UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

MICHAEL LEONARD,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**No. 17 C 09259**
	)	
DOUGLAS A. COLLINS, as Secretary, U.S. Department of Veterans Affairs, [1]	)	**Judge Rebecca R. Pallmeyer**
	)	
Defendant.	)	

MEMORANDUM OPINION AND ORDER

Plaintiff Michael Leonard was fired from his longtime job as a law enforcement officer at the U.S. Department of Veterans Affairs ("VA") in 2013. Leonard claimed he was terminated in retaliation for having filed a claim of race discrimination with the Equal Employment Opportunity Commission ("EEOC") (*see* Summ. J. Order [92] at 17–21) and sought relief pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, *et seq*. (*Id.*) A jury found in favor of Leonard, concluding that retaliatory animus or motive "played a part in" Leonard's termination and that Leonard would not have been terminated but for the retaliatory animus; the jury awarded Leonard $100,000 in compensatory damages for emotional distress.[2] (Jury Verdict at 2–3 [141].) As a result of the jury's findings, Leonard is also presumptively entitled to back pay, though he bears the burden to establish the proper amount for the award. *See David v. Caterpillar, Inc.*, 324 F.3d 851, 865 (7th Cir. 2003).

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[1] David J. Shulkin, the named Defendant when this suit was initiated, is no longer Secretary, U.S. Department of Veterans Affairs. Douglas A. Collins was sworn in as Secretary, U.S. Department of Veterans Affairs on February 25, 2025.

[2] The court instructed the jury that in calculating damages, it "should only consider the mental/emotional pain and suffering that Plaintiff has experienced and is reasonably certain to experience in the future." (Jury Instructions [139] at 17.) Any damages for past or future lost wages and benefits, the court explained, were for the court to calculate and determine. (*Id.*) The parties are currently engaged in limited discovery and briefing on the back pay issues. ([150].)

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At the close of trial evidence, Defendant moved for judgment as a matter of law under Federal Rule of Civil Procedure 50(a) on Leonard's claim for compensatory damages. Defendant argued that Leonard, whose trial testimony was cut short for medical reasons, presented the jury with no competent evidence to support such an award. The court reserved ruling on the motion, and Defendant has now timely renewed it. (*See* Mot. [142] at 2, 7.) For the reasons explained below, Defendant's motion is granted, and the jury's award of compensatory damages is vacated.

BACKGROUND

Leonard's trial was unusual in that the jury heard almost no live testimony from the Plaintiff. On the first day of proceedings, Leonard began his direct testimony but soon experienced a medical issue that forced him to step down from the witness stand. Leonard was ultimately unable to offer any further testimony at trial. Counsel for both parties agreed that Leonard's prior sworn testimony—given in a July 2015 hearing conducted by the Merit Systems Protection Board ("MSPB") and in a May 2019 deposition—would be read into the record in lieu of live testimony. (*See generally* Leonard MSPB Hr'g Tr. [145-2]; Leonard Dep. [145-1].)

In that earlier testimony, Leonard had not described having experienced "mental suffering, humiliation, embarrassment, or pain," and "did not present the jury with any testimony from friends, family members, medical providers, or other witnesses who could attest to any emotional distress or mental harm that [Leonard] might allege to have experienced." (Mot. at 3; Pl. Resp. [145] at 4.) Leonard also acknowledged in his deposition that he never sought any mental health treatment in connection with his removal from the VA. (Leonard Dep. at 121:4–7.) Leonard nonetheless maintains that he presented enough evidence to support the jury's award. The court summarizes below the relevant evidence highlighted by Leonard, adding in small bits of context while bearing in mind that the court must construe the trial evidence "strictly in favor" of Leonard in considering the Defendant's motion. *Thorne v. Member Select Ins. Co.*, 882 F.3d 642, 644 (7th Cir. 2018) (internal citations omitted).

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Leonard worked at the VA for about 25 years before being fired. (Leonard Dep. at 31:6–9 (Leonard began working at the VA in 1987), 15:24–25, 26:3–6 (Leonard's employment with the VA ended in March 2013).) During that span, Leonard testified, he was promoted several times, first from a patrolman to a detective, then to a "detective instructor," and finally to a "criminal investigator," the position he held when he was terminated. (Leonard MSPB Hr'g Tr. at 267:1–6.) Leonard was proud of his career advancement, which he attributed to having "worked [his] butt off, and [believing] in teamwork and the system." (*Id.* at 331:13–18.) Leonard did not testify concerning the salary he earned at the VA, or the full range of employee benefits he received, though he appears to have received health insurance through the VA. (*See* Leonard Dep. at 13:8–13.)

At the MSPB hearing (where Leonard unsuccessfully appealed his termination), Leonard characterized the charges of misconduct against him as "ludicrous." (*Id.* at 330:9.) The investigation of those charges, he noted, was led by another VA law enforcement officer, Cary Kolbe, who Leonard claimed had previously threatened to kill him after a December 2011 confrontation between the two men. (*See* Leonard Dep. at 61:8–63:13, 65:2–22.) Those circumstances, in Leonard's view, made it "inappropriate" for Kolbe to be assigned to conduct the investigation. (*Id.* at 65:23–25.) It appears that at some point between Leonard's firing and his MSPB hearing, Kolbe was appointed to the position Leonard had held as criminal investigator at the Edward Hines, Jr. VA Hospital in Hines, Illinois. (MSPB Hr'g at 330:13–14.) Leonard now argues that he testified about "his outrage and confusion about his termination" (Pl. Resp. at 6), but he did not use that language to describe his emotional state in the MSPB testimony.

At his deposition, Leonard explained that at some point in 2014, he secured a position as a security officer at a company called All Points Security and Detective Agency ("All Points"). (*See id.* at 8:7–14, 9:10–16.) Before starting that job, however, Leonard had been without a full time job for about a year and a half, instead performing menial jobs at the church where he served as a deacon, including, in his telling, "carpentry work, demolition work with certain buildings that

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the church was involved with, [and] counseling as far as the programs that they acquired, summer programs with the kids." (*Id.* at 13:20–14:3.) Leonard estimated he earned no more than $3,000 in total for these tasks. (*Id.* at 15:12–19.)

When he started work as a security officer for All Points in late 2014, Leonard recalled, he earned "[m]inimum wage . . . it had to be around $12 an hour or something like that."[3] (*Id.* at 9:10–15.) Within a year, Leonard was promoted to the position of "site supervisor," with his hourly pay increasing "slightly" to "[m]aybe $12.15." (*Id.* at 8:2–6, 10:2–11.) A year later, he was again promoted to the rank of "field supervisor," a salaried position paying "around 25, $26,000 a year." (*Id.* at 10:15–18, 11:2–10.) By the time of his deposition in May 2019, Leonard was earning about $35,000 per year at All Points. (*Id.* at 11:13–16.) Because All Points offered no employee benefits, Leonard was insured through his wife's health insurance plan.[4] (*Id.* at 10:13–14, 13:4–13.)

DISCUSSION

Compensatory damages for emotional distress must be "supported by competent evidence." *Ramsey v. Am. Air Filter Co.*, 772 F.2d 1303, 1313 (7th Cir. 1985) (citing *Carey v. Piphus*, 435 U.S. 247, 264 n.20 (1978)). As the Supreme Court explained in *Carey v. Piphus*, emotional distress is "customarily proved by showing the nature and circumstances of the wrong *and* its effect on the plaintiff." 435 U.S. at 263–64 (emphasis added). "Neither the likelihood of

[3] The minimum wage in Chicago and throughout Illinois at that time was, in fact, only $8.25 per hour, though the jury did not hear evidence to that effect. Bill Chappel, *Chicago Council Strongly Approves $13 Minimum Wage*, NPR (Dec. 2, 2014, 2:02 PM ET) https://www.npr.org/sections/thetwo-way/2014/12/02/368026116/chicago-council-strongly-approves-13-minimum-wage (last visited April 7, 2025).

[4] Leonard testified at his deposition that his wife, a nurse, was the "director of labor and delivery" at Adventist Hospital in Bolingbrook, Illinois, though it was not clear from his testimony whether she already held the director position at the time Leonard was dismissed by the VA. (Leonard Dep. 13:1–19.) Leonard and his wife have four children; at the time of Leonard's deposition in May 2019, they were aged 40, 36, 26, and 22, and only the youngest still lived with Leonard and his wife. (*Id.* at 4:18–5:1.)

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such an injury" having occurred nor "the difficulty of proving it," the Court held, "is so great as to justify awarding compensatory damages without proof that such injury actually was caused." *Id.* at 264. Accordingly, the Seventh Circuit announced in *Biggs v. Vill. of Dupo* that it requires plaintiffs to "show 'demonstrable emotional distress,'" not just point to circumstances of the violation which "might support an inference of such injury." 892 F.2d 1289, 1305 (7th Cir. 1990) (quoting *Rakovich v. Wade*, 819 F.2d 1393, 1399 (7th Cir. 1987)); *accord Alston v. King*, 231 F.3d 383, 388 (7th Cir. 2000).

Further, "when the injured party provides the sole evidence of mental distress, he must reasonably and sufficiently explain the circumstances of his injury and not resort to mere conclusory statements." *Biggs*, 892 F.2d at 1304 (quoting *Rakovich*, 819 F.2d at 1399 n.6). In *Nekolny v. Painter*, the plaintiffs were three employees of Lyons Township, Illinois, who were found by a jury to have been fired in retaliation for campaigning against the township supervisor in the previous election, a violation of their First Amendment rights. 653 F.2d 1164, 1165 (7th Cir. 1981). The only evidence the three plaintiffs presented of emotional distress, however, was their own testimony that they were "very depressed," "a little despondent and lacking motivation," and "completely humiliated" by their dismissals. *Id.* at 1172. The jury entered modest awards ($5,000, $2,500, and $2,500) for the plaintiffs' mental and emotional distress. *Id.* at 1166. But the Seventh Circuit reversed those awards, concluding that the evidence was "insufficient to constitute proof of compensable mental or emotional injury," as plaintiffs' bare statements were inadequate even when considered along with the facts of the case. *Id.* at 1172–73. Similarly, in *Biggs*, the plaintiff—who had been a part-time police officer with the Village of Dupo, Illinois for 14 years—was fired by Village officials in retaliation for speech protected by the First Amendment: criticizing local politicians in an interview Biggs gave to a newspaper reporter. 892 F.2d at 1299–1300. The only direct evidence of emotional distress Biggs provided was his testimony that he was "affected emotionally by being fired," and that he was concerned by "the idea of [his] family going through it." *Id.* at 1304. That evidence, the Seventh Circuit held, was insufficient as a matter of law to

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