UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 2nd day of June, two thousand twenty-five.

PRESENT: AMALYA L. KEARSE,
DENNIS JACOBS,
RAYMOND J. LOHIER, JR.,
Circuit Judges.

LINDA DILEO,

Plaintiff-Appellant,

v. No. 24-2253-cv

DOUGLAS A. COLLINS,
SECRETARY OF THE U.S.
DEPARTMENT OF VETERAN
AFFAIRS,

Defendant-Appellee.

FOR APPELLANT:	Stephen Bergstein, Bergstein & Ullrich, LLP, New Paltz, NY
FOR APPELLEE:	Varuni Nelson, Nicole M. Zito, Assistant United States Attorneys, *for* John J. Durham, United States Attorney for the Eastern District of New York, Brooklyn, NY

Appeal from a judgment of the United States District Court for the Eastern District of New York (Frederic Block, *Judge*).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgment of the District Court is AFFIRMED.

Plaintiff Linda DiLeo appeals from a judgment of the United States District Court for the Eastern District of New York (Block, *J.*) dismissing her official-capacity suit against the Secretary of the United States Department of Veterans Affairs (the "VA"), her former employer. DiLeo brought claims for gender discrimination and retaliation under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.* Although the District Court granted summary judgment in favor of the VA on all of DiLeo's claims, on appeal DiLeo challenges only the dismissal of her retaliation claims. We assume the parties' familiarity with the underlying facts and the record of prior proceedings, to which we refer only as necessary to explain our decision to affirm.

Title VII retaliation claims are subject to the familiar *McDonnell Douglas* burden-shifting framework. *See Littlejohn v. City of New York*, 795 F.3d 297, 315–16 (2d Cir. 2015); *see also McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802 (1973). In order to establish a *prima facie* case of retaliation, a Title VII plaintiff "must show that [s]he engaged in a protected activity, that [s]he suffered an adverse employment action, and that a causal connection exists between that protected activity and the adverse employment action." *Fox v. Costco Wholesale Corp.*, 918 F.3d 65, 72–73 (2d Cir. 2019).

On appeal, DiLeo contends that a reasonable jury could find that the VA subjected her to a series of adverse actions, including stripping her of various decision-making responsibilities, giving her additional duties, and denying her a raise, in retaliation for her July 9, 2018 informal complaint to the VA's Office of Resolution Management. As the District Court determined, however, DiLeo "admits that the adverse job actions began in June 2018, before her July 2018 complaint." Spec. App'x 11.

The District Court therefore correctly concluded that DiLeo failed to show any "causal nexus" between her protected activity and the purported adverse actions to which she was subjected. *See Fox*, 918 F.3d at 73. "Where timing is the

only basis for a claim of retaliation," and the alleged adverse actions were set in motion before the relevant protected activity, "an inference of retaliation does not arise." *Slattery v. Swiss Reins. Am. Corp.*, 248 F.3d 87, 95 (2d Cir. 2001); *see Zann Kwan v. Andalex Grp.*, 737 F.3d 834, 845 (2d Cir. 2013) ("[A] plaintiff can indirectly establish a causal connection to support a . . . retaliation claim by showing that the protected activity was closely *followed in time* by the adverse [employment] action." (emphasis added) (quotation marks omitted)).

The same purported adverse actions also form the basis for DiLeo's claim that she was constructively discharged in 2020 in retaliation for filing the July 2018 complaint. As to that claim, DiLeo failed to offer admissible evidence to support her assertion that the VA "deliberately ma[de] [her] working conditions so intolerable that [she was] forced into an involuntary resignation." *See Kemp v. Regeneron Pharms., Inc.*, 117 F.4th 63, 71–72 (2d Cir. 2024) (quotation marks omitted).

Accordingly, we conclude that DiLeo's claims were "properly dismissed because [s]he has not introduced evidence that [s]he suffered an adverse employment action after — and causally connected to — [her] engagement in a protected activity." *See Fox*, 918 F.3d at 72.

The District Court also determined in the alternative that the VA offered legitimate, nonretaliatory reasons for its actions but that DiLeo "fail[ed] to carry her burden at step three of *McDonnell Douglas*" to show that those reasons were a pretext for retaliation. Spec. App'x 5. On appeal, DiLeo failed to make any argument regarding pretext in her opening brief. Arguments not made in an appellant's opening brief are generally deemed abandoned "even if the appellant . . . raised them in a reply brief," *JP Morgan Chase Bank v. Altos Hornos de Mexico, S.A. de C.V.*, 412 F.3d 418, 428 (2d Cir. 2005), and "normally will not be addressed on appeal," *Norton v. Sam's Club*, 145 F.3d 114, 117 (2d Cir. 1998). Even if we were to consider the evidence DiLeo points to on the issue of pretext in her reply brief, she fails to "demonstrat[e] weaknesses, implausibilities, inconsistencies, or contradictions in the employer's proffered legitimate, nonretaliatory reasons" such that "a reasonable juror could conclude that the explanations were a pretext" for retaliation. *See Zann Kwan*, 737 F.3d at 846. DiLeo is thus left to rely only on the amount of time that elapsed between her informal complaint and the alleged retaliation. But "temporal proximity alone is not enough to establish pretext in this Circuit." *Abrams v. Dep't of Pub. Safety*, 764 F.3d 244, 254 (2d Cir. 2014).

We have considered DiLeo's remaining arguments and conclude that they are without merit. For the foregoing reasons, the judgment of the District Court is AFFIRMED.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk of Court