DOWD, J.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

Equal Employment Opportunity Commission, et al.,	)	CASE NOS. 5:04CV1824 (Case 1)
	)	5:04CV2070 (Case 2)
Plaintiff(s),	)	
	)	ORDER
v.	)	Re: Docket No. 116 & 128 (Case 1)
	)	Docket No. 191 & 197 (Case 2)
Carter-Jones Lumber Company,	)	
	)	
Defendant(s).	)	

I. INTRODUCTION

Before the Court are Plaintiffs' Motion (Docket No. 116)[1] and Supplemental Motion (Docket No. 128) to amend the judgment and for a new trial in this matter. Defendant has filed a brief in opposition to the new trial motion (Docket No. 118) and to the supplemental motion for a new trial (Docket No. 129). Plaintiffs have filed reply briefs in support of the motion and supplemental motion for a new trial (See Docket Nos. 122 & 131). For the reasons that follows, the motion and the supplemental motion for a new trial (Docket Nos. 116 & 128) are denied.

II. DISCUSSION

In this case, Plaintiffs EEOC and Gerald Price allege that Defendant Carter Lumber engaged in disability discrimination in violation of the Americans with Disabilities Act when Defendant (1) terminated Mr. Price's employment in December 2002 and (2) did not rehire Mr. Price in the spring of 2003. The Court denied Defendant's motion for summary judgment, acknowledging that while it was a "close case," there were sufficient materials facts in dispute

[1]Because the motions and briefs are the same in both Case One and Case Two, the Court only references the documents from Case 1, 5:04CV1824.

for the matter to go to the jury. See May 26, 2006 Memorandum Opinion and Order, Docket No. 82, at 3, 4, and 8.

The Court conducted a jury trial in the above-captioned matter from September 6, 2006 to September 13, 2006. On September 14, 2006 the jury reached its verdict by way of responding to a series of interrogatories. See Docket No. 110. The jury first found that Defendant did not discriminate against Mr. Price when he was terminated in December 2002. With regard to the alleged failure to rehire, the jury found that Mr. Price did not reapply for his position in the spring of 2003. Based on the interrogatory responses, the Court entered judgment in favor of Defendant on both counts of the complaint. See Docket No. 113.

Fed. R. Civ. P. 59 provides that a party may file a motion to alter or amend the judgment or for a new trial within 10 days of the verdict in the action. The original motion for a new trial, Docket No. 116, was timely filed. After the transcript was prepared and filed, the Court permitted the parties to supplement their original positions on the motion for a new trial.

The parties substantially agree that in order for the Court to exercise its discretion to amend the judgment or order a new trial, the Court must conclude that the jury has reached a "seriously erroneous result" as evidenced by (1) a clear error of law; (2) newly discovered evidence; (3) an intervening change in law; or (4) to prevent manifest injustice. See Sault St. Marie Tribe of Chippewa Indians v. Engler, 146 F.3d 367, 371 (6th Cir. 1998). Plaintiffs argue that the first and fourth factor provide cause for the Court to order a new trial and to amend the judgment in this action.

Plaintiffs allege seven separate grounds as a basis for the Court to amend the judgment or

order a new trial. The Court will deal with each ground as presented in the supplemental motion (Docket No. 128) at 6-15.

First, Plaintiffs argue that the jury's conclusions, based on its responses to the interrogatories, were against the weight of the evidence. With respect to the termination claim, the jury found, Interrogatory No. 2A, that Mr. Price had not requested accommodations at the time he was terminated or laid off. Plaintiffs argue that the weight of the evidence overwhelmingly demonstrated that he did request an accommodation and terms upon which he could return to work. However, the facts concerning Mr. Price's termination were disputed by the parties. The Defendant argued that Mr. Price was terminated in December 2002 and Plaintiffs took the position that he was laid off in January 2003.

Sufficient evidence, based on the testimony of Mr. Collins, see Tr. at 312-319 (Docket No. 120), supports Defendant's account and supplies sufficient weight to the finding that Mr. Price was unable to work at that period of time, that he did not request accommodation to return to work and that Defendant did not have work available during the slower winter months. Accordingly, with respect to the termination claim, Plaintiffs' arguments challenging the sufficiency of the evidence are overruled.

Plaintiffs also argue that there was insufficient evidence to support all three findings made by the jury with respect to the refusal to rehire claim. The jury first concluded that Defendant required an application from a previously terminated or laid off employee in order to be considered for rehire. See Interrogatory 5A. The jury answered "no" when asked whether Mr. Price submitted an application for a full time job with Defendant in 2003. See Interrogatory 5B.

Finally, the jury found Plaintiffs had not shown, by a preponderance of the evidence, that "Plaintiff Gerald Price sought, by direct or indirect means, a continuation of employment or a return to employment with Defendant in the Spring of 2003." See Interrogatory 5C. Based on these interrogatory responses, the Court granted judgment in favor of Defendant on the failure to rehire or re-employ claim.

With respect to Interrogatory 5B, there is no evidence in the record to show that Mr. Price submitted an employment application. During the trial, there was a dispute of fact with respect to whether or not Defendant required returning full time employees to complete another application to be considered for re-hire. In this case, there was sufficient evidence for the jury to conclude that it was the practice of Defendant to require an application to be considered for re-hire.

Finally, there was conflicting evidence concerning whether or not Mr. Price sought re-employment. Based on the testimony, the jury concluded the contacts between the parties did not include Mr. Price's request for a return to employment by either direct or indirect means. Again, in this regard, the jury believed the testimony submitted on behalf of Defendant. See Tr. at 332-336 (Docket No. 120). Based on these interrogatory responses, the Court granted judgment in favor of Defendant on the failure to rehire or re-employ claim.

Accordingly, the Court finds that Plaintiffs have not demonstrated the jury's interrogatory responses were against the weight of the evidence and the first of Plaintiffs' objections is overruled.

Second, Plaintiffs challenge the terms of the Interrogatory No. 5A, which provides:

"Do you find that in the year 2003, Carter Jones required an application from a previously terminated or laid off employee in order to be considered for rehire or re-employment as a full time employee?" The jury answered this interrogatory in the affirmative. Plaintiffs argue that because Mr. Price was allegedly told that he was "laid off," he could have reasonably expected that he would be recalled without the need for completing another employment application. As a result, Plaintiffs argue, the interrogatory misled the jury because a laid off employee could only expect that he would be called back to work. Finally, Plaintiffs argue that it would have been futile for Mr. Price to submit an application based upon Mr. Collins alleged statement that he did not want to "work around Mr. Price's dialysis schedule."

The Court first notes that Plaintiffs refer to Mr. Collin's alleged statement in their post-trial briefs on numerous occasions. The Court also points out that Mr. Collins at trial denied ever making the statement regard working around Mr. Price's dialysis schedule. See Tr. at 350 (Docket No. 120). The jury was in the best position to weigh the credibility of the witnesses on this issue. There was other evidence submitted on behalf of Defendant that in fact it was the policy and practice not to lay off employees and to require applications from former full-time employees who were seeking to return to work.

Finally, the jury, in response to Interrogatory 5C, made the finding that Mr. Price did not seek a return to employment, either directly or indirectly, in 2003. The Court concludes that Plaintiffs have not shown prejudice on the issue of whether or not a policy existed to return to work for Defendant, because the jury ultimately concluded, based on the testimony submitted, that Mr. Price had not sought a return to work, either by formal or informal means.

Third, with respect to the termination claim, Plaintiffs argue that the Court should not have included, as part of its instructions on the elements of an Americans with Disabilities Act claim, that Plaintiff needed to request accommodation for his disability or that his disability was so evident to Defendant that Mr. Price need not have requested them. See Interrogatories 2A and 2B. Plaintiffs assume that the only plausible reason for the jury to conclude that Mr. Price did not ask for accommodation at the time he was terminated, or that the need for accommodation was necessary at the time of termination, was because of a breakdown in communication between Mr. Price and Defendant.

However, there was sufficient evidence in the record to demonstrate that at the time of termination, Mr. Price did not request accommodation because he was unable to work and that based on the testimony of Defendant's witnesses, he was not seeking a return to work. See Tr. at 903-904 (Docket No. 123). Accordingly, Plaintiffs' third ground for their motion for a new trial is denied.

Fourth, Plaintiffs object to the Court's instruction related to the requirement that Plaintiff prove that his disability was the sole reason he was terminated and/or not rehired. The Court relied upon existing precedent in the Sixth Circuit to instruct the jury on this issue. See Willliams v. London Utility Com'n, 375 F.3d 424, 428 (6th Cir. 2004). Moreover, the issue never became relevant to the jury's deliberations in that the jury never reached the issue as the case was decided on other factual issues. The Court agrees with Defendant that the issue of this instruction was moot and disagrees with Plaintiffs that including the instruction prejudiced the jury in any fashion.

The fifth and sixth grounds cited by Plaintiffs relate to evidentiary rulings the Court made during the course of the trial. The Court considered the matter of job descriptions sought to be introduced by Defendant that had not been previously supplied to Plaintiffs. Plaintiffs objected and the Court considered the matter on the record and denied the objection. Plaintiffs have not shown good cause or sufficient prejudice based on the job descriptions to support their motion for a new trial. See also Tr. at 268-270 (Docket No. 119) and Tr. at 293-299 (Docket No. 120).

With respect to the sixth ground, Plaintiffs object to the Court's denial to permit them to call three of Mr. Price's former co-workers as hostile witnesses. However, as Defendant points out, the Court permitted counsel for Plaintiffs to use leading questions as needed and upon examination of the record there is no showing of prejudice as a result of the Court's decisions. Accordingly, Plaintiffs' fifth and sixth grounds for a motion for a new trial or to alter and amend the judgment are denied.

Seventh, and lastly, Plaintiffs argue that in fact, Mr. Price was seeking either full or part time employment with Defendant in 2003 and that it was error for the jury only to consider whether Mr. Price was seeking a return to full time employment. The Amended Complaint does not allege that Mr. Price was seeking part-time employment. Mr. Price testified that he was seeking only full-time employment at the time he sought re-employment with Defendant in 2003. See Tr. at 963-966 (Docket No.124).

The Court concluded that there was inadequate evidence in the record to support sending a part time instruction to the jury. Further, Interrogatory 5C was broadly worded to determine whether or not Mr. Price "sought, by direct or indirect means, a continuation of employment or a

return to employment with Defendant in the Spring of 2003?" No limitation was placed on full or part time employment and the jury concluded that Mr. Price had not sought a return to work.

There is evidence in the record upon which the jury could reasonably rely to come to that conclusion, including sworn statements by Mr. Price to the Social Security Administration that he was completely disabled and unable to work. See Tr. at 928 (Docket No. 124). Accordingly, the seventh ground alleged as a basis for a new trial is denied.

III. CONCLUSION

For the reasons stated, the motions (Docket Nos. 116 & 128) for a new trial or to alter or amend the judgment are denied.

IT IS SO ORDERED.

April 5, 2007
Date

/s/ David D. Dowd, Jr.
David D. Dowd, Jr.
U.S. District Judge