IN THE COURT OF APPEALS OF IOWA

No. 8-407 / 07-0372
Filed August 27, 2008

JULIE M. BOYLE,
Plaintiff-Appellant,

vs.

ALUM-LINE, INC.,
Defendant-Appellee.

Appeal from the Iowa District Court for Howard County, John Bauercamper, Judge.

Plaintiff appeals from a district court ruling awarding her damages and attorney fees on her sexual discrimination and retaliatory discharge claims. **AFFIRMED.**

Mark B. Anderson, Cresco, Karl G. Knudson, Decorah, and James P. Moriarty, Cedar Rapids, for appellant.

Donald H. Gloe of Miller, Pearson, Gloe, Burns, Beatty & Cowie, P.L.C., Decorah, for appellee.

Considered by Vogel, P.J., and Zimmer and Miller, JJ.

ZIMMER, J.

Julie Boyle appeals from a district court ruling awarding her damages and attorney fees on her sexual discrimination and retaliatory discharge claims under the federal and state civil rights acts against her former employer, Alum-Line, Inc. We affirm the judgment of the district court.

I. Background Facts and Proceedings

In 2003 Boyle filed a petition against her former employer, Alum-Line, under the Iowa Civil Rights Act (ICRA) and Title VII of the Civil Rights Act of 1964, alleging sexual discrimination and retaliatory discharge claims. Her federal claims were tried to a jury while the state claims were simultaneously tried to the district court. Following a trial, the court entered judgment for Alum-Line denying Boyle's hostile work environment claims under both the ICRA and Title VII. The jury was not instructed as to the Title VII retaliatory discharge claim, and the court refrained from making any findings as to the ICRA retaliatory discharge claim.

Boyle appealed and our supreme court reversed and remanded the district court's judgment on her ICRA retaliatory discharge claim for further findings of fact, conclusions of law, and judgment as to that claim on the existing trial record. *Boyle v. Alum-Line, Inc.*, 710 N.W.2d 741, 752 (Iowa 2006). Our supreme court also directed the district court to enter an order granting judgment to Boyle on her ICRA and Title VII hostile work environment claims and to determine damages based upon the existing trial record. *Id.*

On remand the district court found Boyle was subjected to sexual harassment by her coworkers and was discharged by Alum-Line in retaliation for her sexual

harassment complaints. The court awarded Boyle $30,000 in back pay, $10,000 in past emotional distress, $5000 in front pay, $5000 in future emotional distress, and $50,000 in punitive damages.

Following entry of the judgment in her favor, Boyle filed an application for attorney fees. She requested that she be awarded $46,264.50 and $41,215.50 respectively for her trial attorneys, Mark Anderson and James P. Moriarty, and $98,793 for her appellate attorney, Karl G. Knudson. She further requested the court to allocate the award of attorney fees among her attorneys. After an evidentiary hearing, the district court awarded Boyle $25,000 in trial attorney fees and $25,000 in appellate attorney fees, in addition to the expenses incurred by each attorney throughout the proceedings.

Boyle appeals. She claims the district court abused its discretion in its award of back pay and front pay. She also claims the court abused its discretion in its award of attorney fees and in failing to allocate the award between each attorney.

II. Scope and Standards of Review

The trier of fact determines the amount of damage attributable to a defendant's conduct. *Lynch v. City of Des Moines*, 454 N.W.2d 827, 836 (Iowa 1990). We review for an abuse of discretion. *Id*. We will not interfere with a damage award unless it appears flagrantly excessive or lacks evidentiary support. *Id*. (citation omitted). We likewise review an award of attorney fees in a civil rights action under ICRA and Title VII for an abuse of discretion. *Landals v. George A. Rolfes Co.*, 454 N.W.2d 891, 897 (Iowa 1990).

III. Discussion

A. Damages

Among the myriad of remedies that are available to successful plaintiffs under ICRA and Title VII are lost wages and benefits, also referred to as "back pay," and future lost wages and benefits, or "front pay." *See* 42 U.S.C. § 2000e-5; Iowa Code § 216.15(8)(a)(8) (2003); *Landals*, 454 N.W.2d at 895; *Channon v. United Parcel Serv., Inc.*, 629 N.W.2d 835, 847-48 (Iowa 2001). In computing awards in discrimination cases, we follow two basic principles: (1) an unrealistic exactitude is not required and (2) any uncertainties in determining what an employee would have earned before the discrimination should be resolved against the employer.[1] *Hy-Vee Food Stores, Inc. v. Iowa Civil Rights Comm'n*, 453 N.W.2d 512, 530-31 (Iowa 1990); *see also Van Meter Indus. v. Mason City Human Rights Comm'n*, 675 N.W.2d 503, 514 (Iowa 2004).

These principles are consistent with our ultimate goal of compensating an injured person, which is to place that person in the position he or she would have been in had there been no injury. *Hy-Vee*, 453 N.W.2d at 531. They are also consistent with our obligation to construe ICRA liberally to effectuate its purpose. *Id.*

We further recognize that determining the amount of damages attributable to a defendant's conduct is a matter for the trier of fact. *Lynch*, 454 N.W.2d at 836. Thus,

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[1] Alum-Line argues that reliance on our supreme court's analysis of damages in discrimination cases such as *Hy-Vee Food Stores* and *Van Meter* is inappropriate because this case concerns sexual harassment. However, in *Lynch*, our supreme court held that "maintenance of a sexually hostile work environment through sexual harassment is a form of illegal sex discrimination under" ICRA. *Lynch*, 454 N.W.2d at 833; *see also Excel Corp. v. Bosley*, 165 F.3d 635, 639 (8th Cir. 1999) (stating that under Title VII, when an employee is fired because he acted to defend himself against harassment that his supervisors failed to address, the termination process cannot be said to be free from discrimination). We therefore believe that the court's instruction in the aforementioned cases as to how damages should be calculated in civil rights discrimination cases is applicable here.

we will not interfere with a damages award unless it clearly appears the verdict is flagrantly inadequate or lacks evidentiary support. *Id.* at 837.

With these principles in mind, we turn to Boyle's claims that the district court's award of damages for back pay and front pay are not supported by the record.

1. Back Pay

An employee who has been discriminated against is entitled to be reinstated to the position previously held and given back pay. *Paxton v. Union Nat'l Bank*, 688 F.2d 552, 574 (8th Cir. 1982). The back pay award should be determined by measuring the difference between actual earnings for the relevant time period and those which would have been earned absent the unlawful discrimination. *Id*. The latter calculation includes back pay from the date of discharge to the present and any increases that would have been received within that period. *Id.*

Boyle argues the district court's award of back pay is inadequate because the court erred in its calculation of the number of hours she worked per week and her hourly wage. We do not agree.

The district court "has broad equitable discretion to fashion back pay awards in order to make the Title VII victim whole." *E.E.O.C. v. Dial Corp.*, 469 F.3d 735, 743 (8th Cir. 2006); *Hy-Vee*, 453 N.W.2d at 531. The mechanics of computing back pay can be difficult and alternative figures might be used by the court in fashioning a remedy. *Hy-Vee*, 453 N.W.2d at 531. "In such cases, it suffices for the trial court to determine the amount of back wages as a matter of just and reasonable inferences." *Id.* (citation omitted). We conclude the record discloses a reasonable basis from which the district

court's award of back pay can be inferred or approximated. *Hawkeye Motors*, 541 N.W.2d at 918.

Boyle earned $9 per hour following a favorable sixty-day review until her termination in April 2002. She worked an average of 37.7 hours per week with an additional 1.75 hours of overtime, although the court also noted that "[m]ost weeks" she worked forty hours with some overtime. Employees of Alum-Line "usually" received annual performance evaluations after their first year with the company, which could result in a "standard raise" of fifty cents depending on the evaluation. Boyle also received bonuses averaging $15 dollars per week in addition to an employee benefits package valued at $4.10 per hour.

Following her discharge from Alum-Line, Boyle received unemployment compensation of $3898. She eventually obtained employment in August 2002 and earned $7.25 per hour until she quit in October 2002. She remained unemployed until September 2003 when she accepted a job as a nurse's aid. She was earning $8.70 per hour at the time of the trial. *See* Iowa Code § 215.16(8)(a)(1) ("Interim earned income and unemployment compensation shall operate to reduce the pay otherwise allowable."). We believe the district court's award of $30,000 in back pay is within an acceptable range of the evidence presented at the trial, taking all of these facts into account. *See Van Meter Indus.*, 675 N.W.2d at 514 (stating absolute precision in determining what an employee would have earned but for the employer's discrimination is not required).

We reject Boyle's argument that the "damage award for lost back pay should really be calculated to the time of the decision, which was entered September 14,

2006," more than two years after the trial. In remanding this case to the district court, our supreme court specified that damages should be determined "based upon the existing trial record." *Boyle*, 710 N.W.2d at 752. In order to award Boyle back pay damages beyond the date of the trial, the district court would have been required to consider evidence outside of the existing trial record, such as whether she was employed while her appeal was pending. *See Landals*, 454 N.W.2d at 895 ("Earned income . . . operate[s] to reduce the amount awarded for lost wages.").[2] We therefore affirm the district court's award of back pay damages.

2. Front Pay

Front pay is an equitable remedy that may be awarded in lieu of, but not in addition to, reinstatement. *Channon*, 629 N.W.2d at 848. It is not so much a monetary award for the salary the employee would have received but for the discrimination, but rather the monetary equivalent of reinstatement, to be given in situations where reinstatement is impractical or impossible. *Kramer v. Logan County Sch. Dist.*, 157 F.3d 620, 626 (8th Cir. 1998). The calculation of front pay is necessarily uncertain and is a matter within the sound discretion of the trial court. *Rasmussen v. Quaker Chem. Corp.*, 993 F. Supp. 677, 684 (N.D. Iowa 1998).

Boyle argues that the district court's award of $5000 in front pay is inadequate because the court should have presumed she would have continued to work at Alum-Line until her retirement. We do not agree. The case Boyle cites in support of this proposition, *Smith v. Smithway Motor Xpress, Inc.*, 464 N.W.2d 682, 687 (Iowa 1990), does not support her argument. The court in *Smith* emphasized the award for future

[2] We additionally note that Alum-Line cites no authority to support its proposition that Boyle should be awarded back pay from the date of the trial until the district court issued its ruling on damages in September 2006. *See* Iowa R. App. P. 6.14(1)(*c*).

damages "must be based on the likely duration of the terminated employment" rather than on a presumption that the employee would have continued to work for the employer until retirement. *Smith,* 464 N.W.2d at 687. Furthermore, front pay awards are, by their very nature, "fashioned amidst some amount of speculation. As the length of time for which front pay is requested increases, so does the degree of speculation." *Ogden v. Wax Works, Inc.*, 29 F. Supp. 2d 1003, 1012 (N.D. Iowa 1998), *aff'd*, 214 F.3d 999 (8th Cir. 2000). Courts must be careful not to award amounts that are unduly speculative. *Id.*

The plaintiff bears the initial burden to provide the district court with "the essential data necessary to calculate a reasonably certain front pay award," such as the amount of the proposed award, the length of time the plaintiff expects to work for the defendant, and the applicable discount rate. *Id*. Other factors relevant to the fact-intensive front pay inquiry include the plaintiff's age, the length of time the plaintiff was employed by the defendant, the likelihood the employment would have continued absent the discrimination, the plaintiff's work and life expectancy, and the plaintiff's status as an at-will employee. *Id.* at 1014; *see also Smith*, 464 N.W.2d at 688 ("The biggest problem in awarding future damages for the wrongful discharge of an at-will employee is avoiding speculation . . . . I]t is often difficult, if not impossible, to know how long the employee would have continued to work for the employer.").

Boyle was twenty-nine years old at the time of the trial. She had documented physical and emotional problems, including obesity, asthmatic bronchitis, migraine headaches, and depression, with a life expectancy of approximately fifty-two years of age. She was employed by Alum-Line as an at-will employee, and she had a sporadic

job history preceding her employment there. At the time of her discharge, she had only been employed at Alum-Line for eight months. She had secured other employment by the time of the trial in this matter and was earning an hourly wage almost equal to her ending hourly wage at Alum-Line. In light of this evidence, we conclude the district court did not abuse its discretion in awarding a relatively short term of front pay. *See Ollie v. Titan Tire Corp.*, 336 F.3d 680, 688 (8th Cir. 2003) ("Longer terms of front pay are usually awarded when it is unlikely that the plaintiff will ever be able to achieve the level of income and responsibility that he enjoyed in his earlier position or when it would take the plaintiff a significant number of years to gain the level of seniority and responsibility equivalent to the job lost."). We therefore affirm the court's award of front pay damages.

B. Attorney Fees

We next address Boyle's claim that the district court abused its discretion in awarding her attorney fees. A successful plaintiff under ICRA and Title VII is entitled to reasonable attorney fees. 42 U.S.C. § 2000e-5(k); Iowa Code § 216.15(8)(a)(8). "A reasonable attorney fee is initially calculated by multiplying the number of hours reasonably expended on the winning claims times a reasonable hourly rate." *Dutcher v. Randall Foods*, 546 N.W.2d 889, 896 (Iowa 1996). The burden is upon the applicant for attorney fees to prove both that the services were reasonably necessary and that the charges were reasonable in amount. *Landals*, 454 N.W.2d at 897. We review the court's award of attorney fees for an abuse of discretion. *Id.*

Boyle initially argues the district court abused its discretion because "[a]ppellate efforts in Boyle I were completely successful, resulting in a reversal for judgment and

damages on all preserved claims." However, the results obtained in the proceedings are only one factor among many for the court to consider in determining attorney fees. Other factors include

> the time necessarily spent, the nature and extent of the service, the amount involved, the difficulty of handling and importance of the issues, the responsibility assumed and results obtained, the standing and experience of the attorney in the profession, and the customary charges for similar service.

Id. "The district court must look at the whole picture and, using independent judgment with the benefit of hindsight, decide on a total fee appropriate for handling the complete case." *Id.*

The district court in this case entered detailed findings of fact as to the foregoing factors in determining Boyle was entitled to $25,000 in trial attorney fees "based on 227.27 hours at $110.00 per hour" and $25,000 in appellate attorney fees "based on 166.66 hours at $150.00 per hour." *See Dutcher*, 546 N.W.2d at 897 ("Detailed findings of fact with regard to the factors considered must accompany the attorney fee award."). We cannot say that the court abused its discretion in determining the number of hours reasonably expended, although its determination was considerably lower than that claimed by Boyle's attorney.[3] Nor can we say the court abused its discretion in determining the hourly rate Boyle's attorneys should be compensated at. *See Landals*, 454 N.W.2d at 897 (stating the district court is an expert on the issue of reasonable attorney fees).

[3] The court noted that while Boyle's attorneys asserted they spent 1177.6 hours trying and appealing her case, the defense attorney claimed he spent only 174.70 hours.

We reject Boyle's argument that the district court erred in its attorney fee award because Alum-Line did not "raise specific questions regarding time claimed or . . . effectively rebut the fee requests." The record demonstrates otherwise.[4]

We also reject Boyle's claim that the court abused its discretion in declining to allocate the attorney fee award between each attorney. The cases cited by Boyle in support of this proposition do not support her assertion that the court must apportion its award among the attorneys. Furthermore, the court did separate the attorney fee award for the trial court proceedings from the attorney fee award for the appellate court proceedings.

In conclusion, we determine the district court carefully scrutinized the affidavits and billing statements provided by Boyle's counsel in deciding to award Boyle attorney fees of $50,000 rather than the requested amount of $186,273 or some other amount greater than $50,000. We find no abuse of discretion in the court's award.

IV. Conclusion

We conclude the district court did not abuse its discretion in its award of back pay and front pay damages. Both awards are supported by sufficient evidence in the record. We further conclude the court did not abuse its discretion in awarding Boyle $50,000 in attorney fees. The judgment of the district court is therefore affirmed.

AFFIRMED.

[4] In Alum-Line's resistance to Boyle's application for attorney fees, it denied that the time and hourly rate set forth in her attorneys' fee affidavits were reasonable. It also contended the affidavits "contain[ed] duplication on the part of trial counsel that was unnecessary and . . . itemizations for matters they should not be entitled to recover fees for." At the hearing on attorney fees, Alum-Line again questioned the reasonableness of the hours Boyle's attorneys claimed they expended during these proceedings and their requested hourly rate.