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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A11-703**

Richard Crummy,  
Respondent,

vs.

Enterprise Minnesota,  
Appellant.

**Filed February 6, 2012  
Affirmed  
Ross, Judge**

Hennepin County District Court  
File No. 27-CV-10-18523

Thomas J. Conley, Law Office of Thomas J. Conley, Minneapolis, Minnesota (for respondent)

David J. Duddlestone, Sara G. Sidwell, Jackson Lewis, LLP, Minneapolis, Minnesota (for appellant)

Considered and decided by Minge, Presiding Judge; Kalitowski, Judge; and Ross, Judge.

**UNPUBLISHED OPINION**

**ROSS, Judge**

Enterprise Minnesota terminated Richard Crummy's employment after he failed to meet Enterprise's demand to produce documentary information about his dyslexia and to request a workplace disability accommodation, even though Crummy had no apparent

work-performance deficiencies related to his dyslexia and was not indicating that he wanted an accommodation for it. After a bench trial on Crummy's claim of disability discrimination under the Minnesota Human Rights Act, the district court found Enterprise liable for damages, attorney fees, and interest. Enterprise argues on appeal that the district court erred by holding that the Act applied because Crummy is neither actually disabled nor "regarded as" disabled. It also argues that the only termination reason that the record supports is that Crummy was insubordinate, not that he was harassed or retaliated against after he declared that he has a disability. Because the record and law support the district court's factual findings and legal conclusions, and because the district court did not abuse its discretion by doubling Crummy's damages for lost wages or err by awarding prejudgment interest on Crummy's award for mental anguish, we affirm.

## **FACTS**

Richard Crummy began working in January 2008 as a process engineer for Enterprise Minnesota, a nonprofit consulting group that helps manufacturers streamline production. Crummy disclosed to Enterprise that he has dyslexia in an email to a coworker in April 2008. Crummy's email asked coworker Harry Larson for help with drafting his first service agreement. The email informed Larson that Crummy is dyslexic but that he has adapted and works around it. Glenn Pence, Crummy's supervisor, was copied on Crummy's email to Larson. Pence viewed the communication as a normal request for help by a new process engineer to a salesperson. Pence nevertheless met with Crummy to discuss his dyslexia and how it might affect his job performance. After the meeting, Pence had no performance concerns about Crummy's dyslexia.

That same month, Crummy sought an accommodation for a certification process administered by a third party. Crummy could become certified to provide certain client services through Enterprise, and the certification process included a timed, three-hour written examination. Crummy asked permission to take the test without the time restriction because he has a disability. Crummy again copied Pence on the email, and the third-party examiner extended the time for Crummy to complete the test, which he passed.

Also in April, Crummy participated in his first major client-presentation for Enterprise. It did not go well. Crummy had difficulty spelling words on a white board and he interrupted others when they tried to ask questions. After the presentation, one of the client participants wrote to Enterprise complaining, suggesting that someone other than Crummy should do the writing because spelling appeared to be a problem for him. Pence treated this situation as a part of Crummy's normal development as a new engineer who, not uncommonly, needed to improve his presentation delivery. No other client ever complained about Crummy's performance.

In August 2008, about eight months after Crummy began working at Enterprise and four months after the events just described in April, Pence formally evaluated Crummy's work performance. Pence's written evaluation stated that Crummy had exceeded expectations in productivity and rated him overall as "meet[ing] expectations." It did not identify any concerns about Crummy's job performance nor mention his April presentation difficulties.

In late December 2008, Crummy completed his personal production plan, a year-end goal-setting task for all engineers. In it, Crummy responded to the question, “What help do you need to meet your goals?” by stating, “NO.1 BEFORE YOU COUNT ME OUT BECAUSE OF MY DISAB[I]LITY PLEASE COME TO ME FIRST.” Crummy made this statement in the context of his description of a coworker’s recent comment that he would not accept Crummy’s offer of help because the task would require substantial reading. The context supports the inference that Crummy’s goal-oriented statement was intended to encourage others to consider him when they needed help regardless of their unfavorable assumptions about his abilities. According to Crummy’s trial testimony, he did not write this statement seeking any accommodation from Enterprise. Pence read Crummy’s plan and met with him; he also did not take the statement as a request for an accommodation. Pence’s follow-up email message after the meeting did not imply that he saw any performance problems or any need to suggest an accommodation for Crummy.

Pence did not perceive Crummy as requiring extra time or attention as an employee or as presenting any special management challenges. Pence observed that between January and May 2009, Crummy did a good job and that, aside from the extra time Crummy had requested and been given in April 2008 for the certification exam, Crummy never sought any accommodation. But Pence forwarded Crummy’s December 2008 plan to Peggy Andrews, Enterprise’s human resources representative, because he believed she was qualified to handle any disability issues. Andrews’s reaction triggered the tension that developed into this legal dispute.

In May 2009, Andrews requested a meeting with Crummy and Pence. She wanted to discuss Crummy's dyslexia. Andrews followed up after the meeting by sending an email message that recounted that Crummy had disclosed that he has dyslexia to Pence on two occasions. And, eventually leading to the primary point of the present conflict between Enterprise and Crummy, Andrews also described the nature and concern about the dyslexia in a fashion that seems disconnected from the actual communication that had occurred. She wrote that Enterprise had heard from Crummy that "he has dyslexia and *it may impact how he performs his job* – once in conversation with Glenn [Pence] and once in an e-mail to Glenn." (Emphasis added.) Andrews then "request[ed]" that Crummy produce documents from a professional service provider "on the nature of [Crummy's] disability" and to provide "[a] list of specific accommodations [Crummy] requests in order to perform the essential functions of [his] job." Andrews gave Crummy two weeks to provide the information. Crummy agreed to meet the request, but he later testified that he did so only because he felt that he had no choice. As Andrews later admitted, Crummy had never asked her for an accommodation or assistance, and she never asked Crummy whether he needed any. Crummy also had never told Andrews or anyone at Enterprise that he could not perform the essential functions of his job.

Crummy sent an email to Pence on May 27 informing him that he had been trying to gather the requested information about his dyslexia. He explained that he had contacted various teachers, doctors, and an evaluator. Andrews sent Crummy an email message on June 24 declaring that he was "well past the original deadline of May 26th for [him] to provide Enterprise Minnesota with appropriate documentation so that [it]

could work with [him].” She warned, “Without the documentation and subsequent planning conversation, we cannot move forward to clarify expectations with your peers [and] co-workers,” and she stated, “Please advise where you are in the process.” Crummy replied in an email message to Andrews and Pence informing them that the requested documents were in Michigan and that he could have them sent to Minnesota in several weeks after closing the sale on his home. He also stated that he had a letter from his elementary school instructor and he was in the process of getting a letter from his high school evaluator.

Andrews wrote to Crummy again on August 14 after Crummy began reporting to a new supervisor, John Connelly. She wrote, “We are several weeks beyond the end of May deadline for receiving the documentation for the disability issue that you raised to Glenn Pence.” She added that the reason “we require . . . the information about your disability and the accommodations that you are seeking” is to determine how Enterprise might “make accommodations to enable you to meet the requirements of [your] job.” She gave Crummy “one week” to “provide the requested documentation.” Three days later Crummy met with Connelly to discuss Enterprise’s request for information. Crummy indicated that he was frustrated, but Connelly advised him to get the information to Andrews.

The next day, Crummy called Andrews to discuss his efforts to gather the requested documents. Andrews testified that Crummy did not understand what she was looking for and she thought he was expressing a sense of helplessness. Andrews followed up the call with an email message to Crummy listing general requirements for the

documentation of disabilities. She found the list on the internet, and she later said that the information listed was much broader than Enterprise actually needed from Crummy. She never communicated this to Crummy, however, and she referred him to several “potential service providers,” including PACER Center, ostensibly to help him respond to her requests for documents from him. Two days later Andrews wrote Crummy advising him of another “deadline” for the documents and emphasizing “that the requirement to turn in the requested documentation still stands.”

Crummy contacted all the organizations Andrews had listed for him. He soon met with a representative from the PACER Center, about which Andrews had explained, “They . . . have adult advocates on staff.” The PACER Center is an advocacy organization for people with disabilities. After Crummy relayed to PACER Andrews’s requests for disability information, a PACER representative, Judy Moses, wrote to Andrews on August 25 explaining that her request was not required by the Americans with Disabilities Act (ADA) and stating that unless Crummy had requested a specific accommodation or had demonstrated a performance issue, Enterprise lacked a legal basis for requesting the information about his dyslexia. Two days later Andrews responded directly to Crummy, advising him that she would only work directly with Crummy, not with PACER, and she wrote to PACER directly. Andrews’s separate communications to Crummy and to PACER did not address the legal issue PACER pointed out, which is that Enterprise could not require Crummy to provide disability information unless Crummy had a performance deficiency or requested an accommodation. Instead, her message to PACER represented that “Mr. Crummy is seeking an assessment of this issue in order to

provide Enterprise Minnesota with information regarding his diagnosis and any proposed reasonable accommodations to assist him in performing the functions of his job.”

Two weeks later, Andrews wrote Crummy again. This time she described his “failure to comply with Enterprise Minnesota’s several requests to provide information” and informed him that he was “being placed on unpaid leave from [his] position.” She told him to provide the information she was seeking so she could “schedule a meeting to discuss it.” Ten days later she wrote informing Crummy that he had two days (until September 23) to provide the information or Enterprise would consider terminating his employment. Crummy wrote back explaining that he was still “in the process of providing information that will satisfy the ADA concerns of Enterprise” and that he was working with a rehabilitator in North Dakota, a vocational rehabilitator from PACER, and an attorney recommended by PACER.

Crummy secured the services of attorney Michael Carr, who wrote Andrews on September 24. The letter mirrored the concerns that PACER’s Judy Moses had raised the previous month. It questioned the unpaid suspension for failure to provide information about the disability, specifically challenging why Enterprise was requesting disability information when Crummy’s disability had not affected his job and he had not requested an accommodation. Carr asked for documents from Andrews that would suggest that Crummy needed an accommodation. He urged Enterprise to reinstate Crummy’s employment if there was no basis for requiring the information Andrews had been seeking, pointing out that Enterprise’s actions appeared to be unlawful.



A few days later PACER's Moses sent Andrews an email message stating that PACER would provide disability information after it reviewed Crummy's personnel file and had a chance to verify that Andrews's requested information was actually necessary to determine workplace accommodations. That same day, responding to Carr's letter, Andrews informed Crummy by email that Crummy's need for an accommodation was based on his request for a time-limit modification for his certification testing by the third-party administrator, on his personal production plan, and on their May 2009 meeting.

The following day, Crummy forwarded to Andrews an assessment from Gloria Brown, his former rehabilitation counselor in North Dakota, which discussed his learning disability. This did not satisfy Andrews. She asked Crummy whether he was planning on providing additional information. Crummy stated that he believed this was all Enterprise needed, but that Enterprise should let him know if it needed more. Andrews replied that she was "confused" and concluded that Crummy had failed to provide the information requested. Crummy and his attorney met with Enterprise to resolve the issue. Two days later, Enterprise terminated Crummy's employment for "insubordination," which was his failure to produce the information Andrews was seeking.

Crummy filed a civil complaint in November 2009 accusing Enterprise of discrimination and retaliation under the Minnesota Human Rights Act. After a bench trial, the district court concluded that Enterprise had regarded Crummy as having an impairment under the Minnesota Human Rights Act and that its request for documentation from Crummy was not job related or a business necessity because Crummy had no performance issues and had not requested an accommodation from

Enterprise. It held that Enterprise engaged in an unfair discriminatory practice when it suspended and terminated Crummy's employment for his failure to provide information that it was not entitled to and that its actions constituted harassment and retaliation. It also held that Enterprise discharged Crummy in retaliation for working with an advocate and an attorney. The district court awarded Crummy three years' worth of back and front pay, damages for mental anguish and suffering, two times compensatory damages, payment of reasonable attorney fees, and prejudgment interest on the back pay and mental anguish award.

Enterprise appeals.

## DECISION

Enterprise challenges the district court's conclusions that it discriminated against Crummy under a "regarded as" claim, that Enterprise's suspension and termination of Crummy's employment for failing to provide the requested information constituted harassment, and that it discharged Crummy in retaliation for working with an advocate and attorney. Enterprise also argues that the district court abused its discretion by doubling Crummy's damages award and that it erred by awarding prejudgment interest for Crummy's mental anguish award. We give deference to the district court's findings of fact and will rely on them unless they are clearly erroneous. *Fletcher v. St. Paul Pioneer Press*, 589 N.W.2d 96, 101 (Minn. 1999). A district court's findings of fact are not clearly erroneous unless we are left with a definite and firm conviction that there has been a mistake. *Id.* We review a district court's conclusions of law de novo. *Yath v.*

*Fairview Clinics, N.P.*, 767 N.W.2d 34, 40 (Minn. App. 2009). Under this standard of review, we see no basis to reverse the judgment here.

## I

Enterprise first argues that it did not regard Crummy as disabled and that the district court erred by finding that it discriminated against Crummy under a “regarded as” claim. The mostly undisputed facts belie the argument.

Enterprise challenges the district court’s determination that Enterprise engaged in an unfair employment practice under the Minnesota Human Rights Act (MHRA). Under the Act, it is an unfair employment practice for an employer, because of a disability, to “discriminate against a person with respect to hiring, tenure, compensation, terms, upgrading, conditions, facilities, or privileges of employment.” Minn. Stat. § 363A.08, subd. 2(3) (2008). Enterprise insists that the statute does not apply here because Crummy was not disabled.

### *Regarded as Having an Impairment*

Enterprise’s argument fails whether or not Crummy has an actual disability if Enterprise regarded Crummy as being disabled. A disability under the MHRA is “any condition or characteristic that renders a person a disabled person.” Minn. Stat. § 363A.03, subd. 12 (2008). And a disabled person is “any person who (1) has a physical, sensory, or mental impairment which materially limits one or more major life activities; (2) has a record of such an impairment; or (3) is regarded as having such an impairment.”

*Id.*

Ample evidence supports the district court's conclusion that Enterprise regarded Crummy as disabled within the statute's meaning. Andrews called the May 2009 meeting with Pence and Crummy because she wanted to discuss Crummy's dyslexia disability. In her follow-up email message she asked Crummy to provide information about his dyslexia specifically because she believed he was disabled, stating, "Enterprise Minnesota wants to work with you to see how we can accommodate *this disability*." (Emphasis added). Then in several later emails, both she and Connelly continued to refer to Crummy's dyslexia as a disability.

We are not persuaded otherwise by Enterprise's argument that Andrews's definition of disabled might have differed from the statutory definition. Given that the context of all of the discussions—in fact, the very reason for them according to Andrews—was Andrews's understanding that she was applying state and federal disability antidiscrimination laws, the district court had a factual basis on which to construe Andrews's frequent use of the term "disability" as it regards Crummy to carry the same meaning as disability under the antidiscrimination law that she was attempting to apply. That is, reasonably interpreting Enterprise's justification for requiring Crummy to make a request for a *disability*-related accommodation and to provide supporting information about his *disability*, the district court had sufficient ground to find that Enterprise regarded Crummy as a disabled person under the MHRA.

We can reach this conclusion without undertaking the more exacting analysis that Enterprise suggests is required by the statute, which is to consider whether Enterprise regarded Crummy as having an impairment that materially limits one or more of his

major life activities. That ultimate fact may reasonably be inferred from the circumstances here. The MHRA aims to prevent employers from discriminating against the disabled, as that term is defined by the statute—one who has an impairment that materially limits one or more major life activities; and to assure its effectiveness, the MHRA affords no immunity to intentionally discriminating employers whose only defense against a claim of disability discrimination is that they were mistaken that the complaining employee was actually disabled. When an employer regards an employee as a disabled person *under the statute*, its discrimination against that employee on account of the disability violates the statute. In this case, the incessant requirements of the employer were made through a human resources administrator who felt that she was compelled by the statute to impose the requirements; the relationship between her justification and her actions establishes that she perceived Crummy to be among the class of persons protected by the statute. At the very least, the district court was permitted as fact finder to infer that Enterprise perceived Crummy as disabled based on the circumstantial evidence of Enterprise’s strict treatment of him after he made the statements about his “disability.”

Because probative evidence supports the district court’s finding that Enterprise regarded Crummy as being a disabled person as that term is construed under the MHRA, we have no need to address whether it regarded him as having a life-limiting impairment, which is merely the statutory definition of a disabled person. And because the MHRA prohibits discrimination against those who are “regarded as” disabled, we also have no need to address whether Crummy was in fact disabled. The district court did not err by

concluding that Enterprise violated the MHRA if it discriminated against Crummy based on his perceived disability.

### *Discrimination Against Crummy*

Enterprise argues that it did not discriminate against Crummy on account of his perceived disability. But it imposed a condition on his employment expressly because he disclosed that he had a disability. It demanded that he provide documents about his disability, demanded that he request an accommodation for his disability, suspended him for failing to provide the requested documents and to request an accommodation, and ultimately terminated his employment for the same reason. We do not find convincing Enterprise's contention that it merely "requested" that Crummy produce the documents and specify an accommodation; however one dresses it up, an employer's "request" that carries the condition of discharge is a term or condition of employment. And even if it began as a mere request, Enterprise's urging certainly elevated to a requirement the moment Enterprise treated as "insubordination" Crummy's failure to satisfy it. Enterprise violated section 363A.08, subdivision 2 and discriminated against Crummy when it required him to document his disability as a condition of his continued employment, unless the statute provides an exception for this conduct.

Enterprise argues that an exception applies here. The statute distinguishes business-justified conduct from unlawful discriminatory conduct. It provides that it is not unlawful discrimination for an employer,

with the consent of the employee . . . to obtain additional medical information for the purposes of assessing continuing ability to perform the job or . . . for purposes of assessing the

need to reasonably accommodate an employee . . . or other legitimate business reason not otherwise prohibited by law.

Minn. Stat. § 363A.20, subd. 8(a)(2) (2008). Relying on this statute, Enterprise argues both that Crummy “consented” to its seeking the additional information and that it was obligated under the statute to require him to provide information so that it could meet its obligation to assess the need to reasonably accommodate him. We are not persuaded by either argument.

Crummy’s attempt to acquire and produce the requested documents implies his “consent” only in the most superficial way. No question, he was willing to appease Enterprise, and the record shows that he went to extreme (and arguably degrading) ends to do so—even contacting his elementary school teacher and asking her to produce a letter stating her opinion that he had a learning disability. But no reasonable inference may be drawn that he ever consented to provide documents that he did not possess and could not acquire. And it was his failure to produce *those* documents that is at the heart of Enterprise’s reason for terminating him. So even though the safe harbor provision of the statute allows an employer to obtain otherwise confidential documents based on the employee’s consent, we read nothing in the provision that permits the employer to terminate an employee for withdrawing his consent or for failing to satisfy the employer’s expectations about the extent of production the alleged consent should lead to. Enterprise was not justified in terminating Crummy based on his supposed consent.

Enterprise also was not justified based on its obligation to provide reasonable accommodations for disabled persons. It is an unfair employment practice for an

employer “not to make reasonable accommodation to the known disability of a qualified disabled person . . . unless the employer . . . can demonstrate that the accommodation would impose an undue hardship on the business.” Minn. Stat. § 363A.08, subd. 6(a). Enterprise maintains that it had a legitimate business reason to require Crummy to document his disability and specify some accommodation request based on this statute and the safe harbor provision of section 363A.20, subd. 8(a)(2). But what business reason existed? The district court found that Enterprise’s demand of Crummy was unrelated to any complaints about Crummy’s performance or his ability to do his job. That finding is well supported. Crummy had met or exceeded his supervisor’s performance expectations. And when twice faced with the express question of whether some performance deficiency existed to support Enterprise’s intense focus on documents about Crummy’s dyslexia and its urging him to detail some request for an accommodation, Andrews demurred. Just because a person has a perceived disability, or asserts that he has a disability, is no ground under the MHRA for the employer to demand proof of the disability or to demand that the employee provide some list of accommodations. Not all disabled persons want or need special treatment, and nothing in the statute permits an employer to squeeze medical information out of an employee who refers to a disability but who is not asking to be accommodated because of it.

Enterprise counters, insisting that Crummy had in fact requested an accommodation four times: (1) when he asked for extra time on the certification examination; (2) when he informed coworkers that he has a disability; (3) when he asked his coworker for assistance preparing a service agreement; and (4) when he included in



his plan the request not to be counted out because of his disability. The argument exaggerates the character of these events. True, Crummy did request extra time for an examination. But he made that request to a third-party administrator of the examination, not to Enterprise, and the request was made and granted more than a year before Andrews became involved and began incessantly demanding information that had no practical relationship to it. Similarly, nothing about Crummy's informing his coworkers of his dyslexia leads us to think the district court erred by failing to treat that communication as a request for Enterprise to provide an accommodation. And Crummy's request of his coworker for help in drafting a service agreement was, in the eyes of Crummy's supervisor and Crummy, normal for an employee of Crummy's experience. Finally, Crummy referred to not wanting to be counted out only in the context of his describing that a coworker had turned down his offer to help on the coworker's inaccurate perception that Crummy's dyslexia would have prevented him from helping. The district court was free to infer that Crummy made that statement indicating that he *wanted to* help, not that he *needed* help. The cited evidence does not support Enterprise's assertion that Crummy asked for an accommodation from Enterprise, let alone require such a finding by the district court.

Further contradicting Enterprise's litigation position that Andrews demanded the documents because Crummy had asked for an accommodation, we add that it is evident that Andrews, the center of the dispute and the Enterprise representative who made the demands of Crummy, never thought Crummy had requested an accommodation. In her May 2009 email message, she "requested" that Crummy "provide a list of specific

accommodations he requests in order to perform the essential functions of his job,” and she promised that *when* Enterprise received them, it “will review the requests, and work with [Crummy] to identify how [Enterprise] can implement reasonable accommodations.”

The district court did not clearly err in its fact finding on this point. Substantial evidence supports the finding that Crummy never sought an accommodation. And the district court did not err as a matter of law when it determined that Enterprise engaged in an unfair discriminatory practice by suspending and then terminating Crummy for failing to meet Andrews’s demands for information that it was not entitled to.

#### *Discharge for Insubordination*

Enterprise maintains that it discharged Crummy for reasons other than discrimination. Specifically, it insists that the evidence proves only that it discharged him because of his insubordination, not because it regarded him as having a disability. Sophistry. The only “insubordination” Enterprise cites is Crummy’s failure or unwillingness to produce personal records of his disability (for which he sought no accommodation) and his failure or unwillingness to request a specific accommodation (which he did not need and was not obligated to seek). The argument is fundamentally flawed. Imagine an employer who discharges an atheist because he failed to keep his promise to convert to Catholicism, and then defends against the discharged employee’s MHRA claim by asserting that the employee’s promise-breaking, not religious discrimination, was the real reason for its action. We can credit Enterprise’s claim that it discharged Crummy for insubordination—but the insubordination was his failing to

comply with an unlawful, discriminatory demand. That characterization does not put Enterprise in any better position in relationship to its duties and restrictions under the MHRA.

## II

Enterprise contends that the record does not support the district court's conclusion that its actions constituted harassment or retaliation. This argument also fails.

It is an unfair discriminatory practice for an employer, "who participated in the alleged discrimination," "to intentionally engage in any reprisal against any person because that person: (1) opposed a practice forbidden under [chapter 363A]." Minn. Stat. § 363A.15 (2008). Reprisal includes "any form of intimidation, retaliation, or harassment" and it is a reprisal for an employer to "depart from any customary employment practice" or to "transfer or assign the individual to a lesser position in terms of wages, hours, job classification, job security or other employment status." *Id.*

Crummy opposed Enterprise's unlawful demand for documentation of his dyslexia when he exercised his rights by contacting PACER and securing an attorney. Andrews's testimony alone provided ample ground for the district court to recognize the causal relationship between Crummy's exercise of his legal rights and Enterprise's decisions concerning his employment:

I can't give you an exact date [of Crummy's insubordination], but at some point on the continuum of him working with PACER, first to seeking an assessment, then an advocate got involved, then an attorney got involved, at some point it seemed that he had told us he was going to give us information about how his disability related to his current job,

and at some point he decided not to, and so that's when the decision was made it was insubordination.

According to this testimony, Enterprise engaged in reprisal in the form of harassment and retaliation when it suspended Crummy because he engaged a PACER advocate who questioned the lawfulness of Andrews's demands and when it terminated his employment because he engaged an attorney who also questioned the lawfulness of Andrews's demands. Or more precisely, it engaged in reprisal by suspending and discharging Crummy because he exercised his rights not to provide Enterprise with the information. Either way, we see no clear error.

### III

Enterprise also argues that the district court's doubling of Crummy's damages is not supported by the record. When the district court finds that an employer engaged in an unfair discriminatory practice, it "shall order" the employer to pay the plaintiff "compensatory damages in an amount up to three times the actual damages sustained." Minn. Stat. § 363A.29, subd. 4(a) (2008). This court reviews the district court's application of the MHRA multiplier for an abuse of discretion. *Phelps v. Commonwealth Land Title Ins. Co.*, 537 N.W.2d 271, 274 (Minn. 1995).

The district court awarded Crummy three years of back and front pay, totaling \$251,693. It then doubled those damages for a total of \$503,386. Enterprise maintains that no evidence in the record suggests that Crummy was not adequately compensated without the multiplier and that the district court doubled the damages to punish Enterprise. But the district court need not find that a victim has been inadequately

compensated before multiplying damages. *Phelps*, 537 N.W.2d at 275–76. Nothing in the record leads us to conclude that the district court intended to punish Enterprise or that it otherwise abused its discretion in determining damages.

#### IV

We also are not persuaded to reverse based on Enterprise’s final contention that the district court erred by awarding prejudgment interest on Crummy’s mental anguish award. The district court awarded Crummy prejudgment interest on his back pay and mental anguish damages in the amount of \$291,693. Although the district court did not cite a specific statute in support, we will look to Minnesota Statutes section 549.09, subdivision 1 (2008). That section permits the award of prejudgment interest on “pecuniary damages” but it does not permit prejudgment interest on “punitive damages, fines, or other damages that are noncompensatory in nature.” Minn. Stat. § 549.09, subd. 1(b). Precedent supports the award of prejudgment interest for claims under the MHRA. *See State by Cooper v. Mower County Soc. Servs.*, 434 N.W.2d 494, 501 (Minn. App. 1989). Enterprise asserts that mental anguish damages are not pecuniary damages and therefore, are not subject to prejudgment interest. Because this argument is premised on statutory interpretation of section 549.09, we review this issue de novo. *See State v. Coquette*, 601 N.W.2d 443, 445 (Minn. App. 1999), *review denied* (Minn. Dec. 14, 1999).

We think caselaw permits the discretion exercised by the district court in this case. In *Skifstrom v. City of Coon Rapids*, we analyzed whether section 549.09 permits prejudgment interest to be awarded for past pain, disability, and emotional distress. 524

N.W.2d 294, 295 (Minn. App. 1994), *review granted* (Minn. Feb. 3, 1995) and *appeal dismissed* (Minn. Oct. 25, 1995). Our textual analysis of section 549.09 informed us that it “suggests allowing prejudgment interest on awards for past pain, disability, and emotional distress.” *Id.* at 295–96. We also concluded that “damages are compensatory if they make up for hurt, whether it is economic (money loss) or noneconomic (pain, etc.),” and therefore, “‘noncompensatory’” is limited to damages that are “‘punitive’ in nature” and does not exclude “preverdict interest on damage awards for harm that, though noneconomic, is real, like pain and suffering.” *Id.* at 296; *see also Cox v. Crown Coco, Inc.*, 544 N.W.2d 490, 500–01 (Minn. App. 1996) (holding that preverdict interest on a damage award for emotional distress and lost wages was proper because prior cases, including *Skifstrom*, have allowed preverdict interest in cases involving damages for pain and suffering). The supreme court has also held that before its amendment in 1984, section 549.09 only permitted prejudgment interest on damages that were readily ascertainable. *Lienhard v. State*, 431 N.W.2d 861, 865 (Minn. 1988). But after the 1984 amendment, prejudgment interest can be awarded regardless “of a defendant’s ability to ascertain the amount of damages for which he might be held liable.” *Id.*

Because precedent allows prejudgment interest to be awarded on damages for pain and suffering and the damages do not have to be ascertainable, we hold that the district court did not err by awarding prejudgment interest on Crummy’s mental anguish award.

**Affirmed.**