

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA

TONY TAHERI,

Plaintiff,

vs.

EVERGREEN AVIATION GROUND  
LOGISTICS ENTERPRISES, INC.,

Defendant.

Case No. 3:04-cv-0106-RRB

**ORDER RE MOTIONS IN LIMINE  
AT DOCKETS 74, 75, 76, and 77**

This matter arises from an employment dispute. The sole issue remaining before the Court is Plaintiff's retaliatory termination claim. Four motions in limine are pending before the Court. The issues have been fully briefed and the Court enters the following Order.

**I. DEFENDANT'S MOTION IN LIMINE TO EXCLUDE EVIDENCE OF DAMAGES (DOCKET 74)**

Defendant moves for an order in limine excluding Plaintiff from presenting any evidence related to damages for his alleged retaliatory termination because Plaintiff failed to comply with the disclosure requirements of Rules 26 & 37 of the Federal

Rules of Civil Procedure. Defendant complains that the information that Plaintiff has provided is not properly calculated, making it impossible for Defendant to determine Plaintiff's actual claimed damages. Plaintiff also has failed to provide damages calculations for his medical bills, emotional distress, or lost employment benefits. Plaintiff's failure to provide this information prevented Defendant from adequately exploring the alleged source and accuracy of Plaintiff's damages claims during discovery.

In response, Plaintiff explains that the lost wages calculations are based on the difference between what Plaintiff would have earned if he continued to work for Defendant, less what he earned after the termination. Plaintiff suggests that non-economic damages are not susceptible to a mathematical calculation and it is for the trier of fact to determine. "Because Plaintiff has produced at least some evidence of economic loss, Plaintiff should be allowed to present the evidence produced thus far to a jury, who may reasonably conclude that the evidence provides insufficient justification for a damages award." Docket 88. Plaintiff argues that his evidence should not be precluded, but that he "should be limited to the evidence and calculations produced." Docket 88 at 3.

Defendant complains that Plaintiff has provided no evidence of how long he worked at various employers, why he left those employers, his rate of pay, or his hours of work. "Should Plaintiff be allowed to present a claim for such damages . . . he should not only be limited to what evidence he has produced (as he concedes), but also should bear the burden of proof on mitigation from that production. Fairness dictates that [Defendant] should not bear the mitigation burden where Plaintiff has willfully withheld the information (requested discovery) necessary to make such a showing." Docket 92.

The Motion in Limine at **Docket 74** is **GRANTED**. Plaintiff shall be limited to the evidence and calculations already produced regarding damages and mitigation efforts.

**II. DEFENDANT'S MOTION IN LIMINE TO EXCLUDE MEDICAL TESTIMONY FROM PLAINTIFF TONY TAHERI (DOCKET 75)**

Defendant requests an order in limine excluding Plaintiff Taheri from testifying regarding his current or past medical conditions that he alleges were caused by Defendant. Defendant does not seek to prevent Plaintiff from describing how he felt after his termination, but rather seeks to prevent him from testifying that he was "depressed" or that Defendant "caused" any of his alleged symptoms. Defendant argues that depression is a medical diagnosis, and causation is a medical conclusion. Docket 95. Defendant notes

that Plaintiff has not disclosed any medical expert who will testify on his behalf and that, therefore, Plaintiff should be prevented from testifying beyond any symptoms he may have, as he is not qualified to testify as to causation or diagnosis. See Fed. R. Evid. 701(c). Defendant concedes that he may not testify as to medical causation, but argues he may testify as to how he felt and how his termination affected him. Docket 86.

The Motion in Limine at **Docket 75** is **GRANTED IN PART**. The parties appear to be in agreement regarding the parameters of Plaintiff's potential testimony. Plaintiff may not testify as to causation, but he may testify to his feelings or symptoms, in layman's terms. The Court declines to prohibit the use of the word "depressed." Defendant is free to clarify on cross-examination whether or not Plaintiff was diagnosed with clinical depression by a physician.

### **III. DEFENDANT'S MOTION IN LIMINE TO EXCLUDE EVIDENCE OF PLAINTIFF'S DISMISSED CLAIMS (DOCKET 76)**

Defendant seeks to preclude Plaintiff from presenting, in the presence of the jury, any testimony, documents, or other evidence relating to the underlying facts of Plaintiff's complaints of discrimination or harassment, because those claims have been dismissed on summary judgment and any reference would be unfairly prejudicial to Defendant, would unnecessarily protract the

proceedings, and would confuse the jury. Docket 76. To the extent that Plaintiff alleges that the underlying facts of his discrimination claims are relevant, Defendant agrees to stipulate that Plaintiff engaged in protected activity. Docket 76 at 3.

Plaintiff opposes the motion. Although he agrees that a stipulation from the Defendant that Plaintiff engaged in a protected activity limits the evidence necessary to prove a retaliation claim, such a stipulation, he argues, does not act to limit all evidence related to the protected activity complaint. Plaintiff provides a specific example involving the actions of the new General Manager. Plaintiff argues that evidence of the discrimination and harassment complaints is relevant to the General Manager's motivation in terminating Plaintiff. Plaintiff argues that the decision as to what evidence will be admitted as relevant on this issue should be decided at the time it is offered, through an offer of proof provided out of the presence of the jury. Docket 87.

Defendant suggests that although the jury can be apprised of the general nature of the protected activity, it objects to any evidence of the underlying specifics being presented to the jury.

The Motion in Limine at **Docket 76** is **GRANTED IN PART**. Plaintiff shall not present any evidence relating to the underlying

facts of Plaintiff's complaints of discrimination or harassment, absent an offer of proof provided outside the presence of the jury.

**IV. DEFENDANT'S MOTION TO EXCLUDE DAMAGES RELATED TO ALLEGED HARASSMENT (AS OPPOSED TO ARISING FROM TERMINATION) (DOCKET 77)**

Defendant seeks an order in limine excluding Plaintiff from presenting any evidence or making any reference to damages related to any alleged harassment/discrimination from which he claims to have suffered, because those claims have been dismissed from the case. Docket 77. Specifically, Defendant seeks to exclude any evidence of damages arising from Plaintiff's divorce and his use of antidepressants, because such evidence relates only to the dismissed harassment and discrimination claims and not to the remaining retaliation claim.

Defendant's Motion in Limine at **Docket 77** is **GRANTED** as unopposed. See Docket 85.

**IT IS SO ORDERED.**

ENTERED this 14<sup>th</sup> day of November, 2008.

S/RALPH R. BEISTLINE  
UNITED STATES DISTRICT JUDGE