



Inc., 477 U.S. 242, 248 (1986); see also Celotex Corp. v. Catrett, 477 U.S. 317 (1986). A dispute is genuine if the evidence is such that a reasonable jury could return a verdict for the non-moving party. Id. at 254. We review all evidence and make all reasonable inferences from the evidence in the light most favorable to the non-movant. See In re Flat Glass Antitrust Litigation, 385 F.3d 350, 357 (3d Cir. 2004). The non-moving party may not rest upon mere allegations or denials of the moving party's pleadings but must set forth specific facts showing there is a genuine issue for trial. Lujan v. Nat'l Wildlife Fed'n, 497 U.S. 871, 888 (1990).

## II.

Title VII forbids employment discrimination on the basis of national origin. 42 U.S.C. § 2000e-2(a)(1). We analyze Clarke's claim that he was terminated on this basis by the familiar burden shifting framework announced by the Supreme Court in McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802-04 (1973). The prima facie case enunciated in McDonnell Douglas is flexible and must be adjusted to the various contexts in which it is applied. Sarullo v. U.S. Postal Service, 352 F.3d 789, 798 (3d Cir. 2003). To establish a prima facie case of national origin discrimination, the plaintiff must show: (1) he is a member of a protected class; (2) he was qualified to perform his job; (3) he suffered an adverse employment action; and (4) the adverse employment action was taken under circumstances that give rise to an inference of unlawful discrimination. See id. at 797. If the

plaintiff establishes the foregoing by a preponderance of the evidence,<sup>1</sup> he has created a reasonable inference of discrimination and the burden shifts to the defendant employer to articulate a "legitimate, non-discriminatory reason" for the plaintiff's termination. St. Mary's Honor Ctr. v. Hicks, 509 U.S. 502, 506-07 (1993); Tex. Dept. of Cmty. Affairs v. Burdine, 450 U.S. 248, 253-54 (1981); Sarullo, 352 F.3d at 797. If the defendant proffers a legitimate, non-discriminatory reason, the burden shifts back to the plaintiff to demonstrate that the reason articulated by the defendant is false, that is, that it was not the real reason for the adverse employment action and that unlawful discrimination was the real reason. Hicks, 509 U.S. at 515; see also Sarullo, 352 F.3d at 797. The shifting burden is that of production; the ultimate burden of persuasion always remains with the plaintiff. Hicks, 509 U.S. at 507; Burdine, 450 U.S. at 256.

Plaintiff has not produced evidence to support the allegations in his complaint and cannot establish a prima facie case of national origin discrimination under Title VII. Consequently, he does not create a reasonable inference of discrimination that suffices to shift the burden to the defendant. Id. at 254. The complaint states that the plaintiff is Liberian, performed his job for three years, and was fired due

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1. The Supreme Court has repeatedly characterized this burden as "minimal," see Hicks, 509 U.S. at 506, and "not onerous," see Burdine, 450 U.S. at 253.

to his national origin. Clarke has not come forward with any evidence to support those allegations. Instead, his silence leaves us with the complaint. Even for a pro se plaintiff this is not sufficient either to shift the burden to the defense or create any dispute of material fact. See Brown v. Crawford, 906 F.2d 667, 670 (11th Cir. 1990); Franklin v. Murphy, 745 F.2d 1221, 1235 (9th Cir. 1984); McKnight v. Sch. Dist. of Phila., 171 F. Supp. 2d 446, 458 (E.D. Pa. 2001); Padro v. Heffelfinger, 110 F.R.D. 333, 335 (E.D. Pa. 1986).

Clarke could not withstand summary judgment even if we concluded he had established a prima facie case of discrimination. The defendant has produced evidence that it discharged the plaintiff due to his poor job performance. To support its explanation for plaintiff's termination, the defendant has demonstrated Clarke engaged in inappropriate conduct of a sexual nature serious enough that it produced complaints. The defendant has also shown that plaintiff on occasion did not perform his duties and that a contract between the defendant and the Commonwealth was jeopardized. These explanations are "legally sufficient to justify a judgment for the defendant" under McDonnell Douglas and shift the burden back to the plaintiff to produce evidence that the defendant's proffered explanation was "not the true reason" it fired him. Burdine, 450 U.S. at 255-56. Because the plaintiff has not produced any evidence, he cannot maintain that the defendant's explanation was actually a pretext for discrimination.

Accordingly, we will grant the defendant's motion for summary judgment. The defendant's two motions for sanctions will be denied as moot.<sup>2</sup>

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2. The plaintiff has not only refused to supply evidence to establish a prima facie case or to show pretext but also has denied the defendants appropriate discovery. Clarke has twice failed to appear for his own deposition despite being ordered by this court to do so on two separate occasions.

