

[DO NOT PUBLISH]

In the  
United States Court of Appeals  
For the Eleventh Circuit

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No. 23-10383

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NORIS BABB,

Plaintiff-Appellant,

*versus*

SECRETARY, DEPARTMENT OF VETERANS AFFAIRS,

Defendant-Appellee.

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Appeal from the United States District Court  
for the Middle District of Florida  
D.C. Docket No. 8:14-cv-01732-VMC-TBM

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Before JILL PRYOR, NEWSOM, and LAGOA, Circuit Judges.

## PER CURIAM:

In 2014, Norris Babb, a federal employee, sued the Secretary of the Department of Veterans Affairs, alleging sex and age discrimination, retaliation, and retaliatory hostile work environment pursuant to Title VII of the Civil Rights Act of 1964 (“Title VII”), as amended, 42 U.S.C. § 2000e-16(a), and the Age Discrimination in Employment Act (“ADEA”), 29 U.S.C. § 626. After a series of intervening decisions and appeals, the district court granted summary judgment in favor of the Secretary on Babb’s sex and age discrimination claims. Babb’s Title VII retaliation claim and retaliatory hostile work environment claim proceeded to a jury trial and the jury returned a verdict for the Secretary on both claims.

On appeal, Babb argues that the district court (1) misapplied the federal-sector employment causation standard for discrimination and retaliation claims outlined in *Babb v. Wilkie*, 589 U.S. 399 (2020) (“*Babb I*”), and *Babb v. Sec’y, Dep’t of Veterans Affs.*, 992 F.3d 1193 (11th Cir. 2021) (“*Babb II*”), in its ruling on summary judgment, and (2) abused its discretion in its jury instructions. After carefully considering the parties’ arguments and with the benefit of oral argument, we affirm the judgments below.

### I. FACTUAL BACKGROUND

Noris Babb joined the C.W. Bill Young VA Medical Center (“VA”) in 2004 as a clinical pharmacist under the auspices of the VA’s Pharmacy Services division. In 2006, Babb became a pharmacist in the Geriatrics Clinic at the VA, where she worked until June 2013. During her tenure in Geriatrics, Babb worked as a member

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of an “interdisciplinary team” of caregivers. Babb’s role and responsibilities were governed by a service agreement between Pharmacy Services and Geriatrics. As such, Babb had two sets of supervisors: Dr. Leonard Williams, Chief of the Geriatrics Clinic, and several Pharmacy Services administrators, including (1) Dr. Gary Wilson, Chief of Pharmacy Services; (2) Dr. Marjorie Howard, Babb’s Pharmacy Services direct supervisor; (3) Dr. Keri Justice, Associate Chief of Pharmacy Services; and (4) Dr. Robert Stewart, the Clinical Pharmacy Supervisor.

In 2009, Babb obtained an “advanced scope,” which meant she could practice “disease state management” (“DSM”). As a DSM practitioner, Babb could independently manage patients for certain conditions within the scope of her expertise—diabetes, hypertension, and lipids—without having to consult a physician. In 2011, the VA implemented a new nationwide patient-care system, “Patient Aligned Care Team” (“PACT”), which emphasized “continuity of care,” and required each team member to “work[] at their highest...licensed capacity” to provide optimal medical care for patients. Under PACT, GS-12 pharmacists who practiced DSM at least 25% of the time would be eligible for promotion to GS-13. As a GS-12 with an advanced scope enabling her to practice DSM, Babb naturally sought promotion to GS-13.

During this period (2011–2012), Babb, along with several other women, began to suspect that Pharmacy Services was implementing the new qualification standards for promotion in a manner that discriminated on the basis of sex and age. Ultimately, two

clinical pharmacist colleagues of Babb, Donna Trask and Anita Truitt, filed EEOC complaints in October 2011, which culminated in their filing an age and sex discrimination lawsuit against the Secretary in February 2013. Babb supported her colleagues' allegations, first by providing statements to an EEOC investigator in April and May of 2012, and then, by providing deposition testimony in March 2014.<sup>1</sup> According to Babb, her "whole career...changed" and "took a turn in a bad direction" after "participat[ing]" in Trask and Truitt's case against the Secretary.

In June 2012, Howard, Babb's direct supervisor, asked whether Babb would consider transferring to a vacant primary care position in "Module B." Howard recommended Babb's transfer because she did not think that Babb could satisfy the 25% requirement for the GS-13 promotion if she stayed in the Geriatrics Clinic. But Babb declined. She explained that treating geriatrics was her professional calling and that she remained hopeful that she could see additional patients and thereby satisfy the new promotion criterion. Notably, around this same time, Natalia Schwartz, a younger female pharmacist, requested transfer to the Module B vacancy, but

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<sup>1</sup> In April 2016, we affirmed a federal district court's grant of summary judgment for the Secretary. See *Trask v. Sec'y, Dep't of Veterans Affs.*, 822 F.3d 1179, 1184 (11th Cir. 2016). But, as discussed below, in *Babb II* we held that our decision in *Trask* was abrogated by the Supreme Court's decision in *Babb I*. See *Babb II*, 992 F.3d at 1196, 1200–04 (11th Cir. 2021).

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Pharmacy Services denied her request after deciding not to fill the position.

About two months later, in August 2012, the service agreement between Pharmacy Services and Geriatrics was up for renegotiation. Both Pharmacy Services and Geriatrics initially explored the possibility of having Babb remain in Geriatrics and spend at least 25% of her time using her advanced scope to practice DSM. But such an arrangement was ultimately viewed as unworkable. Babb's Geriatrics supervisor, Williams, concluded that (1) reserving 25% of Babb's time for DSM would detract from Babb's primary job as a clinical pharmacist and increase wait times for patients, and (2) DSM was not well-suited for geriatric patients. Williams determined that Geriatrics could only provide Babb with three slots per day to practice DSM, but that would fall short of the requisite 25% to receive a GS-13 promotion. Accordingly, the executed service agreement did not provide for Babb to practice DSM. Instead, Babb was to spend her time working as a clinical pharmacist as part of an integrated patient-care team, which was Williams's preference.

Because Babb would no longer practice DSM under the renegotiated service agreement, Pharmacy Services initiated the process to remove Babb's advanced scope, which was completed in February 2013.

Around the time of the renegotiation of the service agreement, Babb's increasing concern that she would not be able to practice DSM in Geriatrics led her to ask about opportunities in the VA's anticoagulation clinic. To facilitate her potential transfer, Babb

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