

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

August 27, 2026

Christopher M. Wolpert
Clerk of Court

BO ZOU,

Plaintiff - Appellant,

v.

LINDE ENGINEERING NORTH
AMERICA, INC.,

Defendant - Appellee.

No. 25-5104
(D.C. No. 4:19-CV-00554-JDR-JFJ)
(N.D. Okla.)

ORDER AND JUDGMENT*

Before **HARTZ, BACHARACH**, and **EID**, Circuit Judges.

Mr. Bo Zou is a Chinese man who went to work at age 54 for Linde Engineering North America, Inc. Roughly 10 months after starting, Mr. Zou lost his job in a reduction in force; and he sued Linde for discrimination based on race and age. Linde sought summary judgment; Mr. Zou objected and moved for sanctions and contempt. The district court

* Mr. Zou requests oral argument, but it would not help us decide the appeal. So we have decided the appeal based on the record and the parties' briefs. *See* Fed. R. App. P. 34(a)(2)(C); 10th Cir. R. 34.1(G).

This order and judgment is not precedential except under the doctrines of law of the case, res judicata, and collateral estoppel. But the order and judgment may be cited for its persuasive value if otherwise appropriate. *See* Fed. R. App. P. 32.1(a); 10th Cir. R. 32.1(A).

granted summary judgment to Linde and declined to impose sanctions or contempt. We affirm.

1. Mr. Zou claims discrimination.

Linde designs and builds plants that produce and process gas. The company hired Mr. Zou as a piping engineer; two other employees were serving as piping-design engineers. Both of those employees were white and under 40 years old.

Mr. Zou and seventeen other employees lost their jobs in the reduction in force. But Linde kept the two younger, white piping-design engineers. Within a year, however, they were also laid off.

2. Mr. Zou sues, and the district court properly grants summary judgment to Linde.

For the summary-judgment ruling, we conduct de novo review, using the same standard that applied in district court. *Byers v. City of Albuquerque*, 150 F.3d 1271, 1274 (10th Cir. 1998). Under that standard, we

- view the evidence in the light most favorable to Mr. Zou and
- determine whether the evidence and reasonable inferences entitled Linde to judgment as a matter of law.

See Hua Jiang v. City of Tulsa, 169 F.4th 1194, 1199 (10th Cir. 2026)

(view the evidence in the light most favorable to the nonmovant);

Fed. R. Civ. P. 56(a) (determine whether the movant is entitled to judgment as a matter of law).

The district court applied this test based on the standard for discrimination claims resting on circumstantial evidence. Under that standard, Mr. Zou had to establish a prima facie case. *See Hua Jiang v. City of Tulsa*, 169 F.4th 1194, 1200 (10th Cir. 2026). If he were to present a prima facie case, Linde would need to identify a legitimate, nondiscriminatory reason for his termination. *See id.* And if Linde were to identify such a reason, Mr. Zou would need to present evidence of pretext. *See id.*

The district court assumed that Mr. Zou had presented a prima facie case¹ and considered Linde's explanation that

- the facility no longer needed a piping engineer focused on natural gas and
- Mr. Zou was the only piping engineer in the facility.

The district court concluded that the evidence did not support pretext.

¹ In addition to his claims of race and age discrimination, Mr. Zou alleged retaliation. The district court concluded that Mr. Zou

- had not presented a prima facie showing of retaliation and
- could not show pretext.

In his opening brief, Mr. Zou doesn't dispute that he failed to make a prima facie showing on his retaliation claim. When a "district court states multiple alternative grounds for its ruling and the appellant does not challenge all those grounds in the opening brief, then we may affirm the ruling." *Rivero v. Bd. of Regents of Univ. of N.M.*, 950 F.3d 754, 763 (10th Cir. 2020). So we affirm the grant of summary judgment on the retaliation claim.

a. Linde’s declaration can be considered.

To support summary judgment, Linde submitted a declaration about its business, Mr. Zou’s employment, and the reduction in force. Mr. Zou unsuccessfully moved to strike the declaration, and we consider whether the district court abused its discretion in denying the motion. *See Hafen v. Howell*, 121 F.4th 1191, 1201 (10th Cir. 2024).

Mr. Zou argues that the declarant lacked personal knowledge, saying that she had not seen some of the events. Appellant’s Opening Br. at 16. We disagree because the district court could infer personal knowledge even when the declarant hasn’t seen something take place. For example, the declarant might obtain personal knowledge about an event by reviewing documents. *See Hafen*, 121 F.4th at 1201–02.

Here the declarant said that she had reviewed Linde’s “files and records.” R. at 277.² This statement supported a reasonable inference of personal knowledge. So the court didn’t need to strike the declaration.

b. Mr. Zou hasn’t shown pretext for his layoff.

Mr. Zou contends that the district court shouldn’t have applied the standard for circumstantial evidence because he had presented direct

² Mr. Zou also says that the declaration constitutes hearsay. But Mr. Zou does not explain why the content would have been inadmissible. *See Argo v. Blue Cross & Blue Shield of Kan., Inc.*, 452 F.3d 1193, 1199 (10th Cir. 2006) (stating that the district court can consider affidavits supporting summary judgment, though the affidavits themselves are often inadmissible as hearsay, but the content must be admissible).

evidence of discrimination. *See Hua Jiang v. City of Tulsa*, 169 F. 4th 1194, 1200 (10th Cir. 2026). Evidence is *direct* when it's capable of proving a fact "without inference or presumption." *McNellis v. Douglas Cnty. Sch. Dist.*, 116 F.4th 1122, 1137 (10th Cir. 2024) (internal quotation marks omitted).

Mr. Zou doesn't present direct evidence of discrimination. He instead refers to evidence that

- the younger, white piping-design engineers performed tasks falling under Mr. Zou's job description and attended meetings that Mr. Zou should have been allowed to attend and
- Linde has faced other employment-discrimination lawsuits.

That evidence is circumstantial. So the district court acted correctly in applying the standard for circumstantial evidence.

Applying this standard, Linde argues that it terminated Mr. Zou because his position was eliminated in the reduction in force. Mr. Zou thus bore the burden to show pretext. *See* p. 3, above.

Mr. Zou contends that his evidence showed pretext. An employer's explanation "is pretextual if it is so incoherent, weak, inconsistent, or contradictory that a reasonable jury could find it unworthy of belief." *Hua Jiang v. City of Tulsa*, 169 F.4th 1194, 1200 (10th Cir. 2026) (internal quotation marks omitted). Mr. Zou urges pretext from Linde's

- continued need for work by the piping-design engineers,

- continued focus on natural gas despite attributing the reduction in force to a new business strategy,
- disproportionate layoffs of employees over 40 years old, and
- inconsistencies in how time on the job affected the layoffs.

Mr. Zou points out that Linde split Mr. Zou's tasks between the piping-design engineers. But elimination of a position turns on "whether the responsibilities still constituted a single, distinct position." *Furr v. Seagate Tech., Inc.*, 82 F.3d 980, 988 (10th Cir. 1996). And Mr. Zou doesn't deny that Linde shifted his responsibilities to multiple individuals occupying a different position. So the court can't infer pretext from the continued need for work by piping-design engineers.

Mr. Zou also denies that Linde moved away from natural gas, emphasizing that Linde stated that it was changing its business direction ("from an [engineering/procurement/construction] execution model to an [engineering/procurement/fabrication] execution model") rather than shifting away from a focus on natural gas. R. at 441–42, 495. But he doesn't say why this statement would conflict with Linde's explanation. Besides, Linde had given other reasons for the reduction in force, such as expectations of a lighter workload based on market conditions. *Id.* Mr. Zou doesn't try to cast doubt on this explanation for the reduction in force. Granted, he points out that employees worked in natural gas even after the

reduction in force. But Linde hasn't argued that it was abandoning work in natural gas.

Mr. Zou also points to data showing that the layoffs fell disproportionately on older employees. But this data "grouped all employees together regardless of specialty or skill and failed to take into account nondiscriminatory reasons for the numerical disparities." *Furr*, 82 F.3d at 987. So this data "does not permit an inference of pretext." *Id.*³

In sum, the evidence doesn't support a finding of pretext involving Linde's elimination of Mr. Zou's position as part of a move away from natural gas.⁴

³ Mr. Zou says that the district court's "worst ruling" rejected his statistical argument based on evidence that the workers being laid off had poor performance evaluations. Appellant's Reply Br. at 14. Mr. Zou misunderstands the ruling. The court didn't refer to performance evaluations; the cited language came from a case that the district court had quoted. R. at 565.

⁴ Linde asserted that time on the job had affected its decisions about whom to layoff, and Mr. Zou challenges that assertion as pretext. But even if he could discredit the assertion, we would still affirm. When an employer offers multiple reasons for termination, the employee generally must present evidence showing "each of the employer's justifications are pretextual." *Tyler v. RE/MAX Mountain States, Inc.*, 232 F.3d 808, 814 (10th Cir. 2000). Mr. Zou can't show pretext when he failed to undermine Linde's claim that it had decided to eliminate his position. So we need not consider Mr. Zou's assertion about Linde's explanation involving time on the job.

3. The district court didn't commit reversible error in declining to impose sanctions or contempt.

Mr. Zou asked the district court to hold Linde in contempt. The magistrate judge denied the request. In addition, the magistrate judge issued a protective order that

- required Mr. Zou to get permission before seeking additional discovery from Linde and
- prohibited him from filing new motions for sanctions or contempt based on Linde's discovery responses.

The district judge rejected a subsequent objection to the magistrate judge's rulings and Mr. Zou requested summary judgment as a sanction or remedy for Linde's misconduct. On appeal, Mr. Zou argues that

- the magistrate judge erred in denying a request for contempt and in issuing a protective order and
- the district court erred in declining to sanction Linde or hold it in contempt.

Mr. Zou argues that the magistrate judge shouldn't have decided whether to impose contempt and shouldn't have issued a protective order.

We can assume for the sake of argument that the magistrate judge lacked authority to enter an order disposing of the contempt motion. *See Deutsch v. Annis Enters., Inc.*, 882 F.3d 169, 174 n.3 (5th Cir. 2018) ("The prevailing view is that a magistrate lacks the power to adjudicate contempt proceedings." (internal quotation marks omitted)). Even with that assumption, though, the magistrate judge's entry of an order wouldn't

require reversal because the district judge stated that he agreed with the ruling. *See Lister v. Dep't of Treasury*, 408 F.3d 1309, 1311–12 (10th Cir. 2005) (declining to reverse because the district judge said that objections were “devoid of merit” when reviewing a magistrate judge’s unauthorized order denying leave to proceed in forma pauperis).

Mr. Zou also argues that the magistrate judge shouldn’t have issued a protective order because it constituted *injunctive relief*. *See* 28 U.S.C. § 636(b)(1)(A). But the protective order didn’t constitute *injunctive relief*. *See* 19 Moore’s Federal Practice § 203.10[6][a] (3d ed. 2026) (stating that a discovery order “is not injunctive in nature because it does not grant or withhold substantive relief”); *see also Gulfstream Aerospace Corp. v. Mayacamas Corp.*, 485 U.S. 271, 279 (1988) (stating that a federal-court order relating “only to the conduct or progress of litigation before that court ordinarily is not considered an injunction”).

Mr. Zou also requested contempt later in the proceedings. But that time, he made the request in the body of his motion for summary judgment. The district judge ruled on that request without any involvement by the magistrate judge.⁵

⁵ Mr. Zou also contends that the district court erred by failing to discuss his misconduct allegations when ruling on summary judgment. But the court had already addressed similar allegations at earlier stages. The court didn’t need to discuss these allegations again.

For sanctions and contempt, Mr. Zou argues that Linde lied in answering discovery requests and refused to produce documents. We review the denial of sanctions and contempt for an abuse of discretion. *See Kaufman v. Am. Fam. Mut. Ins.*, 601 F.3d 1088, 1092 (10th Cir. 2010) (sanctions); *Coomer v. Make Your Life Epic, LLC*, 140 F.4th 1269, 1276 (10th Cir. 2025) (contempt).

The district court didn't abuse its discretion. Mr. Zou accuses Linde of perjury and falsification, but he really just disagrees with Linde's evidence. And Mr. Zou provides no reason to second-guess the district court's earlier reason for declining to hold Linde in contempt.

* * *

Mr. Zou alleges discrimination based on race and age, but those allegations lack evidentiary support. So we affirm the grant of summary judgment to Linde.⁶

Entered for the Court

Robert E. Bacharach
Circuit Judge

⁶ We deny all the pending motions.