

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

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

MEMORANDUM OPINION

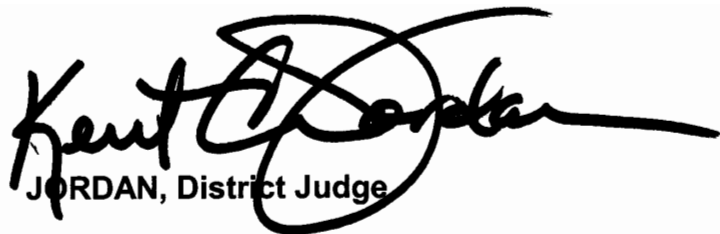
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March 11, 2005
Wilmington, Delaware



JORDAN, District Judge

I. INTRODUCTION

From October 4 to October 7, 2004, this disability discrimination case was tried to a jury, resulting in a verdict of \$27,000 for Lily Spencer ("Plaintiff") and against Wal-Mart Stores, Inc. ("Wal-Mart"), that sum consisting of the jury's award of \$12,000 for emotional distress and \$15,000 for lost wages. (Docket Item ["D.I."] 68.) Plaintiff claimed that she was subjected to a hostile work environment at Wal-Mart and that Wal-Mart failed to reasonably accommodate her disability, in violation of the Americans with Disabilities Act. (D.I. 1.) Currently before me is a post-trial motion for judgment as a matter of law ("JMOL") (D.I. 80) filed by Wal-Mart for a finding that Plaintiff failed to prove that she was subjected to a hostile work environment and that, even if she had been subjected to a hostile work environment, she is not entitled to lost wages. Also before me is Plaintiff's motion to amend the judgment to include injunctive relief to prevent Wal-Mart from further engaging in discriminatory practices (D.I. 76) and a motion for reimbursement of attorney's fees and costs (D.I. 78). For the reasons stated herein, the JMOL motion will be granted in part and denied in part and Plaintiff's motions will be denied.

II. PROCEDURAL BACKGROUND

On August 26, 2004, Wal-Mart and Plaintiff filed a proposed joint pre-trial order, in which Wal-Mart made a motion *in limine* to preclude Plaintiff from seeking an award of front and back pay. (D.I. 47 at 24-26.) In a September 29, 2004 Order, I denied that motion. (D.I. 58.) Later, at the jury instruction conference during the trial, Wal-Mart

again voiced its objection to the inclusion of a space for an award of back pay on the verdict sheet to be used by the jury. (D.I. 74 at 116-20.) I again overruled their objection and allowed both sides to make their respective arguments to the jury. (*Id.*) The jury verdict form provided for possible findings as to both lost wages and emotional distress. (D.I. 68.)

In a prior settlement of Plaintiff's worker's compensation claim against Wal-Mart, the parties agreed that at least \$12,000 of that settlement would be credited against any recovery in this litigation. See *infra*, Section V. pg. 8-10.

III. MOTION FOR JUDGMENT AS A MATTER OF LAW

A. Standard of Review

To prevail on a renewed motion for JMOL following a jury trial¹, a party must show that "the record is critically deficient of that minimum quantity of evidence from which a jury might reasonably afford relief." *Walter v. Holiday Inns, Inc.*, 985 F.2d 1232, 1238 (3d Cir. 1993). "The Court is not free to weigh the evidence, pass on the credibility of witnesses, or substitute its own judgment of the facts for that of the jury." *Trans-World Mfg. Corp. v. Al Nyman & Sons, Inc.*, No. 81-471, 1983 U.S. Dist. LEXIS 14075 at *9 (D. Del. 1983).

¹Rule 50(a) of the Federal Rules of Civil Procedure empowers a court during trial to rule against a party as a matter of law after the moving party is fully heard on an issue, if "there is no legally sufficient evidentiary basis for a reasonable jury to find for that party on that issue." *Walter v. Holiday Inns, Inc.*, 985 F.2d 1232, 1238 (3d Cir. 1993) (citation omitted). If the court denies a motion for JMOL during trial, a party may renew the motion within ten days of entry of judgment in the case. Fed. R. Civ. P. 50(b). Wal-Mart properly preserved its right to make the present motion.

B. Discussion

i. Lost wages

Wal-Mart argues that it was improper to allow the jury to include “lost wages” in its calculation of compensatory damages. (D.I. 81 at 8-9.) The term “lost wages” as used in this case has the same meaning as the term “backpay” used generally in employment discrimination cases. See *Gunby v. Pennsylvania Electric Co.*, 840 F.2d 1108, 1119 (3d Cir. 1988) (stating that “[t]he appropriate standard for the measurement of a back pay award is to take the difference between the actual wages earned and the wages the individual would have earned in the position that, but for discrimination, the individual would have attained”).

Historically in Title VII cases, compensatory damages were not permitted.

Rather, all relief was governed by 42 USCS § 2000e-5(g), which states:

[i]f the court finds that the respondent has intentionally engaged in or is intentionally engaging in an unlawful employment practice charged in the complaint, the court may enjoin the respondent from engaging in such unlawful employment practice, and order such affirmative action as may be appropriate, which may include, but is not limited to, reinstatement or hiring of employees, with or without back pay

42 U.S.C. § 2000e-5(g). After the enactment of the Civil Rights Act of 1991, however, compensatory damages were also allowed in cases involving intentional employment discrimination. 42 U.S.C. § 1981a(a)(2). Nevertheless, Section 1981a states that “[c]ompensatory damages awarded under this section shall not include backpay, interest on backpay, or any other type of relief authorized under section 706(g) of the Civil Rights Act of 1964 [42 U.S.C. § 2000e-5(g)].” 42 U.S.C. § 1981a(b)(2).

Although back pay is not allowed as compensatory damages, it is still available through 42 U.S.C. § 2000e-5(g)(1). See *Booker v. Taylor Milk Co.*, 64 F.3d 860, 864 (3d Cir. 1995) (stating that “VII authorizes, *inter alia*, a back pay award”). Moreover, as stated in Section 2000e, the determination of back pay is for the court and, therefore, equitable in nature. See *Bates v. Board of Educ.*, C.A. No. 97-394-SLR, 2000 U.S. Dist. LEXIS 4873, 24-25 (D. Del. 2000) (stating that “back pay is intended as an equitable remedy”).

As already noted (*supra* at 1-2), during consideration of the *in limine* motions, Wal-Mart argued that I should not permit Plaintiff to seek lost wages. (D.I. 47 at 24-26.) It argued that because Plaintiff had not made out a case for constructive discharge, she should not be permitted to collect lost wages that accrued after what Wal-Mart characterized as a voluntary termination of her employment. (*Id.*) In my order denying that motion (D.I. 58), I concluded that “[w]hether damages are appropriate in this case is ... a matter to be determined at trial.”² (*Id.* at 2-3.) Wal-Mart raised the subject briefly again during the jury instruction conference, and its objection to the inclusion of lost wages on the verdict sheet was noted. (D.I. 74 at 116-20.)

With the lost wages/back pay issue now before me once more, I conclude that the issue was not one properly put to the jury and is solely within the province of the court. See *Bates v. Board of Educ.*, C.A. No. 97-394-SLR 2000 U.S. Dist. LEXIS 4873, 24, 25 (D. Del. 2000). Accordingly, as the issue of back pay should not have been

²Because neither party addressed the equitable nature of back pay in their briefing, I did not address it in that Memorandum Order.

submitted to the jury, I must grant Wal-Mart's JMOL motion to vacate the jury verdict of \$15,000 in lost profits.

Plaintiff has not requested that I grant equitable relief in the form back pay. Even if she had, however, I would not find it appropriate in this case, as she has not alleged constructive discharge. In fact, her attorney specifically disclaimed any constructive discharge claim during the jury instruction conference, and there was no evidence or argument about constructive discharge given at trial. (D.I. 65 at 117 (stating that "[s]he is out on medical leave ... [those sums] the amount of money that she lost ... are compensable damages that don't amount to constructive discharge".)) Therefore, any post-trial attempt by Plaintiff to make out a case for constructive discharge would be unpersuasive. Back pay is thus not a remedy available to Plaintiff. See *Hertzberg v. SRAM Corp.*, 261 F.3d 651, 659 (7th Cir. 2001) (holding that "[a] victim of discrimination that leaves his or her employment as a result of the discrimination must show either an actual or constructive discharge in order to receive the equitable remedy of reinstatement, or back and front pay in lieu of reinstatement").

ii. Hostile Work Environment

Wal-Mart argues that the evidence presented at trial did not demonstrate harassment based on Plaintiff's disability and, even if there had been such harassment, there was insufficient evidence to show that the harassment was so severe or pervasive as to render the store a hostile work environment. (D.I. 81 at 3-7.) Wal-Mart does, however, list six incidents that Plaintiff relied on at trial to show the existence of a hostile work environment, and Plaintiff cited numerous others from the record. (*Id.* at 4;

D.I. 84 at 4-9.) Although Wal-Mart argues that these incidents were not motivated by or the result of Plaintiff's disability, the testimony of Plaintiff, along with the testimony of her son, was enough for a jury to conclude that many, if not all, of the harassing behavior was directed at Plaintiff because of her deafness. (D.I. 84, Ex. 1 at 150-53, 157-58, 163, 167.)

Plaintiff testified that Wal-Mart created a hostile work environment through the lack of properly trained interpreters and that her supervisor, Mr. Tran, was hostile towards her whenever qualified interpreters were requested. (*Id.* at 144-49, 153, 159, 157-58.) On one occasion, Mr. Tran yelled at Plaintiff for requesting an interpreter and threw a book on the table, which greatly upset Plaintiff. (*Id.* at 153.) Mr. Tran and other employees refused to write notes to aid in communication with Plaintiff. (*Id.*) Plaintiff was also more closely supervised than other employees, her supervisor going so far as to follow her to the rest room, for example. (See *id.* at 157-58.) Her son also testified that her boss called her stupid and ignored her complaints about the poor treatment that she was receiving at Wal-Mart. (*Id.*, Ex. 2 at 203.)

Additionally, Plaintiff testified that, while working in the cash office at Wal-Mart, she was met with hostility when she asked simple questions or tried to teach other employees simple signs to help them communicate with her. (*Id.* at B-160-62.) As an example, Plaintiff testified that one Wal-Mart employee tapped her on the shoulder, held up her middle finger, and asked what it meant. (*Id.* at B-163.) Plaintiff said that, after ignoring the obscene gesture, the same employee again proceeded to tap her on the shoulder and hold up her middle finger. (*Id.*)

Timothy Miller, a hearing-impaired co-worker of Plaintiff's, testified that a hearing co-worker, "was very mean and not friendly", to Plaintiff, and that he felt that the co-worker in question "was [either] an evil woman, or hated deaf people." (*Id.*, Ex. 3. at C-56.) Mr. Miller testified that certain hearing employees treated Plaintiff and other deaf employees differently and that those hearing employees were not social towards or friendly with the deaf employees. (*Id.* at C-52.) He also testified that another manager, constantly watched Plaintiff and made her feel uncomfortable, and that the manager did not treat hearing employees in the same manner. (*Id.* at C-57.) Further, when Plaintiff was assigned to a specific department, she was never given an assistant; however, when "the new hearing person took over that department, he, that person had an assistant." (*Id.* at C-58.) Another hearing-impaired witness, Christy Hennessey, testified that, while visiting Plaintiff, a hearing employee signed or gestured a "dirty word" to her. (*Id.*, Ex. 4 at C-74.) The jury could fairly have considered all this as lending credibility to Plaintiff's contention that employees at Wal-Mart were routinely hostile towards her because of her disability.

Given the evidence presented, considered in the light most favorable to Plaintiff, I cannot say that the jury erred in finding the actions of Wal-Mart and its employees created a hostile work environment.

IV. MOTION TO AMEND JUDGMENT TO INCLUDE INJUNCTIVE RELIEF

Plaintiff has also filed a motion pursuant to Federal Rule of Civil Procedure 59, asking the Court to alter or amend the jury's judgment to include injunctive relief. (D.I. 76.) Plaintiff's motion is not well founded and fails to meet the "high standard" required

for motions under Rule 59. See *Price v. Delaware Department of Correction*, 40 F. Supp.2d 544, 550 (D.Del. 1999). The evidence at trial did not show a pattern of discrimination by Wal-Mart that would require a permanent injunction, and there was also evidence that Wal-Mart had specific ADA policies designed and utilized to prevent any future discrimination. (See, e.g., D.I. 73 at A-91, 98-100, 105, 107-110, 116-20; D.I. 70 at B-10, 15, 23-27, 142-43, 210-11.) Most significantly, injunctive relief is inappropriate in this context because Plaintiff is no longer an employee at Wal-Mart. Consequently and any injunctive relief would not benefit her. See *Fesel v. Masonic Home*, 447 F. Supp. 1346, 1354 (D. Del. 1978) (holding "general injunctive relief will not be granted where there will be no benefit to the plaintiff").

V. MOTION FOR REIMBURSEMENT OF ATTORNEY'S FEES

Title VII provides, in relevant part: "[i]n any action or proceeding under this title, the court, in its discretion, may allow the prevailing party ... a reasonable attorney's fee ... as part of the costs" 42 U.S.C. § 2000e-5(k). The United States Court of Appeals for the Third Circuit has established a test to determine whether a party qualifies for an award of attorney's fees:

First, the plaintiff must be a "prevailing party"; i.e., the plaintiff must essentially succeed in obtaining the relief sought on the merits. Second, the circumstances under which the plaintiff obtained the relief sought must be causally linked to the prosecution of the Title VII complaint, in the sense that the Title VII proceedings constituted a material contributing factor in bringing about the events that resulted in the obtaining of the desired relief.

Blackshear v. City of Wilmington, 15 F. Supp. 2d 417, 432 (D. Del. 1998) (quoting *Sullivan v. Commonwealth of Pennsylvania Dept. of Labor and Indus.*, 663 F.2d 443,

452 (3d Cir. 1981)). Further, “[a] prevailing party is entitled to recover its reasonable attorney’s fees unless special circumstances would render such an award unjust.” *Torres v. Metropolitan Life Ins. Co.*, 189 F.3d 331, 332 (3d Cir. 1999) (citing 42 U.S.C. § 2000e-5(k) (West Supp. 1999)); *Independent Fed’n of Flight Attendants v. Zipes*, 491 U.S. 754, 761 (1989); *Newman v. Piggie Park Enterprises, Inc.*, 390 U.S. 400, 402 (1968). The Supreme Court has held that “[a] plaintiff who seeks compensatory damages but receives no more than nominal damages” often represents one of the circumstances where attorney’s fees are not appropriate. *Farrar v. Hobby*, 506 U.S. 103, 115 (1992).

In the case at bar, Plaintiff was awarded \$12,000 as compensatory damages for emotional distress and \$15,000 as lost wages. (D.I. 68.) Because I have determined that she is not entitled to the \$15,000 as lost wages, and because of the offset of the settlement of her worker’s compensation claim against the remainder of the jury’s award, Plaintiff will not recover any of the sums awarded by the jury.³ Consequently, Plaintiff will recover no damages in this case. The question then becomes whether Plaintiff’s lack of a recovery is akin to nominal damages deserving no award of attorney’s fees, or, in the alternative, whether the jury’s verdict represents an award

³In Wal-Mart’s Answering Brief, it notes that any recovery in this case must be offset by the earlier settlement of Plaintiff’s worker’s compensation claim. (D.I. 86 at 4, fn.2.) Wal-Mart further indicates the settlement was for approximately \$12,000. (See *id.*, (stating that offset of settlement against total jury award of \$27,000 would leave “at most \$15,000.”)) Defendant did not attach the settlement, citing the confidentiality of the agreement as the reason. (*Id.*) Plaintiff has not refuted Wal-Mart’s math, however, and I therefore take it at face value.

that, despite the Defendant's earlier worker's compensation settlement, is sufficient to support granting attorney's fees.

The Supreme Court has stated that damage awards are designed "to compensate injuries caused" by the actions in question, but they were "never intended to produce windfalls to attorneys" *Farrar* , 506 U.S. at 115 (internal citations omitted). In this case, Plaintiff was already compensated by a settlement payment for harm she suffered at Wal-Mart. (D.I. 86 at 4, fn.2.) Plaintiff litigated this matter in the hopes that she could prove that she sustained damages in excess of the settlement payment, but she did not. Therefore, as a practical matter, this litigation did not benefit Plaintiff in any way, and an award of attorney's fees would be inappropriate. Consequently, Plaintiff's request for attorney's fees is denied.⁴

VI. CONCLUSION

For the reasons stated, I will GRANT Wal-Mart's motion for JMOL to the extent that I will vacate the award of lost wages, and I will DENY that motion in all other respects. (D.I. 80) I will also DENY Plaintiff's motions for amendment of the judgment (D.I. 76), and reimbursement of attorney fees (D.I. 78). An appropriate order will follow.

⁴The awarding of attorney's fees with respect to settlements is permissible and may be necessary in some cases. Plaintiff has not, however, put forth any evidence that such an award would be appropriate in this case with respect to the settlement of the related worker's compensation case.

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

ORDER

For the reasons set forth in the Memorandum Opinion issued in this action on this date, the motion filed by Defendant Wal-Mart Stores, Inc. for judgment as a matter of law (D.I. 80; the "JMOL Motion") is GRANTED to the extent that the \$15,000 award to Plaintiff for lost wages is vacated; in all other respects the JMOL Motion is DENIED. Plaintiff Lily Spencer's motion for amendment of judgment to include injunctive relief (D.I. 76) is DENIED, and Plaintiff's further motion for reimbursement of attorney fees (D.I. 78) is DENIED.


UNITED STATES DISTRICT JUDGE

March 11, 2005
Wilmington, Delaware