Opinion issued August 4, 2020

In The

Court of Appeals

For The

First District of Texas

NO. 01-19-00044-CV

OAKBEND MEDICAL CENTER, Appellant

V.

DAWN SIMONS, Appellee

On Appeal from the 240th District Court
Fort Bend County, Texas
Trial Court Case No. 14-DCV-216064

MEMORANDUM OPINION

Appellant, OakBend Medical Center, appeals the judgment rendered on a jury verdict in favor of appellee, Dawn Simons, on her claims brought under the Texas

Whistleblower Act.[1] In four issues, OakBend contends that Simons presented insufficient evidence to (1) satisfy the objective and subjective prongs of the "good faith" standard under the Act; (2) demonstrate that OakBend knew about her second complaint to the Occupational Safety and Health Administration ("OSHA") before it suspended her and terminated her employment; (3) support the jury's award of emotional distress damages; and (4) support the jury's award of damages for lost wages and benefits. We reverse.

Background

A. Factual History

OakBend, a municipal hospital authority, hired Simons as a staff nurse in its emergency room on June 27, 2011. At the time of her hire, Simons received orientation materials which covered, among other things, the hospital's safety policies and the reporting of safety and security issues. OakBend promoted Simons to emergency room charge nurse approximately six months later.

In 2012, a patient attacked Simons, punching her in the jaw and breast. A police report was filed, and the patient received a five-year sentence for assaulting medical personnel.

In December 2013, Simons learned of a "sentinel event" (the technical term for an unexpected death at the hospital) that occurred during the night shift involving

[1] TEX. GOV'T CODE § 554.002.

one of her patients.[2] The security officer on duty who was assigned to watch the patient asked a nurse to watch him while the officer unlocked the main hospital doors.[3] When the nurse left the patient unattended to respond to an emergency involving an infant, the patient left the hospital and was hit by a train.

On December 12, 2013, Simons filed a complaint ("first complaint") with OSHA, which stated that "nurses and staff are threatened and physically attacked by patients. There is not adequate security to protect employees." Simons believed that several of the security officers, one of whom she described as being in poor health and another as too old, were physically incapable of providing security to patients and staff. She testified that when she made her complaint, she felt that "we needed help" because the hospital was in an area with "a ton of drug use" and some of the patients "are difficult to deal with." Following an investigation, OSHA determined that it could not substantiate Simons's complaint.

After Simons filed her complaint, her supervisor, Rhonda Abbe, told her that some members of the administration felt that she was insubordinate and wanted her to be removed. At the time, Simons had not received any negative counseling.

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[2] At the time of the incident, Simons worked the day shift from 7:00 a.m. to 7:00 p.m.

[3] Simons testified that it was standard practice for the hospital to lock its main doors from 9:00 p.m. to 6:00 a.m.

In a letter dated April 9, 2014, OakBend advised Simons that it would not reimburse her tuition for seeking a nurse practitioner license. Noting its current policy that "[t]he course must be of direct value to the department in which the employees' current position is held," OakBend stated that it "does not employ the position 'Advanced Registered Nurse Practitioner.'" Simons testified that OakBend had previously reimbursed her tuition despite the fact that her initial tuition reimbursement application advised OakBend that she was taking courses to attain a nurse practitioner license. Simons further testified that she worked alongside nurse practitioners in the emergency room at OakBend. On cross-examination, Simons admitted that she did not have any personal knowledge as to whether OakBend employed nurse practitioners.

On April 16, 2014, Simons filed a complaint ("second complaint") with OSHA, stating that OakBend denied her tuition reimbursement in retaliation for her having filed her first complaint about OakBend's inadequate security.

On April 23, 2014, Frank Arch, an investigator with the Texas Department of State Health Services ("DSHS"), arrived at OakBend to investigate an allegation that Simons had kicked a patient on April 4, 2014. Simons learned that Eddie Jay Thatcher, a security officer at OakBend, had filed a complaint reporting that he witnessed Simons kick a patient. The patient, who tested positive for several drugs, was asleep on a stretcher when Simons came into the room to wake him so that a

psychiatric assessment nurse could evaluate him. According to Thatcher, Simons said, "I'm going to make him as uncomfortable as possible" and kicked the patient in the foot. Simons told Arch that she did not kick the patient but had only tapped his foot, and that he woke up screaming and cursing at her.

As a result of his investigation, Arch advised OakBend that it had an "immediate jeopardy" situation[4] and must submit a plan to address how it intended to remove the threat. Later that same day, OakBend suspended Simons pending further investigation of the incident.

On May 27, 2014, OakBend notified Simons that a nursing peer review committee proceeding was scheduled for June 17, 2014, to review the April 4 incident. Simons did not appear at the proceeding. On August 24, 2014, OakBend terminated Simons's employment.

By letter dated August 21, 2015, the United States Department of Labor advised Simons that it had concluded its investigation of her second complaint and found no reasonable cause to believe that OakBend retaliated against her by denying her tuition reimbursement and ultimately terminating her employment.

[4] Arch testified that "immediate jeopardy" means that a threat has been made to a patient's safety or a potential threat to a patient's safety exists.

B. Trial Proceedings

On July 10, 2014, Simons filed suit against OakBend asserting a cause of action under the Texas Whistleblower's Act. Trial began on May 1, 2018.

After both sides rested, the trial court submitted the charge to the jury, which included the following questions on liability:

> **QUESTION NO. 1**
>
> Was Dawn Simons['s] December 2013 report to the Occupational Safety and Health Administration ("OSHA") that OakBend had inadequate security made in good faith and a cause of OakBend denying her request for tuition reimbursement?
>
> The report was a cause of the tuition reimbursement denial if it would not have occurred when it did but for the report's being made. Dawn Simons does not have to prove the report was the sole cause of the tuition reimbursement being denied.
>
> "Good faith" means that (1) Dawn Simons believed that the conduct reported was a violation of the law and (2) her belief was reasonable in light of her training and experience. "Good faith" does not require that the allegations in the report need to be true.
>
> **QUESTION NO. 3**
>
> Were the reports by Dawn Simons to OSHA that OakBend had inadequate security or that OakBend retaliated by revoking her tuition reimbursement made in good faith and a cause of OakBend suspending or terminating her employment?
>
> The report was a cause of the suspension or termination if it would not have occurred when it did but for the report's being made. Dawn Simons does not have to prove the report was the sole cause of her suspension or her termination.

> "Good faith" means that (1) Dawn Simons believed that the conduct reported was a violation of the law and (2) her belief was reasonable in light of her training and experience. "Good faith" does not require that the allegations in the report need to be true.

The jury answered "yes" to both questions,[5] and it awarded Simons $5,000 for loss of tuition reimbursement, $16,000 in compensatory damages, $26,000 in lost wages, and $8,000 in lost benefits.[6] OakBend filed a motion for judgment notwithstanding the verdict; the trial court denied the motion on December 3, 2018. The trial court entered a final judgment in favor of Simons on December 27, 2018. This appeal followed.

Discussion

In its first issue, OakBend contends that Simons is not protected by the Texas Whistleblower Act because she failed to present any evidence that she acted in good faith in filing either of her complaints with OSHA. In its second issue, OakBend argues that Simons failed to offer any evidence that OakBend knew about her second complaint when it suspended Simons's employment and, therefore, her second complaint cannot form the basis of her retaliation claim. In its third and fourth issues, OakBend asserts that Simons failed to present evidence to support the jury's award of emotional distress damages, lost wages, and benefits.

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5 The charge reflects that the jury's verdict was not unanimous.

6 The trial court awarded Simons $35,000 in attorney's fees.

A. Standard of Review

In conducting a legal sufficiency review, we view the evidence in a light that tends to support the finding of the disputed facts and disregard all evidence and inferences to the contrary. *Lee Lewis Constr., Inc. v. Harrison*, 70 S.W.3d 778, 782 (Tex. 2001). We must credit evidence favorable to the verdict if reasonable jurors could, disregard contrary evidence unless reasonable jurors could not, and reverse the jury's determination only if the evidence presented at trial would not enable reasonable and fair-minded people to reach the verdict under review. *City of Keller v. Wilson*, 168 S.W.3d 802, 827 (Tex. 2005).

We may sustain a legal sufficiency, or no-evidence, point if the record reveals one of the following: (1) the complete absence of a vital fact; (2) the court is barred by rules of law or of evidence from giving weight to the only evidence offered to prove a vital fact; (3) the evidence offered to prove a vital fact is no more than a scintilla; or (4) the evidence established conclusively the opposite of the vital fact. *See Uniroyal Goodrich Tire Co. v. Martinez*, 977 S.W.2d 328, 334 (Tex. 1998). If more than a scintilla of evidence exists, it is legally sufficient. *Lee Lewis Constr.*, 70 S.W.3d at 782. More than a scintilla of evidence exists if the evidence furnishes some reasonable basis for differing conclusions by reasonable minds about a vital fact's existence. *Id.* at 782–83.

B. Texas Whistleblower Act

The Texas Whistleblower Act provides that "[a] state or local governmental entity may not suspend or terminate the employment of, or take other adverse personnel action against, a public employee who in good faith reports a violation of law by the employing governmental entity or another public employee to an appropriate law enforcement authority." TEX. GOV'T CODE § 554.002(a). The whistleblower statute is designed to enhance openness in government by protecting public employees from retaliation by their employers when they report violations of law in good faith and to secure lawful conduct on the part of those who direct and conduct the affairs of government. *Tex. Dep't of Crim. Justice v. McElyea*, 239 S.W.3d 842, 849 (Tex. App.—Austin 2007, pet. denied).

The Texas Supreme Court has held that, in the context of the whistleblower statute, good faith is analyzed using an objective standard and a subjective standard. *Wichita Cty. v. Hart*, 917 S.W.2d 779, 784 (Tex. 1996). "'Good faith' means that (1) the employee believed that the conduct reported was a violation of law and (2) the employee's belief was reasonable in light of the employee's training and experience." *Id*. The test's first element—the "honesty in fact" element—ensures that a public employee seeking a remedy under the whistleblower statute believed that she was reporting an actual violation of law. *Tex. Dep't of Transp. v. Needham*, 82 S.W.3d 314, 320 (Tex. 2002) (citing *Hart*, 917 S.W.2d at 784–85). The test's

second element ensures that even if the reporting employee honestly believed that the reported act was a violation of law, the reporting employee only receives protection if a reasonably prudent employee in similar circumstances would have believed that the facts as reported constituted a violation of law. *Id*. (citing *Hart*, 917 S.W.2d at 785).

To prove a claim under the Whistleblower Act, a public employee must demonstrate that she reported a violation of law in good faith and that the adverse employment action by the employer would not have occurred had the report not been made. *City of Houston v. Levingston*, 221 S.W.3d 204, 226 (Tex. App.—Houston [1st Dist.] 2006, no pet.) (citing *City of Fort Worth v. Zimlich*, 29 S.W.3d 62, 67 (Tex. 2000)); *see also* TEX. GOV'T CODE §§ 554.002, 554.004. To meet the causation requirement, the employee is not required to show that her reports of illegal conduct were the sole reason for the employer's adverse action. *Tex. Dep't of Human Servs. v. Hinds*, 904 S.W.2d 629, 634 (Tex. 1995). Instead, she must present some evidence that "but for" her reports, the employer's suspension or termination would not have occurred when it did. *Id*. at 636; *see also Zimlich*, 29 S.W.3d at 68.

There is no requirement that an employee identify a specific law when making a report. *McElyea*, 239 S.W.3d at 850; *Llanes v. Corpus Christi Indep. Sch. Dist*., 64 S.W.3d 638, 642 (Tex. App.—Corpus Christi 2001, pet. denied). Nor does an

employee need to establish an actual violation of law. *McElyea*, 239 S.W.3d at 850; *Llanes*, 64 S.W.3d at 642. But there must be some law prohibiting the complained-of conduct to give rise to a whistleblower claim. *See Mullins v. Dallas Indep. Sch. Dist.*, 357 S.W.3d 182, 185 (Tex. App.—Dallas 2012, pet. denied). "In other words, to recover under the Act, an employee must have a good-faith belief that a law, which in fact exists, was violated." *City of Houston v. Cotton*, 171 S.W.3d 541, 547 n.10 (Tex. App.—Houston [14th Dist.] 2005, pet. denied) (internal quotation omitted); *see also McElyea*, 239 S.W.3d at 850; *Llanes*, 64 S.W.3d at 642. "And the 'law' must be a state or federal statute, an ordinance, or a rule adopted under a statute or ordinance." *Mullins*, 357 S.W.3d at 188 (citing TEX. GOV'T CODE § 554.001(1)). "Other complaints and grievances, including alleged violations of an agency's internal procedures and policies, will not support a claim." *Coll. of the Mainland v. Meneke*, 420 S.W.3d 865, 870 (Tex. App.—Houston [14th Dist.] 2014, no pet.) (quoting *Mullins*, 357 S.W.3d at 188); *see also Vela v. City of Houston*, 186 S.W.3d 49, 53 (Tex. App.—Houston [1st Dist.] 2005, no pet.) ("Violation of the City's internal policies are not 'laws' under the Act.").

C. Analysis

1. First OSHA Complaint

OakBend contends that Simons did not make her first complaint to OSHA in good faith because she failed to present any evidence to satisfy the subjective and objective elements of the "good faith" standard set forth in *Hart*.

With regard to the first element, OakBend argues that Simons did not file her first complaint to OSHA regarding OakBend's alleged lack of security in good faith because she did not subjectively believe OakBend had violated a law. OakBend argues that although Simons believed that OakBend should have more and better security officers, she did not believe that OakBend's actions violated the law. In response, Simons asserts that she believed that the fact that OakBend only had one security officer on duty for four facilities violated the law, and that she properly reported the safety issue to OSHA, the entity that governs workplace safety.

In her 2013 complaint to OSHA, Simons stated, "Nurses and staff are threatened and physically attacked by patients. There is not adequate security to protect employees." At trial, Simons testified that she made the complaint because "I honestly felt we needed—we needed help" because "there is a ton of drug use in that area so some of the patients that we—we have are difficult to deal with." On cross-examination, Simons testified, "I did feel that there were some physical incapabilities of some of the security in order—they physically weren't capable of

providing security." In particular, she testified that one of the officers "had had a stroke, he was a bad diabetic, and physically just was in bad health," and she felt that one of the officers "was too old and should retire." Simons further testified that given the patient population and the area in which the hospital was located, she believed the security officers should be armed.

Simons presented no evidence that inadequate security is a violation of law. There must be some law prohibiting the complained-of conduct to give rise to a whistleblower claim. *See Mullins*, 357 S.W.3d at 185. Although Simons was not required to identify a specific law when she made her report, *see McElyea*, 239 S.W.3d at 850, and she did not need to establish an actual violation of law, *see id*., Simons had to have a good faith belief that "a law, *which in fact exists*, was violated." *Cotton*, 171 S.W.3d at 547 n.10 (emphasis added). In fact, Simons acknowledged in her deposition that no such law exists. Moreover, to the extent Simons believed a lack of security personnel violated the hospital's internal policies related to security and safety, such reliance cannot serve as the basis for a whistleblower claim. *See Univ. of Houston v. Barth*, 403 S.W.3d 851, 854–55 (Tex. 2013) (per curiam) (noting that reliance on internal administrative policies cannot serve as basis for viable whistleblower claim); *Meneke*, 420 S.W.3d at 872 ("At most, Meneke has identified issues related to internal administrative disagreements and turf battles between two departments in the college. There is no issue of fact with respect to whether the

conduct of which he complains is prohibited by [law]."); *Vela*, 186 S.W.3d at 53 ("Violation of the City's internal policies are not 'laws' under the Act."). Simons's evidence demonstrated, at most, that she believed that there should be more security officers, or better ones, but it does not establish that she believed that OakBend committed a violation of law. *See Meneke*, 420 S.W.3d at 872.

We conclude that the evidence is legally insufficient to support the jury's finding that Simons had a good faith belief that the conduct she reported in her first OSHA complaint was a violation of law. *See Uniroyal Goodrich Tire*, 977 S.W.2d at 334.

2. Second OSHA Complaint

OakBend contends that the evidence is legally insufficient to show that Simons's second complaint was objectively reasonable. This is so, it argues, because she offered no evidence to show that a reasonably prudent employee in similar circumstances would have believed that the facts as reported constituted a violation of law.[7]

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[7] Federal law governing occupational health and safety includes an anti-retaliation provision: "No person shall discharge or in any manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this chapter or has testified or is about to testify in any such proceeding or because of the exercise by such employee on behalf of himself or others of any right afforded by this Act." 29 U.S.C. § 660(c)(1). OakBend does not contend that Simons's second complaint—that OakBend retaliated against her for filing her first complaint by denying her request for tuition reimbursement—fails to allege a violation of law.

a. Objective Element of "Good Faith" Standard

OakBend argues that several facts demonstrate that Simons's belief that OakBend denied her tuition reimbursement in retaliation for the filing of her first complaint related to inadequate security was objectively unreasonable. First, it argues that it was OakBend's policy to reimburse tuition for programs that would benefit OakBend, and that Simons was aware of the policy. OakBend further argues that Simons admitted at trial that she had no personal knowledge as to whether OakBend employed nurse practitioners. In support of its assertion, OakBend points to the fact that Karen DeBouise, who was called as a witness at trial, testified that she is an emergency nurse practitioner who is employed by a physician group that contracts with OakBend, but she is not employed by OakBend. OakBend also asserts that the evidence shows that Simons subsequently earned a much higher salary working for a different employer. Thus, it contends, a reasonable person with years of experience in nursing, like Simons, would never expect her employer to pay for her to achieve a degree that would result in her leaving the employer to obtain higher pay elsewhere.

Simons asserts that she proffered more than a scintilla of evidence to enable the jury to conclude that her belief that OakBend retaliated against her by denying her tuition reimbursement was objectively reasonable. In support of her assertion, Simons points to evidence that her supervisor, Rhonda Abbe, told her that OakBend

had "narrowed down" the first complaint to her, and that the administration wanted to remove her for insubordination, despite the fact that she did not have a disciplinary history. She also points to Clover Johnson's testimony that OakBend wanted to initiate a progressive termination of Simons, but that Johnson refused to do so because Simons was doing "a stellar job" and there was no basis for such disciplinary action.

Simons further relies on evidence showing that OakBend failed to follow its own tuition reimbursement policy. The policy required employees to send the approved original application for reimbursement along with supporting documentation to the Human Resources Department no later than January 30 for the preceding fall semester. Human Resources was then required to "return an approved copy of the application to the employee within five (5) days of receipt." Simons asserts that she did not receive a response by February 5, 2014, and that she only received the letter revoking her tuition on April 9, 2014. Simons argues that OakBend's failure to adhere to its own tuition reimbursement policy enabled the jury to conclude that her belief was objectively reasonable.

Additionally, Simons points to her own testimony that OakBend utilized a number of nurse practitioners, it had approved her previous application for tuition reimbursement on which she stated that she sought to become a nurse practitioner, and she knew of other nurse practitioners whose tuition OakBend reimbursed.

Finally, she asserts that the temporal proximity between the filing of her first complaint and OakBend's revocation of her tuition reimbursement four months later also enabled the jury to determine that her belief that OakBend retaliated against her was objectionably reasonable.

We conclude that Simons presented more than a scintilla of evidence to enable the jury to conclude that her belief that OakBend retaliated against her by denying her tuition reimbursement was objectively reasonable. *See Hart*, 917 S.W.2d at 784. We sustain OakBend's first issue with regard to her first complaint, and we overrule its first issue as it pertains to her second complaint. Having reached this conclusion, we consider OakBend's second issue, i.e., whether Simons's second complaint may form the basis of a retaliation claim.

b. Knowledge of Second Complaint

OakBend contends that Simons's second complaint to OSHA concerning the denial of her tuition reimbursement cannot form the basis of a retaliation cause of action because she failed to present evidence that OakBend knew about her second complaint before it suspended her and terminated her employment. OakBend argues that the evidence established that it suspended Simons following DSHS's investigation of the patient abuse allegation against her, and that it terminated her after she chose not to participate in OakBend's peer review conference.

To prevail on a whistleblower claim, a plaintiff must produce evidence that her report of a violation caused the adverse personnel action. *See Zimlich*, 29 S.W.3d at 67. While circumstantial evidence may be sufficient to establish a causal link between the adverse employment action and the reporting of illegal conduct, such evidence must, at a minimum, show that the person who took the adverse employment action knew of the employee's report of illegal conduct. *Harris Cty. v. Vernagallo*, 181 S.W.3d 17, 25 (Tex. App.—Houston [14th Dist.] 2005, pet. denied). Stated differently, a decision-maker could not fire an employee because of the employee's report of alleged illegal conduct if the decision-maker did not even know the employee made such a report. *Alief Indep. Sch. Dist. v. Perry*, 440 S.W.3d 228, 238 (Tex. App.—Houston [14th Dist.] 2013, pet. denied).

i. Suspension

Simons contends that she presented more than a scintilla of evidence to permit the jury to find that OakBend knew about her second complaint before it suspended her one week later.[8] In support of her contention, Simons asserts that her supervisor,

[8] Simons initially contends that OakBend waived its sufficiency challenge because it failed to address the multiple ways liability could be established in Question No. 3. Question No. 3 asked: "Were the reports by Dawn Simons to OSHA that OakBend had inadequate security or that OakBend retaliated by revoking her tuition reimbursement made in good faith and a cause of OakBend suspending or terminating her employment?" Simons argues that while OakBend challenges the causation linking her second complaint of retaliation to her subsequent suspension and termination, it does not challenge the causation linking her first complaint of inadequate security to her suspension or termination and has, therefore, waived it. In light of our conclusion that Simons's first complaint does not give rise to a

Clover Johnson, testified that OakBend's administrator, Sue McCarty, knew Simons filed the complaints with OSHA:

> Q: And if you look at the bottom [of Simons's suspension letter], you see employee comment. This is written by Ms. Simons: I am told that this is due to a recommendation of the surveyors here today who[] are conducting their own investigation. I would like it also known that I believe this is a part of a retaliation effort by administration related to OSHA complaint.
>
> Did she discuss that with you?
>
> A: Yes, she did.
>
> Q: And what was your opinion?
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> A: My opinion was that this was possible. That that's what it was about. I do remember Sue McCarty telling me that she thought that Dawn was the one who made the complaint to OSHA.
>
> Q: Do you remember when that occurred?
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> A: I remember that we were in the board room. I'm not sure of the date, but I do remember that we were in the board room, and we had surveyors—we had multiple surveyors at multiple times, so I can't say.
>
> Q: That was before the suspension was enacted, correct?
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> A: That is correct.

From this testimony, the jury could have concluded only that OakBend was aware that Simons made *a* complaint to OSHA. OakBend acknowledges that it was

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whistleblower claim, we consider only whether there is sufficient evidence to support a finding that her second complaint was a cause of her suspension or termination.

aware of Simons's first complaint filed in December 2013 because OSHA conducted an onsite investigation of her complaint that same day. However, there is nothing in the record showing that OSHA advised OakBend of Simons's second complaint, or that OakBend was aware of Simons's second complaint, before it suspended her one week later. To conclude otherwise, the jury was required to speculate because the trial record does not demonstrate that OakBend knew about it. *See Vernagallo*, 181 S.W.3d at 27 ("To conclude, as the jury did, that Constable Freeman knew Vernagallo submitted the January 15th report requires speculation because the record does not divulge if he knew about it.").

Simons argues that Johnson's testimony that McCarty told her about Simons's complaint while Arch was on the premises on April 23, 2014, and before OakBend suspended Simons, shows that OakBend was aware of the second complaint. This argument, however, ignores the fact that both of Simons's complaints were filed before OakBend suspended her, and Johnson's testimony does not provide any information about the complaint to which she was referring.

ii. Termination

Simons also contends that she presented sufficient evidence to permit the jury to conclude that OakBend knew about her second complaint before it terminated her on August 24, 2014. In support of her contention, Simons directs us to a grievance letter that she sent to OakBend in which she stated that she filed a complaint with

OSHA as a result of OakBend's denial of her tuition reimbursement. The May 13, 2014 letter is attached as an exhibit to Simons's response to OakBend's plea to the jurisdiction and is part of the clerk's record, but it was not admitted at trial and, therefore, was not evidence that the jury could consider. Moreover, when Simons testified, she had the opportunity to refresh her memory by reviewing the letter. On further examination, she stated that in the letter she asked OakBend about returning to her position, lost wages, and tuition reimbursement, but she did not state that the letter contained any reference to the second complaint to OSHA. McCarty also testified that she was not aware that Simons filed a grievance.[9] *See Whitney v. El Paso Indep. Sch. Dist.*, 545 S.W.3d 150, 159 (Tex. App.—El Paso 2017, no pet.) ("But at a minimum, [the plaintiff] had to demonstrate that the person who took the adverse employment action—the decision-maker—knew of her report of illegal conduct."); *Perry*, 440 S.W.3d at 238 (noting that decision-maker could not fire employee because of employee's report of alleged illegal conduct if decision-maker did not know employee made report); *Vernagallo*, 181 S.W.3d at (reversing trial

[9] Similarly, no evidence was introduced showing that Cindy Johnson, whose name appears above "manager's signature" on the corrective action form suspending Simons and the personnel action request terminating her employment, knew about Simons's second complaint or her grievance letter.

court judgment where there was no evidence decision-maker was aware of report). Accordingly, we sustain OakBend's second issue.[10]

Conclusion

In summary, we conclude that there is legally insufficient evidence to support the jury's finding that Simons had a good faith belief that the conduct she reported in her first OSHA complaint was a violation of law. We sustain OakBend's first issue in this regard. We further conclude that the evidence is legally insufficient to support a finding that OakBend knew about Simons's second OSHA complaint before it suspended her or terminated her employment and, thus, her second complaint could not form the basis of a retaliation claim under the whistleblower statute. We sustain OakBend's second issue. We reverse the trial court's judgment and render judgment that Simons take nothing on her claims.

Russell Lloyd
Justice

Panel consists of Justices Keyes, Lloyd, and Hightower.

[10] In light of our holding, we do not reach OakBend's third and fourth issues challenging the damage awards.