

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

HASSAN H. SHERIF : CIVIL ACTION
 :
 v. :
 :
 AstraZeneca, L.P., et al. : No. 00-3285

MEMORANDUM AND ORDER

J. M. KELLY, J.

May 16, 2001

Presently before the Court is the Motion by Plaintiff Hassan H. Sherif ("Sherif") for Protective Order. Sherif seeks to prohibit Defendants from: (1) obtaining tax returns from 1999 and 2000; (2) contacting Sherif's present employer; and (3) obtaining any and all medical records from Sherif. Sherif's Complaint alleges against the individual defendants, employees of AstraZeneca, L.P. ("AstraZeneca") and/or AstraZeneca itself: (1) discrimination based on sex, race, religion and ethnic origin pursuant to Title VII of the Civil Rights Act of 1964 ("Title VII"), as amended, 42 U.S.C. § 2000e to 2000e-17 (1994); (2) disability discrimination pursuant to Title I of the Americans with Disabilities Act ("ADA"), 42 U.S.C. §§ 12111-121117; (3) retaliation for filing a complaint with the Equal Employment Opportunity Commission ("EEOC"), pursuant to Title VII and the ADA; (4) parallel discrimination and retaliation claims under the Pennsylvania Human Relations Act ("PHRA"); 43 Pa. Con. Stat. Ann. § 951-963 (West 1991); (5) defamation, libel and slander; (6) invasion of privacy by holding Sherif in a false light; and (7)

aiding and abetting in violation of the PHRA.¹

I. BACKGROUND

The following relevant facts are not in dispute. Sheriff was employed by AstraZeneca and its predecessors in various sales and sales management positions. In 1997, he was hired as a Developmental Specialist in the Philadelphia Customer Sales Unit ("PCU") of Astra-Merk, a predecessor to AstraZeneca.

In August of 1998, Sheriff was informed that he had not submitted expense reports since the beginning of the year. He compiled those expense reports and submitted them in September. Shortly thereafter, Sheriff was informed of concern with the timeliness and accuracy of his expense reports and that an investigation was under way. Sheriff was suspended with pay pending investigation of his expenses. In November of 1998, Sheriff was allowed to return to work at AstraZeneca, but with a demotion to Pharmaceutical Specialist and with a six month probationary period. Sheriff's salary remained below the previous average for Developmental Specialists, however, and almost \$10,000 below the current average. Sheriff was criticized for asking a manager questions at a meeting.

Sheriff then filed complaints with the Pennsylvania Human

¹Plaintiff's claim of negligent infliction of emotional and physical distress was previously dismissed as to all Defendants. In addition, the parties stipulated to dismiss all Title VII and ADA claims against the individual Defendants.

Relations Commission ("PHRC") and the EEOC. Following the complaints, Sherif alleges he was given mis-configured computer software, was not visited by his supervisor in the field and his sales were not reported correctly. Sherif blamed his sub-par sales levels on the mis-configured software. Sherif was told that he was being held to a different standard than anybody else, criticized for taking vacation in May of 1999, and received an annual pay increase of 1.5% when the average was 4.5%. Sheriff was ultimately terminated on May 24, 1999.

In response to Defendants' discovery requests, Sherif has produced over five boxes of documents, including redacted W2 forms, redacted pay stubs and other redacted documents pertaining to Sherif's employment after his termination. Sherif has refused to identify his post-termination employer or employers. In addition, Sherif has turned over medical records from his treatment by Drs. Bock and DeRosa, but not releases for any other medical records.

II. STANDARD OF REVIEW

A party is entitled to receive, through discovery, information that is "reasonably calculated to lead to the

discovery of admissible evidence." Fed. R. Civ. P. 26(b)(1). Broad and liberal discovery is allowed by the federal rules. Pacitti v. Macy's, 193 F.3d 766, 777 (3d Cir. 1999). A party opposing discovery may file a motion seeking a protective order which will be granted upon good cause, in order to prevent "annoyance, embarrassment, oppression, or undue burden or expense." Fed. R. Civ. P. 26(c).

III. DISCUSSION

A. Plaintiff's Tax Returns

First, Plaintiff argues that Defendants' request for his tax returns is overly broad and must be prohibited. Specifically, he contends that his W-2 forms, pay stubs and other documents relating to his post termination employment, all of which he has previously produced, are sufficient for purposes of calculating his damages. Defendants, however, claim that Plaintiff's tax returns are the most comprehensive way to verify the magnitude of lost wages, and, therefore, are discoverable.

"Public policy favors the nondisclosure of income tax returns." DeMasi v. Weiss, 669 F.2d 114, 119 (3d Cir. 1982) (quoting Cooper v. Hallgarten & Co., 34 F.R.D. 482, 483 (S.D.N.Y.1964)). The policy against non-disclosure, however, is not absolute. An individual's privacy interest in his tax returns must be balanced with a number of factors, including the opposing party's need for the information, its materiality, and

its relevance. See id. at 120. Whether tax returns are discoverable is determined by a two-part balancing test: (1) the returns must be relevant to the subject matter of the action; and (2) there must be a compelling need for the returns because the information contained therein is not otherwise readily obtainable. In re Sunrise Securities Litigation, 130 F.R.D. 560, 578 (E.D. Pa. 1989). The burden of establishing relevance is on the party seeking discovery; the party resisting disclosure bears the burden of establishing alternative sources for the information. Id.

Sherif's claims of lost wages and lost benefits make his post termination wages relevant. However, the entire income tax returns of the plaintiff and his wife need not be disclosed. The plaintiff will submit to the Court copies of his tax returns for the years 1999 and 2000 for an in camera review by the Court. The Court will review and disclose to the defendant such information from the tax return which it believes the defendant is entitled to have.

B. Identity of Plaintiff's Present Employer

The Court finds the identify of plaintiff's post-termination employers is relevant information to what economic damages the plaintiff has suffered as a result of plaintiff's termination of employment by defendant.

C. Plaintiff's Medical Records

Finally, Plaintiff argues that Defendants' request for all medical information regarding Plaintiff, dating back to 1990, is "overly broad, irrelevant and violates confidential information." Defendants counter that Plaintiff's medical records are relevant to the cause of Plaintiff's alleged emotional and physical condition. While this Court previously dismissed Plaintiff's negligent infliction of emotional and physical distress claim, Plaintiff is also seeking damages for emotional distress, and various accompanying physical symptoms (migraines, sleeplessness and high blood pressure), in connection with his Title VII and PHRA claims. Therefore, any medical records relating to the physical and emotional ailments alleged by Plaintiff are relevant and discoverable.

What is unclear, however, is exactly what medical records Defendants are currently seeking. Plaintiff has previously turned over all medical records relating to treatment by his family doctor of three years, Dr. Boch, and a psychologist, Dr. DeRosa. In his deposition testimony, Plaintiff states that: (1) he had never seen a psychologist or a psychiatrist prior to his suspension in the Fall of 1998; (2) he saw Dr. DeRosa from the time of suspension to May or June of 1999; and (3) since May or June of 1999 he has not seen any other psychologist, psychiatrist or therapist. Dep. pg. 264-65. Furthermore, in his Reply Brief,

Plaintiff states that "he has already produced all of the records of the psychologist he has seen." Therefore, it appears that Defendants already have all of Plaintiff's existing psychiatric records.

In addition, Plaintiff testified during his deposition that: (1) prior to his suspension Dr. Bock had been his family physician for three years; (2) he never saw any other physician for high blood pressure prior to Dr. Bock; and (3) his family physician prior to Dr. Bock never treated him for migraines, sleeplessness or high blood pressure. Dep. pg. 267-68. Therefore, there appears to be no other physician from whom Plaintiff sought treatment for his alleged physical symptoms. Because Plaintiff has already turned over his records from Dr. Bock, there is no additional discoverable medical records. Accordingly, because it appears that all relevant medical and psychiatric records have already been turned over by Plaintiff, Plaintiff's motion for protective order concerning any other medical records is granted. No other physician than those identified will be permitted to testify in this matter or may not be referred to in the trial of this matter.

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ORDER

AND NOW, this 16th day of May, 2001, in consideration of the Motion for Protective Order filed by the Plaintiff, Hassan H. Sherif (Doc. No. 18), the Response filed by the Defendants, AstraZeneca, L.P., et al. and the Plaintiff's Reply Brief, it is **ORDERED** that:

1. Plaintiff shall supply copies of his income tax returns for the years 1999 and 2000 for an in camera inspection by the Court within ten (10) days of the date of this Order.
2. Plaintiff shall disclose to the defendants the identity of plaintiff's current employer.
3. Plaintiff, having averred he has given the defendants all the medical records of physicians and other health care providers to the defendant, is restricted at the trial in this matter to those physicians and other health care providers so

identified. No references at trial shall be made to any other physician or other health care provider not disclosed.

BY THE COURT:

JAMES MCGIRR KELLY, J.