaliatory-discharge context, in which the employee suffers an adverse employment action, . . . for which there may have been a legitimate reason, it is never permissible to deter an injured employee from seeking workers' compensation benefits.” 831 N.W.2d at 671. But here, as with retaliatory-discharge claims, *McDonnell Douglas* is appropriate because it is possible that there was a nondiscriminatory reason for the city's failure to offer continued employment. See *id.*; see also *Kirk v. State, Dept. of Transp.*, A15-0253, 2015 WL 5200798, at *5 (Minn. App. Sept. 8, 2015) (concluding appellant had failed to meet his burden to show pretext for his failure-to-offer-continued-employment claim), *rev. denied* (Minn. Nov. 25, 2015); Minn. R. Civ. App. P. 136.01, subd. 1(c) (“Nonprecedential opinions . . . are not binding authority except as law of the case, res judicata or collateral estoppel, but nonprecedential opinions may be cited as persuasive authority.”).

(quotation omitted). “At the third step, the burden shifts back to the employee,” *id.*, who must establish that the employer’s “proffered reason is a pretext for discrimination,” *Hoover v. Nw. Private Mortg. Banking*, 632 N.W.2d 534, 542 (Minn. 2001).

Here, appellant challenges the district court’s decision that she failed to raise genuine issues of material fact on her MHRA and WCA claims. We address appellant’s claims in turn.

I.

Appellant argues the district court improperly granted summary judgment on her MHRA claim. Appellant claims the city violated the MHRA when it discriminated against her because of a disability—her work-related knee injury. *See* Minn. Stat. § 363A.08, subd. 2; *Hoover*, 632 N.W.2d at 542. When reviewing MHRA disability-discrimination claims under the *McDonnell-Douglas* framework,⁵ we frequently apply “principles which have evolved in the adjudication of claims under the [Americans with Disabilities Act (ADA)]” because the two statutes have substantial similarities. *Hoover*, 632 N.W.2d at 542. Here, we assume without deciding that the parties met their respective burdens to satisfy the first two steps in the *McDonnell-Douglas* framework, because we conclude the district court correctly determined appellant failed to raise a genuine issue of material fact on the third step—pretext.

⁵ Respondent resurrects on appeal an argument that the district court rejected, asserting that we should apply the elevated prima facie showing set forth in *Dietrich v. Canadian Pac. Ltd.*, 536 N.W.2d 319, 323 (Minn. 1995), because appellant’s termination resulted from a workforce reduction. But, respondent conceded at summary judgment that it lacked authority for the proposition that eliminating a single employee constitutes a workforce reduction. We conclude the district court properly applied the *McDonnell-Douglas* framework under the facts in this case.

“The proper scope of inquiry on the issue of pretext is limited to whether the employer gave an honest explanation of its behavior.” *Benassi v. Back & Neck Pain Clinic, Inc.*, 629 N.W.2d 475, 482 (Minn. App. 2001), *rev. denied* (Minn. Sept. 11, 2001). To survive summary judgment, a plaintiff must “establish that there is a question about whether the employer’s justification is pretextual that creates a genuine issue of material fact for trial.” *Id.* In Minnesota, an employee can show pretext “either directly by persuading the court that a discriminatory reason likely motivated the employer or indirectly by showing that the employer’s proffered explanation is unworthy of credence.” *Sigurdson v. Isanti County*, 386 N.W.2d 715, 720 (Minn. 1986) (citation omitted); *see also Hanson*, 972 N.W.2d at 373 (surviving summary judgment under the pretext step includes offering evidence either that “the employer’s stated reason is untrue” or “that an improper reason ‘motivated the discharge decision’” (citations omitted)).

Here, the district court determined, and appellant does not dispute, that the city “articulated a legitimate non-discriminatory reason for the discharge – i.e., its budget constraints and reduced staffing needs” due to the pandemic. On appeal, appellant relies on two pieces of evidence she claims created a genuine issue of material fact that the city’s articulated, non-discriminatory reason was pretextual.⁶ We conclude neither creates a genuine issue of material fact.

⁶ Appellant argues for the first time on appeal that a genuine issue of material fact existed because “[t]here were websites of [a] city council meeting” that showed water usage increased in 2020. We generally will not consider matters not argued to and considered

First, appellant argues that the HR representative's June 17, 2020 email expressing concern about discrimination liability shows that the city's proffered reason for her termination was pretextual. But employers charge HR personnel with ensuring legal compliance. *See, e.g., Rosenfield v. GlobalTranz Enter., Inc.*, 811 F.3d 282, 286 (9th Cir. 2015) (addressing HR director's retaliation claim under -Fair Labor Standards Act and noting employees like her are "responsible for ensuring compliance"); *Makowski v. SmithAmundsen LLC*, 662 F.3d 818, 823 (7th Cir. 2011) (noting HR employee's duties included consultation with management regarding termination decisions and consultation with outside counsel to ensure compliance with antidiscrimination laws). And the record indicates the HR representative appropriately raised liability concerns with city leadership. But more importantly, in the same sentence expressing liability concerns, the HR representative wrote, "[appellant] is not seeing how *the work has gone away*." (Emphasis added.) Far from pretextual evidence, the HR representative's email corroborates the city's proffered nondiscriminatory reason for appellant's termination.

Second, appellant argues she raised a genuine issue of material fact regarding pretext when she presented evidence that she was the only "regular . . . classified worker" the division discharged. "Instances of disparate treatment can support a claim of pretext," but appellant must present evidence showing "[s]he and the disparately treated [employees] were similarly situated in all relevant respects." *Harvey v. Anheuser-Busch, Inc.*, 38 F.3d 968, 972 (8th Cir. 1994) (quotation omitted); *cf. Peterson v. Minn. Dep't of*

by the district court. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). Therefore, we decline to reach this argument.

Labor and Ind., 591 N.W.2d 76, 79 (Minn. App. 1999) (“An essential element of an equal protection claim is that the persons claiming disparate treatment must be similarly situated to those to whom they compare themselves.” (quotation omitted)), *rev. denied* (Minn. May 18, 1999). “[T]he individuals used for comparison must have dealt with the same supervisor, have been subject to the same standards, and engaged in the same conduct without any mitigating or distinguishing circumstances.” *E.E.O.C. v. Kohler Co.*, 335 F.3d 766, 776 (8th Cir. 2003).

Here, the record establishes that while appellant and UOs were employees in the classified service, they did not belong to the same classification. The city’s rules state that “[p]ositions in the same class shall be sufficiently similar to permit the use of a single job title.” Appellant’s position was titled “part-time meter reader[,]” and did not share a job title with UOs. And while UOs also took meter readings, their job duties included several tasks which appellant’s did not, such as the replacement of water meters and other infrastructural maintenance and repairs. Lastly, the city required UOs to have certain training and licensure that it did not require for appellant’s position. Thus, UOs were not similarly situated to appellant.⁷

⁷ Appellant also argues that the city failed to follow its own rules because employees with “less seniority” should have been laid off first. But this argument presupposes that the less-senior employees were in the same class. Because the evidence in the record shows appellant was the only part-time meter reader, any less-senior employee would not be in the same class. Additionally, the city’s rules state that the city “may layoff an employee in the classified service for lack of work, reduction of funds, elimination of the position, or other material changes in duties or organizational needs.” Appellant’s termination does not violate the city rules. Therefore, appellant’s argument does not demonstrate a genuine issue of material fact on the pretext issue.

For these reasons, we conclude appellant failed to raise a genuine issue of material fact that the city's stated non-discriminatory reason for discharging appellant was pretextual. *See Benassi*, 629 N.W.2d at 482. We, therefore, affirm the district court's decision to grant summary judgment on appellant's MHRA claim.

II.

Appellant separately challenges the district court's decision to grant summary judgment on her WCA claims. Appellant argues the district court erred when it concluded she failed to raise a genuine issue of material fact on both her retaliatory-discharge and failure-to-offer-continued-employment claims on the basis that she did not set forth a prima facie case for discrimination. Under the first step in the *McDonnell-Douglass* framework, to establish a prima facie case in this context, the employee must meet three elements: "(1) statutorily protected conduct by the employee; (2) adverse employment action by the employer[;] and (3) a causal connection between the two." *Schmitz*, 831 N.W.2d at 670.

The parties do not dispute, and we agree, that receiving workers' compensation is statutorily protected conduct and that discharge is an adverse employment action. *See* Minn. Stat. § 176.82, subds. 1-2; *see also Randall v. N. Milk Prods., Inc.*, 519 N.W.2d 456, 460 (Minn. App. 1994). The parties dispute whether appellant introduced sufficient causal-connection evidence to survive summary judgment. Appellant points to one piece of evidence to argue she met her burden to show a causal connection—the city's failure to file a "first report of injury" with the Minnesota Department of Labor and Industry until around the first time the division reduced her hours.

For both claims, the failure to timely submit a “first report of injury” alone does not create a genuine issue of material fact that a causal connection existed between appellant receiving workers’ compensation benefits and appellant’s termination. If anything, it demonstrates poor recordkeeping. Further, nothing in the record suggests that the city ever attempted to impede appellant’s ability to receive workers’ compensation, expressed displeasure over appellant receiving workers’ compensation, or tied appellant’s termination to her receipt of workers’ compensation.⁸

For this reason, we conclude appellant failed to raise a genuine issue of material fact to meet her prima facie burden under the first step of the *McDonnell-Douglass* framework.⁹ On this basis, we affirm the district court’s decision to grant summary judgment on appellant’s WCA claims.

Affirmed.

⁸ Appellant obliquely asserts in her issues statement that the division’s failure to follow “city councils budget policies” established causation. Appellant forfeits this argument for otherwise failing to brief it. *See McKenzie v. State*, 583 N.W.2d 744, 746 n.1 (Minn. 1998) (applying the rule that arguments not briefed are waived in an appeal in which the appellant “allude[d] to” an issue but “fail[ed] to address them in the argument portion of his brief”).

⁹ Appellant argues the district court erred when it determined vicarious official immunity barred her claim. Because we conclude appellant’s claims fail on the merits, we do not reach this issue.