

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
Harrisonburg Division

KRIESTA L. WATSON,)	
Plaintiff,)	Civil Action No. 5:14cv22
)	
v.)	<u>REPORT & RECOMMENDATION</u>
)	
SHENANDOAH UNIVERSITY, <i>et al.</i> ,)	By: Joel C. Hoppe
Defendants.)	United States Magistrate Judge

Before the Court are the Plaintiff Kriesta Watson’s, ECF No. 89, and Defendants Shenandoah University (“Shenandoah” or “the University”) and Board of Trustees’, ECF No. 87, cross-motions for summary judgment.¹ Each party has filed briefs, ECF Nos. 88, 89, and responded to the other’s motion, ECF Nos. 91, 92, and Watson has filed an amended motion for summary judgment. ECF No. 93. The Court heard oral argument on September 15, 2016. Watson filed additional evidence and an addendum, ECF Nos. 96, 97, and Defendants replied, ECF No. 98. The matter is now ripe for decision.

Addressing the Defendants’ motion for summary judgment first, and having considered the parties’ pleadings, briefs, evidence, oral arguments, and the applicable law in the light most favorable to Watson, I find that no genuine issue of material fact exists to show Watson was terminated for racially discriminatory reasons in violation of Title VII of the Civil Rights Act of 1964 (“Title VII”), 42 U.S.C. § 2000e, *et seq.* I also find that this outcome does not change when examining the claims set forth in Watson’s motion for summary judgment and viewing the evidence in the light most favorable to the Defendants. I therefore recommend that the presiding District Judge grant the Defendants’ motion for summary judgment, and deny Watson’s motion for summary judgment.

¹ The motions are before me by referral under 28 U.S.C. § 636(b)(1)(B). ECF No. 54.

I. Standard of Review

Summary judgment is appropriate only if “there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a); *Tolan v. Cotton*, --- U.S. ---, 134 S. Ct. 1861, 1866 (2014) (per curiam). Facts are material when they “might affect the outcome of the suit under the governing law.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A genuine dispute over a material fact exists if “a reasonable jury could return a verdict in favor of the nonmoving party.” *Kolon Indus., Inc. v. E.I. DuPont de Nemours & Co.*, 748 F.3d 160, 173 (4th Cir. 2014) (citing *Anderson*, 477 U.S. at 248).

“The moving party bears the initial burden of demonstrating the absence of a genuine issue of material fact.” *Appalachian Power Co. v. Arthur*, 39 F. Supp. 2d 790, 796 (W.D. Va. 2014) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986)). If the moving party makes that showing, the nonmoving party must then produce admissible evidence—not mere allegations or denials—establishing the specific material facts genuinely in dispute. Fed. R. Civ. P. 56(c), (e); *Scott v. Harris*, 550 U.S. 372, 380 (2007); *Wilkins v. Montgomery*, 751 F.3d 214, 220 (4th Cir. 2014). When deciding a summary judgment motion, the court must consider the whole record and draw all reasonable inferences in the light most favorable to the nonmoving party. *Tolan*, 134 S. Ct. at 1866. The court does not weigh evidence, consider credibility, or resolve disputed issues—it decides only whether the record reveals a genuine dispute over material facts. *See id.*

II. Procedural History

Watson initially filed suit against multiple defendants alleging various discrimination claims, including disability discrimination under the Americans with Disabilities Act and race and gender discrimination in violation of Title VII; retaliation under Title VII; interference and retaliation under the Family Medical Leave Act; federal wage and hour violations; defamation

and wrongful discharge in violation of public policy under state law; and violation of constitutional due process. *See Watson v. Shenandoah Univ.*, No. 5:14cv22, 2015 WL 5674887, at *1 (W.D. Va. Sept. 24, 2015). On September 24, 2015, United States District Judge Elizabeth K. Dillon ordered that all defendants save for Shenandoah University and the Board of Trustees, and that all of Watson’s claims except for her racial discrimination claim under Title VII, be dismissed with prejudice. ECF No. 53. The parties proceeded with discovery regarding Watson’s remaining race discrimination claim, and each filed cross-motions for summary judgment.

III. Facts

Defendant Shenandoah University is a private, liberal arts university located in Winchester, Virginia. Grigsby Aff. ¶ 4, ECF No. 88-31. The Board of Trustees acts as the governing and decision-making body of the University. Watson is a forty-three-year-old African American woman who holds three degrees: a Bachelor of Arts in Sociology from the University of Michigan, a Masters of Education from Harvard University, and a Doctorate of Education from Morgan State University. Watson Dep. 15:13–16, ECF No. 88-1.²

Shenandoah hired Watson on August 14, 2008, as its Director of Institutional Research and Assessment. Defs. Ex. 8, ECF No. 88-8. Her pay never decreased during her employment; in fact, she received an incremental increase after her first year. Watson Dep. 37:2–8. After being hired, Watson received a copy of the University’s handbook detailing pertinent employment policies for which she executed a Receipt Acknowledgment Form. Defs. Ex. 9, ECF No. 88-9. Watson also understood that her employment was at will. Watson Dep. 112:19–113:5. Watson

² In her latest brief, Watson raises a new argument that the Defendants’ use of depositions in their motion for summary judgment is not permitted by the Virginia Code. ECF No. 96, at 5–6. Watson is entirely correct that Virginia Code § 8.01-420 prohibits the use of depositions at summary judgment in Virginia state court proceedings, but that argument misses the mark as Virginia procedural rules for summary judgment do not govern proceedings in Federal Court. Conversely, Rule 56 of the Federal Rules of Civil Procedure, which does govern here, allows the use of depositions in motions for summary judgment. Fed. R. Civ. P. 56(c)(1)(A).

continued to work for Shenandoah until her employment was terminated on October 25, 2010. Defs. Ex. 21, ECF No. 88-21; Pl. Ex. 1, ECF No. 89-1. Throughout Watson's time at Shenandoah, Dr. Bryon Grigsby ("Grigsby") served as her direct supervisor. Watson Dep. 38:9–11.

As the Director of Institutional Research, Watson was responsible for many important tasks, including compliance issues, accreditation visits, compiling data on retention numbers, strategic planning, indicator numbers, critical indicators for the institution, providing data for the institution, and completing assessment and learning outcomes. Grigsby Dep. 9:1–9, ECF No. 96-41. Additionally, Watson took on the responsibility of overseeing the Registrar's Office. Grigsby Dep. 9:9–12. Grigsby and President Tracy Fitzsimmons ("Fitzsimmons"), as well as the Board of Trustees, relied on her work product and the information she provided to Shenandoah in performing their jobs. Watson Dep. 99:13–100:9.

Like all employees at Shenandoah, Watson received an annual performance review from her direct supervisor. Her first review took place in October 2009 and covered the 2008–09 school year. Defs. Ex. 10, ECF No. 88-10. The review addressed her performance across seven categories: Administrative Leadership; Scholarship; Teaching; Yes, You Can Attitude; Quality of Work; Involvement; and Communication/Collegiality. *Id.* It also included individualized goals for the upcoming 2009–10 school year. *Id.* Because this was her first performance review, it did not contain an analysis of the previous year's goals. *Id.*

Watson's first review was a mixed bag. Grigsby rated her Scholarship as "excellent," and her Quality of Work and Yes, You Can Attitude as "good." *Id.* He rated her Administrative Leadership, Teaching, and Involvement as "needs improvement," and her Communication/Collegiality as "poor." *Id.* Grigsby specifically noted that "[t]hreatening job

security, enacting reprisals, and mocking faculty and staff has to stop” and Watson could not “manage the office from home and need[ed] to be on campus meeting with staff, deans and faculty on a regular basis.” *Id.* He also indicated, however, that Watson had “contributed much to the external scholarship” of Shenandoah, and “[t]he work that gets produced out of the office is becoming much stronger.” *Id.* The performance review concluded with a list of goals for the 2009–10 school year based on the critiques highlighted in the review, and both Grigsby and Watson signed the review. *Id.*

Despite signing the review, Watson testified in her deposition that she disagreed with many of Grigsby’s conclusions, Watson Dep. 47:10–12, although she understood the list of goals for the upcoming year, *id.* at 62:5–11. She asserted that she did not contest the review at the time because she was under the impression that it merely reflected Grigsby’s opinion and would not adversely affect her status at Shenandoah. Watson Dep. 49:1–16. One bone of contention was that the October 2009 review did not mention Watson’s medical condition that stemmed from her car accident in June 2009 and it did not mention a medical accommodation. *Id.* at 51:9–13. Watson notified Grigsby on June 22 by email that she had been in a serious car accident and had spent much of the prior day in the emergency room. Pl. Ex. 47, ECF No. 96-45, at 3; Grigsby Dep. 11:4–9. Grigsby responded by telling Watson to take as much time off as she needed. Grigsby Dep. 11:8–9. Watson later submitted leave reports indicating that she missed eleven total days of work from June 22 through July 8 for medical reasons. Pl. Ex. 47, at 2. After an additional two days off, which she attributed to vacation days, Watson returned to work. *Id.* Grigsby stated that he did not have a standard practice regarding long-term absences and that he relied on the individual employee to communicate his or her medical problems to him. Grigsby Dep. 15:18–16:6. Grigsby testified that he assumed Watson was able to continue her work when

she returned because she did not inform him of her need for any accommodations. *Id.* at 16:1–6. Grigsby admits that he was aware of Watson’s extended absence and did not notify the Human Resources (“HR”) Department in accordance with University policy requiring such notification when an employee missed three or more days of work. *Id.* at 17:5–15. Other than submitting the aforementioned leave reports, Watson did not notify the HR Department of any medical condition or need for an accommodation, *see* Landes Dep. 29–34, ECF No. 96-42, and nothing in the evidence submitted to the Court indicates that she requested medical accommodations at any time during her employment.³

During the ensuing year, various Shenandoah officials raised concerns about Watson’s conduct. First, in April 2010, Grigsby sent Watson an email expressing his concerns with her spending habits and budget management, and he notified her that he would be freezing her department’s budget. Pl. Ex. 25, ECF No. 91-10. Watson responded to this email with a detailed explanation, and no further correspondence between the two about this particular concern over spending habits appears in the record. *Id.* In June 2010, however, Watson received another memo, this time from assistant comptroller Candi Johnson, regarding questionable purchases from the school bookstore charged to Shenandoah between July 1, 2009, and April 21, 2010. Pl. Ex. 23, ECF No. 91-8. Watson and her assistant Belinda Moore (“Moore”) created a matrix in

³ Watson also provided documentation of her medical bills following the accident and her official forms requesting vacation and medical leave days. *See* Pl. Ex. 47. When asked directly in her deposition if she ever made a formal request for an accommodation, Watson did not provide a yes or no answer, but instead referenced an email she sent Grigsby notifying him of the seriousness of the accident and indicating that she would have to undergo physical therapy. Watson Dep. 51:14–22. Watson’s June 22 email to Grigsby and his response are the only emails on this issue that were submitted to the Court, and neither mention physical therapy or other medical treatment. *See* ECF Nos. 91-26, 96-45 at 3, 7.

response to this memo to explain the purchases, but Johnson advised Watson that discrepancies still lingered. Pl. Ex. 24, ECF No. 91-9.⁴

Watson's colleagues also lodged multiple complaints against her. In May 2010, Kelly Samson-Rickert, an employee in Shenandoah's HR Department, sent a confidential memo to Grigsby detailing the complaints of two anonymous members of Watson's team. Defs. Ex. 14, ECF No. 88-14. The memo notes, "[b]oth employees stated they are fearful of their safety in the workplace, of their supervisor's [Watson's] outburst of anger, and of a daily reoccurrence of demonstrated unprofessionalism." *Id.* The memo specifically details examples of Watson's behavior, including verbal abuse; yelling and profanity; demeaning language; threats of reprisal for reporting her behavior to Grigsby; instances of falsifying records, including her work calendar, to pursue personal endeavors; frequent absences; unstable and unpredictable behavior; and furious anger, and it references a taped telephone conversation to support these assertions. *Id.* Additionally, in June 2010, one of Watson's subordinates, Melinda Toth ("Toth"), contacted Grigsby regarding Watson's conduct during a conference in Chicago, and she followed up their conversation with a memo to Grigsby. Defs. Ex. 15, ECF No. 88-15. Toth wrote that to the best of her knowledge, Watson did not attend any of the scheduled sessions. *Id.* She also reported that she overheard Watson spend more than three hours on the phone discussing Toth's work performance with other team members. *Id.* Toth feared that she would be terminated by Watson, and she requested Shenandoah to either intervene or transfer her to another role within the University. *Id.*

Watson had her second performance review with Grigsby during the summer of 2010 regarding the 2009–10 school year. Defs. Ex. 11, ECF No. 88-11; Pl. Ex. 4, ECF No. 89-4. This

⁴ None of the documents referenced in the correspondence (e.g., the detailed list of questionable purchases, the matrix, and Watson's explanatory email) were provided to the Court.

review evaluated the same seven categories—Administrative Leadership; Teaching; Scholarship; Yes, You Can Attitude; Quality of Work; Involvement; and Communication/Collegiality—but this time rated Watson’s performance on a standard 1-to-5 scale, with 1 being the lowest score and 5 being the highest score. *Id.* Grigsby rated Watson’s performance at 5 in Scholarship; 3 in Teaching, Yes, You Can Attitude, and Quality of Work; and 2 in Administrative Leadership, Involvement, and Communication/Collegiality. *Id.* At the outset of his summary of her performance, Grigsby noted, “This will serve as your second notification that you are not meeting minimum standards for administrative leadership, teaching, involvement, and collegiality. Your quality of work has also slipped, as your team continues to have problems working together under your leadership and direction.” *Id.* The summary reinforces that Watson had a positive reputation for being “a masterful institutional researcher,” but noted that her performance suffered in other crucial aspects. *Id.* The performance review also detailed the goals from the previous review, many of which Grigsby said Watson had failed to meet. *Id.* It then concluded with a new set of goals for the 2010–11 year, which included completing the unmet 2009–10 goals. *Id.* Grigsby also removed Watson from her role of overseeing the Registrar’s Office, but requested that she provide assistance to the new Registrar for an intermediate period of three months. *Id.*

Unlike the previous year, however, neither Grigsby nor Watson signed the performance review, and Watson chose to contest this review. She submitted a formal response to Grigsby on August 17, 2010, via email addressing the review in detail. Pl. Ex. 6, ECF No. 89-6. In her response, Watson took issue with the lack of clear documentary evidence to support Grigsby’s conclusions regarding her performance, especially as it related to her work attendance, professionalism, and collegiality; the terminology in the review, which she perceived as

ambiguous and unclear; and Grigsby's conclusions on what goals she met. *Id.* Addressing her work attendance, Watson argued that because Grigsby did not provide concrete evidence that she was not on campus, this issue should not have been included in the review. *Id.* Watson also disputed the newly added goal of checking in with Grigsby's office each morning and providing access to her calendar because she believed it was not an appropriate request to make of a faculty member, it was not consistent with the University handbook, and no other employees who directly reported to Grigsby were subject to the same expectation. *Id.* Watson responded to all of Grigsby's allegations of her lack of professionalism with the same statement: "This statement does not provide specific incidents, examples or dates to substantiate it. Consequently, it denies me an opportunity to respond to it. Therefore, this vague, inflammatory statement should not be included in the final yearly performance evaluation." *Id.* As for her collegiality, Watson cited specific dates where she met with her colleagues, but she did not provide details of these meetings. *Id.* Grigsby accepted her response and placed it in her file along with her other assessments. Pl. Ex. 8, ECF No. 89-8.

After receiving Watson's response to the performance review, Grigsby told her in an email that he still did not have access to her calendar – an issue that he had raised before. *Id.*; *see also* Grigsby Dep. 30:20–31:5. Watson's reply did not acknowledge this request, prompting Grigsby to write to her: "I want your calendar fixed by Friday. This is the last time I am saying this." Pl. Ex. 35, ECF No. 91-20. Watson appears to have complied with this directive by granting him access, although Grigsby contends that the information still was not accurate. Grigsby Dep. 31:1–5. For example, in an email to Watson, Grigsby noted that her calendar

simply read “Busy,” a problem Watson attributed to the school’s shift to using Gmail in July 2010, Pl. Ex. 8, even though Grigsby alleges the problem persisted for over a month.⁵

Grigsby also sent Watson an email expressing concern over reports he received from other employees that her department was not supporting the new Registrar. Pl. Ex. 7, ECF No. 89-7. In a reply email, Watson disputed these reports and asserted that her department had been very supportive of the new Registrar. *Id.* She indicated that her focus had been on work, and therefore she did not have the time to engage in such negative exchanges. *Id.* She concluded by reaffirming her commitment to Shenandoah, her department, and the new Registrar. *Id.*

The next major incident took place on September 28, 2010, between Watson and one of her subordinates, Teresa Masiello (“Masiello”). Although neither side disputes that an altercation took place, beginning first in a parking lot and ending in Masiello’s office, each party puts forward differing accounts of what transpired. Watson alleges that Masiello attacked her in the parking lot. Watson Dep. 87. Watson claims that following this altercation, she went to Masiello’s office to discuss the matter further and find out what caused Masiello to be so distraught. *Id.* Watson asserts that she “was not heated,”⁶ Watson Dep. 87:1, and she claims that Masiello tried to inform her that Grigsby was trying to fire Watson. Watson Dep. 87. According to Watson, Masiello was concerned because she had warned Watson of this before and she felt Watson did not believe her. *Id.* Watson claims that Masiello said “I told you once before that this

⁵ Watson provided copies of her calendar spanning the period of July through October 2010. Pl. Ex. 56, ECF No. 96-55. For most days from July 9, 2010, through September 17, 2010, Watson’s calendar lists “Busy” at various times of the day and sometimes more than once. *Id.* Additionally, Watson’s calendar indicates that she would be in meetings on October 18 and 19 in Baltimore, Maryland. *Id.* at 26. As discussed below, she actually was at a conference in Barbados.

⁶ In her reply brief, Watson asserts that Masiello was heated during this exchange and that they were talking loudly when Grigsby walked into the office. Pl. Reply Br. 17–18. These statements in Watson’s brief, however, are not evidence. Although Watson has been permitted extensive discovery in order to obtain admissible evidence that would support this assertion, she has not provided any to the court.

is a racist environment,” Watson Dep. 87:5–6, and that Masiello had previously expressed concern about Watson being a black woman in Winchester County, a topic they discussed frequently. *Id.* at 87:16–18. They also briefly discussed Masiello’s recent performance evaluation, but it was not the focus of their conversation.⁷ Watson Dep. 87:23–25.

The Defendants regard the event differently from Watson, relying on evidence from Masiello and on Grigsby’s account of what he witnessed. In her deposition, Masiello stated that she approached Watson in the parking lot that morning because she learned that details of her performance evaluation had been shared with other team members. Masiello Dep. 21:17–25, ECF No. 88-7. Masiello asked Watson if performance evaluations were confidential, at which point Watson requested to take the conversation inside to Masiello’s office. *Id.* There, Watson raised her voice and proclaimed that Masiello’s work ethic and results were disappointing. *Id.* at 23:9–19. In a memo written that day to Marie Landes, the Director of the HR Department at Shenandoah, Grigsby reported that around 9:30 a.m. another employee, Penny Gum, came to his office “visibly shaken” and told him that Watson was screaming at Masiello. Defs. Ex. 17, ECF No. 88-17. When Grigsby got to Masiello’s office, he witnessed Watson standing over Masiello’s desk yelling at her while Masiello remained seated. *Id.* Even though the office door was closed, Grigsby could hear shouting, which he described as “a continual assault without any clear directions on what needs to be accomplished and how it should be done.” *Id.* Grigsby knocked and entered the room and told them that he had received a complaint about noise coming from the office. *Id.* Watson told Grigsby, “We got it. We’re getting it done,” to which Grigsby responded by telling them to keep the noise down. *Id.* Characterizing this scene, Grigsby

⁷ Watson also submitted a statement, in which Moore explained, “I later found out that [Masiello] had found [Watson] in the parking lot and was yelling at her about me talking to Paul about her eval[uation].” Pl. Ex. 37, ECF No. 91-22. From this statement, it does not appear that Moore actually witnessed the parking lot incident.

stated, “[w]hile I have seen disagreements among employees in the past, I have never witnessed anything close to that.” Grigsby Aff. ¶ 15.

Later in the afternoon, Masiello emailed Grigsby to thank him for stopping by because it made her “feel better knowing that others witnessed the event.” Defs. Ex. 18, ECF No. 88-18. In a follow-up email, Masiello asked to schedule an appointment with him regarding the incident. *Id.* She also explained her version of the events in further detail, noting specifically that Watson seemed upset that Masiello questioned the dissemination of her evaluation results, which is when the screaming and yelling began. *Id.* Grigsby forwarded this email to Landes and indicated that Watson’s version of the events differed drastically from Masiello’s. *Id.* He also conveyed that Watson had come to his office earlier that day and told him that the incident was predicated on faculty giving Masiello a hard time and pushing back on assessment, but that everything was “all good now.” *Id.*

A few weeks later, on October 18 and 19, Watson took a trip to Barbados to attend a conference concerning community colleges. Watson Dep. 99:4–9. This immediately preceded an important meeting with the Board of Trustees, scheduled for October 20.⁸ *Id.* On October 18, Grigsby asked his assistant, Jeanne Hoffman (“Hoffman”), to locate Watson and have her report to the President’s office. Grigsby Aff. ¶ 17. After failing to reach Watson on her phone or cell phone, Hoffman spoke to Moore, who informed Hoffman that Watson was at an off-campus meeting. *Id.* When pressed further, Moore stated that “I was told to tell anyone who asked that she was at an off-campus meeting,” and refused to disclose Watson’s location. *Id.* Moore did, however, offer to email Watson to pass along Grigsby’s request. Grigsby Aff. Ex. 8. Hoffman

⁸ Initially, the Defendants argued that Watson was not physically on campus on October 20. During oral argument, however, defense counsel stated that she did not believe the Defendants took the position that Watson was not on campus on the 20th.

then went to the office of another subordinate, Pam Lamborne, where she learned that Watson was at the conference in Barbados. *Id.*

Following the encounter with Hoffman, Moore sent Watson an email informing her that Grigsby had inquired about her location. Defs. Ex. 19, ECF No. 88-19. Moore said she responded that she “did not know” to every question Hoffman asked. *Id.* Later in the day, Moore sent another email to Watson detailing other encounters where she claimed not to know Watson’s location. *Id.* She explained, “[Hoffman] asked why did I lie to her. I said I tell people what I am told to say. I guess I am the only loyal person here!!” *Id.*

Masiello testified that Moore told her Watson was not in the office and Moore said she did not have permission to reveal Watson’s location.⁹ Masiello Dep. 27:18–28:1. These conversations with Watson’s staff led Grigsby to believe that Watson had instructed her staff to lie about her whereabouts if asked. Grigsby Dep. 64:19–21, 65:1–9.

While at the conference in Barbados, Watson also worked on University business, including the indicators for the Board meeting. Watson Dep. 108:10–16. Watson returned to Shenandoah and made a presentation at the Board meeting on October 20. Pl. Ex. 51, ECF No. 96-49, at 5. At the end of the day, Grigsby and Watson spoke over the phone. Watson asserts that Grigsby behaved in an “unprofessional and abusive” manner and that during the call Grigsby threatened her job and told her that “[she] will pay for [her] actions.” Pl. Ex. 9, ECF No. 89-9.¹⁰

After learning of Watson’s Barbados trip and her instructions to her staff not to disclose her location, Grigsby met with Fitzsimmons and recommended terminating Watson’s employment. Grigsby Dep. 49:10–50:1, 61:1–16. On October 25, Watson met with Grigsby and

⁹ Masiello testified that this discussion occurred on October 20. Masiello Dep. 28:2–4.

¹⁰ Watson asserts that Claressa Morton overheard the conversation and agreed with her assessment, Pl. Ex. 10, but Watson has not submitted any evidence to support this assertion.

Landes, at which point she received the termination letter from Fitzsimmons. Watson Dep. 114:12–22. The letter broadly referenced her “inability to improve [her] job performance according to Shenandoah University policies,” Defs. Ex. 21, as the reason for termination, and it specifically invoked sections 9.1 (Work Schedule),¹¹ 9.2 (Departmental Procedures),¹² and 9.4 (Professionalism)¹³ of the employee handbook as grounds for the decision. Pl. Ex. 1.

Fitzsimmons’s letter also notes that “Bryon Grigsby has talked with you several times and documented these problems but you have not made sufficient improvements.” *Id.* Shenandoah provided Watson with severance pay and three months of medical benefits. *Id.*

Watson invoked Shenandoah’s grievance procedure to challenge her termination. AS the first step of the grievance process, Watson submitted a letter to Grigsby challenging her dismissal. Defs. Ex. 23, ECF No. 88-23. Grigsby timely responded in detail to each of Watson’s grounds. Defs. Ex. 24, ECF No. 88-24. He concluded by stating: “I am upholding my decision to terminate you because of the repeated failure to deal with subordinates effectively and your inability to let your supervisor know of your whereabouts.” *Id.* Watson then promptly sent a letter to Fitzsimmons, initiating the second level of the grievance procedure. Defs. Ex. 25, ECF No. 88-25. Fitzsimmons, without providing any detail, notified Watson that she had chosen to uphold Grigsby’s decision. Defs. Ex. 26, ECF No. 88-26.

¹¹ Section 9.1 states in its entirety: “Each employee is to conform to the regular work schedule requirements for his/her department. Efficient use of the workday is required. Regular attendance, punctuality, and conformance to scheduled lunch periods are required. Employees are expected to be informed about the university.” Pl. Reply Br. 4.

¹² Section 9.2 states in its entirety: “Employees are to follow recognized departmental procedures and instructions in performing their jobs. All deviations from established policy must be approved by the appropriate supervisor.” Pl. Reply Br. 4.

¹³ Section 9.4 states in its entirety: “Shenandoah University expects that all employees are able to conduct themselves professionally at all times in the workplace. This includes demonstrating a cheerful manner, a willingness to learn, an intelligent interest in the students, a feeling of pride about their work and a spirit of friendliness toward others. Professionalism is also displayed by respecting co-workers and all constituencies of the university.” Pl. Reply Br. 4–5.

Watson then notified Landes of her desire to seek the third and final level of review—specifically, an investigation by a Grievance Committee. Defs. Ex. 27, ECF No. 88-27. The Grievance Committee’s role is to review the documentation presented by the grievant and that person’s supervisor or other appropriate University official. Landes Dep. 72:17–22. The Grievance Committee then determines whether this evidence provides sufficient grounds for granting the grievant’s request, *id.* at 72:24–25, but it does not recommend termination, *id.* at 63:13–14. The Grievance Committee does not conduct its own independent investigation, and it does not consider matters or questions not contained in the employee’s grievance. *Id.* at 52:19–23. The decision of the Grievance Committee reflects the merits of the employee’s grievance and is final unless the President of the University determines otherwise. Pl. Ex. 17, ECF No. 96-17.

Following Watson’s request for the third level of review, the Grievance Committee, comprised of three members of the faculty, met and reviewed the documents provided by Watson and Shenandoah. Allen Dep. 8:19–10:7, 24:4–14, ECF No. 88-4. The Grievance Committee issued a letter to Watson on January 26, 2011, upholding the decision to terminate. Pl. Ex. 2, ECF No. 89-2. In particular, the Grievance Committee determined that the termination decision was justified based on Watson’s alleged violation of the University’s attendance policy, which results in automatic termination. *Id.* Because it viewed the evidence as uncontroverted, the Grievance Committee did not assess the merits of the remainder of Watson’s contentions or the Defendants’ reasons for terminating her. *Id.* Watson did not have any further communication with Shenandoah regarding the grievance procedure or her employment following this date. Watson Dep. 133:20–25.

IV. Discussion

A. *Title VII Race Discrimination Claim Legal Standard*

A plaintiff claiming discrimination under Title VII may prove such a violation “either through direct and indirect evidence of [discriminatory] animus, or through the burden-shifting framework of *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 [93 S.Ct. 1817, 36 L.Ed.2d 668] (1973).” *Jones v. Constellation Energy Projects & Servs. Grp., Inc.*, 629 F. App’x 466, 468 (4th Cir. 2015) (per curiam) (alterations in original) (quoting *Foster v. Univ. of Md.–E. Shore*, 787 F.3d 243, 249 (4th Cir. 2015)). Under the *McDonnell Douglas* approach, the plaintiff has the initial burden of demonstrating a prima facie case of discrimination in order to survive summary judgment. *See id.* at 468. To make out a prima facie case for discriminatory termination, the plaintiff must demonstrate four elements: 1) that he or she belongs to a protected class; 2) that he or she suffered an adverse employment action; 3) that at the time of the adverse employment action, he or she was performing the job at a level that met the employer’s legitimate expectations; and 4) that the position remained open or was filled by a similarly qualified applicant outside the protected class. *See, e.g., Holland v. Washington Homes, Inc.*, 487 F.3d 208, 214 (4th Cir. 2007).

If the plaintiff succeeds in such a showing, the burden then shifts to the defendant to assert a legitimate, nondiscriminatory reason for taking the adverse employment action at issue. *See Calobrisi v. Booz Allen Hamilton, Inc.*, --- F. App’x ---, 2016 WL 4437565, at *2 (4th Cir. Aug. 23, 2016) (per curiam). At this stage, the Supreme Court has noted that “[t]his burden is one of production, not persuasion; it ‘can involve no credibility assessment.’” *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 142 (2000) (quoting *St. Mary’s Honor Ctr. v. Hicks*, 509 U.S. 502, 509 (1993)). In other words, if the defendant employer asserts a legitimate, nondiscriminatory reason for taking the adverse employment action, it is not the court’s role to determine the credibility or persuasiveness of that reason. Instead, in such a circumstance, the

defendant succeeds in meeting its burden. When the employer meets this burden, the presumption of discrimination created by the prima facie case disappears, and the burden shifts back to the plaintiff to demonstrate by a preponderance of the evidence that the defendant's stated reason is actually pretext for a true discriminatory purpose. *See Hill v. Lockheed Martin Logistics Mgmt., Inc.*, 354 F.3d 277, 285 (4th Cir. 2004). The plaintiff can meet this burden "either by showing that [the defendant's] explanation is 'unworthy of credence' or by offering other forms of circumstantial evidence sufficiently probative of . . . discrimination." *Mereish v. Walker*, 359 F.3d 330, 336 (4th Cir. 2004) (quoting *Tex. Dep't of Cmty. Affairs v. Burdine*, 450 U.S. 245, 256 (1981)). If the plaintiff cannot make this showing of pretext, then the discrimination claim will fail. *See id.* "The ultimate question in every employment discrimination case involving a claim of disparate treatment is whether the plaintiff was the victim of intentional discrimination." *Reeves*, 530 U.S. at 153.

B. Analysis

1. Defendants' Motion for Summary Judgment

a. Watson's Prima Facie Case

Watson has offered no direct evidence of discrimination, and her arguments are tailored towards the *McDonnell Douglas* burden-shifting approach. *See* Pl. Mot. Summ. J. 4. To succeed, Watson must first demonstrate a prima facie case of discrimination. While the Defendants concede that she meets the first two elements—that she is a member of a protected class (African American) and that she suffered an adverse employment action (termination on October 25, 2010)—they contend that she has not established the third and fourth elements of the prima facie case. Defs. Reply Br., ECF No. 92, at 5.

Before discussing the contested elements, I must address Watson’s misconception with regard to the adverse employment action¹⁴ at issue here, i.e., her termination. Watson’s termination occurred on October 25, 2010, when she received the letter written by Fitzsimmons. Watson incorrectly asserts that her termination occurred when the Grievance Committee upheld her termination on January 26, 2011. *See* Pl. Mot. Summ. J. 4, 7. All events subsequent to October 25, however, concern Watson’s use of the University’s grievance process, but do not constitute additional or alternative adverse employment actions. Watson takes issue with the findings of the Grievance Committee in their January 26, 2011, letter. She contends that the Grievance Committee overturned all of the previously stated justifications for Watson’s firing and relied solely on her unauthorized absence for three consecutive days—October 18, 19, and 20—which, according to Shenandoah policy, results in automatic, voluntary termination. While Watson correctly notes that the Grievance Committee relied solely on that policy in upholding the decision to terminate, she misconstrues the effect of the remainder of the letter. Importantly, the Grievance Committee did not overturn, affirm, or otherwise comment on any of the other reasons proffered for her termination; rather, they abstained from evaluating these reasons because they felt there was clear evidence Watson had violated the unauthorized absence policy, resulting in automatic termination. The Defendants do not contend that Watson was not present on October 20, *see supra* note 7; thus, the factual basis for the Grievance Committee’s finding that she violated the unauthorized absence policy is wanting.

Nonetheless, this deficiency does not change the Court’s analysis because Watson’s termination on October 25, and not the Grievance Committee decision, is the adverse

¹⁴ “An adverse employment action is a discriminatory act that ‘adversely affect[s] the terms, conditions, or benefits of the plaintiff’s employment.’” *Holland*, 487 F.3d at 219 (quoting *James v. Booz-Allen & Hamilton, Inc.*, 368 F.3d 371, 375 (4th Cir. 2004)). Answering the Court’s questions at oral argument, Watson agreed that the only adverse employment action she was pursuing in this case was her termination.

employment action relevant to her Title VII race discrimination claim. Fitzsimmons and Grigsby had authority over employment decisions, and they made the decision to terminate Watson's employment. Fitzsimmons Dep. 18:1–11; Grigsby Aff. ¶¶ 18–19. This explanation is bolstered by the language in Fitzsimmons's letter to Watson: "After consultation with Bryon Grigsby, the decision was made to terminate your employment as the Director of Institutional Research and Assessment, effective today, October 25, 2010." Pl. Ex. 1. As Landes explained in her deposition, the Grievance Committee's role is to review the grievant's claim of unfair treatment, but it cannot change the grounds for the termination. Landes Dep. 52:15, 19–23. Watson has offered no evidence to show that the Grievance Committee made the decision to fire her. Thus, the undisputed facts show that Fitzsimmons and Grigsby—not the Grievance Committee—made the ultimate decision to fire Watson on October 25, and the Grievance Committee's letter does not alter that decision.

Moving to the third element of the prima facie case, Watson must show by a preponderance of the evidence that she was meeting her employer's legitimate expectations at the time of her termination. The focus of this inquiry is not whether the employee was qualified for the job at the time of hiring, but whether her job performance met the employer's legitimate expectations. *Warch v. Ohio Cas. Ins. Co.*, 435 F.3d 510, 514 (4th Cir. 2006). The Fourth Circuit has explained, "whether an employee met his [or her] employer's legitimate expectations at the time of termination depends on the 'perception of the decision maker . . . , not the self-assessment of the plaintiff.'" *Jones*, 629 F. App'x at 469 (quoting *Hawkins v. PepsiCo, Inc.*, 203 F.3d 274, 280 (4th Cir. 2000)). Because these expectations are inherently subjective, and the burden of proving the prima facie case falls on the plaintiff, the Court must consider the

“employer’s ‘evidence that the employee was not meeting those expectations.’” *Id.* (quoting *Warch*, 435 F.3d at 516).

The Defendants present a bevy of evidence showing that Watson was not meeting work expectations. From early in her employment to the day of her firing, the record shows that Watson clashed with both her subordinates and her supervisors and that in her supervisors’ estimation she failed to improve. Grigsby’s two performance evaluations of Watson document his perception that she did not meet expectations in a number of areas and that she did not take the identified steps to improve those deficiencies. Moreover, the primary problems identified in the evaluations—unexplained absences from campus and lack of leadership and collegiality—persisted in the employer’s view. For example, Grigsby considered the incident with Masiello that he witnessed as the culmination of Watson’s disrespect for her colleagues and directly indicative of her failure to improve her collegiality and leadership. Grigsby Dep. 48:24–49: 7. Additionally, Watson’s refusal to grant Grigsby access to her calendar despite repeated requests to do so, *id.* at 49:10–13, and her undisclosed trip to Barbados impacted Grigsby’s perception of her availability on campus, *id.* at 49:13–50:1.¹⁵

Watson surely disputes the grounds that the Defendants cite as supporting their contention that her work performance did not meet their legitimate expectations.¹⁶ But her disagreements with the Defendants wholly pertain to the ultimate truthfulness of the events in question instead of addressing the crucial issue of whether she actually met the Defendants’

¹⁵ While I am cognizant of the concern of conflating prong three of Plaintiff’s prima facie case with the second stage of the *McDonnell Douglas* inquiry into the employer’s legitimate, non-discriminatory reason for termination, *see Warch*, 435 F.3d at 515–16, it is nonetheless entirely permissible to consider “a long string of performance problems leading up to firing” in evaluating whether Watson met Shenandoah’s legitimate expectations, *id.* at 516.

¹⁶ In her many briefs, Watson never directly addresses the third prong in any of her iterations of the prima facie standard, although she does contest on many occasions the merits of the Defendants’ reasons for terminating her.

legitimate job expectations. Thus, her disagreements with the reasons do not raise a dispute about the Defendants' perception of Watson's work performance. *See, e.g., Warch*, 435 F.3d at 514 (explaining the importance behind requiring the plaintiff to address the employer's legitimate expectations and perception at the third prong because "considering an employer's legitimate expectations comports with the purpose of requiring the establishment of a prima facie case—to screen out those cases whose facts give rise to an inference of nondiscrimination, in other words, to eliminate the most common, nondiscriminatory reasons for the employer's conduct"). Simply put, even when viewing the evidence in the light most favorable to Watson, the Court cannot conclude that she meets her burden of showing by a preponderance of the evidence that she "was doing [her] job well enough to rule out the possibility that [she] was fired for inadequate job performance," *id.* at 515 (quoting *Loeb v. Textron, Inc.*, 600 F.2d 1003, 1013 (1st Cir. 1979)), in essence that she was meeting Shenandoah's legitimate expectations at the time of her termination. Therefore, Watson's prima facie case fails. The deficiencies in Watson's case, however, do not end at prong three.

For the fourth element of her prima facie case, Watson must show that her position remained open, or that Shenandoah hired a similarly qualified applicant from outside the protected class. Although Watson improperly concentrates most of her evidence on the individuals who replaced her as the registrar, she did provide the Court with additional evidence that her primary position as the Director of Institutional Research and Assessment remained open, and when it was filled, Shenandoah hired an individual outside the protected class. The evidence she provided is of questionable admissibility,¹⁷ but because of Watson's pro se status

¹⁷ Watson provided the Court with numerous LinkedIn pages for Melanie Winter, who apparently replaced Watson after her initial termination, and Dr. Howard Ballentine, who is listed on Shenandoah's website as the current Director of Institutional Research and Assessment at the University. Pl. Ex. 46, ECF No. 96-44. Both are white.

and her suggestion that she was unable to secure discovery relevant to the prong four analysis, the Court will assume without deciding that she meets this prong of the prima facie case.

b. Defendants' Legitimate, Nondiscriminatory Reasons for Termination

Assuming *arguendo* that Watson does present a prima facie case of discriminatory termination, the burden shifts to the Defendants to offer a legitimate, nondiscriminatory reason for her firing. The Defendants easily satisfy this burden. Beginning the first year of her employment at Shenandoah, Watson struggled to meet her employer's expectations, received numerous warnings from Grigsby about her conduct, and failed to adapt to his suggestions for improvement. These performance problems were identified early in Watson's tenure at Shenandoah, and they persisted until her termination. Ultimately, Grigsby stated that he terminated Watson based on her continued failure to heed his warnings regarding her schedule, the trip to Barbados and measures to obfuscate it, and repeated instances of disrespect towards her colleagues. Grigsby Dep. 58:6–59:2. These are the same reasons provided in the termination letter. *See* Defs. Ex. 21, Pl. Ex. 1. Any one of these grounds suffices for Defendants to meet their burden at this stage of the *McDonnell Douglas* test to show that Watson was terminated for a legitimate, non-discriminatory reason. *See Reeves*, 530 U.S. at 142.

c. Pretext

The presumption of discrimination created by a successful showing of the prima facie case now disappears, and the burden shifts back to Watson to show that Shenandoah's proffered reasons were pretext for a discriminatory motive. To succeed, Watson must "prove by a preponderance of the evidence that the neutral reasons offered by the employer 'were not its true reasons, but were a pretext for discrimination.'" *Merritt v. Old Dominion Freight Line, Inc.*, 601 F.3d 289, 294 (4th Cir. 2010) (quoting *Burdine*, 450 U.S. at 253). Watson can "survive summary

judgment so long as [she] has offered sufficient evidence to allow a reasonable jury to disbelieve the defendant's proffered reason for [firing her]." *Thurston v. Am. Press, LLC*, 497 F. Supp. 2d 778, 782 (W.D Va. 2007).

Watson's arguments and evidence to support a showing of pretext are unpersuasive. Fashioning her arguments around an Eighth Circuit standard,¹⁸ Pl. Br. Opp. 3, ECF No. 91, Watson asserts that the Defendants selectively applied their own policies and shifted their reasoning for termination. *See Merritt*, 601 F.3d at 298–99.¹⁹ Watson cites four examples of this conduct in support of her argument: 1) Grigsby failed to submit the disputed performance review to the HR Department; 2) the Grievance Committee based its decision on unsubstantiated investigations that violated HR policies; 3) the Grievance Committee changed the reason for her termination; and 4) during discovery, the Defendants failed to provide her with critical documents, including medical documents pertaining to an accommodation request, comparator information such as job descriptions and resumes, Watson's timesheets, Grigsby's written termination recommendation, and the missing appendices from her December 21, 2010, letter requesting a second level of review of her termination.²⁰ Pl. Br. 7–10, ECF No. 96. Nothing in

¹⁸ *See Lake v. Yellow Transp., Inc.*, 596 F.3d 871, 874 (8th Cir. 2010) (“[A] plaintiff may show pretext, among other ways, by showing that an employer (1) failed to follow its own policies, (2) treated similarly situated employees in a disparate manner, or (3) shifted its explanation of the employment decision.”).

¹⁹ In *Merritt*, a female plaintiff successfully showed pretext by presenting credible evidence that the employer's requirements of passing a physical ability test, which she failed and which the employer relied on in firing her despite an otherwise exemplary employment record, was not evenly applied to her male counterparts. 601 F.3d at 298–99. *Merritt* also showed that her employer's rationale for firing her developed well after her termination occurred. *Id.* at 298. Thus, the Fourth Circuit held that the employer's reasons could be indicative of pretext. *Id.* (“[A] factfinder could infer from the late appearance of [the employer's] current justification that it is a post-hoc rationale, ‘invented for the purposes of litigation’ and ‘not a legitimate explanation for [its] decision.’” (quoting *EEOC v. Sears Roebuck & Co.*, 243 F.3d 846, 853 (4th Cir. 2001))).

²⁰ Watson's argument that she was denied some documents has no bearing on the pretext analysis. Furthermore, the Court has already considered Watson's argument about the adequacy of Defendants' production of discovery, held a conference call on March 3, 2016, and subsequently found no grounds to

the evidence, however, demonstrates that the Defendants failed to consistently apply their policies to Watson's situation or changed their reasons for termination.

As previously discussed, *supra* IV.B.1.a, the Grievance Committee does not make termination decisions, nor can it change the grounds for termination; it reviews the grievant's claim for unfair treatment. The decisionmakers, Grigsby and Fitzsimmons, consistently provided the same reasons for terminating Watson: her unexplained absences from campus and her lack of professionalism and collegiality, culminating in the Barbados trip and Masiello incident. The Grievance Committee's unsupported finding that Watson was off campus for more than three days was not a reason offered by Grigsby or Fitzsimmons for her termination. Accordingly, the Grievance Committee's determination does not show a shift in the grounds for Watson's termination and is not probative evidence of pretext.

The main thrust of Watson's pretext argument is her challenge to the veracity of the Defendants' reasons for terminating her and Grigsby's handling of employment matters. *See Reeves*, 530 U.S. at 147 (“[I]t is *permissible* for the trier of fact to infer the ultimate fact of discrimination from the falsity of the employer's explanation.”). It is a similar approach to the one taken by the plaintiff in *Hawkins v. PepsiCo, Inc.*, 203 F.3d 274. In that case, Lisa Hawkins, an African American woman, worked under a white manager, Sally Price, for roughly a year

direct the Defendants to make an additional production of documents. ECF No. 78. When Watson raised the issue again at the September 15 hearing, the Court declined to reopen discovery, but granted Watson time to supplement her filings with any additional evidence she deemed relevant to her motion for summary judgment.

As to her own medical records and the appendices she submitted with her EEOC complaint, Watson does not have a right to demand that the Defendants produce documents that are under her custody and control. Moreover, Watson has not claimed that she provided her medical records to the Defendants, and she does not explain what these medical records would have shown. Additionally, Grigsby testified that he discussed with Fitzsimmons his recommendation that Watson be fired, but he did not say, and no evidence suggests, that his recommendation was in writing. Grigsby Aff. ¶ 19; Grigsby Dep. 61:5–16. Ultimately, Watson does not explain, and the Court cannot discern, how these documents – at least those that the Defendants may have possessed – could show a shift in the reasons for her termination or a failure by the Defendants to follow their policies or how her argument is relevant to the pretext inquiry. Therefore, this argument is unpersuasive.

while employed with PepsiCo. *Id.* at 276. Hawkins presented a long list of complaints concerning her working relationship with Price. For instance, Hawkins claimed that Price treated her and the other African American employee who directly reported to Price differently from the white managers; Price did not adequately apprise Hawkins of her responsibilities, contributing to her poor performance; and Price consistently criticized Hawkins for not being a “team player.” *Id.* at 277. Additionally, on one occasion after Price criticized a document prepared by Hawkins, Hawkins took the exact same document to Price the following day and falsely claimed that a white manager had worked on it, to which Price responded that it looked great. *Id.* In her attempt to show pretext, Hawkins primarily challenged Price’s evaluation of her job performance and Pepsi’s failure to adequately investigate the dispute. *Id.* (“Hawkins alleges that Price’s assessment of her performance was excessively negative and often based on erroneous information. Hawkins also claims that Price’s feedback was in some instances too general and failed to elaborate on the positive aspects of Hawkins’ performance.”). Pepsi terminated Hawkins shortly thereafter, with Price’s opinion playing a deciding factor. *Id.* at 278.

When Hawkins brought an employment discrimination lawsuit against Pepsi alleging discrimination on the basis of race, the district court granted Pepsi’s motion for summary judgment because Hawkins “failed to produce sufficient evidence of a racially hostile environment.” *Id.* On appeal, the Fourth Circuit assumed that Hawkins satisfied the elements of the prima facie case and easily concluded that Pepsi had met its burden of giving a legitimate reason for terminating Hawkins. *Id.* The analysis then focused on Hawkins’s ultimate failure to show pretext. *Id.* at 279 (“Hawkins cannot show that Pepsi’s stated reasons for terminating her were not the real reasons for her discharge.”).

The Fourth Circuit held that Hawkins failed to show pretext for numerous reasons. One reason was that she supplied no evidence suggesting that Price believed her performance was good; in fact, the Fourth Circuit noted that Hawkins's evidence revealed that Price thought her performance was generally poor. *Id.* The Fourth Circuit specifically identified the negative performance review, which it called "Hawkins' biggest bone of contention in this case," *id.*, and criticized Hawkins for disputing the merits of Price's evaluation, rather than "producing evidence that shows Price's assessment of her performance was dishonest or not the real reason for her termination as the law requires," *id.* at 280. Hawkins's only evidence in support of her positive performance were emails and memoranda that she wrote, as well as statements allegedly made by coworkers, which the Fourth Circuit rejected as irrelevant. *Id.*

The Fourth Circuit also noted that Hawkins failed to show pretext because she "does nothing more than speculate that Price terminated her out of racial animus." *Id.* The Fourth Circuit considered Hawkins's argument that none of her white coworkers were subjected to similar treatment by Price, and summarily rejected it. *Id.* at 281. ("Hawkins presents no facts that tend to show this allegedly disparate treatment was due to race rather than Price's admittedly low regard for Hawkins' individual performance. Hawkins has demonstrated that she and Price did not see eye-to-eye. But this showing of a difference of opinion, coupled with Hawkins' conclusory allegations of racism, cannot reasonably support the conclusion that Hawkins' discharge was motivated by racial animus."). The Fourth Circuit affirmed the district court's grant of summary judgment, stating that it "refuse[d] to transmute such ordinary workplace disagreements between individuals of different races into actionable race discrimination." *Id.* at 276.

Watson's case is remarkably similar to *Hawkins*. Like Hawkins, Watson's main "bone of contention" here is the disputed 2009–10 performance review conducted by Grigsby, and Watson focuses her attempts to show pretext by challenging the veracity of Grigsby's conclusions. Watson offers no evidence, however, other than her personal assessment of her work performance to show that Grigsby's stated concerns about her performance or the reasons for her termination were dishonest or not the actual reasons he relied on. Watson takes issue with Grigsby's handling of her disputed evaluation and his failure to follow University policy regarding employee disputes. *See, e.g.*, Pl. Mot. Summ. J. 8. The submitted evidence, however, shows that throughout Watson's tenure at Shenandoah, Grigsby consistently consulted with HR and for the most part followed University policy concerning Watson's conflicts with colleagues and her termination. Grigsby Dep. 50:2–51:1, 60:11–61:16; Defs. Ex. 17 (memo from Grigsby to Landes regarding Watson's conduct during the Masiello incident); Defs. Ex. 18 (email exchange between Grigsby, Masiello, and Landes, concerning the incident between Watson and Masiello). Grigsby did not take Watson's disputed second performance evaluation to HR for reconciliation, as Landes testified would have been the appropriate procedure, Landes Dep. 89:12–24, but despite Watson's belief to the contrary, Grigsby's failure to adhere to HR Department policy in this one instance does not result in a showing of pretext. Grigsby admitted during his deposition that he was unaware of this policy and he took no further steps other than to file Watson's objections because she declined his offer to discuss a professional development plan. Grigsby Dep. 27:3–17. Moreover, Watson offers no evidence that Grigsby followed this policy with some employees from outside of the protected class while not following it in his dealings with Watson. Unlike the employer in *Merritt*, whose selective application of a rarely used policy was deemed to be an attempt to disguise sex discrimination, and thus did result in a showing of pretext, *see*

601 F.3d at 298–99, Grigsby’s actions do not suggest, and Watson’s evidence does not reveal, any differing treatment between employees that could be attributed to a discriminatory motive on Grigsby’s part regarding his handling of Watson’s disputed performance review.

Watson also quibbles with Grigsby’s investigation of the incident with Masiello, and presents her version as the truth. Watson’s version does put some facts in dispute, such as what started the argument and the substance of what was said in Masiello’s office, but this disagreement is not material to the pretext inquiry. *See Scates v. Shenandoah Mem. Hosp.*, No. 5:15cv32, 2016 WL 6270798, at *7 (W.D. Va. Oct. 26, 2016) (citing *DeJarnette v. Corning Inc.*, 133 F.3d 293, 298 (4th Cir. 1998)) (“To rebut this showing [of defendant’s legitimate reasons for termination, the plaintiff] cannot merely argue her supervisors made a bad decision, were incorrect about her performance, or the workplace discord was actually the fault of another; she must put forward evidence that the reasons [the defendant] offered were not truly in contemplation, and that she was truly fired for engaging in protected action.”). Watson has not presented any evidence to show that Grigsby did not in fact believe that he witnessed Watson berating Masiello, or that Penny Gum reported the incident to Grigsby. Additionally, Grigsby apparently credited Masiello’s version over Watson’s after he had spoken to them, received the report from Penny Gum that Watson was yelling at Masiello, *see* Defs. Ex. 17, and himself witnessed a part of the altercation. Watson’s disagreement with Grigsby’s conclusion as to the events that took place is nothing more than an attempt to challenge his crediting of one person’s version over another’s. *Cf. Scates*, 2016 WL 6270798, at *8 (“[The plaintiff] argues she was a good worker who was bullied and ‘ganged up on.’ This disputes [the defendant’s] decision, and argues that it was incorrectly made. However, it does nothing to show that [the defendant’s] proffered reason for termination was pretextual.” (internal citations omitted)). Thus, it does not

draw into dispute Grigsby's assertion that the incident was truly a reason for Watson's termination.

As for the Barbados trip, Watson concedes she attended a conference on October 18 and 19 in Barbados and does not dispute that she told Moore, her assistant, to refuse to divulge Watson's location. In fact, the calendar Watson submitted into evidence after the hearing appears to note falsely that she was in meetings in Baltimore, Maryland. Pl. Ex. 56, at 25. Watson asserts that although she was not on campus, she did perform work on those days and she did not violate a University travel policy because none existed. The Defendants do not dispute these facts. *See* Grigsby Dep. 63:8–11; Landes Dep. 90:18–23. These assertions, however, are irrelevant. Grigsby's concession that Watson performed work while in Barbados does not affect the legitimacy of his reasons for firing her because Watson was not fired for her work on that report. *See* Grigsby Dep. 64:10–17. The lack of the travel policy likewise does not affect Grigsby's and Fitzsimmons's reasons for termination because Watson was not fired for violating a University travel policy. Grigsby testified that when he tried to find Watson to correct the board indicators, his efforts to find her were initially stymied by Watson's staff, whom she had told to lie about her whereabouts. *Id.* 63:20–64:3, 64:16–21, 65:1–9. This was one of the reasons given for Watson's termination, and she has presented no evidence to show this was not a true reason.

Watson presents other events that she contends demonstrate the Defendants' deceit or racial motivations. For example, she claims that Masiello warned her of instances of racism at Shenandoah and that the two talked about the racist environment frequently, Watson Dep. 87:14–18; that Masiello and Paul Shoremont, another Shenandoah employee, told her that Grigsby encouraged them to file false accusations against Watson, Pl. Br. Opp. 10; Pl. Ex. 9, ECF No. 89-9; that Kelly Samson-Rickert in HR told her to just "smile and bear it" when

Watson complained to her about Grigbsy's alleged and unspecified racist and sexist behaviors, Pl. Br. Opp. 18; and that Moore claimed that Masiello encouraged her to testify falsely against Watson, Pl. Br. Opp. 19. When Watson raised these arguments at the hearing, the Court noted that no evidence supported her assertions, but invited her to submit additional evidence to confirm these claims. The 500-plus pages that Watson submitted after the hearing do not contain even a scintilla of evidence supporting these assertions, let alone provide sufficient support for a showing of pretext. In fact, Dr. Claressa Morton ("Morton"), one of Watson's colleagues at Shenandoah, testified in her deposition that she had not experienced, seen, or heard of any racial discrimination directed at University employees in the seven years prior to her deposition in early 2016. Morton Dep. 28:10–13, ECF No. 88-5. Morton only confirmed that she would assume racism existed generally at Shenandoah because she believed that racism existed in America. *Id.* at 26:22, 27:5.

Watson's evidence does not draw into dispute the fact that her performance evaluations over two years raised concerns about her professionalism, collegiality, leadership, and absenteeism. These performance deficiencies culminated in the incident with Masiello and the Barbados trip, which Grigbsy and Fitzsimmons cited as the ultimate grounds for Watson's termination. Watson has not presented any evidence to show that these two incidents were not the true reasons for her termination, *Burdine*, 450 U.S. at 253, much less that her race played any consideration. *See Hawkins*, 203 F.3d at 279–81. Therefore, Watson has not met her burden of showing that the Defendant's reasons were indeed pretextual, as her "assertions of discrimination in and of themselves are insufficient to counter substantial evidence of legitimate

nondiscriminatory reasons for an adverse employment action.” *Hawkins*, 203 F.3d at 281 (quoting *Williams v. Cerberonics, Inc.*, 871 F.2d 452, 456 (4th Cir. 1989)).²¹

In sum, Watson fails to prove her prima facie case because she has not demonstrated that she met the legitimate expectations of Shenandoah at the time of her firing. Additionally, even assuming that she could make out a prima facie case, Watson fails to show by a preponderance of the evidence that any of the legitimate reasons asserted by the Defendants were actually pretext for racial discrimination because she has presented only speculation, but not any evidence, of discrimination. This holds true even in viewing the evidence in the light most favorable to Watson, as required when considering the Defendants’ motion for summary judgment. Therefore, because no genuine dispute of material fact exists to show that the Defendants discriminated against Watson and because Watson has no actionable claim on which to proceed, I recommend that the presiding District Judge grant the Defendants’ motion for summary judgment.

2. *Watson’s Motion for Summary Judgment*

Watson also filed her own motion for summary judgment. The relevant portions of Watson’s argument boil down to her belief that she has satisfactorily made out a prima facie case and subsequently showed that the Defendants’ reasons for firing her were pretext for discrimination. She also erroneously asserts that because Judge Dillon did not dismiss her race discrimination claim when ruling on the Defendants’ motion to dismiss, she is entitled to

²¹ Watson also attempts to portray Grigsby and Masiello as comparators for purposes of her race discrimination claim. Neither Grigsby, who was her supervisor, nor Masiello, who was her subordinate, are true comparators. Moreover, contrary to Watson’s assertions in her brief, no evidence shows that either of them engaged in comparable conduct to Watson, particularly as it related to Watson’s absenteeism and lack of professionalism. Additionally, although Watson asserted at the hearing and in her briefs, *see, e.g.*, Pl. Br. at 11–12, that Grigsby consistently behaved unprofessionally, she has provided no evidence whatsoever to support her assertion. Her efforts to show that Shenandoah treated “comparators” differently are thus not persuasive.

summary judgment. Watson's arguments miss the mark. The analysis in this Report and Recommendation shows that the Defendants are entitled to summary judgment even when viewing the evidence in the light most favorable to Watson; this conclusion does not change when viewing the evidence in the light most favorable to the Defendants, which I must do in considering Watson's motion for summary judgment. Therefore, I recommend that the presiding District Judge deny Watson's motion for summary judgment.

V. Conclusion

For the foregoing reasons, I find that no genuine issue of material fact exists as to whether Shenandoah terminated Watson in violation of Title VII. Therefore, I RECOMMEND the presiding District Judge GRANT Defendants' motion for summary judgment, ECF No. 87, and DENY Watson's motions for summary judgment, ECF Nos. 89, 93.

Notice to Parties

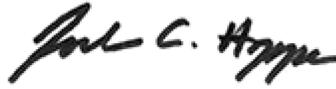
Notice is hereby given to the parties of the provisions of 28 U.S.C. § 636(b)(1)(C):

Within fourteen days after being served with a copy of this Report and Recommendation, any party may serve and file written objections to such proposed findings and recommendations as provided by rules of court. A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge may also receive further evidence or recommit the matter to the magistrate judge with instructions.

Failure to file timely written objections to these proposed findings and recommendations within 14 days could waive appellate review. At the conclusion of the 14-day period, the Clerk is directed to transmit the record in this matter to the Honorable Elizabeth K. Dillon, United States District Judge.

The Clerk shall send certified copies of this Report and Recommendation to all counsel of record and unrepresented parties.

ENTER: November 14, 2016

A handwritten signature in black ink that reads "Joel C. Hoppe". The signature is written in a cursive style with a large, stylized initial 'J'.

Joel C. Hoppe
United States Magistrate Judge