

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF MISSISSIPPI

DR. PRESTON BOLES,
Plaintiff

v.

GREENWOOD LEFLORE HOSPITAL
Defendant.

DOCKET NO. 4:21-cv-088-DMB-JMV

DEFENDANT’S MEMORANDUM IN SUPPORT
OF SUMMARY JUDGMENT

Defendant Greenwood Leflore Hospital (“GLH”) respectfully submits its Memorandum in Support of its Motion for Summary Judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure, seeking dismissal of Plaintiff Dr. Preston Boles’ (“Plaintiff or “Boles”) claims for race discrimination. For the foregoing reasons, summary judgment is proper.

I. INTRODUCTION

Dr. Preston Boles sued GLH, claiming that it discriminated against him based on his race by paying him less than his colleague, Dr. Joseph Assini. The undisputed facts, however, show that GLH did not discriminate against Dr. Boles. Simply put, Dr. Boles completed far fewer patient encounters than Dr. Assini. In fact, Dr. Assini generated significantly more billable patient encounters over the course of his tenure at GLH compared to Dr. Boles.¹ The undisputed facts also show that Dr. Boles was paid less because he negotiated a lower salary, had a lower production expectation and fewer administrative duties. Thus, Dr. Boles had a lower salary and incentive bonuses. The undisputed facts further reveal that Dr. Boles raised no issue with the salary he negotiated until he discovered his colleague’s salary. When Dr. Boles requested a raise, GLH paid

¹ Exhibit B - Declaration of Lea Denton (Figure reached by subtracting Dr. Assini’s total charges from patient encounters during his tenure (\$14,114,298) from Dr. Boles’ total charges during the same period (\$3,066,083).

him an additional \$100,000 in base salary. In fiscal year 2019 and 2020, Dr. Boles received all bonuses he was entitled to under his contracts. There is no conflict on the substantial evidence regarding these facts to create a jury question. As such, Dr. Boles cannot avoid summary judgment and his case must be dismissed.

II. STATEMENT OF FACTS

Dr. Preston Boles is currently a podiatrist with Greenwood Leflore Hospital. He first practiced podiatry after his residency in Greenwood as a solo practitioner in 1992.² Dr. Boles became interested in joining GLH in 2006 because the administrative portion of his practice became too daunting, and he wanted to forego that responsibility.³ As part of his agreement with GLH, the hospital agreed to take on the administrative tasks, and he would simply practice podiatry.⁴

Dr. Boles sold his practice to GLH on April 1, 2006.⁵ GLH paid Dr. Boles \$15,000 for his office equipment and furnishings.⁶ According to the agreement, Boles became an employee of GLH and accepted a salary of \$65,000 per year.⁷ This salary was \$20,000 more than what he was making with his private practice.⁸ Additionally, the one-year contract called for Boles to receive 90% of productivity⁹ in addition to salary.¹⁰

In June 2007, GLH's Board of Directors recommended raising Dr. Boles salary to \$126,000,¹¹ an amount commensurate with the median salaries for podiatrists. Dr. Boles accepted

² Exhibit A - Deposition of Preston Boles at 14.

³ Exhibit A - Deposition of Preston Boles at 16.

⁴ *Id.*

⁵ Exhibit A - Deposition of Preston Boles at 14.

⁶ Exhibit A - Deposition of Preston Boles at 17-18.

⁷ *Id.*

⁸ *Id.*

⁹ If Dr. Boles' billing exceeded his salary, he would receive 90 percent of anything collected by GLH over that amount.

¹⁰ Exhibit A - Deposition of Preston Boles at 21.

¹¹ Exhibit A - Deposition of Preston Boles, Exhibit 11.

a new contract paying him this salary.¹² Dr. Boles signed a series of one-year employment contracts spanning from July 1, 2008, to June 30, 2013. Each contract included a base salary of \$126,000 and a productivity bonus. The bonus applied only if Dr. Boles' billings exceeded his salary.¹³ Dr. Boles did not receive a bonus in 2009, 2010 or 2011 because his billings did not exceed his salary.¹⁴ In fact, Dr. Boles' billings were significantly less than his salary during these years.

Dr. Boles' administrative difficulties

Dr. Boles was required to provide GLH with records of his encounters called "charts" so that GLH could bill health insurance providers for his services.¹⁵ Providing charts is critical to a hospital's financial well-being. The sooner a physician provides his charts, the sooner the hospital can file charges on the completed charts and be reimbursed.¹⁶ The longer it takes for a physician to provide charts, the more difficult it becomes for the hospital to be paid.¹⁷

Dr. Boles constantly struggled to keep up with his charts, which hampered the hospital's ability to be reimbursed from health care providers.¹⁸ In June 2009, GLH's Board of Directors learned that Dr. Boles was at least 300 charts behind.¹⁹ As of the date of Dr. Boles' deposition, he admitted being approximately 200 charts behind.²⁰ He was also suspended from practice at GLH in April 2022 for being 326 charts behind.²¹

¹² Exhibit A - Deposition of Preston Boles at 44.

¹³ Exhibit A - Deposition of Preston Boles, Exhibit 11.

¹⁴ Exhibit A - Deposition of Preston Boles at 29-32.

¹⁵ *Id.*

¹⁶ Exhibit B - Declaration of Lea Denton, ¶ 7.

¹⁷ *Id.*

¹⁸ Exhibit A - Deposition of Preston Boles at 27.

¹⁹ *Id.* Dr. Boles also admitted being more than 300 charts behind.

²⁰ Exhibit A - Deposition of Preston Boles at 80.

²¹ Exhibit C - April 13, 2022, letter from GLH to Dr. Boles.

GLH also found that Dr. Boles was not meeting the production threshold established through MGMA data.²² The standard expectation was 80 patients per week, which would be approximately 320 per month. In 2009, for example, Dr. Boles was only seeing 240-300 patients per month – well below the standard expectation.²³ GLH's Board of Directors noted that they were very concerned with Dr. Boles from a financial standpoint because his billings were not exceeding his salary.²⁴ In fact, the hospital was subsidizing him at \$130,000 per year, and it was estimated that he would be subsidized at \$133,000 for 2009.²⁵

In December 2012, Dr. Boles' salary was decreased from \$126,000 to \$113,400 because he failed to reach his productivity expectations for several years.²⁶ His productivity was a negative number resulting in the hospital losing money based on his failure to meet his production expectation.²⁷

At the same time, GLH was moving toward contracts based on WRVU production to align physician compensation among all physicians. GLH chose to compensate its physicians based on annual expectations of working relative value units (WRVUs). WRVUs are calculated by multiplying the CPT code assigned to a particular procedure by the number of procedures to be performed over a specified period.²⁸ The annual minimal WRVU expectation is based on the number of procedures expected to be completed during the fiscal year and directly affects the conversion rates for each physician.²⁹ Essentially, the higher the WRVU expectation, the higher the conversion rate will be. Also, a higher WRVU expectation supports a higher base pay

²² Exhibit A - Deposition of Preston Boles at 28-29, Exhibit 5.

²³ *Id.*

²⁴ *Id.*

²⁵ Exhibit A - Deposition of Preston Boles at 26-27, Exhibit 4.

²⁶ Exhibit A - Deposition of Preston Boles at 32-33.

²⁷ Dr. Boles lost the hospital \$134,528 in fiscal year 2010 and \$147,000 in 2012. (Exhibit A - Deposition of Preston Boles at 51, 57).

²⁸ See, Exhibit B - Declaration of Lea Denton ¶ 5.

²⁹ *Id.*

amount. Each conversion rate is based on the annual WRVU expectation negotiated into each physician's contract.³⁰ Therefore, higher achieving physicians would be rewarded with higher year-end bonuses.

Dr. Boles' contracts under the WRVU production metric

Dr. Boles agreed to a new contract based on a WRVU production schedule in December 2012.³¹ The new contract called for him to bill at least 1,250 WRVUs per six-month, semi-annual period and at least 2500 WRVUs annually to earn his full base salary.³² Once Dr. Boles met his minimum production expectation, he would receive a production bonus based on a conversion rate of \$44.05 for each WRVU produced that exceeded his minimum production expectation.³³ Similarly, if he failed to meet his production expectation, he would owe the hospital \$44.05 for each WRVU under his minimum production expectation.³⁴

Dr. Boles also signed a two-year agreement in July 2015 which paid him a \$115,000 base salary with a production bonus of \$45.00 for each WRVU over his minimum production expectation.³⁵ Again, Dr. Boles was expected to bill at least 1,250 WRVUs per six-month, semi-annual period and at least 2500 WRVUs annually to earn his full base salary.³⁶ Dr. Boles signed another two-year agreement in July 2017 that paid him a \$115,000 base salary with the same production expectations and conversion rate.³⁷

In July 2019, Dr. Boles signed a two-year agreement that paid him a \$215,000 base salary.³⁸ His production bonus was based on a conversion rate of \$45.00 for each WRVU exceeding his

³⁰ *Id.*

³¹ Exhibit A - Deposition of Preston Boles at 58-59.

³² Exhibit A - Deposition of Preston Boles at 34-35.

³³ *Id.*

³⁴ *Id.*

³⁵ Exhibit A - Deposition of Preston Boles at 37-38.

³⁶ *Id.*

³⁷ Exhibit A - Deposition of Preston Boles, Exhibit 9.

³⁸ Exhibit A - Deposition of Preston Boles, Exhibit 10.

minimum production expectation.³⁹ Because his base salary increased, his minimum production expectation increased to 4285 WRVU annually.⁴⁰ Based on his performance, Dr. Boles received incentive bonuses in fiscal year 2020 and fiscal year 2021.⁴¹

Dr. Joseph Assini

In October 2012, Dr. Joseph Assini relocated to Greenwood from New York to join GLH's podiatry clinic. He was board certified in foot and ankle surgery by the American Board of Podiatric Medicine and the American Board of Foot and Ankle Surgery.⁴² Dr. Assini negotiated a contract that included a base salary of \$240,000 that included a minimum production expectation of 5581 WRVU.⁴³ His production bonus was based on a conversion rate of \$43.00 per WRVU exceeding his minimum production expectation.⁴⁴ Dr. Assini's contract also paid him \$24,000 annually as medical liaison that increased his base salary to \$250,000 based on a minimum production expectation of 4800 WRVU.⁴⁵ His production bonus was based on a \$45.00 conversion rate.⁴⁶ Dr. Assini signed another two-year agreement in 2017 with the same salary and production expectations.⁴⁷

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ Exhibit A - Deposition of Preston Boles at 81, 89.

⁴² Exhibit D - Assini Board Certification.

⁴³ Exhibit E - Assini Employment Contract 2012.

⁴⁴ *Id.*

⁴⁵ Exhibit A - Deposition of Preston Boles at 90, Exhibit 32

⁴⁶ *Id.*

⁴⁷ *Id.*

Each physician's WRVU production compared

Dr. Assini produced more WRVUs than Dr. Boles from October 2012 to September 2020.

Consider the following production numbers:

<u>FY 2013</u> Boles – 2680.93 Assini – 3744.62	<u>FY 2017</u> Boles – 5414.49 Assini – 6728.26
<u>FY 2014</u> Boles – 1741.47 Assini – 3952.00	<u>FY 2018</u> Boles – 6093.43 Assini – 6734.16
<u>FY 2015</u> Boles – 2853.64 Assini – 4431.89	<u>FY 2019</u> Boles – 6409.45 Assini – 6766.05
<u>FY 2016</u> Boles – 3342.20 Assini – 5594.52	<u>FY 2020</u> Boles – 5151.51 Assini – 4357.77 ⁴⁸
	<u>FY 2021</u> Boles – 5117.19 Assini – 476.48 ⁴⁹

Dr. Boles' salary increase request

In September 2018, Dr. Boles received a report detailing the salaries of all physicians at GLH.⁵⁰ Although he knew his base salary was \$115,000, he discovered that Dr. Assini's base salary was \$250,000.⁵¹ Dr. Assini and Dr. Boles both received bonuses between 2016 and 2019

⁴⁸ Dr. Assini became ill with an aggressive form of cancer in September, 2020 and took a leave of absence to undergo chemotherapy.

⁴⁹ Dr. Assini passed away in May 2021.

⁵⁰ Exhibit A - Deposition of Preston Boles, Exhibit 18.

⁵¹ Exhibit A - Deposition of Preston Boles at 60. In his deposition, Dr. Boles recalled Dr. Assini stating that he could not move to Mississippi unless he received a salary of \$250,000 because of his expenses.

because they exceeded their respective WRVU expectations. Through his bonuses, Dr. Boles would often double his overall salary.⁵² However, after learning about Dr. Assini's base salary, Dr. Boles asked to have his base salary increased, essentially so that he would not have to wait until the end of the fiscal year to receive his bonus. In June 2019, GLH's Board of Directors approved his request and modified his base salary to \$215,000. With the increased salary, Dr. Boles' minimum production expectation increased to 4285 WRVU. Dr. Boles also learned that Dr. Assini's conversion rate was \$52.00, while his was \$45.00.⁵³ Despite having a lower production expectation, which resulted in a lower conversion rate, Dr. Boles requested that his conversion rate be raised to \$52.00 as well. This request was rejected because his production expectation did not support an increase in his conversion rate.⁵⁴

In each of his contracts before 2019, Dr. Boles' billings were below the 25th percentile of podiatrists according to MGMA data.⁵⁵ Because of this, his WRVU expectation, and therefore his base salary, was set below the 25th percentile of salaries for podiatrists. In 2019, Dr. Boles' billings were at the 40th percentile.⁵⁶ Meanwhile, Dr. Assini's billings were at the 75th percentile of podiatrists from 2015 through 2020.⁵⁷ As such, his base salary was consistently set at the 75th percentile.⁵⁸

III. LAW AND ARGUMENT

A. Standard of Review

The legal standard for summary judgment is well settled to which the Court is well acquainted. Summary judgment is appropriate when, after viewing the evidence in the light most

⁵² Exhibit A - Deposition of Preston Boles at 101, Exhibit 34.

⁵³ Exhibit A - Deposition of Preston Boles at 61, Exhibit 18.

⁵⁴ Exhibit A - Deposition of Preston Boles at 109.

⁵⁵ Exhibit A - Deposition of Preston Boles at 51-55.

⁵⁶ Exhibit A - Deposition of Preston Boles at 109.

⁵⁷ Exhibit A - Deposition of Preston Boles, Exhibit 18.

⁵⁸ *Id.*

favorable to the non-moving party, there is no genuine issue of material fact that the moving party is entitled to judgment as a matter of law.⁵⁹ If the moving party establishes the absence of a genuine issue of material fact, the burden shifts to the non-moving party to produce evidence of the existence of a genuine issue for trial.⁶⁰ Once the burden has shifted, the nonmoving party cannot rely on speculation but must go beyond the pleadings and present facts on each element of his case showing that there is a genuine issue of fact.⁶¹ A complete failure of proof on an essential element renders all of other facts immaterial, because no genuine issue of material fact remains.⁶² Plaintiff must show a substantial conflict in evidence to support a jury question.⁶³ “[T]he mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no genuine issue of material fact.”⁶⁴

Fifth Circuit courts generally analyze Title VII and § 1981 claims together because they are governed by the same standard.⁶⁵ Therefore, since Dr. Boles brings his claims under both statutes, only Title VII will be referred to because they require the same proof to establish liability.

B. Dr. Boles’ race discrimination claims fail as a matter of law.

1. Dr. Boles has no direct evidence of race discrimination.

Title VII provides that it is an “unlawful employment practice for an employer to discharge any individual, or to otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s race,

⁵⁹ *Amburgey v. Corhart Refractories Corp.*, 936 F.2d 805, 809 (5th Cir. 1991); FED. R. CIV. P. 56(c).

⁶⁰ *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986).

⁶¹ *Id.* at 323.

⁶² *Washington v. Armstrong World Indus.*, 839 F.2d 1121, 1122 (5th Cir. 1988).

⁶³ *See Boyd v. State Farm Ins.*, 158 F.3d 326, 328 (5th Cir. 1998).

⁶⁴ *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986) (emphasis added). *Edwards v. Your Credit, Inc.*, 148 F.3d 427, 432 (5th Cir. 1998). (“We do not, however, in the absence of any proof, assume that the nonmoving party could or would prove the necessary facts.”).

⁶⁵ *See Harville v. City of Houston, Miss.*, 945 F.3d 870, 874 n.10 (5th Cir. 2019).

color, religion, sex, or national origin.⁶⁶ To prevail on a claim for discrimination under Title VII, a plaintiff must prove “by a preponderance of the evidence that the employer intentionally discriminated against [her] because of [her] protected status.”⁶⁷

2. Dr. Boles cannot establish a prima facie case of discrimination.

To make out a *prima facie* case of discrimination in compensation, a plaintiff must show that he was a member of a protected class and that he was paid less than a non-member for work requiring substantially the same responsibility.⁶⁸ Pursuant to the *McDonnell Douglas* framework, a plaintiff's prima facie case creates an inference of discrimination, which the employer is required to rebut with a legitimate non-discriminatory reason" for the pay disparity.⁶⁹ If the employer provides such a reason, the burden shifts back to the plaintiff to establish that the employer's stated reason is pretext to mask the actual reason for discrimination. *Id.* A plaintiff must present evidence that both (1) rebuts the employer's non-discriminatory reason, and (2) creates an inference that race was a determinative factor in the challenged employment decision.⁷⁰

Here, Dr. Boles cannot establish a prima facie case of discrimination based on his race. He compares himself to Dr. Joseph Assini, a Caucasian podiatrist and alleges that he was paid less than Dr. Assini because he is African-American. However, Dr. Boles cannot establish that he was similarly situated to Dr. Assini for several reasons. First, Dr. Boles negotiated a much lower initial salary when he first joined GLH. He initially accepted a salary of \$65,000 when he first joined GLH, and that salary increased in when GLH brought his salary in line with MGMA numbers. Conversely, Dr. Assini insisted on a salary of \$250,000 to relocate to Mississippi. While his initial

⁶⁶ 42 U.S.C § 2000e-2(a)(1).

⁶⁷ *Wallace v. Methodist Hosp.*, 271 F.3d 212, 219-220 (5th Cir. 2001).

⁶⁸ *Uviedo v. Steves Sash & Door Co.*, 738 F.2d 1425, 1431 (5th Cir. 1984).

⁶⁹ *Ross v. University of Texas at San Antonio*, 139 F.3d 521, 525 (5th Cir. 1998) (concerning age discrimination).

⁷⁰ *See, Taylor v. UPS, Inc.*, 554 F.3d. 510 (5th Cir. 2008).

contract ultimately paid a \$240,000 base salary, Dr. Assini also negotiated directorships that increased his overall salary. Further, Dr. Assini's WRVU expectation was significantly higher to support his higher salary.

Second, Dr. Boles' production levels pale in comparison to Dr. Assini's. As noted previously, Dr. Assini out-billed Dr. Boles every year they worked together. Third, Dr. Assini had additional duties, including medical staff liaison and director for GLH's Center for Excellence.⁷¹ Dr. Assini was paid an additional \$24,000 for these responsibilities that Dr. Boles did not have.⁷²

If the "difference between the plaintiff's conduct and that of those alleged to be similarly situated *accounts for* the difference in treatment received from the employer," the employees are not similarly situated for the purposes of an employment discrimination analysis.⁷³ While Dr. Boles and Dr. Assini were both podiatrists, they are not similarly situated because of their production differences and administrative responsibilities. Because of these distinctions, Dr. Boles cannot establish that he and Dr. Assini were similarly situated for summary judgment purposes. Therefore, he cannot establish a prima facie case of discrimination, and his discrimination claims must be dismissed.

3. GLH established a legitimate and non-discriminatory reason for the compensation difference between Dr. Boles and Dr. Assini.

Even if Dr. Boles was able to establish a prima facie case of discrimination, his claim still fails because GLH has legitimate and non-discriminatory reasons for the pay difference between the two physicians. As previously noted, Dr. Boles' production was consistently lower than Dr. Assini's, a critical distinction since physicians' base salaries at GLH were based on WRVU

⁷¹ Exhibit A - Deposition of Preston Boles, Exhibit 32.

⁷² *Id.*

⁷³ *Lee v. Kansas City S. Ry. Co.*, 574 F.3d 253, 259 (5th Cir. 2009). (citing *Wallace v. Methodist Hosp. Sys.*, 271 F.3d 212, 221 (5th Cir. 2001)).

expectations. The higher a physician's WRVU expectation, the higher their base salary would be. Production bonuses are based on a conversion rate that applies once a physician exceeds his or her WRVU expectation. Because it takes additional effort to exceed a higher WRVU expectation, the conversion rate for a physician with such a threshold will also be higher. This allows higher achieving physicians to be rewarded accordingly for their additional work.

In each contract he signed between 2012 and 2020, Dr. Boles' production expectation was lower than Dr. Assini's.⁷⁴ This meant that Dr. Boles was not required to produce as many WRVUs as Dr. Assini. Because his production expectation was lower than Dr. Assini's, his base salary was lower. Also, since Dr. Boles' WRVU expectation was lower, his conversion rate was also lower.⁷⁵ Dr. Boles acknowledged in his deposition that he understood that Dr. Assini's production expectation was higher than his. Consider this exchange on the topic of production:

- Q. It was your understanding that the hospital's expectations of what they expected Dr. Assini to do with RVUs was higher than yours.
- A. Yes
- Q. So, Dr. Assini's ability to get a bonus is higher than your ability to get a bonus? That was a bad question. Dr. Assini's eligibility for a bonus, he had to do more than what you had to do to get the bonus?
- A. Yes.⁷⁶

As such, the compensation differences were based on differing production rates, which are a legitimate, non-discriminatory reason for paying one physician more than another.

4. Dr. Boles cannot establish that GLH's legitimate and non-discriminatory reasons for the compensation difference was pretext for discrimination.

Dr. Boles fails to advance any facts indicating that GLH's reasons for the pay difference were not true. Instead, the record shows that his production expectation, *and his actual*

⁷⁴ It is also important to note that because Dr. Boles had a lower WRVU expectation, it was easier for him to earn a bonus. In the years where he exceeded his expectation (2015-2019), his bonuses were nearly equal to his base salary, meaning that he would double his base salary.

⁷⁵ When Dr. Boles base salary was raised to \$215,000, he was making 85 percent of Dr. Assini's salary (215,000/250,000 = .85) His conversion rate of \$45.00 is 86.5 percent of Dr. Assini's \$52.00 conversion rate.

⁷⁶ Exhibit A - Deposition of Preston Boles at 61.

production, were considerably lower than Dr. Assini's, which accounted for the difference in base salary and the conversion rate. Even when Dr. Boles received a \$100,000 increase in base salary in 2019, Dr. Assini still maintained a higher production expectation. In fact, Dr. Assini produced more WRVUs every year the two worked together except for FY 2021 (the year that Dr. Assini passed away). Moreover, the pay differences among *all* GLH physicians were based on differing WRVU expectations.⁷⁷ The differing expectations were not based on race, as several minority physicians had higher WRVU thresholds than their non-minority counterparts, and thus had higher base salaries.⁷⁸

Further, Dr. Boles has a fundamental misunderstanding about how his compensation plan worked. He contends in his Complaint that if he had a higher conversion rate, he would reach his production goal sooner, would not have to work as hard to achieve his goal and would earn the same salary as Dr. Assini.⁷⁹ This is simply not the case. As previously stated, base salaries are established through minimum production goals. Also, the conversion rate for incentive bonuses applies *after* a physician reaches his or her production expectation. Physicians who meet higher minimum production expectations are rewarded with higher conversion rates, so the difference in conversion rates is largely immaterial when comparing base salaries. As such, Dr. Boles' contention that he was paid less per RVU for the balance of his tenure is wholly incorrect.

Dr. Boles acknowledged in his deposition that Dr. Assini's WRVU expectation was higher than his.⁸⁰ He also admitted that he did not fully understand how his compensation plan worked⁸¹ and that he did not contest any of the terms in his previous employment contracts. Further, he does

⁷⁷ Exhibit A - Deposition of Preston Boles at 66-69, Exhibit 18.

⁷⁸ *Id.*

⁷⁹ Exhibit A - Deposition of Preston Boles, Exhibit 20.

⁸⁰ Exhibit A - Deposition of Preston Boles at 61.

⁸¹ Exhibit A - Deposition of Preston Boles at 92.

not raise any specific facts contradicting the record or suggesting that his expectation was lowered specifically because of his race. Conversely, the record indicates that a higher expectation would not have been appropriate given that Dr. Boles lost the hospital more than \$300,000 between 2010 and 2012,⁸² and that he was consistently tardy in completing his charts.⁸³ Ultimately, Dr. Boles cannot establish that GLH's production-based pay differences were pretext for discrimination.

C. Dr. Boles' breach of contract claim fails as a matter of law.

Dr. Boles also contends that GLH breached its contract with him by failing to pay the bonuses he was owed from 2019 and 2020. However, the undisputed facts indicate that GLH paid Dr. Boles all required incentive payments under his employment. In Mississippi, a plaintiff bears the burden of proving each element of a breach of contract claim; specifically, the existence of a valid contract, and a breach of that contract.⁸⁴ Summary judgment is appropriate when the non-moving party has failed to make a showing sufficient to establish the existence of an element essential to the party's case, and on which that party will bear the burden of proof at trial.⁸⁵

Here, Dr. Boles fails to provide sufficient evidence to offer a fact question for trial regarding GLH's purported breach. He admitted in his deposition that he received bonuses in each of the years he exceeded his minimum production expectation.⁸⁶ He also provides no facts supporting any claim that he did not receive his bonuses. Conversely, GLH provided financial statements showing Dr. Boles was paid \$267,204.48 during fiscal year 2020, which included a \$51,840.00 bonus.⁸⁷ He was also paid \$231,184.24 through August of 2021, which included a

⁸² Exhibit A - Deposition of Preston Boles at 51-55, Exhibits 15-17.

⁸³ Exhibit A - Deposition of Preston Boles at 52. Dr Boles was 430 charts behind going into his 2010 contract renewal, and he was suspended from practice in April 2022 for being 326 charts behind.

⁸⁴ *Bus. Communs., Inc. v. Banks*, 90 So. 3d 1221, 1225 (Miss. 2012). *See also, Suddith v. Univ. of S. Miss.*, 977 So.2d 1158, 1175 (Miss. Ct. App. 2007); *Warwick v. Matheney*, 603 So.2d 330, 336 (Miss. 1992).

⁸⁵ *Lee v. Keller Williams Realty*, 247 So. 3d 293, 297 (Miss. Ct. App. 2017).

⁸⁶ Exhibit A - Deposition of Preston Boles at 81.

⁸⁷ *Id.* at 89.

bonus of \$39,991.95 paid in January 2021.⁸⁸ He also admitted that he received a bonus at the end of the 2021 fiscal year.⁸⁹ Dr. Boles' contention that he was not properly paid is wholly incorrect. His claim is simply based on his own misunderstanding between payments made during the calendar year, as opposed to incentive payments based on GLH's fiscal calendar.⁹⁰ He also misunderstands how the conversion rate applies, and incorrectly believes that it should apply to *all WRVUs* worked instead of those exceeding his minimum production expectation. The contract terms are not ambiguous in this regard, and Dr. Boles' confusion does not create a material fact issue for summary judgment purposes. Because of this, Dr. Boles' breach of contract claim does not survive summary judgment and should summarily be dismissed.

IV. CONCLUSION

Dr. Boles cannot establish a prima facie case of discrimination. He was not similarly situated to Dr. Assini because of their differing production expectations and duties at GLH. Even if the court finds that Dr. Boles established a prima facie case, GLH had a legitimate non-discriminatory reason for the salary difference. Dr. Boles cannot show that GLH's reasons are pretext for racial discrimination. As such, his race discrimination claims fail, and summary judgment is appropriate here. Additionally, he fails to present any facts creating a jury question regarding his breach of contract claim. At the same time, GLH has shown that he was paid all required bonuses. Because of this, his breach of contract claim must also be dismissed.

⁸⁸ Exhibit F – Boles' FY2019 and 2020 payment history

⁸⁹ *Id.* at 81.

⁹⁰ Dr. Boles' contracts for fiscal year 2019 and 2020 run from July 1 to June 30 of the following year. However, GLH's fiscal year calendar runs from October 1 to September 30 of the following year.

Respectfully submitted,

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