

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

LILY SPENCER,)
)
 Plaintiff,)
)
 v.) Civil Action No. 03-104-KAJ
)
 WAL-MART STORES, INC.,)
)
 Defendant.)

MEMORANDUM ORDER

This is an employment discrimination case. Presently before me is the Defendant’s Motion *in Limine* (the “Motion”), submitted as part of the proposed pretrial order (D.I. 47 at 24), seeking to exclude any argument for or evidence in support of a recovery by Plaintiff of either back pay or front pay. The Defendant argues that the Plaintiff is essentially claiming that she was constructively discharged but that in fact she has provided no evidence to support such a claim and, under the applicable standard of law, cannot prevail on such a claim. Thus, says the Defendant, an award of back pay and, per force, of front pay would be unlawful. (D.I. 54.) The Plaintiff counters that she is not alleging constructive discharge but is actually alleging that she was unable to return to work after a leave of absence because she was diagnosed with depression brought on by the stress of her work environment. (D.I. 55.) She asserts that evidence of what her earnings were and would have been is appropriate to her claim for compensatory damages.

After reviewing the parties’ submissions and the arguments made at the pretrial conference, I have concluded that the Defendant’s Motion, while it has some logical appeal, must be denied. It is true that the Plaintiff never resigned in this case. She took

a leave of absence and then sued. It is also true that she has not made out a case for constructive discharge or the remedies associated with it.¹ I cannot, however, agree with the Defendant that the Plaintiff's argument is at bottom nothing more than an effort to take a claim for constructive discharge and call it something different.

The Defendant's argument, as I take it, is that if the high standard for a claim for constructive discharge could be circumvented simply by saying that an environment not bad enough for constructive discharge was bad enough to depress the claimant and therefore the claimant is entitled to the same recovery that a constructive discharge would warrant, the standard for constructive discharge will be significantly undermined. *See Duffy v. Paper Magic Group, Inc.*, 265 F. 3d 163, 167 (3d Cir. 2001) (employing an "objective test to determine whether an employee can recover on a claim of constructive discharge" and stating the standard as "whether a reasonable jury could find that the [employer] permitted conditions so unpleasant or difficult that a reasonable person would have felt compelled to resign.") (internal quotation marks and citation omitted). That does have logical force. However, Congress has chosen to provide that

¹Plaintiff's counsel has acknowledged that a claim for constructive discharge cannot be made out on the facts of this case. He said of the Plaintiff's claim:

It's not a constructive discharge claim. At the time she went out, she went out on medical leave and continued in that position on medical leave and/or on leave vis-a-vis Workers' Compensation matter because she was unable to return to work. Constructive discharge occurs when things are so opprobrious and the employer has made the environment so clearly opprobrious that anyone of normal sensitivities in that client's same situation could not continue

(8/31/04 Transcript at 15-16.)

compensatory and punitive damages are available under Title VII and, by extension, the ADA. 42 U.S.C. § 1981a(a). It must have been apparent to Congress that there are circumstances other than constructive discharge cases where evidence of economic loss would be required to make out a case for compensatory damages. Whether damages are appropriate in this case is, of course, a matter to be determined at trial, but I cannot conclude that simply because evidence would be relevant to a claim not in the case, i.e., constructive discharge, it cannot then be offered for a claim that is in the case, i.e., compensatory damages allegedly flowing from the claimed discriminatory conduct.

Accordingly, it is hereby ORDERED that the Defendant's Motion (D.I. 47 at 24) is DENIED.

Kent A. Jordan
UNITED STATES DISTRICT JUDGE

September 29, 2004
Wilmington, Delaware