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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

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CLERK U.S. DISTRICT COURT
DISTRICT OF DELAWARE
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LILY SPENCER Plaintiff,

Plaintiff,

v.

WAL-MART STORES, INC.,

Defendant.

Civil Action No. 03-104-KAJ

MEMORANDUM ORDER

I. INTRODUCTION & BACKGROUND

Presently before me is a Motion to Alter or Amend Judgment and Motion for Relief from Judgment (Docket Item ["D.I."] 91; the "Motion") filed by Lily Spencer ("Plaintiff") pursuant to Federal Rule of Civil Procedure 59(e).[1] Plaintiffs' Motion, which is in essence a motion for reconsideration, comes in response to my March 11, 2005 Opinion, in which I ruled that Plaintiff was not entitled to lost wages and denied Plaintiff's Motion to Amend Judgment to Include Attorney's Fees. (D.I. 90.)

II. STANDARD OF REVIEW

A motion for reconsideration should be sparingly granted. The purpose of a motion for reconsideration is to correct manifest errors of law or fact or to present newly discovered evidence. *Seawright v. Carroll*, No. 02-1258-KAJ, 2004 WL 396310, at *1 (D.

[1] The factual background of the case is described in detail in *Spencer v. Wal-Mart Stores, Inc.*, C.A. No. 03-104-KAJ, 2005 U.S. Dist. LEXIS 4373 (D. Del. March 11, 2005).

Del. Mar. 2, 2004) (citing *Harsco Corp. v. Zlotnicki*, 779 F.2d 906, 909 (3d Cir. 1985)). "A motion for reconsideration is not appropriate to reargue issues that the court has already considered and denied." *Id.* (internal citation omitted). A court may grant a motion for reconsideration "if the moving party shows: (1) an intervening change in the controlling law; (2) the availability of new evidence that was not available when the court issued its order; or (3) the need to correct a manifest injustice." *Id.* (citing *Max's Seafood Café v. Quinteros*, 176 F.3d 669, 677 (3d Cir. 1999)).

III. DISCUSSION

A. Lost Wages[2]

Plaintiff argues that, although equitable in nature, "the amount of back pay and front pay damages is left to the jury" and, therefore, I should have only "determined whether or not the jury's award was based on a reasonable method of calculation." (D.I. 92 at 3.) However, the case Plaintiff cites, *Bates v. Board of Educ.*, does not support her position. C.A. No. 97-394-SLR, 2000 U.S. Dist. LEXIS 4873, *24-25, 31 (D. Del. March 31, 2000). That case shows that a jury can determine the amount of back pay and or front pay that should be awarded, but the decision makes clear that it is the province of the court to determine if back pay or front pay is appropriate. *Id.* at *24-25, 31. As to Plaintiff's argument that she is entitled to back pay as an equitable remedy, I have already ruled that she is not, and nothing has changed in the interim to alter that decision. (D.I. 90.)

[2]The terms "back pay" and "lost wages" are used interchangeably throughout this order.

B. Attorney's Fees

In her Motion, Plaintiff argues that I based my denial of attorney's fees on the mistaken belief that the settlement of the state workers compensation claim occurred before the jury rendered a verdict in this case. (D.I. 92 at 5-6.) Specifically, Plaintiff argues that "[i]t was only after the jury awarded [her] damages for lost wages and emotional distress that she agreed to compromise her workers compensation claim ... ." (*Id.* at 6.) Defendant does not dispute that the settlement was reached after the jury rendered its verdict, but instead argues that the timing is inconsequential because Plaintiff will still receive nothing as a result of this ligation. (D.I. 93 at 7.) As I was under a misimpression as to the timing of the settlement before issuing my last opinion, and because I think the timing is consequential, I will now reconsider my opinion in light of this newly presented evidence. (D.I. 90 at 8-10.)

The case law is clear that in order to be a prevailing party for purposes of the attorney's fees, a party must "succeed on any significant issue in litigation which achieves some of the benefits the parties sought in bringing suit." *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983) (internal quotations omitted). The Supreme Court has said "[t]his is a generous formulation that brings the plaintiff only across the statutory threshold." *Id.* In the instant case, at the time the jury verdict was rendered, Plaintiff received a monetary award for emotional distress, which is what she sought in bringing suit. (D.I. 72.) The subsequent agreement to offset the recovery in her workers compensation case does not alter her prevailing party status.[3] When the verdict was rendered, Plaintiff had not yet

[3]Plaintiff argues that because the state workers compensation claim cannot include claims for emotional distress, any settlement of her workers compensation

entered into the settlement of her workers compensation case. (D.I. 72; D.I. 92, Attach. A.) The timing matters here because it demonstrates that Plaintiff had her victory in hand and made knowledgeable decisions about how best to use that limited victory to her advantage. This is a significantly different circumstance than what I had understood previously, which was that Plaintiff had gone into the trial having already bargained away her potential recovery. *But cf. Gulfstream III Assocs., Inc. v. Gulfstream Aerospace Corp.*, 995 F.2d 414, 423 (3d Cir. 1993) (holding that "the reduction of a plaintiff's net recovery due to the offset of a jury verdict by prior settlements does not indicate that plaintiff failed to prove any of its claims at trial"). She is indeed a statutory prevailing party.

Although the determination of whether a plaintiff is a prevailing party is "generous," it only brings the plaintiff "across the statutory threshold[,] ... . It remains for the district court to determine what fee is 'reasonable.'" *Hensley*, 461 U.S. at 433. A reasonable fee is one that is adequate to attract competent counsel, but which does not produce a windfall for attorneys. *Pub. Interest Research Group of New Jersey, Inc. v. Windall*, 51 F.3d 1179, 1185 (3d Cir. 1995) (internal quotations omitted); *Blum v. Stenson*, 465 U.S. 886, 897 (1984). The starting point for determining the reasonableness of a fee is to calculate the "number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate." *Hensley*, 461 U.S. at 433. The result of this calculation is called the "lodestar;" the lodestar is presumed to be a reasonable fee. *See Rode v. Dellarciprete*, 892 F.2d 1177,

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claim cannot be used to offset her emotional distress award. (D.I. 92 at 6.) The settlement agreement has no such restrictions. (D.I. 93, Ex. B.) Consequently, I reaffirm the holding implicit in my earlier decision (D.I. 89 at 9-10) that the settlement of the workers compensation claim can be used by Defendant to offset the damages award for emotional distress.

1183 (3d Cir. 1990). There are, however, "other considerations that may lead the district court to adjust the fee upward or downward, including the important factor of the 'results obtained.'" *Hensley*, 461 U.S. at 434. In fact, the degree of the success obtained is the most "critical factor" in the calculation of a "reasonable fee." *Id.* at 436. The most common scenario in which the "results obtained" has an effect on the calculation of a "reasonable fee" occurs when a plaintiff succeeds on only some of the claims for relief. *See, e.g., id.* (stating that, in such a situation, the questions that need to be answered are "did the plaintiff fail to prevail on claims that were unrelated to the claims on which he succeeded [and] did the plaintiff achieve a level of success that makes the hours reasonably expended a satisfactory basis for making a fee award").

In the context of enhancing the lodestar to account for excellent results, the Supreme Court stated that "the lodestar figure includes most, if not all, of the relevant factors constituting a 'reasonable' attorney's fee" and further said that the "'results obtained' from the litigation are presumably fully reflected in the lodestar amount, and thus cannot serve as independent bases for increasing the basic fee award." *Pennsylvania v. Delaware Valley Citizens' Council for Clean Air*, 478 U.S. 546, 566 (1986). The Third Circuit subsequently held that the lodestar may be adjusted to account for the "results obtained," but such an adjustment is done solely with relation to "wholly or partially unsuccessful claims that are related to the litigation of the successful claims." *Rode*, 892 F.2d at 1183 (citing *Hensley*, 461 U.S. at 434-37). Further, "[t]his adjustment should be taken independently of the other adjustments and should be the first adjustment applied to the lodestar." *Id.* (internal citation omitted). Generally, "where a plaintiff prevails on one

or more claims but not on others, fees shall not be awarded for time that would not have been spent had the unsuccessful claims not been pursued." *Lanni v. New Jersey*, 259 F.3d 146, 151 (3d Cir. 2001). If the claims were "were inter-related, nonfrivolous, and raised in good faith," *Hensley*, 461 U.S. at 435, it still may be proper to reduce an award of attorney's fees to account for a plaintiff's failure to succeed on all claims. *Buss v. Quigg*, No. 02-4053, 91 Fed. Appx. 759, 761 (3d Cir. Feb. 5, 2004).[4]

The Third Circuit has stated that it is permissible to look at "the amount of damages awarded, ... compared with the amount of damages requested" when determining a reasonable fee.[5] *Washington v. Philadelphia County Court of Common Pleas* , 89 F.3d 1031, 1042 (3d Cir. 1996). In other words "the amount of damages awarded, when compared with the amount of damages requested may be one measure of how successful [a] plaintiff was in his or her action." *General Instrument Corp. v. Nu-Tek Elecs. & Mfg.*, 197 F.3d 83, 91 (3d Cir. 1999) (citing *Washington*, 89 F.3d at 1041) (also holding, however, "that comparison may be an imperfect measure ...").[6]

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[4]Third Circuit Internal Operation Procedure 5.7 notes that the Court of Appeals, by tradition, does not cite non-precedential opinions; however, the citation of such opinions is not forbidden. *Cf.* Third Circuit Local Appellate Rule 28.3 ("[c]itations to federal decisions that have not been formally reported shall identify the court, docket number and date, and refer to the electronically transmitted decision").

[5]It is not permissible, however, to consider what percentage of the damage award the lodestar comprises, however. *Washington*, 89 F.3d at 1041. Such a rule "would make it difficult, if not impossible, for individuals with meritorious civil rights claims but relatively small potential damages to obtain redress from the courts." *Id.* (quoting *City of Riverside v. Rivera*, 477 U.S. 561, 578 (1986) (plurality opinion)).

[6]Such an adjustment to the lodestar may conflict with the holding in *Rode*, *i.e.*, that the adjustment for "results obtained" is done solely with respect to the comparison of successful and unsuccessful claims. *See Rode* 892 F.2d at 1183. However, the Third Circuit may have contemplated that the adjustment to the lodestar to account for

The propriety of comparing the amount of damages awarded to the amount requested is supported by the Supreme Courts decision in *Farrar v. Hobby.*, 506 U.S. 103 (1992). In that case, the Court held that "[w]hen a plaintiff recovers only nominal damages because of his failure to prove an essential element of his claim for monetary relief, the only reasonable fee is usually no fee at all." 506 U.S. at 114. The logic of that statement supports the argument that more than "prevailing" is important in determining a "reasonable fee," that a qualitative assessment of the victory is also important, and that such an assessment may have a quantitative component.

In the case at bar, Plaintiff's counsel has submitted his hours worked and rates charged to come to a calculated lodestar of $149,320 and expenses of $4,957.34 for a total of 154,277.34. (D.I. 79.) As a general matter I find these hours and rates reasonable, and chose not to reduce the hours or rates to reach a "reasonable fee." Instead I will determine if a general reduction of the lodestar is in order. *See Rode*, 892 F.2d at 1182 (stating that the court may account for limited success through the reduction of hours or a general reduction of the lodestar).

Because of my ruling with respect to Plaintiff's claim for back pay, *see supra*, Part III A, Plaintiff prevailed on only one of her claims, namely her claim of emotional distress. The presentation of evidence at trial and its development in discovery were such that the back pay and emotional distress aspects of the case are not subject to simple compartmentalization. As the time spent on Plaintiff's successful and unsuccessful claims cannot be parsed, I am not required to reduce the award of attorney's fees to account for

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a plaintiff's limited monetary success would be done after the first independent adjustment for the "results obtained."

unsuccessful claims. *Lanni*, 259 F.3d at 151.

Instead, the primary factor I look to in order to adjust the lodestar to arrive at a "reasonable fee" is the limited success of Plaintiff on the one claim as to which she prevailed, namely the $12,000 in damages awarded for Plaintiff's emotional distress. Plaintiff did not benefit in any tangible way from this litigation, other than the $12,000 award. In fact, as part of the settlement of her workers compensation claim, Plaintiff agreed to officially terminate her employment with Defendant. Therefore, the only real benefit Plaintiff received from this litigation is the $12,000, which she later bargained away. While in some cases, an award of $12,000 may be considered a significant success, this is surely not one of those cases. Plaintiff indicated in the pretrial briefing that potential damages amounted to $500,000, not including compensatory and punitive damages. (D.I. 47 at 20-21.) Comparing the actual award of $12,000 to the projected damages of over $500,000 shows that this litigation was a serious disappointment for Plaintiff.

Plaintiff's counsel are highly experienced and deservedly enjoy excellent reputations. Counsel no doubt believed that Plaintiff had a strong case and that she would likely prevail on her claims, but they did not achieve the level of success they had anticipated. Nevertheless, in recognition of the limited success that was obtained, some limited award is appropriate. I have determined that a negative multiplier of 75% to the lodestar is appropriate to arrive at a "reasonable fee." This represents my effort to recognize the good faith efforts and skill brought to bear by Plaintiff's counsel and balance that against the minimal success achieved. Consequently, I hold that Plaintiff will be awarded $38,569.34 in fees and costs.

IV. CONCLUSION

IT IS THEREFORE ORDERED that Plaintiff's Motion (D.I. 91) is DENIED with respect to reconsideration of the March 11, 2005 Opinion as it pertains to Plaintiff's claim for lost wages, and the Motion is GRANTED with respect to reconsideration of the application for attorney's fees. IT IS FURTHER ORDERED that plaintiff is awarded, and Defendant shall pay, $38,569.34 in attorney's fees, inclusive of any costs.

UNITED STATES DISTRICT JUDGE

June 24, 2005
Wilmington, Delaware