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IN THE SUPREME COURT OF IOWA

Darrell Jeffrey McClure, Plaintiff-Appellant, v. **Corteva Agriscience LLC,** Defendant-Appellee,	**Supreme Court No. 23-0628** Keokuk County Case No. LACL142507

Appeal from the Iowa District Court in and for Keokuk County
The Honorable Crystal S. Cronk, District Court Judge

Appellee's Final Brief

FAEGRE DRINKER BIDDLE & REATH LLP

Susan P. Elgin, AT0011845
susan.elgin@faegredrinker.com
801 Grand Avenue, 33rd Floor
Des Moines, Iowa 50309-8003
Telephone: (515) 248-9000
Facsimile: (515) 248-9010

Terran C. Chambers*
terran.chambers@faegredrinker.com
2200 Wells Fargo Center
90 S. Seventh Street, Suite 2200
Minneapolis, Minnesota 55447
Telephone: (612) 766-7000
Facsimile: (612) 766-1600

CORTEVA AGRISCIENCE LLC

Daniel J. Gomez*
daniel.gomez@corteva.com
974 Centre Road, CRP 735/4330-2
Wilmington, Delaware 19805
Telephone: (302) 485-3493

**Admitted pro hac vice*

ATTORNEYS FOR DEFENDANT-APPELLEE CORTEVA AGRISCIENCE LLC

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STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

1. **The District Court Correctly Ruled that McClure Did Not and Could Not Make a *Prima Facie* Case of Age Discrimination Because He Was Not Performing His Job Satisfactorily.**

   Johnson v. Mental Health Institute, 912 N.W.2d 855 (Iowa Ct. App. Jan 10, 2018)

   Gordon v. Wells Fargo Bank, N.A., 964 N.W.2d 783 (Iowa Ct. App. 2021)

2. **The District Court Correctly Ruled that McClure Did Not and Could Not Make a *Prima Facie* Case of Disability Discrimination Because He Was Not Disabled.**

   Goodpaster v. Schwan's Home Serv., Inc., 849 N.W.2d 1 (Iowa 2002)

   Vincent v. Four M Paper Corp., 589 N.W.2d 55 (Iowa 1999)

3. **The District Court Correctly Ruled that McClure Failed to Raise a Jury Question of Whether the Reason for His Discharge Was Retaliatory.**

   Godfrey v. State, 962 N.W.2d 84 (Iowa 2021)

   McCrea v. City of Dubuque, 899 N.W.2d 739 (Iowa Ct. App. 2017)

   DeBoom v. Raining Rose, Inc., 772 N.W.2d 1 (Iowa 2009)

4. **The District Court Correctly Ruled that McClure Was Not Subject to a Hostile Work Environment.**

   Haskenhoff v. Homeland Energy Solutions, LLC, 897 N.W.2d 553 (Iowa 2017)

   Farmland Foods, Inc. v. Dubuque Human Rights Comm'n, 672 N.W.2d 733 (Iowa 2003)

ROUTING STATEMENT

Because this case does not present novel questions of law, Iowa R. App. P. 6.1101 supports transferring it to the Iowa Court of Appeals for decision.

STATEMENT OF THE CASE

Defendant-Appellee Corteva Agriscience LLC ("Corteva") ended Plaintiff-Appellant Darrell Jeffrey McClure's at-will employment on July 10, 2020. In the years leading up to the termination of his employment, Appellant was involved in a series of workplace incidents that violated policy and jeopardized his safety and that of others, including a significant loading dock infraction, a forklift collision, and a near-miss collision two days later.

Corteva made the decision to terminate Appellant's employment based on the facts showing that despite coaching and disciplinary warnings, Appellant continued to violate safety protocols and place himself, and others, at risk of harm.

Rather than accept that his at-will employment ended because of *his* conduct and *his* performance gaps, Appellant filed this litigation on August 24, 2021, and filed the operative pleading in this lawsuit on March 11, 2022.

The District Court, the Honorable Crystal S. Cronk, granted Corteva's Motion for Summary Judgment in its entirety on March 29, 2023.

Appellant now appeals.

STATEMENT OF THE FACTS

Appellee Corteva Agriscience processes, packages, and ships corn and soybeans used in the commercial agricultural industry. Def's MSJ App. 86, App. 0096. Corteva's predecessor in interest, Pioneer Hi-Bred, hired Appellant Jeff McClure as an at-will employee on December 22, 1983. Ruling on Defendant's Motion for Summary Judgment ("Ruling"), p. 1, App. 0242; *see also* Def's MSJ App. 12, App. 0022. It discharged him for misconduct on July 10, 2020. Ruling, p. 1, App. 0242; *see also* Def's MSJ App. 15, 488-490, App. 0025, 0498-0500.

Appellant sued, alleging that Corteva discriminated against him because of his age and a claimed disability, retaliated against him for making complaints to Corteva's Human Resources ("HR") department, and subjected him to a hostile work environment. *See* First Amended and Substituted Petition at Counts I, II, III, pp. 11-14, App. 0053-0056.

The District Court granted Corteva summary judgment because the undisputed material facts showed that (1) Appellant was not performing his job satisfactorily for purposes a discrimination claim; (2) Appellant was not disabled as a matter of law; (3) there was no causal connection between his complaints to HR and the termination of his employment; and (4) his allegations did not rise to the level of a hostile work environment under Iowa law. Ruling,

pp. 11, 14, 16, 18, App. 0252, 0255, 0257, 0259. For the reasons set forth herein, this Court should affirm.

A. Corteva's Hedrick Location.

Appellant worked as a production technician at Corteva's Hedrick, Iowa facility. Ruling, p. 1, App. 0242; *see also* Def's MSJ App. 15, App. 0025. As a production technician, Appellant operated a forklift to make loads, collect product from the assembly line, stack product in the warehouse, and engage in loading dock activities involving trucks and trailers. Ruling, p. 1, App. 0242; *see also* Def's MSJ App. 16, App. 0026.

Corteva assigns its Hedrick facility employees, like Appellant, to work different shifts depending on the season. Ruling, p. 1, App. 0242; *see also* Def's MSJ App. 87, App. 0097. Corteva staffs both 8 and 12-hour shifts. Def's MSJ App. 87, App. 0097. Corteva employees assigned a 12-hour shift typically work from 6:15 a.m. to 6:00 p.m. or 6:00 p.m. to 6:15 a.m. *Id.* Corteva employees assigned an 8-hour shift may work from 6:00 a.m. to 2:30 p.m. (first shift), 2:00 p.m. to 10:30 p.m. (second shift), or 10:00 p.m. to 6:30 a.m. (third shift). *Id.*

In 2017 and 2018, Corteva placed new managers at the site, including Dan Dehrkoop, who served as the location manager for the Hedrick facility. Ruling, p. 1, App. 0242; *see also* Def's MSJ App. 70, App. 0080. Other new

managers included Chad Langstraat, Will Ritter, and Steve Brooks, who served as site supervisors and oversaw day-to-day management of the employees at the Hedrick facility. Ruling, pp. 1-2, App. 0242-0243; *see also* Def's MSJ App. 17-18, 41, 92, 109-110, 117, App. 0027-0028, 0051, 0102, 0119-0120, 0127.

Corteva considers workplace safety a core value and an employment priority. Ruling, p. 2, App. 0243; *see also* Def's MSJ App. 76, App. 0086. Corteva provides all employees with safety-related training and education, including on powered industrial equipment (*i.e.,* guidelines for forklift operations), warehouse material movement, transportation vendor safety (*i.e.,* dock and loading protocols), and fall protection. Corteva trained Appellant on these topics. Ruling, p. 2, App. 0243; *see also* Def's MSJ App. 195, App. 0205.

B. Appellant's Alleged Disability.

Appellant experienced two heart attacks during the span of time that Corteva employed him. Ruling, pp. 3-4, App. 0244-0245; *see also* Def's MSJ App. 33, 42, App. 0043, 0052. The first occurred in February 2014 and the second in 2019. Ruling, pp. 3-4, App. 0244-0245. After his first heart attack, Appellant submitted a request for an accommodation to avoid working on a

night shift, which Corteva at all times granted. Ruling, p. 3, App. 0244; *see also* Def's MSJ App. 42-43, App. 0052-0053.

In 2017, due to a change in leadership and a new staffing plan, management asked Appellant if his doctor could clarify his restrictions. Ruling, p. 3, App. 0244; *see also* Def's MSJ App. 43, 87, App. 0053, 0097. Appellant submitted three new notes from his doctor, each of which provided different parameters for his requested accommodation: one said he could not work "a prolonged night shift schedule," a second asked that he not work "multiple night shifts or a[n] overnight shift schedule consisting of 1900-0600 hours [sic] time frame," and a third stated he could "work an occasional night shift of one shift, but no more than two shifts that are not back to back shifts." Ruling, pp. 3-4, App. 0244-0245; *see also* Def's MSJ 43, 44, 435, 436, App. 0053-0054, 0445-0446.

Notwithstanding any confusion regarding how these restrictions aligned with Corteva's various shifts, it is undisputed that Corteva never required Appellant to work two consecutive second or third shifts from 2014 to the end of his employment. Ruling, p. 4, App. 0245; *see also* Def's MSJ App. 44, App. 0054.

Notably, at the same time, Appellant also worked as an EMT for Davis County Hospital and as a firefighter for the City of Bloomfield. Def's MSJ

App. 9, App. 0019. In those jobs, Appellant worked evening and overnight shifts, seemingly flouting and contradicting his Corteva work restrictions. Def's MSJ App. 7-9, 285-294, App. 0017-0019, 0295-0304.

Finally, following his second heart attack in April 2019, Appellant reported that he experienced occasional migraine headaches. Ruling, p. 4, App. 0245; *see also* Def's MSJ App. 23-24, App. 0033-0034. Appellant stated that he was able to manage his migraine symptoms with over-the-counter pain medication and rest. Ruling, p. 4, App. 0245; *see also* Def's MSJ App. 66, App. 0076.

C. <u>Appellant's HR Complaint.</u>

On October 22, 2017, Appellant submitted an internal complaint through Corteva's Ethics Hotline. Ruling, p. 4, App. 0245; *see also* Def's MSJ App. 45, 260-284, App. 0055, 0270-0294. His hotline complaint recited nine instances where Appellant thought Corteva's leadership acted "inappropriately" toward him or others, but seven of his nine examples pertained only to other employees. *Id*.

As to the two examples that did relate to him, Appellant's 2017 hotline complaint contended that Corteva had asked for an updated doctor's note solely to make it more difficult for him to obtain an accommodation (though he was never denied any requested accommodation), and that he believed

Corteva issued a September 26, 2017 disciplinary action (discussed below) with an intent to "force him out". Ruling, p. 4, App. 0245; *see also* Def's MSJ App. 260, App. 0270.

Corteva assigned the investigation of Appellant's complaint to Human Resources Managers Kaylee Tanner and Tonya Arnold. Ruling, p. 4, App. 0245; *see also* Def's MSJ App. 171, 177-178, App. 0181, 0187-0188. Following investigation, Corteva did not substantiate Appellant's claims. Ruling, p. 4, App. 0245.

D. <u>Appellant's Disciplinary History and the Termination of His Employment.</u>

During his tenure at Corteva, Appellant amassed a lengthy record of safety-related violations, which include (but are not limited to):

(1) firing a loaded gun on the job (1993), Ruling, p. 2, App. 0243; *see also* Def's MSJ App. 422, App. 0432;

(2) standing on a stack of pallets 10-12 feet off the ground without proper fall protection (2010), Ruling, p. 2, App. 0243; *see also* Def's MSJ App. 423, App. 0433;

(3) sleeping at work (2011), Ruling, p. 2, App. 0243; *see also* Def's MSJ App. 424-425, App. 0434-0435; and

(4) moving a stack of boxes four-high in violation of workplace conduct expectations (2016), Ruling, p. 2, App. 0243; *see also* Def's MSJ App. 433-434, App. 0443-0444.

His safety violations had raised enough concern that his 2016 written review noted:

> Need to recognize hazards as there are a lot of eyes on you and we have the opportunity to change the culture with our ASI [contract] employees, but they see you doing things such as not stopping at intersections, cutting corners at the intersections to speed up time, not stop, drop, and roll. These are items you have control over and can have the biggest influence on others.

Def's MSJ App. 431, App. 0441.

Appellant's safety-related counseling continued throughout his employment and escalated in frequency in response to Appellant's increasingly flagrant conduct. In particular:

2017: On September 26, 2017, Appellant received a written warning for engaging in several safety violations, including once again using a forklift to move four stacked boxes across the warehouse, using his cellular device on the warehouse floor, and using a forklift to move two stacks of boxes side by side. Ruling, p. 2, App. 0243; *see also* Def's MSJ App. 433-434, App. 0443-0444. The warning noted that Appellant was asked if he knew that an unloading procedure he used was against workplace requirements and he

nodded, indicating "yes." Def's MSJ App. 433-434, App. 0443-0444. That document concluded by stating:

> I am greatly concerned about this situation. These issues are not only a risk to your safety, but also others working on the floor. . . . [Y]ou admitted to knowing the correct policy/procedure and deliberat[ely] ignored it. These behaviors are unacceptable. . . . If further incidents of this nature occur in the future, further disciplinary action will occur, up to and including termination.

Id.

Appellant received a "below required performance" rating in his 2017 Year End Performance Review. Def's MSJ App. 24, 449, App. 0034, 0459. For a second consecutive year, Appellant's review referenced safety deficiencies:

> Ensure you are doing things the correct way according to the policy, and not the fastest way. Others on the floor look up to you and see you as a mentor. When you tell them not to do something, but then they see you doing it a month later, it loses some of the meaning you had when you told them not to do it. . . . Take the time and stop the process to show them the correct way of getting it done, which might be a slower process. If it is safer, it is worth doing it the slower way. Ensure you are following the procedures put in place, even if you don't agree with them.

Def's MSJ App. 448, App. 0458.

2018: Appellant received coaching after a supervisor observed him violating workplace conduct expectations by not staying three feet away from a running forklift. Def's MSJ App. 451, App. 0461.

2019: Corteva began utilizing Hyster brand forklifts equipped with a Vehicle System Manager ("VSM") to better oversee and monitor the use of the heavy machinery, and Appellant quickly recorded unsafe driving behavior. Ruling, p. 3, App. 0244; *see also* Def's MSJ App. 209, 211, 218, 468, 501-502, App. 0219, 0221, 0228, 0478, 0511-0512.

The Hyster VSM function monitored vehicle accelerations in real-time and recorded instances when the VSM electronic device determined that a forklift accelerated too fast, braked too suddenly, or hit an object (all of which the VSM reported as an "impact"). Def's MSJ App. 209, 221, App. 0219, 0231.

The Hyster VSM system recorded these instances by measuring the G-forces registered against the forklift. Def's MSJ App. 209, App. 0219. For context, the typical maximum deceleration that on-road vehicles (*i.e.*, cars) will attain before the vehicle's tires begin to skid/slide on concrete pavement is approximately .9 to 1 Gs. *Id.* When a forklift recorded an impact above four Gs, it would shut down, or "lock out," requiring a member of Corteva's management team to reset it to become operational again. Def's MSJ App. 136, App. 0146.

Appellant immediately recorded a high number of impacts for which he received performance feedback in his year-end review:

> With the new Hyster Tracking, it shows that you are not very fluent in your driving behavior and have had a high impact sensor rate for the month of October. I would like to see this number come down, which will indicate you are being mindful of this and trying to be more fluent, which will make you more efficient at operating your forklift.

Def's MSJ App. 468, App. 0478.

2020: Appellant's performance transgressions escalated significantly, ultimately resulting in the termination of his employment. Def's MSJ App. 488-490, App. 0498-0500.

In particular, despite the counseling he received in his 2019 year-end review, Appellant continued to log Hyster VSM impacts throughout 2020, indicating he was not driving his forklift in a safe manner:

Month	**Number of Impacts by Appellant**
January 2020	4
February 2020	2
March 2020	2
April 2020	4
May 2020	6
June 2020	5

Def's MSJ App. 211, 455, 462, 494, 495, App. 0221, 0465, 0472, 0504, 0505.

While Appellant contends, despite unrebutted expert evidence in the summary judgment record (Def's MSJ App. 190-245, App. 0200-0255), that VSM data is unreliable, he could not dispute any of his own impacts with any particularity during his deposition. Ruling, p. 12, App. 0253.

Appellant incurred other safety violations, too. Ruling, pp. 2, 12-14, 16, App. 0243, 0253-0255, 0257. On April 2, 2020, Appellant was involved in a serious loading dock incident. Ruling, p. 13, App. 0254; *see also* Def's MSJ App. 472-473, App. 0482-0483. Appellant entered a semi-trailer at the loading dock to load heavy equipment without first ensuring the truck was properly locked into the dock (which it was not) and that the truck driver did not have the keys (which he retained). Def's MSJ App. 85, 472-473, App. 0095, 0482-0483. Consequently, the truck driver pulled away from the dock with Appellant and loading equipment *still inside* — all in violation of the company's workplace conduct expectations. *Id*.

Despite Appellant's attempt to explain this incident away: (1) witnesses stated the truck was not properly locked into the dock pursuant to policy; (2) Corteva's management had never seen an incident of this nature before; and (3) despite Appellant's insistence on an equipment malfunction, no such malfunction could be recreated by Corteva's safety team. Ruling, pp. 13-14, App. 0254-0255; *see also* Def's MSJ App. 83-85, App. 0093-0095. Appellant received a final written warning stating that another breach of Corteva's safety expectations could result in termination of employment. Ruling, p. 2, App. 0243; *see also* Def's MSJ App. 472-473, App. 0482-0483.

On April 30, 2020, Appellant received an additional reminder that any further safety infractions could result in the termination of his employment:

> You received a Written Warning September 26, 2017 for violation of various safety procedures. In addition, you received a Final Written Warning April 6, 2020 for violation [of] various safety procedures. Both your WW and FWW stated you must demonstrate sustained improvement, satisfactory performance in all job duties, and if further incidents of this nature occur in the future, further disciplinary action will occur, up to and including termination. These behaviors you are demonstrating do not align with our Core Values. **These issues are a serious concern and I want to ensure you understand, with any further performance or attendance violations, your job is in jeopardy.**

Pl's MSJ App. Vol. I, App. 0083, App. 0090. Notwithstanding this warning, in May 2020, Appellant recorded a record-high number of Hyster VSM impacts. Ruling, p. 12, App. 0253; *see also* Def's MSJ App. 211, App. 0221.

Thereafter, on June 29, 2020, Appellant hit another forklift with his own in a T-bone collision that damaged the end of Appellant's forklift and the side of the forklift operated by a temporary contract worker. Ruling, pp. 13-14, App. 0254-0255; *see also* Def's MSJ App. 211, 476, App. 0221, 0486. Dehrkoop took and annotated these photographs after the collision:

Temp 47
Jeff M
Impact Location
CONFIDENTIAL
COR_08000447

Def's MSJ App. 482-484, App. 0492-0494.

Dehrkoop authenticated those photographs and explained their context at his deposition. Def's MSJ App. 83-84, App. 0093-0094. In addition, Corteva's unrebutted expert report found:

> Mr. McClure's second high impact occurred on June 29, 2020, when Mr. McClure was backing his forklift at a speed of 4 miles per hour and the rear of his forklift hit the side of another forklift generating 5.6 Gs of force to his forklift. Mr. McClure failed to operate his forklift at a safe speed which would have permitted him to stop in a safe manner. As a consequence, he was removed from operating his forklift, received counseling from Mr. Daniel Dehrkoop, and received refresher training from Mr. Josey Hubanks.

Def's MSJ App. 211, App. 0221.

Contrary to Appellant's contention, *both* drivers were treated the same as a result of the collision and both operators were taken off of the fork trucks until completion of hands-on training.

Appellant disputes any assessment of fault and contests whether he or the forklift he collided with was going faster. Ruling, pp. 12-13, App. 0253-0254. Even so, Dehrkoop's deposition testimony reflects what he witnessed immediately after the collision:

> Q. That last picture in Exhibit 17, I think, shows damage to the fork truck; is that right?
>
> A. Correct.
>
> Q. How difficult is it to damage a fork truck like that? Can you explain what kind of material we're looking at there? Is that plastic? Rubber? Metal?
>
> A. So, yeah, that's actually -- I'm going to -- I believe that's metal. That actually is part of the counter balance or what they refer to as the counter balance of a forklift. That is a very hard material. I want to say it's 100 percent metal.
> Most of the damage there is some pretty heavy paint chipping. So not only is it – normally if you see -- the paint on those forklifts is really good. Normally if we see damage to a fork truck, it's more of a scuffing, if you will. Not necessarily chipping out of the paint that it was showing here.
> So probably -- probably a bit outside of my realm of experience, but I would say it's pretty difficult to do that. It's pretty uncommon for me to see paint chipped like that on a fork truck.
>
> Q. Was this impact concerning to you?

A. Yeah, it was very concerning. They both had an extremely high registration on the impact rating. And I don't know if we've seen an impact level – so the forklift that took the brunt of the impact, basically the one that got Tboned, if you will, it took an impact of 11.4. And I don't know, to this day, if we have seen an impact level higher than that in an incident. I don't recall one if we have.

Q. So what does that tell you, then, about how Mr. McClure was driving?

A. Well, I didn't even have to look at this, but I'm looking at both of the – if you read both of the impact speeds, or the impact event, they were both, you know, driving at a high rate of speed. And Mr. McClure was as well coming out back -- backing out of that lane.

Def's MSJ App. 83-84, App. 0093-0094.

Dehrkoop further explained in his deposition:

Q. I want to talk about the impact that Mr. McClure had with another employee. How common are fork truck -- I mean, how common is it for fork trucks to hit each other at the facility?

A. It's pretty rare. Again, fork trucks have a light that shines behind them about 12 -- 11, 12 feet behind them. It's a blue light that projects out to kind of notify individuals if a fork truck's backing out of a bay or that type of stuff. The fork trucks also have, you know, blinking yellow lights as kind of a notification of when a fork truck is moving or turned on. The headlights on the fork truck also project forward and you can generally see -- you know, think of it like at night, you can see the cars coming because the light's shining. Or they're pretty bright lights, so they kind of show up in the rest of the warehouse. And obviously, we've got horns and honking. You know, when the fork truck's going backwards, they honk. So it's pretty rare for

fork trucks to come into contact with each other at the facility.

Q. Is it fair to say that if they do come into contact at the facility that probably someone's not following safety protocols?

A. Absolutely.

Def's MSJ App. 83, App. 0093.

Two days after this collision, on July 1, 2020, Appellant was involved in another incident: a near-miss impact that shut off his forklift. Def's MSJ App. 211, App. 0221. Appellant recorded a high impact at 6.2 Gs of force in this incident that triggered a lockout. *Id*.

And just one week later, on July 9, 2020, Appellant's forklift recorded yet another impact. Def's MSJ App. 486, App. 0496.

These events escalated management's safety concerns about Appellant's workplace conduct and, given the frequency with which they occurred, unabated by any performance feedback, a demonstrated unwillingness to improve. Ruling, pp. 13-14, App. 0254-0255; *see also* Def's MSJ App. 77, App. 0087. As a result, Corteva discharged Appellant from his at-will employment on July 10, 2020. Def's MSJ App. 488-490, App. 0498-0500.

Appellant argues that each of his many violations, some of which occurred before new management was in place, was either a misunderstanding

or a malicious fabrication. *See generally* Appellant's Proof Brief, pp. 11-38. Even further, because Appellant denies each of these violations, Appellant theorizes that they prove the existence of a multi-year campaign to harass him, borne out of animosity towards Appellant in his mind because of his: (a) age; (b) actual or perceived disability; and (c) filing of an HR complaint in 2017. Def's MSJ App. 248-258, App. 0258-0268. Appellant's claims fail.

STANDARD OF REVIEW

Appellant appeals from the District Court's grant of summary judgment in Corteva's favor. On appeal, this Court reviews the district court's ruling "for correction of errors at law." Iowa R. App. P. 6.907.

Summary judgment is proper when the entire record demonstrates that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Stevens v. Iowa Newspapers, Inc.*, 728 N.W.2d 823, 827 (Iowa 2007) (citing *Carr v. Bankers Trust Co.*, 546 N.W.2d 901, 903 (Iowa 1996); Iowa R. Civ. P. 1.981(3). An issue is "genuine" if "the evidence is such that a reasonable jury could return a verdict" for the party resisting the motion. *Fees v. Mutual Fire & Auto Ins. Co.*, 490 N.W.2d 55, 57 (Iowa 1992). An issue of fact is "material" when a dispute exists that may affect the outcome of the suit, given the applicable governing law. *Id.* The non-moving party may not rest upon the mere allegations or denials in the pleadings and

instead "must set forth specific facts showing that there is a genuine issue [of material fact] for trial." Iowa R. Civ. P. 1.981(3), (5).

As the United States Supreme Court has stated, applying similar standards to those applicable here, "an employer [is] entitled to judgment as a matter of law if the record conclusively revealed some other, nondiscriminatory reason for the employer's decision, or if the plaintiff created only a weak issue of fact as to whether the employer's reason was untrue and there was abundant and uncontroverted independent evidence that no discrimination had occurred." *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 148 (2000).

SUMMARY OF THE ARGUMENT

It is undisputed that Appellant's discrimination and retaliation claims will proceed using the *McDonnell Douglas* framework, under which Appellant must make a *prima facie* case of discrimination or retaliation and thereafter must show that Corteva's articulated non-discriminatory and non-retaliatory basis for each adverse employment action was pretextual. *See, e.g.*, *McDonnell Douglas Corp.*, 411 U.S. 792, 802-03 (1973); *Farmland Foods, Inc. v. Dubuque Human Rights Comm'n*, 672 N.W.2d 733, 741 n.1 (Iowa 2003) (setting forth *prima facie* case elements for discrimination in employment).

As discussed herein, Plaintiff cannot do either.

ARGUMENT

I. Appellant Cannot Establish a *Prima Facie* Case for Age Discrimination Under Any Standard.

In order to survive summary judgment on his age discrimination claim, Appellant needed to first establish a *prima facie* case by showing he was: (1) a member of a protected class; (2) performing his work satisfactorily; and (3) had adverse action taken against him. *Vaughan v. Must, Inc.*, 542 N.W.2d 533, 538 (Iowa 1996) (citing *Lindsey v. Prive Corp.*, 987 F.2d 324 (5th Cir. 1993).

There is no dispute that Appellant had met his burden on parts (1) and (3). Before the District Court, Corteva argued (and the District Court agreed) that Appellant was not performing his work satisfactorily because of his numerous, documented safety violations – many of which Appellant readily admitted he engaged in, despite believing he should not be disciplined. Ruling, pp. 11-13, App. 0252-0254.

Appellant's Brief now spends 7 full pages arguing (for the first time) that Corteva and the District Court applied the wrong standard. According to Appellant, the Court should only consider whether Appellant was "qualified

for the position" in analyzing his *prima facie* case – <u>not</u> whether Appellant was performing his job satisfactorily.[1] *See* Appellant's Proof Brief, pp. 39-46.

Appellant's argument presents a distinction without a difference. By the time Appellant reached a point where he was amassing monthly – and at points, weekly – safety infractions of increasing severity, including an unprecedent dock lock incident, a forklift collision, and another near-miss (as described above), Appellant was neither performing his job satisfactorily <u>nor</u> qualified for his role. Indeed, in a case cited in Appellant's own brief, *Boelman v. Manson State Bank*, 522 N.W.2d 73 (Iowa 1994), the court expressly recognized that whether an employee is "qualified for the position" requires an analysis of the employee's *current* capabilities – not merely historical performance. *See also Henkel Corp. v. Iowa Civil Rights Comm'n*, 471 N.W.2d 806 (Iowa 1991) ("In assessing an employee's qualifications, we

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[1] Appellant cites to the Iowa Supreme Court's recent *Feeback v. Swift Pork Co.*, 988 N.W.2d 340 (Iowa 2023) decision for this proposition but does not concede that it operates retroactively. (Appellant's Brief at 39). This position is nonsensical. The alternative phrasing of the second prong of the *McDonnell Douglas* test has been used prior to the *Feeback* decision. *See, e.g., Rumsey v. Woodgrain Millwork, Inc.*, 962 N.W.2d 9, 22 (Iowa 2021). Yet Appellant did not include it in his briefing below. Pl's Resistance to MSJ, pp. 28-29. Unless *Feeback* applies retroactively, then, Appellant's argument is waived. Appellee contends that *Feeback* does apply retroactively because it does not meet the standard set forth in *Beeck v. S.R. Smith Co.*, 359 N.W.2d 482, 484 (Iowa 1984): it did not decide an issue of first impression or overrule past precedent, retrospective operation will not retard the operation of anti-discrimination laws, and there is no inequity in imposing *Feeback* retroactively.

must consider the individual's ability to perform the job in a reasonably competent and satisfactory manner"); *see also Stansbury v. Sioux City Cmty. Sch. Dist.*, 986 N.W.2d 867 (Iowa Ct. App. 2022) (stating the requirements of a *prima facie* case as: "he was qualified to perform the job and was performing satisfactorily"); *Gordon v. Wells Fargo Bank, N.A.*, 964 N.W.2d 783 (Iowa Ct. App. 2021) (same); *Johnson v. Mental Health Inst.*, 912 N.W.2d 855 (Iowa Ct. App. 2018) (same). Of course, this makes sense. It is hard to fathom how – and Appellant does not explain how – an employee with a demonstrated inability to complete the essential functions of his role in accordance with the company's safety guidelines could feasibly be deemed "qualified," regardless of his tenure.

Accordingly, the Court should affirm the District Court's grant of summary judgment in Corteva's favor on Appellant's age discrimination claim.

II. Appellant Cannot Establish a *Prima Facie* Case for Disability Discrimination Because Appellant Was Neither Disabled Nor Perceived to be Disabled.

To state a *prima facie* case for disability discrimination, Appellant needed to show that he: (1) had a disability; (2) he was qualified to perform the essential functions of his job; and (3) the circumstances of his termination gave rise an inference of illegal discrimination. *Goodpaster v. Schwan's*

Home Serv., Inc., 849 N.W.2d 1, 6 (Iowa 2002). Appellant cannot pass the first hurdle because he is not "disabled" as a matter of law.

The Iowa Civil Rights Act ("ICRA") defines a disability as "the physical or mental condition of a person which constitutes a substantial disability." Iowa Code section 216.2(5). A person is disabled who has a "physical or mental impairment which substantially limits one or more major life activities," or "a record of such an impairment," or "is regarded as having such an impairment." *Goodpaster*, 849 N.W.2d at 6 (quoting Iowa Admin. Code r. 161-8.26(1)). "Major life activities" include "functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working." *Id.* r. 161-8.26(3).

Thus, in assessing whether a person has a "disability," the Court must determine: (1) whether he has a physical or mental impairment; (2) whether that impairment limits one more major life activities; and (3) whether the impairment imposes a "substantial limitation" on that identified major life activity as compared to most people in the general population. *See Jackson v. Union Pac. R.R. Co.*, 2021 WL 1726895 (S.D. Iowa Mar. 29, 2021) (assuming the plaintiff suffered an impairment but stating he "points to no evidence demonstrating these conditions substantially limit his major life activities as

compared to most people in the general population"). "[N]ot every impairment. . . constitute[s] a disability." *Id.*

Here, the District Court agreed with Corteva that Appellant was <u>not</u> disabled as a matter of law because his alleged disability (his two prior heart attacks/cardiovascular disease and episodic migraines) did not substantially limit any major life activity as compared to most people in the general population. Ruling, pp. 9, 11, App. 0250, 0252. Indeed, Appellant readily admitted his alleged disability did not impact his ability to work a full-time job (and multiple part time jobs), nor his ability to walk, see, hear, speak, or learn. Def's MSJ App. 7-9, App. 0017-0019.

On appeal, Appellant cursorily reiterates that his "heart attacks/cardiovascular disease and migraines. . . substantially limited his ability to work, a major life activity." *See* Appellant's Proof Brief, p. 61. But nothing in the record supports this assertion. "A person is substantially limited in his or her ability to work when the person is significantly restricted in the ability to perform either a class of jobs or a broad range of jobs in various classes as compared to the average person having comparable training, skills and abilities." *Bearshield v. John Morrell & Co.*, 570 N.W.2d 915, 920 (Iowa 1997). To find that an ailment substantially limits a person's ability to work, the Court must find that it provides a "significant barrier to employment."

Webb v. Garelick Mfg. Co., 94 F.3d 484, 488 (8th Cir. 1996); *Fjellestad v. Pizza Hut of Am., Inc.*, 188 F.3d 944, 949 (8th Cir. 1999) ("Finding that an individual is substantially limited in his or her ability to work requires a showing that his or her overall employment opportunities are limited.").

Here, Appellant not only remained gainfully employed at Corteva for six years while working the day shift full time, but also continued to work multiple other jobs. Def's MSJ App. 7-9, App. 0017-0019. His ability to work was far from "substantially limited." *See Runkle v. Potter*, 271 F.Supp.2d 951 (E.D. Mich. 2003) (finding a plaintiff was not "disabled" where "Plaintiff has only shown, at best, an inability to work on a single shift. . . . Plaintiff's work history belies any argument of being substantially impaired in the life activity of working."). Accordingly, Appellant is not disabled as a matter of law and the Court can, and should, affirm on this ground alone.

But further, Appellant reasserts that even if he was not *actually* disabled, Corteva *perceived* him to be disabled. In *Vincent v. Four M Paper Corp.*, 589 N.W.2d 55, 62 (Iowa 1999), the Iowa Supreme Court explicitly restricted the use of the "perceived as disabled" doctrine "to those cases in which the adverse employment decision 'rested on myths, fears, or stereotypes[.]'" As the District Court put it "[t]he focus of the perceived disability option is the attitude of others." Ruling, p. 11, App. 0252.

For example, in *Howell v. Merritt Co.*, 585 N.W.2d 278, 281 (Iowa 1998), the Court found that a disability discrimination finding could be sustained based on a perceived disability where the defendant terminated the plaintiff's employment after it observed her wearing a battery-operated medical device used to control back spasms and concluded that her back condition was too much of a liability for the company and would prevent her from doing the job. Ruling, pp. 10-11, App. 0251-0252. There, there was evidence that suggested that the employer was relying on stereotypes and fears about the plaintiff's medical condition rather than an individualized evaluation of the plaintiff's actual physical condition or actual ability to do the job.

By contrast, here, the District Court correctly determined that nothing in the record showed that the termination of Appellant's employment rested on myths, fears, or stereotypes about his perceived disability and granted summary judgment in Corteva's favor. Ruling, p. 11, App. 0252.

Appellant points to no such record evidence on appeal (of course, because none exists). Accordingly, this Court should affirm.

III. Appellant Cannot Establish Pretext for Age or Disability Discrimination.

Even if Appellant could establish that he was qualified for his job (despite his numerous safety violations), or that he had an actual disability,

Appellant's discrimination claims would still fail because he is not able to establish that the legitimate business reason advanced for the termination of his employment (his safety record) was pretext for discriminatory animus.[2] *See McDonnell Douglas*, 411 U.S. at 802-03; *Hedlund v. State*, 930 N.W.2d 707, 723 (Iowa 2019) ("Drawing all inferences in Hedlund's favor, Hedlund has failed to present sufficient evidence from which a reasonable jury could infer that defendants' legitimate, nondiscriminatory reason for termination was pretextual and that age discrimination was the real reason for his termination.").

To meet his burden at the pretext stage "the plaintiff must show that a prohibited reason, rather than the employer's stated reason, actually motivated the employer's action." *Nelson v. USAble Mut. Ins. Co.*, 918 F.3d 990, 993 (8th Cir. 2019). "The showing of pretext necessary to survive summary judgment requires more than merely discrediting [the employer's] proffered reason for the adverse employment decision. [The employee] must also prove that the proffered reason was a pretext for [] discrimination." *Grutz v. U.S. Bank. N.A.*, 695 N.W.2d 505 (Iowa Ct. App. 2005) (citations and quotation marks omitted); *see also generally Fitzgerald v. Hy-Vee, Inc.*, 899 N.W.2d

[2] Though the District Court did not find it necessary to reach a pretext analysis, this Court may affirm based on any ground raised below, including the lack of pretext.

740 (Iowa Ct. App. 2017) (stating that sufficient evidence must be shown to demonstrate that a reasonable fact finder could find the employer's proffered justification "unworthy of credence"); *Feeback* 988 N.W.2d at 349 ("the critical inquiry in discrimination cases like this one is not whether the employee actually engaged in the conduct for which he was terminated, but whether the employer in good faith believed that the employee was guilty of the conduct justifying discharge.") (quotation marks omitted) (citing *Pulczinski v. Trinity Structural Towers, Inc.*, 691 F.3d 996, 1002 (8th Cir. 2012)).

Appellant cannot make this showing for several reasons: (1) Appellant can point to no direct evidence in the record to show that Corteva's decisions were motivated by animus toward his protected class status; (2) Appellant can point to nothing in the record to undermine that Corteva honestly believed his performance was a safety risk; (3) Appellant cannot use comparators to establish pretext; and (4) Appellant's attempted use of "me-too" evidence is both inadmissible and irrelevant.

First, Appellant has not introduced any direct evidence supporting his claims that his supervisors bore discriminatory animus toward any protected class status. *Roberts v. Park Nicollet Health Servs.*, 528 F.3d 1123, 1128 (8th Cir. 2008) (quoting *EEOC v. Liberal R-II Sch. Dist.*, 314 F.3d 920, 923 (8th

Cir. 2002)) (requiring "evidence of 'remarks of the employer that reflect a discriminatory attitude,' [or] 'comments which demonstrate a discriminatory animus in the decisional process or those uttered by individuals closely involved in employment decisions.'"). Though Appellant dismisses his (over 30) safety violations as evidence of Hedrick's management being "out to get him" because of his protected class, there is not a single piece of evidence in the record to support that this is true. *See Nelson v. James H. Knight DDS, P.C.*, 834 N.W.2d 64, 69 (Iowa 2013) (noting even *unfair* treatment of an employee does not violate the ICRA so long as the employer does not engage in discrimination based on an employee's protected status).

Indeed, Appellant *admits* that his supervisors never expressed any sort of discriminatory animus towards him based on either his age or his alleged disability and he "did not know" whether certain corrective actions were motivated by his protected class because he "can't read their mind[s]." Def's MSJ App. 30, 37, 42, 57, App. 0040, 0047, 0052, 0067. Appellant's surmise of discrimination—without any evidentiary support in the record—falls well short of raising a fact issue concerning pretext. *See DePriest v. Milligan*, 823 F.3d 1179, 1184 (8th Cir. 2016) ("To survive summary judgment, a plaintiff must substantiate [his] allegations with sufficient probative evidence that would permit a finding in [his] favor on more than mere speculation,

conjecture, or fantasy."); *Walls v. Jacob N. Printing Co., Inc.*, 618 N.W.2d 282, 284 (Iowa 2000) (speculation is insufficient to generate a genuine issue of fact). Appellant's failure to substantiate his allegations of pretext with more than mere speculation, conjecture, or fantasy warrants affirmance of the summary judgment order. *DePriest*, 823 F.3d at 1184 (quoting *Rickard v. Swedish Match N. Am., Inc.*, 773 F.3d 181, 184 (8th Cir. 2014)).

Second, Appellant cannot show pretext by arguing that his conduct did not *actually* amount to violation of Corteva's safety expectations and requirements (*i.e.*, he never *actually* violated any policy; it *was not* his negligence that resulted in him being in a trailer while a truck pulled away; he *was not* violating Corteva's policies when he moved boxes around the warehouse in a variety of ways; it *was not* his driving activity that set off his Hyster VSM impact device; and it *was not* his driving activity that resulted in forklift collisions). The relevant inquiry is not whether Appellant *actually* violated Corteva's policies, but whether Corteva "honestly believed the asserted grounds at the time of the termination" or whether discrimination motivated the decision instead. *Twymon v. Wells Fargo & Co.*, 462 F.3d 925, 935 (8th Cir. 2006); *Henderson v. Ford Motor Co.*, 403 F.3d 1026, 1034 (8th Cir. 2005); *EEOC v. Trans States Airlines, Inc.*, 462 F.3d 987, 992 (8th Cir. 2006) (the "relevant question is whether the [employee] can show that [the

employer] was motivated by discriminatory animus, rather than solely by its *belief* that [the employee] violated company policy.") (emphasis in original)); *Magnussen v. Casey's Mktg. Co.*, 787 F. Supp. 2d 929, 952 (N.D. Iowa 2011).

Appellant cannot show pretext unless he can point to facts in the record to show that Corteva did not honestly believe Appellant had violated its safety policies at the time it terminated his employment. *Pulczinski*, 691 F.3d at 1003 ("proof that the employee never violated company rules does not show that the employer's explanation was false. . . . the employee must show the employer did not truly believe that the employee violated company rules."). Appellant has not made, and cannot, make this showing. Indeed, given the record, including Appellant's lengthy history of performance counseling and Corteva leadership's testimony regarding their concerns, Appellant cannot reasonably or legitimately dispute that Corteva honestly believed he had violated its safety rules or posed a risk of injury when it disciplined him or terminated his employment.

Third, Appellant cannot point to anyone who engaged in conduct similar to his but was treated more favorably. "[T]he test for whether someone is sufficiently similarly situated, as to be of use for comparison, is rigorous . . . individuals used for comparison must have dealt with the same supervisor, have been subject to the same standards, and engaged in the same conduct

without any mitigating or distinguishing circumstances." *Feeback*, 988 N.W.2d at 350 (citation and quotation marks omitted).

Before the District Court, Appellant identified two alleged comparators: Brandon Sieren and the unnamed temporary contractor worker with whom Appellant collided on his forklift. Ruling, pp. 13-14, App. 0254-0255. As a preliminary matter, despite Appellant's insistence on referring to Mr. Sieren and the temporary worker as "younger" and "non-disabled," the record contains no indication – other than Appellant's surmise – of either's age or disability status[3]. *See* Appellant's Proof Brief, pp. 15-16. But Appellant also admits he has no idea (1) whether either engaged in conduct similar to his; or (2) whether either was disciplined. Def's SUMF at ¶¶ 130-131, 143-144, App. 0105, 0107; *see also* Def's MSJ App. 57-58, App. 0067-0068. It is undisputed that Appellant has not seen either individual's personnel file, performance reviews, disciplinary records, or Hyster tracking data. Def's SUMF at ¶¶ 143-144, App. 0107; Def's MSJ App. 20, 25-26, App. 0030, 0035-0036. He thus presents no evidence they are similarly situated to him and otherwise does not meet the stringent proof requirements for making that legal determination.

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[3] And, given that Appellant does not know the temporary worker's *name*, it seems unlikely he would know details regarding the temporary worker's medical condition.

And the District Court properly noted that the record contains evidence to the contrary: both the temporary worker and Mr. Sieren had an overall history of safe performance. Ruling, pp. 13-14, App. 0254-0255. In the case of the temporary worker, the forklift collision was his first or second safety incident. *Id.* In the case of Mr. Sieren, he was "typically a good employee and follows all procedures," but was nonetheless counseled regarding the lock dock incident in which he was involved. *Id.* The record simply does not support that the unnamed temporary worker or Mr. Sieren (1) were younger than Appellant and/or not disabled; (2) had a performance history comparable to Appellant's; (3) engaged in conduct comparable to Appellant's; (4) were treated more favorably than Appellant. Accordingly, they cannot be relied upon to show pretext.

Finally, Appellant cobbles together a collection of random, unsupported complaints by other employees and argues that because Corteva discriminated against *them*, it necessarily discriminated against *him*. But even assuming Appellant sufficiently established that any other employee experienced actual discrimination or retaliation (which he did not), these allegations are inadmissible: none relate to Appellant, Appellant's documented safety violations, or a specific discriminatory attitude against Appellant by plant management or Corteva. They should be disregarded for

this reason alone. *Garang v. Smithfield Farmland Corp.*, 439 F.Supp.3d 1073 (N.D. Iowa 2020) (ignoring use of "me too" evidence at summary judgment stage as irrelevant and unpersuasive).

Appellant attempts to avoid this reality by stating this is "exactly one type of competent evidence" that can be offered to defeat summary judgment. *See* Appellant's Proof Brief, p. 55. But not one of the cases Appellant cites is on point. Indeed, most are not at a summary judgment disposition at all.[4]

Even if the Court considered this evidence, it does nothing to support Appellant's discrimination or retaliation claims. For example, Jeff Winn, Mike Ellis, Jeff Wolcott, and Bill Leach, are *four older employees, two with disabilities, whom Corteva never discharged*. Jeff Winn and Jeff Wolcott both retired from Corteva after decades-long careers in which Corteva undisputedly accommodated their disabilities. Ruling, pp. 13-14, App. 0254-0255; *see also* Def's MSJ App. 35, 50, 63-64, App. 0045, 0060, 0073-0074. Bill Leach voluntarily resigned, citing a "lack of training and support" "with the new systems brought on." Pl's MSJ App. Vol. 1, App. 0073, App. 0080.

[4] While *Sandoval v. Am. Build. Maint. Indus., Inc.*, 578 F.3d 787, 802-803 (8th Cir. 2009), cited by Appellant, was decided on summary judgment, the court in that case was analyzing a sexual harassment claim – specifically, whether the employer should have reasonably been on notice of sexual harassment in the workplace. The court found that evidence of widespread sexual harassment endured by others was relevant to the employer's reasonable notice. Of course, this is not applicable in this context.

Even if the experiences of these individuals were relevant or admissible (which they are neither) each's purported misgivings about their work environment do nothing to support Appellant's argument that the real reason Corteva terminated *his* employment was to fulfill a scheme to rid the workplace of older and disabled workers; to the contrary, they knock his claim out from under him.

Because Appellant has not identified any cognizable evidence that would establish that Corteva's safety concerns were pretext for discrimination based on his age or his alleged disability, even if Appellant could establish either *prima facie* case (which he cannot), the Court should uphold the District Court's dismissal of Appellant's discrimination claims.

IV. There Is No Temporal or Logical Connection Between Appellant's 2017 Complaint and His Termination Almost Three Years Later.

Appellant's retaliation claim fares no better. Retaliatory discharge cases "should be decided at summary judgment when a plaintiff has failed to establish a question of material fact for the jury regarding causation." *Wusk v. Evangelical Ret. Homes, Inc.*, No. 15-0166, 2015 WL 9450914, at *3 (Iowa Ct. App. Dec. 23, 2015) (citing *Teachout v. Forest City Cmty. Sch. Dist.*, 584 N.W.2d 296, 301 (Iowa 1998)). Evidence that an adverse action occurred after the employee engaged in a protected activity, standing alone, is not sufficient

to establish causation. *Teachout*, 584 N.W.2d at 296; *Phipps v. IASD Health Servs. Corp.*, 558 N.W.2d 198, 203 (Iowa 1997) (finding termination following engagement in protected activity "without more, is insufficient to generate a jury question on retaliation."). Moreover, it is well-established that subsequent intervening events "erode any causal connection" between protected conduct and a termination for misconduct. *See Cheshewalla v. Rand & Son Const. Co.*, 415 F.3d 847, 852 (8th Cir. 2005); *Kiel v. Select Artificials, Inc.*, 169 F.3d 1131, 1136 (8th Cir. 1999).

Here, applying these standards, the District Court correctly found that there was no causal connection between Appellant's October 2017 internal complaint and his discharge nearly three years later in July 2020. Ruling, p. 18, App. 0259. The District Court correctly noted that Appellant's safety-related disciplinary actions both pre-dated and post-dated his complaint to HR, and that there was no evidence to support that his complaint, and not Appellant's behavior, motivated his termination. *Id.* at 17-18, App. 0258-0259. Indeed, Appellant's significant safety violations, both individually and taken together, are intervening events sufficient to sever any plausible causal connection between Appellant's protected conduct and the termination of his employment.

On appeal, Appellant doubles down on temporal proximity, relying on *DeBoom v. Raining Rose, Inc.*, 772 N.W.2d 1 (Iowa 2009) for the proposition that "while temporal proximity between the protected activity and adverse action is important, it is not dispositive" and asserting that therefore the determination of causation is a question for the jury and not for the Court. *See* Appellant's Proof Brief, pp. 56-58.

Appellant is incorrect. In particular, Appellant misuses the holding of *DeBoom* which did not involve a retaliation claim and did not sustain a claim where there was a delay in the adverse employment action. Instead, *DeBoom* involved claims of pregnancy discrimination where the plaintiff was terminated **seven business days after she returned from her pregnancy leave**. The Court in that case found that, while "[t]iming alone is not sufficient to demonstrate the employer's reason for terminating the employee was pretextual." *Id.* at 8 (citations and quotations omitted). In other words, the Court in that case found that **close temporal proximity was not sufficient to prove discrimination, not that timing was insufficient to sever causation** (as Appellant argues here).

Indeed, there are many cases where Iowa courts have found that a gap in time less than the three years at issue in this case is sufficient to sever causation at the summary judgment stage. *See, e.g.*, *McCrea v. City of*

Dubuque, 899 N.W.2d 739 (Iowa Ct. App. 2017) (finding a temporal link over two months is insufficient to constitute causation for retaliation, without more); *Newkirk v. State*, 669 N.W.2d 262 (Iowa Ct. App. 2003) (finding proximity "lacking" where two years had passed since the protected activity); *Smith v. Fairview Ridges Hosp.*, 625 F.3d 1076, 1088 (8th Cir. 2010) (finding one month between protected activity and adverse employment action is not close enough to support a finding of causation without something more); *see also Cheshewalla*, 415 F.3d at 852; *Kiel*, 169 F.3d at 1136.

At best, Appellant again points to the discipline he received as evidence of retaliation. *See* Appellant's Proof Brief, p. 58. But for the same reason Appellant cannot show pretext for discrimination (discussed above), he cannot show pretext for retaliation. It is Appellant's burden to point to some evidence in the record to suggest that Corteva was motivated by retaliatory animus, not actual concerns about Appellant's performance, when it issued discipline to him and terminated his employment. Appellant has not done this.

Because Appellant cannot establish causal connection between the termination of his employment and his complaint made three years earlier, the District Court's dismissal of Appellant's retaliation claim should be affirmed.

V. Appellant Did Not Identify Any Severe or Pervasive Conditions That Altered the Conditions of His Employment.

Finally, given the deficiencies with Appellant's other claims, it is unsurprising that Appellant has been unable to support his hostile work environment claim. In order to sustain such a claim, Appellant must prove, *inter alia*, that his workplace was "permeated with discriminatory intimidation, ridicule, and insult . . . sufficiently severe or pervasive to alter the conditions" of his employment and "create an abusive working environment." *Haskenhoff v. Homeland Energy Sols., LLC*, 897 N.W.2d 553, 571 (Iowa 2017). The conduct must be extreme, ongoing, and not merely unpleasant. *See Stoddard v. BE & K, Inc.*, 993 F. Supp. 2d 991, 1002 (S.D. Iowa 2014).

Before the District Court, Appellant alleged he was subjected to a hostile work environment in the form of (1) unjustified discipline and (2) multiple conversations regarding his doctor's note. Ruling, pp. 15-16, App. 0256-0257.

The District Court correctly dismissed Appellant's hostile work environment claim, finding that nothing in the record suggested the alleged treatment affected a term, condition, or privilege of Appellant's employment, where he received five written disciplinary actions over the course of 27 years

and requested an accommodation that was, at all times, granted. Ruling, p. 16, App. 0257.

On appeal, Appellant cites no law, reiterates the same allegations, and, faced with a lack of evidence showing how any conduct affected a term or condition of *his* employment, pivots to talking about inadmissible, irrelevant experiences of other employees. *See* Appellant's Proof Brief, pp. 58-59.

If Appellant had engaged with the case law, he would have seen that the types of allegations he makes do not rise to the level of "ridicule" or "insult" sufficient to state a claim for a hostile work environment. *See generally Stoddard*, 993 F.Supp.2d at 1002; *Farmland Foods*, 672 N.W.2d at 744-45 ("The objective determination [of a hostile work environment] considers all the circumstances, including: (1) the frequency of the conduct, (2) the severity of the conduct, (3) whether the conduct was physically threatening or humiliating or whether it was merely offensive, and (4) whether the conduct unreasonably interfered with the employee's job performance.") (citing *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 23 (1993); *Freeman v. Kansas,* 128 F. Supp.2d 1311, 1320 (D. Kan. 2001) (wherein the court held a supervisor may scold and yell at an employee without violating Title VII)); *see also Wilkie v. Dept. of Health & Hum. Servs.*, 638 F.3d 944, 955 (8th Cir. 2011) (quoting *Cross v. Prairie Meadows Racetrack & Casino*, 615 F.3d 977,

981 (8th Cir. 2010) (stating courts impose such a "demanding" standard because anti-discrimination law does not prohibit all verbal or physical harassment and does not act as a "general civility code for the American workplace"); *Shaver v. Indep. Stave Co.*, 350 F.3d 716, 721 (8th Cir. 2003) ("Conduct that is merely rude, abrasive, unkind, or insensitive does not come within the scope of the law."); *see also Nelson*, 834 N.W.2d at 69 (dismissing the notion that *unfair* treatment of an employee could violate the ICRA).

Indeed, Iowa courts have held that the receipt of performance feedback and disciplinary action in the face of demonstrated safety violations does not amount to a hostile work environment as a matter of law. *See Thomas v. State of Iowa Child Support Collections*, 08-0722, 2008 WL 5484349, at *7 (Iowa Ct. App. Dec. 31, 2008) (finding it "well-settled that criticism" or "close supervision of work activities" is insufficient to establish conduct that a reasonable person would find abusive or hostile without more) (citing *Farmland Foods, Inc.*, 672 N.W.2d at 744-45). This is particularly true where, as here, Appellant can draw no tie between his performance feedback and his membership in one or more protected classes, even going so far as admitting that none of the individuals responsible for managing him ever made any derogatory comments or references to his alleged protected class statuses. Def's MSJ App. 30, 37, 57, App. 0040, 0047, 0067; *see Haskenhoff*, 897

N.W.2d 553 at 571 (stating the environment must be "permeated" with "*discriminatory*" intimidation or ridicule) (emphasis added); *see also Simon Seeding & Sod, Inc. v. Dubuque Human Rights Comm'n*, 895 N.W.2d 446, 469 (Iowa 2017) (noting that occasional criticism of an employee's work performance by a supervisor, absent references or another nexus to a protected characteristic, does not amount to harassment); *Kim v. Grand View Coll.*, 797 N.W.2d 621 (Iowa Ct. App. 2011) (same).

And, of course, that Corteva asked for a clarification regarding Appellant's doctor's note, *while at all time honoring his request for an accommodation*, cannot demonstrate an environment "permeated with discriminatory intimidation, ridicule, and insult sufficiently severe or pervasive to alter the conditions" of his employment.

Appellant's allegations do not amount to a hostile work environment as a matter of law and this Court should affirm the District Court's grant of summary judgment in Corteva's favor.

CONCLUSION

For the foregoing reasons, this Court should affirm the District Court's grant of summary judgment in Corteva's favor.

Dated: December 1, 2023.

Respectfully submitted,

FAEGRE DRINKER BIDDLE & REATH LLP

/s/ Susan P. Elgin
Susan P. Elgin AT0011845
susan.elgin@faegredrinker.com
801 Grand Avenue, 33rd Floor
Des Moines, Iowa 50309-8003
Telephone: (515) 248-9000
Facsimile: (515) 248-9010

Terran C. Chambers*
terran.chambers@faegredrinker.com
2200 Wells Fargo Center
90 S. Seventh Street, Suite 2200
Minneapolis, Minnesota 55447
Telephone: (612) 766-7000
Facsimile: (612) 766-1600
**Admitted pro hac vice*

CORTEVA AGRISCIENCE LLC

Daniel J. Gomez*
daniel.gomez@corteva.com
974 Centre Road, CRP 735/4330-2
Wilmington, Delaware 19805
Telephone: (302) 485-3493
**Admitted pro hac vice*

ATTORNEYS FOR DEFENDANT-APPELLEE CORTEVA AGRISCIENCE LLC

CERTIFICATE OF FILING

The undersigned certifies that on December 1, 2023, she filed Appellee's Final Brief with the Clerk of the Supreme Court via EDMS, in accordance with Iowa R. App. P. 6.701(2) and Iowa Ct. R. 16.1221(1).

/s/ Susan P. Elgin
Susan P. Elgin, AT0011845
susan.elgin@faegredrinker.com
FAEGRE DRINKER BIDDLE & REATH LLP
801 Grand Avenue, 33rd Floor
Des Moines, Iowa 50309-8003
Telephone: (515) 248-9000
Facsimile: (515) 248-9010

Certificate of Service

I hereby certify that on December 1, 2023, I electronically filed the foregoing Appellee's Final Brief with the Clerk of the Court by using the Iowa Electronic Document Management System. Because that system will send a notice of electronic filing to the counsel shown below, this constitutes service of the document for purposes of the Iowa Court Rules in compliance with Rule 16.317(1)(a).

Michael Carroll, AT0001311
CARNEY & APPLEBY, P.L.C.
303 Locust Street, Suite 400
Des Moines, Iowa 50309-1770
Telephone: (515) 282-6803
Facsimile: (515) 282-4700
Email: *mike@carneyappleby.com*

Megan Flynn, AT0010000
FLYNN LAW FIRM, P.L.C.
2700 Westown Parkway, Suite 200
West Des Moines, Iowa 50266
Telephone: (515) 809-6975
Facsimile: (855) 296-3165
Email: *megan@flynnlawia.com*

Attorneys for Plaintiff-Appellant

/s/ Susan P. Elgin
Susan P. Elgin, AT0011845
susan.elgin@faegredrinker.com
Faegre Drinker Biddle & Reath LLP
801 Grand Avenue, 33rd Floor
Des Moines, Iowa 50309-8003
Telephone: (515) 248-9000
Facsimile: (515) 248-9010

ATTORNEY'S COST CERTIFICATE

The undersigned certifies the actual cost of reproducing the necessary copies of the preceding Appellee's Final Brief was $0.00 and that amount has been actually paid by the attorneys for the Appellees.

FAEGRE DRINKER BIDDLE & REATH LLP

/s/ Susan P. Elgin
Susan P. Elgin AT0011845
susan.elgin@faegredrinker.com
801 Grand Avenue, 33rd Floor
Des Moines, Iowa 50309-8003
Telephone: (515) 248-9000
Facsimile: (515) 248-9010

Terran C. Chambers*
terran.chambers@faegredrinker.com
2200 Wells Fargo Center
90 S. Seventh Street, Suite 2200
Minneapolis, Minnesota 55447
Telephone: (612) 766-7000
Facsimile: (612) 766-1600
**Admitted pro hac vice*

CORTEVA AGRISCIENCE LLC

Daniel J. Gomez*
daniel.gomez@corteva.com
974 Centre Road, CRP 735/4330-2
Wilmington, Delaware 19805
Telephone: (302) 485-3493
**Admitted pro hac vice*

ATTORNEYS FOR DEFENDANT-APPELLEE CORTEVA AGRISCIENCE LLC

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATION AND TYPEFACE AND TYPE-STYLE REQUIREMENTS

The undersigned certifies on December 1, 2023, that Appellee's Final Brief complies with:

1. The type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) because, according to the word count software used to prepare Appellee's Final Brief, it contains 9,416 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1); and

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/s/ Susan P. Elgin
Susan P. Elgin, AT0011845
susan.elgin@faegredrinker.com
FAEGRE DRINKER BIDDLE & REATH LLP
801 Grand Avenue, 33rd Floor
Des Moines, Iowa 50309-8003
Telephone: (515) 248-9000
Facsimile: (515) 248-9010