

UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF
LOUISIANA

Daniel J. Burg v. The Recreation and Park Commission for the
Parish of East Baton Rouge (BREC)

Burg · No. 3:25-cv-00427 (25-427-BAJ-EWD) · Decided March 11, 2026

SUMMARY

This document is a Magistrate Judge’s Report, Recommendation, and Order in Daniel J. Burg’s Fair Labor Standards Act action against the Recreation and Park Commission for the Parish of East Baton Rouge (BREC). The magistrate judge recommends granting BREC’s motion for summary judgment and dismissing Burg’s claims with prejudice, concluding that the unpaid five-day suspension did not eliminate his exempt status and that BREC did not unlawfully retaliate against him. The document also recommends disregarding an argument raised for the first time in reply and denying Burg’s motion for leave to file a sur-reply.

CASE DETAILS

COURT	United States District Court for the Middle District of Louisiana
WRITING FOR THE COURT	Erin Wilder-Doomes
JURISDICTION	United States District Court for the Middle District of Louisiana
DECIDED	March 11, 2026
DOCKET	3:25-cv-00427 (25-427-BAJ-EWD)
DISPOSITION	other
PROCEDURAL POSTURE	Magistrate judge's report and recommendation on BREC's motion for summary judgment in an FLSA action. The magistrate judge recommended granting summary judgment and dismissing all claims with prejudice, subject to review and adoption by the district judge.
STANDARD OF REVIEW	Summary judgment is appropriate when there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. The evidence and reasonable inferences must be viewed in the light most favorable to the nonmovant, without weighing evidence or resolving credibility disputes. The report and recommendation is subject to district-judge review under 28 U.S.C. § 636(b)(1)(B).
PRECEDENTIAL VALUE	nonprecedential

PARTIES

Daniel J. Burg v. The Recreation and Park Commission for the Parish of East Baton Rouge (BREC)

TOPICS

flsa retaliation constructive discharge summary judgment civil procedure

PRACTICE AREAS

employment law wage and hour civil procedure

QUESTIONS PRESENTED

1. Whether BREC's five-day unpaid suspension and resulting pay deduction caused Burg to lose his FLSA-exempt status under the salary-basis regulations.
2. Whether the single challenged deduction demonstrated an actual practice of improper deductions under 29 C.F.R. § 541.603(a).
3. Whether BREC retaliated against Burg for engaging in activity protected by the FLSA.
4. Whether the alleged workplace conditions constituted a constructive discharge.
5. Whether the court should consider BREC's argument under 29 C.F.R. § 541.602(a)(1), raised in reply, and whether Burg should be permitted to file a sur-reply.

HOLDINGS

1. The five-day unpaid suspension did not cause Burg to lose his FLSA-exempt status because it was imposed pursuant to BREC's written disciplinary policy, for cause, and in good faith for alleged workplace misconduct involving deficient supervision, payroll fraud, timekeeping violations, and failure to review purchasing-card statements.
2. The single challenged deduction affecting one pay period did not establish an actual practice of improper deductions and therefore did not defeat Burg's exempt status.
3. Burg failed to establish an actionable FLSA retaliation claim because several alleged actions preceded any FLSA-protected complaint, other alleged actions were not materially adverse, and he failed to show a causal connection or pretext for BREC's legitimate disciplinary reasons.
4. Burg failed to establish constructive discharge because the alleged conditions were not so intolerable that a reasonable person would have felt compelled to resign.
5. The court recommended disregarding BREC's argument under 29 C.F.R. § 541.602(a)(1) because it was raised for the first time in reply and recommended denying Burg's motion for leave to file a sur-reply because the remaining arguments were repetitive or immaterial.

KEY QUOTATIONS

"Because there is no genuine issue of material fact that Plaintiff's unpaid suspension did not result in the loss of his exempt status, and that BREC did not unlawfully retaliate against Plaintiff, it is recommended that the

Motion be granted, dismissing Plaintiff's claims with prejudice.” (at 3)

“Here, there is no genuine issue of material fact that Plaintiff's receipt of one allegedly improper deduction did not result in an “actual practice” by BREC of making improper deductions.” (at 25)

“Because Plaintiff cannot establish a prima facie showing of a retaliation claim and/or because there is no issue of fact that BREC had a legitimate, non-retaliatory reason for its actions, Plaintiff's retaliation claim also fails and summary judgment on this claims is also proper.” (at 30)

FACTUAL BACKGROUND

Burg was a salaried Aquatics Manager for BREC and supervised employees at Liberty Lagoon. BREC's Internal Audit found that subordinate employees engaged in payroll fraud and timekeeping violations and that Burg failed adequately to supervise them and failed to review required purchasing-card statements. BREC suspended Burg for five days without pay under its disciplinary rules; the deduction was later taken from his paycheck. Burg complained about the suspension and related policies, later resigned in a letter characterized as a constructive resignation, and filed this FLSA action alleging loss of exempt status and retaliation.

PROCEDURAL HISTORY

Burg filed suit on May 20, 2025, alleging that BREC violated the FLSA by deducting five days of pay from his salary during an unpaid suspension, thereby affecting his exempt status, and retaliated against him, allegedly resulting in constructive discharge. BREC answered and moved for summary judgment. After amended opposition filings, replies, and a motion for leave to file a sur-reply, the magistrate judge issued this report and recommendation recommending that the motion be granted, the FLSA claims dismissed with prejudice, the late-raised argument under 29 C.F.R. § 541.602(a)(1) disregarded, and the sur-reply denied.

DISPOSITION

other

CASES CITED

- Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986)
- Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247, 249 (1986)
- McCullough v. Wright, 824 F. App'x 281, 284 (5th Cir. 2020)
- Renwick v. PNK Lake Charles, L.L.C., 901 F.3d 605, 611 (5th Cir. 2018)
- Little v. Liquid Air Corp., 37 F.3d 1069, 1075 (5th Cir. 1994)
- International Shortstop, Inc. v. Rally's, Inc., 939 F.2d 1257, 1263 (5th Cir. 1991)
- Venable v. Smith Int'l, Inc., 117 F.4th 295, 299 (5th Cir. 2024)
- Texas v. United States Department of Labor, 756 F. Supp. 3d 361, 382 (E.D. Tex. 2024)
- Watkins v. City of Montgomery, Ala., 775 F.3d 1280, 1284 (11th Cir. 2014)
- Balgowan v. State of New Jersey, 115 F.3d 214 (3d Cir. 1997)
- Richardson v. Regeis Care Center, LLC, 2017 WL 432806, at *3 (S.D.N.Y. 2017)

- *Wetzel v. Town of Orangetown*, 2013 WL 1120026, at *6 (S.D.N.Y. Mar. 18, 2013)
- *Parmar v. Safeway, Inc.*, 2011 WL 888238, at *5 (W.D. Wash. Mar. 14, 2011)
- *Abramo v. City of New York*, 54 F. App'x 708 (2d Cir. 2003)
- *Ellis v. J.R.'s Country Stores, Inc.*, 779 F.3d 1184, 1194-96 (10th Cir. 2015)
- *Carpenter v. City & County of Denver, Colorado*, 115 F.3d 765, 767 (10th Cir. 1997)
- *Kennedy v. Commonwealth Edison Co.*, 410 F.3d 365, 372 (7th Cir. 2005)
- *Block v. City of Los Angeles*, 253 F.3d 410, 415 (9th Cir. 2001)
- *Aiken v. City of Memphis, Tennessee*, 190 F.3d 753, 762 (6th Cir. 1999)
- *Martinez v. Hilton Hotels Corp.*, 930 F. Supp. 2d 508, 522 (S.D.N.Y. 2013)
- *Karropoulos v. Soup du Jour, Ltd.*, 128 F. Supp. 3d 518, 529 (E.D.N.Y. 2015)
- *Connors v. Environmental Operations, Inc.*, 2025 WL 2996256, at *3 (E.D. Mo. Oct. 24, 2025)
- *Cash v. Cycle Craft Co., Inc.*, 508 F.3d 680, 684 (1st Cir. 2007)
- *Mathews v. Bronger Masonry, Inc.*, 772 F. Supp. 2d 1004, 1013 (S.D. Ind. 2011)
- *Georgia Firefighters' Pension Fund v. Anadarko Petroleum Corp.*, 99 F.4th 770, 774 (5th Cir. 2024)
- *Butler v. S. Porter*, 999 F.3d 287, 297 (5th Cir. 2021)
- *Lasater v. Texas A & M Univ.-Commerce*, 495 F. App'x 458, 461 (5th Cir. 2012)
- *Kanida v. Gulf Coast Medical Personnel LP*, 363 F.3d 568, 577 (5th Cir. 2004)
- *Hagan v. Echostar Satellite, LLC*, 529 F.3d 617, 624 (5th Cir. 2008)
- *Starnes v. Wallace*, 849 F.3d 627, 631-32 (5th Cir. 2017)
- *Shirley v. Chrysler First, Inc.*, 970 F.2d 39 (5th Cir. 1992)
- *Stewart v. Mississippi Transportation Commission*, 586 F.3d 321, 332 (5th Cir. 2009)
- *Noack v. YMCA of Greater Houston Area*, 418 F. App'x 347, 353 (5th Cir. 2011)
- *Pennsylvania State Police v. Suders*, 542 U.S. 129, 131, 141 (2004)
- *Brown v. Bunge Corp.*, 207 F.3d 776, 782 (5th Cir. 2000)
- *Garvin v. Southwestern Correctional, L.L.C.*, 391 F. Supp. 3d 640, 654 (N.D. Tex. 2019)
- *Landgraf v. USI Film Products*, 968 F.2d 427, 430 (5th Cir. 1992), *aff'd*, 511 U.S. 244 (1994)
- *Brooks v. Houston Independent School District*, 86 F. Supp. 3d 577, 589 (S.D. Tex. 2015)
- *Saketkoo v. Administrators of Tulane Educational Fund*, 31 F.4th 990, 1000 (5th Cir. 2022)
- *Williams v. Lakeview Loan Servicing LLC*, 694 F. Supp. 3d 874, 884 (S.D. Tex. 2023)
- *Green v. HCTec Partners, LLC*, 2024 WL 250787, at *3-4 (S.D. Tex. Jan. 23, 2024)
- *Ortiguerra v. Grand Isle Shipyard, LLC*, 674 F. Supp. 3d 349, 355-56 (E.D. La. 2023)
- *Aday v. Westfield Insurance Co.*, 2022 WL 203327, at *13 (6th Cir. Jan. 24, 2022)
- *Santos v. Coleman World Group, LLC*, 2017 WL 5474061, at *4 (W.D. Tex. Nov. 13, 2017)
- *Cutrer v. Board of Supervisors of Louisiana State University*, 429 F.3d 108, 113 (5th Cir. 2005)
- *King Fisher Marine Service, Inc. v. M/V SOCOL 2*, 2001 WL 1911437, at *3 (S.D. Tex. Sept. 26, 2001)
- *Rushing v. Kansas City Southern Railway Co.*, 185 F.3d 496, 504 (5th Cir. 1999)
- *Geiserman v. MacDonald*, 893 F.2d 787, 793 (5th Cir. 1990)

- In re Snowflake, Inc., Data Security Breach Litigation, 2026 WL 318355, at *2 (U.S. Jud. Pan. Mult. Lit. Feb. 5, 2026)
- Reilly v. Connecticut Interlocal Risk Management Agency, 2025 WL 1726366, at *2-3 (D. Conn. June 20, 2025)

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