UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER

October 15, 2013

NORBERTO SAGAL TORRES, Complainant,	)	
	)	8 U.S.C. § 1324b Proceeding
v.	)	OCAHO Case No. 12B00081
PACIFIC CONTINENTAL TEXTILES, INC., Respondent.	)	

FINAL DECISION AND ORDER

I. PROCEDURAL HISTORY

Norberto Sagal Torres filed a complaint alleging that Pacific Continental Textiles, Inc. (Pacific Continental) discriminated and retaliated against him by firing him on November 9, 2011, and that the company also refused to accept documents Torres presented to show his identity and eligibility to work in the United States. Pacific Continental filed an answer denying the material allegations of the complaint and raising various affirmative defenses, after which prehearing procedures were undertaken. The action arises under the nondiscrimination provisions of the Immigration and Nationality Act as amended, 8 U.S.C. § 1324b. Torres is not represented by counsel and acts pro se in the matter.

Presently pending is Pacific Continental's motion for summary decision. Torres was given a period of thirty days to file a response to the motion. He made no response and the time for doing so has expired.

II. BACKGROUND INFORMATION

Torres is a lawful permanent resident of the United States. Pacific Continental is a textile manufacturing company that has its principal place of business in Rancho Dominguez, California. The record reflects that Torres was a long-term Pacific Continental employee who was initially hired in 1988. He worked in the company's shipping and receiving department as a

driver's assistant, a job that consisted primarily of loading and unloading trucks. Torres says he complained to his supervisor, Cham W. Pak,[1] manager of the shipping and receiving department, about not getting enough overtime hours and about the company's violation of employment verification requirements. Torres also says he complained about Pak to the director of corporate HR operations, after which time he felt intimidated and threatened. Ultimately, he was fired for reasons that are disputed by the parties.

Because of a lack of specificity in the complaint, I issued an order of inquiry to Torres requesting more detailed information about various events and when they occurred. Torres made a prompt response stating that Pacific Continental asked him to fill out an I-9 form for the first time on July 8, 2009, even though he had been working there since 1988. He says he presented a permanent resident card, but Pak told him he also needed to provide a driver's license and social security card. Torres says he told Pak that a permanent resident card was sufficient, but Pak told him that if he didn't want to comply he should look for another job. He says that after this incident reprisals against him began in the form of changes in his work schedule.

Torres says he wrote the HR Director, Daniel Ju, on October 23, 2009, reporting that Pak was hiring unauthorized workers and giving them preferential treatment, but the complaint was never resolved.[2] Torres says that in the last few months Pak seemed to be annoyed when he was around. Torres believes this was because "I was constantly claiming my rights as an employee." Torres says his termination notice of November 9, 2011 reflects that he was fired for failure to report an accident with a company truck to his supervisor or anyone else. The accident occurred on November 8, 2011, the previous day. Torres acknowledges that he was in the truck, but says he was not driving and was under the impression that only the driver had to report an accident. He reports that after a hearing his unemployment benefits were granted.

III. SCOPE OF THIS PROCEEDING

On the basis of the record and the additional facts Torres provided, an order was issued clarifying the permissible scope of the complaint. The order explained that because Torres is an alien lawfully admitted for permanent residence who obtained his green card on December 1, 1990 and never applied for citizenship in the United States, he is not a protected individual within the

[1] There are several variations in record respecting the spelling of Pak's name. The spelling used throughout is that used in the charge Torres filed with the Office of Special Counsel for Immigration-Related Unfair Employment Practices.

[2] Torres' charge says Daniel Ju left Pacific Continental around September, 2010.

meaning of 8 U.S.C. § 1324b(a)(3)(B). Torres accordingly lacks standing to maintain an action for citizenship status discrimination. OCAHO case law makes clear that such an action may be maintained only by a protected individual. *See Omoyosi v. Lebanon Corr. Inst.*, 9 OCAHO no. 1119, 3 (2005);[3] *Mengarpuan v. Asbury Methodist Village*, 4 OCAHO no. 612, 236, 243 (1994).

In the charge he filed with the Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC) Torres reported that Pacific Continental has more than fifteen employees. Any claim against the company with respect to national origin discrimination is accordingly cognizable only under Title VII and may not be pursued in this forum. 8 U.S.C. § 1324b(a)(2)(B). The governing statute provides that the INA's prohibition of national origin discrimination does not apply in cases covered under section 703 of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2 (2006) (Title VII). *See id.* Generally speaking, an employer is covered by Title VII if it is engaged in an industry affecting commerce and has fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year. 42 U.S.C. § 2000e(b). Title VII thus covers most claims of national origin discrimination against employers who employ fifteen or more employees. Claims of national origin discrimination against such employers are not within the scope of § 1324b, and must be directed to EEOC. *See Lima v. N.Y.C. Dep't of Educ.*, 10 OCAHO no. 1128, 8 (2009). Pacific Continental is such an employer.

Finally, to be actionable, an event must have occurred within the 180-day period preceding the filing of an OSC charge; events cognizable in this case are accordingly limited to those occurring after May 20, 2011. Prior events are time-barred because the governing statute provides that no complaint may be filed respecting any immigration-related unfair employment practice occurring more than 180 days prior to the filing of a charge with OSC. 8 U.S.C. § 1324b(d)(3). *See Programmers Guild, Inc. v. Value Consulting*, 10 OCAHO no. 1135, 3-4 (2010). A timely charge is a condition precedent to the filing of a private action with OCAHO, *Aguirre v. KDI Am. Prods., Inc.*, 6 OCAHO no. 882, 632, 644 (1996); *Bozoghlanian v. Raytheon Co.*, 4 OCAHO no. 660, 602, 609 (1994), and "a discriminatory act which is not made the basis for a timely charge is the legal equivalent of a discriminatory act which occurred before the statute was passed," *United*

[3] Citations to OCAHO precedents reprinted in bound Volumes 1 through 8 reflect the volume number and the case number of the particular decision, followed by the specific page in that volume where the decision begins; the pinpoint citations which follow are thus to the pages, seriatim, of the specific entire volume. Pinpoint citations to OCAHO precedents subsequent to Volume 8, where the decision has not yet been reprinted in a bound volume, are to pages within the original issuances; the beginning page number of an unbound case will always be 1, and is accordingly omitted from the citation. Published decisions may be accessed in the Westlaw database "FIM-OCAHO," or in the LexisNexis database "OCAHO," or on the website at http://www.justice.gov/eoir/OcahoMain/ocahosibpage. htm# PubDecOrders.

Air Lines, Inc. v. Evans, 431 U.S. 553, 558 (1977). Torres' claim based on document abuse in July 2009 is untimely and may not be considered in this proceeding.

Because Torres may not pursue claims for discrimination or document abuse, this case is limited to the question of whether Pacific Continental retaliated against him during the period from May 20, 2011 to November 9, 2011, for conduct he engaged in that is specifically protected under 8 U.S.C. § 1324b, and, in particular, whether Torres' discharge on November 9, 2011 can be attributed to a retaliatory motive based on some protected conduct he engaged in.

IV. LEGAL STANDARDS TO BE APPLIED

A. Summary Decision

OCAHO rules[1] provide that summary decision as to all or part of a complaint may issue if the pleadings, affidavits, material obtained by discovery or otherwise, or matters officially noticed show that there is no genuine issue as to any material fact and that the moving party is entitled to a summary decision. 28 C.F.R. § 68.38(c). This rule is similar to and based upon Rule 56(c) of the Federal Rules of Civil Procedure, which permits the entry of summary judgment in federal cases. OCAHO jurisprudence accordingly looks to federal case law interpreting that rule for guidance in determining when summary decision is appropriate. *See United States v. Candlelight Inn*, 4 OCAHO no. 611, 212, 222 (1994).

When the burden of establishing an issue at trial would be on the nonmovant, the moving party may prevail merely by pointing out the absence of evidence supporting the nonmovant's case because a failure of proof on any element upon which the nonmoving party bears the burden necessarily renders all other facts immaterial. *See Celotrex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986); *Hammoudah v. Rush-Presbyterian-St. Luke's Med. Ctr.*, 8 OCAHO no. 1050, 751, 767 (2000). Thus to withstand a properly supported motion, the nonmoving party who bears the burden of proof at trial must come forward with sufficient competent evidence to support all the essential elements of the claim. While the facts and reasonable inferences therefrom are to be viewed in the light most favorable to the nonmoving party, summary decision may nevertheless issue if no specific facts demonstrate a contested material factual issue. *See United States v. Primera Enters., Inc.*, 4 OCAHO no. 615, 259, 261 (1994).

The summary judgment inquiry scrutinizes a case to determine whether there is sufficient proof in the form of admissible evidence to carry the burden of proof at a trial. *See Mitchell v. Data*

[1] 28 C.F.R. pt. 68 (2013).

Gen. Corp., 12 F.3d 1310, 1316 (4th Cir. 1993). That scrutiny permits the adjudicator to review the evidence and determine whether consequential facts are in dispute, and to resolve the case without a trial if they are not. *Id.* A fact is material if it might affect the outcome of a case. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A factual issue is genuine only if it has a real basis in the record. *See Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87 (1986). In the absence of any proof it will not be assumed that the nonmoving party could or would prove the necessary facts.

B. The Relative Burdens of Proof

The familiar burden-shifting analysis established by *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802-05 (1973), is also used to analyze claims of retaliation. *Cf. Ray v. Henderson*, 217 F.3d 1234, 1240 (9th Cir. 2000). First, the plaintiff must establish a prima facie case; second, the defendant must articulate some legitimate, nondiscriminatory reason for the challenged action; and third, if the defendant does so, the inference raised by the prima facie case disappears, and the plaintiff then must prove, by a preponderance of the evidence, that the defendant's articulated reason is false and that the defendant retaliated against the plaintiff. *Id.; see also Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 142-43 (2000); *Saint Mary's Honor Ctr. v. Hicks*, 509 U.S. 502, 510-11 (1993); *Texas Dep't of Cmty. Affairs v. Burdine*, 450 U.S. 248, 252-53 (1981). This means that an employer that puts forth a legitimate nonretaliatory reason for the employment decision will ordinarily be entitled to summary resolution unless the complainant can show that the decision was more likely than not based in whole or in part on a prohibited factor.

An individual can meet the burden to show a prima facie case of retaliation by presenting evidence that: 1) the individual engaged in conduct protected by § 1324b, 2) the employer was aware of the protected conduct, 3) the individual suffered an adverse employment action, and 4) a causal connection exists between the protected activity and the adverse employment action. *See Shortt v. Dick Clark's AB Theatre, LLC*, 10 OCAHO no. 1130, 6 (2009). A causal connection can be inferred from a variety of facts and circumstances. *See Ipina v. Mich. Jobs Comm'n*, 8 OCAHO no. 1036, 559, 577 (1999). The paradigmatic circumstantial evidence giving rise to an inference of retaliation is temporal proximity between the protected conduct and the adverse action; where the adverse action follows closely on the heels of the protected conduct, an inference of causation ordinarily arises. *See Bell v. Clackamas Cnty.*, 341 F.3d 858, 867 (9th Cir. 2003) (finding evidence of retaliation sufficient where a lowered performance review, and ultimately termination, followed immediately after plaintiff's complaints). *See generally* Justin P. O'Brien, *Weighing Temporal Proximity in Title VII Retaliation Claims*, 43 B.C. L. Rev. 741 (2002).

To qualify as protected conduct in this forum, an activity must implicate some right or privilege

specifically secured under § 1324b, or a proceeding under that section. *See, e.g., Harris v. Haw. Gov't Emps. Ass'n*, 7 OCAHO no. 937, 291, 295 (1997); *Yohan v. Cent. State Hosp*., 4 OCAHO no. 593, 13, 21-22 (1994) (finding no OCAHO jurisdiction over threats to report employer to "EEOC, the Immigration Department (sic), the American Counsel General, the ALCU (sic), the NAACP, Georgia Legal Services," or agencies other than OSC or this office). Complaints about the presence of undocumented workers, standing alone, do not constitute protected conduct for purposes of this analysis because § 1324b(a)(5) is not a catch-all statute; it prohibits retaliation only when that retaliation is engaged in for the purpose of discouraging activity related to the filing of OSC charges or interfering with rights or privileges secured specifically under § 1324b. *See Cavazos v. Wanxiang Am. Corp.*, 10 OCAHO no. 1138, 1-2 (2011); *see also Arres v. IMI Cornelius Remcor, Inc.*, 333 F.3d 812, 813-14 (7th Cir. 2003) (observing that § 1324b(a)(5) does not provide a remedy for individuals who filed a charge or complaint about violations of immigration law rather than about discrimination). This is accordingly not an appropriate forum for complaints addressed generally to the employment of undocumented workers. *See* 8 U.S.C. § 1324a(e)(1)(A); 8 C.F.R. § 274a.9.

V. THE POSITIONS OF THE PARTIES

A. Pacific Continental's Motion for Summary Decision

The company's motion was accompanied by the declarations of Rachel E. Greenhall and Lynn Sunjara. The Greenhall declaration was in turn accompanied by exhibits consisting of A) excerpts from the first session of the deposition of Norberto Torres (16 pp.); B) the complaint (20 pp.); C) excerpts from the second session of the deposition of Norberto Torres (11 pp.); D) Torres' OSC charge (11 pp.); and E) a letter dated March 20, 2012 from OSC to Torres. The Sunjara declaration was accompanied by exhibit A, a "Status of Employment" form with an effective date of November 9, 2011, reflecting that the reason given for termination was Torres' failure to report an accident with a company truck to his supervisor or anyone else, and that the company learned of the accident only after a security guard told the customer about it.

Lynn Sunjara's declaration states that Sunjara is the Manager of Corporate Administration for the company. The declaration says that beginning in late 2008 there was a slowdown in Pacific Continental's business and a decline in profitability. In September 2008 the company had to close one of its plants, and in early 2010 a sister company filed Chapter 7 Bankruptcy and Pacific Continental barely survived. Sunjara states further that the textile and apparel industries have been hard hit ever since World Trade Organization agreements began allowing companies to "source offshore" for goods and services that were previously provided domestically. Sunjara states in addition that Torres was one of four employees who were fired for not reporting an accident with a company truck that occurred on November 9, 2011, a violation of company

policy.

Pacific Continental asserts that there is no genuine issue of material fact and that the company is entitled to judgment as a matter of law. The company says it had legitimate nondiscriminatory reasons for reducing Torres' hours and terminating his employment. The company points out that, as Torres acknowledged in his deposition, he lost only overtime hours and his schedule was never reduced to less than forty hours a week. According to the company, any reduction in overtime hours did not occur because of Torres' complaints to or about Pak, but were likely the result of a slowdown in the company's business and a decline in its overall profitability during the period from 2008 through 2010. Sunjara's declaration points to a plant closure and the bankruptcy of a sister corporation during this period. Sunjara also states, contrary to Torres' allegations, that he was terminated for failure to report an accident he was involved in with a company truck, a violation of company policy. She asserts that Torres was only one of four employees, including another driver's assistant, who were fired for failure to report the same accident.

B. Torres' Position

While Torres made no response to the motion, his position is set out in his previous filings. His theory appears to be that he was discharged on November 9, 2011 for complaints he made to Cham Pak in 2009 about having to show too many supporting documents when completing an I-9 form for the first time, for complaints he continuously made to Pak about reduction of his overtime hours and Pak's alleged favoritism toward unidentified unauthorized workers, for a letter he wrote to Daniel Ju on October 23, 2009 complaining about Pak, and for questioning Pak in October 2011 about a videoconference.

Torres says he gave a note to Cham Pak on October 31, 2011, and told him about a videoconference to be conducted by USCIS about the I-9 form, and after that, Pak became very hostile toward him. Torres says he asked Pak on November 4, 2011 if he was going to participate in the videoconference, and he was fired the following week. Torres believes this incident was also causally related to his discharge and that the accident with the truck was a pretext. Torres says the real reason for his termination was the complaints he made to Pak, starting in 2009 and continuing up until just before his discharge.

VI. DISCUSSION AND ANALYSIS

Many of Torres' factual allegations are wholly unsupported in the record. He provided no evidence, for example, that establishes the immigration status of Pacific Continental's other workers or that shows how overtime hours were allocated. As an initial matter, there are

problems with respect to the issues of protected conduct and causation, so it is not clear that Torres can make out a prima facie case of retaliation. It is not self-evident that each of the actions he describes, including asking Pak about the videoconference (the only temporally related event Torres identified), can constitute protected conduct within the meaning of 8 U.S.C. § 1324b(a)(5). More importantly, the causal connection between the protected conduct and the adverse employment action, the linchpin of any retaliation claim, is not apparent. To show a causal link, there must be sufficient evidence to raise an inference that the employee's protected activity is the likely reason for the adverse action. Torres points to no objective evidence that would support an inference of a causal relationship between his discharge and his complaints, most of which are too remote in time to raise any inference based on temporal proximity.

While there is no bright line rule that a particular time is either per se too long or per se sufficiently short to infer a causal connection, *Coszalter v. City of Salem*, 320 F.3d 968, 977-78 (9th Cir. 2003), generally speaking, the greater the temporal gap, the more attenuated the inference. *See, e.g., Clark Cnty Sch. Dist. v. Breeden*, 532 U.S. 268, 274 (2001) (noting that an adverse action occurring twenty months after the protected conduct "suggests, by itself, no causality at all"). Here the adverse action of Torres' termination occurred two years or more after many of the complaints Torres alleged in his charge. Like the intervals at issue in *Jamal v. Wilshire Mgmt. Leasing Corp.*, 320 F. Supp. 2d 1060, 1080 (D. Or. 2004), the periods between the alleged conduct and the adverse action are simply too long to support a causal link. *See also Villiarimo v. Aloha Island Air, Inc.*, 281 F.3d 1054, 1068 (9th Cir. 2002) (termination occurred ten months after complaint). Any inference that might be drawn, moreover, based on temporal proximity between the note to Pak about the videoconference and Torres' discharge is dispelled by the fact that three other employees were also fired for the same offense as he was. Torres does not suggest that the three other employees also sent notes to or complained about Pak, nor does he otherwise explain how his discharge can be the result of retaliation while the discharges of the other three were not.

Assuming arguendo for purposes of this motion that Torres could establish a prima facie case, Pacific Continental proffered a legitimate nondiscriminatory reason for the challenged employment decision: Torres should have reported an accident with a company truck, but did not do so, a violation of company policy. Four employees failed to report the same accident and all four were terminated. This nonretaliatory reason is sufficient to shift the burden of production back to Torres to create a factual issue as to whether the company's explanation is a pretext. He can do this only by presenting evidence sufficient to create an inference that Pacific Continental's proffered reason has no basis in fact, did not actually motivate the employer, or was insufficient to motivate the decision. *See Ipina*, 8 OCAHO no. 1036 at 574.

On issues where the nonmoving party bears the ultimate burden of proof, the nonmoving party must present definite, competent evidence to rebut the moving party's motion. *See Liberty*

Lobby, 477 U.S. at 256-57. A complainant's evidence of pretext must be "both *specific and substantial*" to overcome an employer's legitimate nondiscriminatory reason. *See Aragon v. Republic Silver State Disposal, Inc.*, 292 F.3d 654, 658-59 (9th Cir. 2002) (citing cases) (emphasis in the original). A complainant thus will not ordinarily survive a motion for summary resolution simply because an employment decision appears harsh or severe. *Anderson v. Newark Pub. Schs.*, 8 OCAHO no. 1024, 361, 364 (1999). The question is whether the employer retaliated against the employee, not whether the employer made the best decision it could have under the circumstances. Ultimately, to create a genuine issue of material fact as to whether retaliation occurred there must be some reason to believe that but for an individual's protected conduct the adverse employment action would not have taken place. *See Ipina*, 8 OCAHO no. 1036 at 578.

What that means in the context of this case is that there must be some basis to believe that but for Torres' complaints to and about Pak, he would not have been fired on November 9, 2011, despite his failure to report the accident and despite the fact that three others were fired for the very same conduct. Torres pointed to no objective evidence from which an inference of retaliation can reasonably be drawn, and examination of the record reflects that it is devoid of evidence that would support such an inference. No rational factfinder could conclude based on this record that Torres was fired for engaging in activity protected under 8 U.S.C. § 1324b.

OCAHO rules require evidentiary hearings only where genuine factual issues are raised. 28 C.F.R. § 68.38(e). Parties should not be put to the burden and expense of a hearing unless it is shown that there are genuine issues of material fact to be determined. One of the principal purposes of summary adjudication is to isolate and dispose of claims or defenses that are factually unsupported. *See United States v. Aid Maint. Co.*, 6 OCAHO no. 893, 810, 813-14 (1996). Summary decision is therefore regarded not as a disfavored procedural shortcut, but rather as a way to avoid unnecessary hearings where there is no genuine issue as to any material fact, as demonstrated by pleadings, affidavits, discovery, and any judicially noticed matters. *See United States v. Ricardo Calderon, Inc.*, 5 OCAHO no. 805, 657, 660 (1995).

VII. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Findings of Fact

1. Norberto Sagal Torres is a lawful permanent resident of the United States.

2. Norberto Sagal Torres obtained a green card on December 1, 1990 and never applied for citizenship in the United States.

3. Pacific Continental Textiles, Inc. is engaged in the textile business and has its principal place of business in Rancho Dominguez, California, where it employs more than fifteen workers.

4. Norberto Sagal Torres was hired by Pacific Continental Textiles, Inc. in 1988.

5. Norberto Sagal Torres worked in the shipping and receiving department at Pacific Continental Textiles, Inc. as a driver's assistant, a job that consisted primarily of loading and unloading trucks.

6. Norberto Sagal Torres alleges that he complained to his supervisor, Cham W. Pak, in July 2009 about having to show too many documents when completing an I-9 form.

7. Norberto Sagal Torres alleges that he complained to his supervisor, Cham W. Pak, in and after July 2009 about a reduction in his overtime hours.

8. Norberto Sagal Torres sent a letter on October 23, 2009 to Daniel Ju, then the Director of Corporate HR/Operations, complaining that his supervisor, Cham W. Pak, engaged in unfair practices.

9. Norberto Sagal Torres alleges that in October 2011 he asked his supervisor, Cham W. Pak, about participating in a videoconference about the I-9 form.

10. Norberto Sagal Torres was terminated on November 9, 2011 after failing to report an accident with a company truck.

11. Norberto Sagal Torres was one of four employees, including another driver's assistant, who were terminated after failing to report an accident with a company truck.

12. On November 16, 2011 Norberto Sagal Torres filed a charge against Pacific Continental Textiles, Inc. with the Office of Special Counsel for Immigration-Related Unfair Employment Practices.

13. On March 20, 2012, the Office of Special Counsel sent a letter to Norberto Sagal Torres advising him that he had the right to file a complaint with the Office of the Chief Administrative Hearing Officer within ninety day of his receipt of the letter.

14. Norberto Sagal Torres filed his complaint on June 8, 2012.

B. Conclusions of Law

1. Norberto Sagal Torres is not a protected individual within the meaning of 8 U.S.C. § 1324b(a)(3)(B) and therefore lacks standing to maintain an action for citizenship status discrimination. *See Omoyosi v. Lebanon Corr. Inst.*, 9 OCAHO no. 1119, 3 (2005).

2. Pacific Continental Textiles, Inc. is an entity within the meaning of 8 U.S.C. § 1324b(a)(1).

3. Pacific Continental Textiles, Inc. is an employer within the meaning of the Civil Rights Act of 1964, 42 U.S.C. § 2000e(b) (2006) (Title VII).

4. All conditions precedent to the institution of this proceeding have been satisfied.

5. Norberto Sagal Torres did not establish a prima facie case of retaliation in violation of 8 U.S.C. § 1324b(a)(5).

6. In order to withstand a properly supported motion for summary decision, the nonmoving party who bears the burden of proof at trial must come forward with sufficient competent evidence to support all the essential elements of the claim. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986).

7. Where a nonmoving party who would bear the burden of proof at trial is unable to make a showing sufficient to establish an element essential to that party's case, summary judgment will ensue. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986).

8. When the burden of establishing the issue at trial would be on the nonmovant, the moving party may prevail merely by pointing out the absence of evidence supporting the nonmovant's case because a failure of proof on any element upon which the nonmoving party bears the burden necessarily renders all other facts immaterial. *See Hammoudah v. Rush-Presbyterian-St. Luke's Med. Ctr.*, 8 OCAHO no. 1050, 751, 767 (2000).

9. Assuming arguendo that Norberto Sagal Torres presented a prima facie case of retaliation, Pacific Continental Textiles, Inc. proffered a legitimate nondiscriminatory reason for terminating him.

10. Norberto Sagal Torres did not point to specific and substantial evidence to create a triable issue, or point to evidence sufficient to raise a genuine issue of material fact as to whether Pacific Continental Textiles, Inc.'s reasons for terminating him were a pretext for discrimination or retaliation for protected conduct.

11. There are no genuine issues of material fact and Pacific Continental Textiles, Inc. is entitled to summary decision pursuant to 28 C.F.R. § 68.38(c).

To the extent that any statement of fact is deemed to be a conclusion of law or any conclusion of law is deemed to be a statement of fact, the same is so denominated as if set forth as such.

ORDER

For the reasons more fully set forth herein, the complaint should be, and hereby is, dismissed.

SO ORDERED.

Dated and entered this 15th day of October, 2013.

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Ellen K. Thomas
Administrative Law Judge

Appeal Information

In accordance with the provisions of 8 U.S.C. § 1324b(g)(1), this Order shall become final upon issuance and service upon the parties, unless, as provided for under the provisions of 8 U.S.C. § 1324b(i), any person aggrieved by such Order files a timely petition for review of that Order in the United States Court of Appeals for the circuit in which the violation is alleged to have occurred or in which the employer resides or transacts business, and does so no later than 60 days after the entry of such Order.