

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

DIANE McCRANE : CIVIL ACTION
Plaintiff, :
 :
v. :
 :
MARCONI MEDICAL SYSTEMS, INC., :
Defendant. : No. 01-1518

MEMORANDUM AND ORDER

J. M. KELLY, J.

MARCH , 2002

Presently before the Court are the following: (1) Plaintiff's Motion to Compel Defendants to Answer Certain Interrogatories and Requests for Production of Documents without Objection; (2) Defendant's Motion to Preclude the Admission of Evidence Regarding Damages Claimed in Plaintiff's Pretrial memorandum; and (3) Plaintiff's Motion in Limine to Preclude Certain Witnesses from Testifying at Trial. Plaintiff, Diane McCrane, asserts the following claims in her Complaint against Defendant, Marconi Medical Systems, Inc.: (1) violation of the Family And Medical Leave Act ("FMLA"), 29 U.S.C. § 2601 et seq., (1994); (2) violation of the Americans With Disabilities Act ("ADA"), 42 U.S.C. § 12101 et seq.; (3) wrongful discharge under Pennsylvania law; (4) violation of the Consolidated Omnibus Budget Reconciliation Act ("COBRA"), 29 U.S.C. § 1161 et seq.; and Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1132 et seq. After considering the motions, relevant pleadings and evidence, and hearing oral argument made by counsel on March 25, 2002, the Court makes the following ruling.

BACKGROUND

Plaintiff worked for Defendant¹ as a customer service employee from March 1997 until September 17, 1999 when she was terminated. On September 9, 1999, while reaching for certain files, Plaintiff stood on a stool in an awkward manner, which caused her knee to give way, causing immediate pain. That morning, Plaintiff went to her doctor, Dr. Edward J. Ciecko, who recommended that Plaintiff remain out of work.

After the date of the injury, it is undisputed that Plaintiff was absent from work until September 17, 1999 when Defendant fired her. The parties, however, differ greatly on what happened during the period between September 9th and September 17th. According to Plaintiff, she was following her doctor's advice to stay home and was in constant touch with her supervisor, Georgeanne Paczkoski ("Paczkoski"). Moreover, Plaintiff claims she requested worker's compensation forms from Paczkoski during their phone conversations but she never received the forms from Defendant. Paczkoski, on the other hand, claims that Plaintiff only called in once during the time period after

¹ At the time Plaintiff worked for Defendant, it was known as Picker International, Inc. Plaintiff worked at the OrderExpress operation, located in Trevoze, Pennsylvania. Defendant's headquarters are located in Cleveland Ohio. Subsequent to the filing of this lawsuit, Defendant's name was changed to Philips Medical Systems Inc. The caption of this case does not reflect the name change. The parties may file a stipulation if they choose to change the caption of this case to reflect the latest name change.

her injury and termination, and did not inform her as to the exact nature of her injury. Moreover, she denies Plaintiff asked for worker's compensation forms.

It is also undisputed that the termination letter sent to Plaintiff by Defendant cited "job abandonment" as the reason for Plaintiff's termination. Plaintiff, however, claims that Defendant Corporation fired her because she attempted to exercise her lawful rights to pursue worker's compensation benefits. In response to the lawsuit, Defendant claims Plaintiff was fired because she failed to report to work, and failed to provide a physician statement indicating that she was unable to perform her job duties, for six consecutive days, as she had been instructed to do. Defendant also cites a history of poor attendance for firing Plaintiff.

On September 27, 1999, Plaintiff filed for worker's compensation benefits. On November 12, 1999, it was agreed that Plaintiff was entitled to worker's compensation benefits from September 9, 1999, the date of her injury, to October, 4 1999,² the date Dr. Ciecko released Plaintiff to return to work. Plaintiff's knee injury, however, worsened and Plaintiff

² On October 1, 2000, the operation at the Trevoise office which had employed Plaintiff was discontinued. As a result, although Dr. Ciecko released the Plaintiff to return to work on October 4, 1999, Plaintiff's former position as a customer service employee no longer exists at the Trevoise office. All other employees at the Trevoise office, however, were given the choice of relocating to Cleveland, Ohio.

underwent knee surgery on January 20, 2000. Plaintiff received worker's compensation benefits from January 20, 2000 to April 12, 2000. Due to complications, Plaintiff subsequently underwent a second surgery on August 19, 2000. Plaintiff has been receiving worker's compensation since then. In sum, it is undisputed that Plaintiff received worker's compensation benefits since the date of her injury with the exception of 32 weeks during the relevant period. During those 32 weeks, Plaintiff also received some unemployment compensation benefits. Plaintiff has not been able to find a job since her termination from Defendant Corporation.

On March 29, 2001, Plaintiff filed this lawsuit. Discovery in this case was to conclude October 15, 2001 but by Stipulation and Order, it was extended 60 days until December 15, 2001. The case was placed in the trial pool on February 4, 2002. On March 25, 2002, a hearing was held to hear argument on the various Motions before the Court. Defendant's Motion For Partial Summary Judgment is still pending before this Court. Upon hearing oral argument, the Court determined that the parties still have not resolved several discovery disputes, mainly the failure of both parties to fully disclose and answer the other party's request for interrogatories and production of documents. The Court will address each motion in turn.

I. MOTION TO COMPEL PRODUCTION OF DOCUMENTS

In Plaintiff's Second Request for Production of Documents, she requested that Defendant produce the following:

All documents referring to the worker's compensation claim which plaintiff Diane McCrane filed against defendant, including all correspondence between defendant and defendant's worker's compensation insurance carrier which reference Diane McCrane and/or her worker's compensation claim.

Defendant answered by stating:

Defendant objects to this request as it requests documents referring to the plaintiff's worker's compensation claim which was filed after plaintiff's termination and which are therefore irrelevant. Defendant also objects to this request as seeking information protected by the attorney-client privilege and disclosure of trial preparation materials beyond the scope of permissible discovery under F.R.C.P.(26)(b)(3).

In Plaintiff's Third Request for Production of Documents, she requested:

1. All attendance records of the seven employees assigned to the Order Express operation of the Trevoise office from March, 1997 to October 1, 2000.
2. All documents referring to any attendance issues pertaining to the seven employees assigned to the Order Express operation of the Trevoise office from March, 1997 to October 1, 2000.

Defendant responded to both requests as follows:

Defendant objects to this request as it seeks documentation that is irrelevant and may contain sensitive and/or confidential material which would implicate privacy interests of individuals not parties to this lawsuit. Defendant also objects to this request as overly broad and unduly burdensome. Documents referring to the attendance of employees could embrace a broad spectrum of materials in many

different forms. In addition, the OrderExpress operation which employed plaintiff is no longer in existence. Therefore a search of the sort requested would require a review of voluminous number of documents housed in the state of Ohio with attendant unreasonable expenditures of time and expense.

Plaintiff rejected Defendant's offer to produce time sheets in lieu of the attendance records.

DISCUSSION

Federal Rule of Civil Procedure 26(b)(1) provides:

Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action It is not grounds for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

Relevancy under Rule 26(b) is broadly construed. See Oppenheimer Fund, Inc. v. Sanders, 437 U.S. 340, 351 (1978). The scope of discovery, however, is not without its limits and is "committed to the sound discretion of the trial court." Miller v. Hygrade Food Products Corp., 89 F. Supp. 2d 643, 657 (E.D. Pa. 2000) (citations omitted). Moreover, the party seeking discovery has the burden of showing relevancy. Id.

1. Attendance Records

The Court finds that documents relating to other employee's attendance records are relevant to the Plaintiff's asserted claims and to Defendant's asserted defenses. Although Defendant offered time sheets, in lieu of the attendance records, they do not satisfy the Plaintiff's discovery request as time sheets do

not indicate the type of disciplinary actions taken against the other employees similarly situated as the Plaintiff. The Court, however, finds the scope of the Plaintiff's discovery request as to the attendance records overly broad. Therefore, the Court will limit the discovery of documents relating to the attendance records of the seven other employees, to documents dating back to 18 months prior to Plaintiff's discharge. This should suffice to provide Plaintiff with any relevant evidence she seeks and make the production of document less onerous for the Defendant.

Accordingly, the Defendant is ordered, within twenty (20) days of this Order, to produce the requested attendance records of the seven other similarly situated employees, provided the records are available. Considering the records are now located in some warehouse in Cleveland, Ohio, Defendant is directed to make a search of those records using reasonable means and effort. In addition, Defendant is directed to produce the previously offered time sheets, since they may act to supplement the attendance records where none is available or missing. Furthermore, Defendant, may, in the interest of protecting any confidential or privacy concerns of third party individuals, redact social security numbers and any other information Defendant deems confidential. Where disputes arise, the Court will view in camera the contested portions of the documents.

2. Plaintiff's Worker's Compensation Claim Documents

Defendant objects to Plaintiff's request for documents related to the Plaintiff's worker's compensation claim based on relevancy, attorney-client privilege and redundancy. Documents relating to Plaintiff's worker's compensation claims are clearly relevant to the Plaintiff's claims. At this time, the Court need not discuss attorney-client privilege or work-product privilege because the Court finds that the Defendant has already satisfied the Plaintiff's request for production.

Plaintiff is already in possession of the requested documents. Defendant subpoenaed the relevant records from AIG, Defendant's worker's compensation carrier and the Plaintiff's own worker's compensation attorney. These materials were handed over to the Plaintiff before this Motion was filed. Plaintiff, not satisfied with these documents, further sought copies of the same documents which are in Defendant's files. The production of these copies, however, would be wasteful and redundant. Defendant has represented to this Court that all non-privileged responsive documents have been produced to the Plaintiff. Plaintiff has no basis for insisting on copies of exact same documents, other than hopeful conjecture that the copies in Defendant's files may contain some other non-privileged information that supports Plaintiff's legal theory. As such, Plaintiff's request to compel Defendant to produce copies of

documents related to Plaintiff's worker's compensation claim is denied.

II. EVIDENCE REGARDING DAMAGES

The second motion before the Court relates to Plaintiff's claimed damages in her Pretrial Memorandum, listed as: (1) back-pay; (2) compensatory damages; (3) liquidated damages under the FMLA; (4) punitive damages under the wrongful termination claim; (5) attorney's fees, expert fees and costs under various statutes; and (6) COBRA damages. Defendant seeks to have the Court preclude evidence of the claimed damages on the following basis: (1) the Plaintiff failed to allege the damages with specificity; (2) the claimed damages are not cognizable under the Plaintiff's claim; (3) the claimed damages were not pleaded in Plaintiff's Amended Complaint; and (4) no evidence has been proffered in support of them. Although this case has already been placed in the trial pool, it is premature to discuss admissibility at this time because the parties are clearly still in the midst of several discovery disputes. As such, the Court will treat this motion as a discovery motion to compel Plaintiff to answer certain interrogatories and produce documents related to Plaintiff's claimed damages and reserve the issue of admissibility at trial for another time.

DISCUSSION

This Court's Pretrial and Trial Procedures require that Plaintiff include in its Pretrial Memoranda an "itemized statement of damages or other relief sought." Furthermore, Local Civil Rule 16.1(b)(3)(A) specifies that parties seeking damages "shall provide a detailed description of each item and state the amount of damages claimed." The Defendant also specifically requested that Plaintiff provide the Defendant with Plaintiff's claimed damages, the method of computation, and any supporting documentation of the claimed damages. The statement of claimed damages provided by Plaintiff in her Pretrial Memorandum is not specific enough to satisfy this Court's standing order. It also appears from the pleadings and argument at hearing that Plaintiff has not satisfied Defendant's discovery requests.

As such, Plaintiff shall, within ten (10) days of this Order, provide a more detailed, specific list of itemized damages, show the method of computation and list or provide the Defendant with specific documentation, if any, to support the claimed damages as requested by the Defendant's discovery requests. For each item, the Court makes the following notation.

1. Back-pay: Both parties agree Plaintiff has been receiving worker's compensation benefits with the exception of 32 weeks of the relevant period. There is also evidence that Plaintiff received unemployment benefits. As agreed by the

parties, these amounts will most likely reduce the total amount of back-pay Plaintiff will be claiming. Therefore, the Plaintiff shall provide a summary of the relevant time periods with a breakdown of the amounts claimed for each relevant time period, and show the exact method of computation for the amount of back-pay to which Plaintiff is claiming she is entitled. Plaintiff shall also provide any supporting documentation she has not yet provided to Defendant.

2. Compensatory Damages: Plaintiff shall set forth elements of the claimed compensatory damages and show how Plaintiff satisfies each element. Apart from the monetary amount related to pain and suffering, Plaintiff shall provide the method of computation and enumerate in detail the amount and basis for each claimed compensatory damage. Plaintiff shall also provide any supporting documentation she has not yet provided to Defendant.

3. Liquidated Damages under the FMLA: Plaintiff shall provide the method of computation and enumerate in detail the amount and basis for the claimed statutory fees.

4. Punitive damages: The issue of punitive damages will be addressed in this Court's resolution of Defendant's Partial Summary Judgment Motion and Leave to Amend Defendant's Partial Summary Judgment Motion, which asks this Court to dismiss Plaintiff's claim for punitive damages.

5. Attorney's fees, expert fees and costs: The issue of attorney's fees is not a matter for the jury but within the province of the court. It is, therefore, reserved until the final resolution of the case. On the other hand, Defendant is entitled to information concerning the costs of any expert fees. Plaintiff is ordered to provide the Defendant with information, including any documents, on the past and future costs of any experts it has retained and may possibly use at trial.

6. \$4,800 under COBRA for inferior insurance coverage: Plaintiff shall produce all documents, including receipts and evidence of payment, related to the alleged inferior insurance coverage Plaintiff was forced to pay for as a result of Defendant's failure to comply with COBRA. Furthermore, the Plaintiff is directed to provide the method of computation and enumerate specifically the amount and basis for the computation of the claimed amounts.

7. \$ 54,800 of statutory COBRA damages: Plaintiff shall provide a breakdown of relevant time periods and enumerate specifically the method of computation and show the basis for the computation of the claimed amounts.

III. PREVIOUSLY UNIDENTIFIED TRIAL WITNESSES

On January 7, 2002, after discovery closed and less than one month before this case was to be placed in the trial pool,

Defendant listed eight new trial witnesses in its Pretrial Memorandum. The Defendant seeks to preclude them from testifying at trial. The eight witnesses are Plaintiff's former co-workers who will testify regarding the Plaintiff's "job performance, attendance record, her alleged accident, the time frame following her accident and termination." Defendant did not identify these individuals either in its Self Executing Disclosures or in its response to Plaintiff's Interrogatories.

DISCUSSION

Federal Rule of Civil Procedure 26(e) imposes on litigants a duty to supplement discovery responses. Defendant's argument that Plaintiff had notice merely because the names of these individuals were mentioned by Plaintiff in her deposition is without merit. Defendant should have given notice earlier. As such, this Motion will be treated as a Motion to Compel Defendant to Answer Certain Interrogatories, rather than a motion to preclude witnesses from testifying at trial.

Moreover, this Court's standing Order states that the Pretrial Memorandum is to contain "A list of witnesses to be presented with a brief statement of the nature of their testimony. Witnesses not listed may not be called in the party's case in chief." Defendant's Pretrial Memorandum fails to articulate the specific nature of the proposed witnesses' testimony. Defendant's description of the proposed witnesses'

testimony basically encompasses the whole case. Therefore, the information contained in the Plaintiff's Pretrial Memorandum does not satisfy the Plaintiff's obligations.

Therefore, the Court orders Defendant to cure its failure to supplement the Plaintiff's interrogatories and the defect in its Pretrial Memorandum by articulating the exact nature of the proposed witness' testimony and providing the names, addresses, and phone numbers of each proposed witness to the Plaintiff within ten (10) days of this Order. Plaintiff shall have thirty (30) days in which to depose any of those eight witnesses should it choose to do so after Defendant's submission as directed by this Court.

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

DIANE McCRANE	:	CIVIL ACTION
Plaintiff,	:	
	:	
v.	:	
	:	
MARCONI MEDICAL SYSTEMS, INC.,	:	
Defendant.	:	No. 01-1518

O R D E R

AND NOW, this day of March, 2002, in consideration of Plaintiff's Motion to Compel Defendant to Answer Certain interrogatories and Requests for Production of Documents without Objection (Doc. No. 7); Defendant's Motion to Preclude the Admission of Evidence Regarding Damages Claimed in Plaintiff's Pretrial memorandum (Doc. 17); and Plaintiff's Motion In Limine To Preclude Certain Witnesses From Testifying at Trial (Doc. 18), the following is **ORDERED**:

1. Plaintiff's Motion to Compel Defendant to Answer Certain interrogatories and Requests for Production of Documents without Objection (Doc. No. 7) is **GRANTED** in part and **DENIED** in part.

A. Defendant shall, within twenty (20) days of this Order, produce attendance records and time sheets of seven other employees at the Trevoise office dating back 18 months from Plaintiff's termination, September 17, 1999.

B. Plaintiff's motion to compel documents related to Plaintiff's worker's compensation claim without objection is denied.

2. Defendant's Motion to Preclude the Admission of Evidence Regarding Damages Claimed in Plaintiff's Pretrial Memorandum (Doc. 17), which the Court deems as a Motion to Compel Evidence Regarding Damages Claimed in Plaintiff's Pretrial Memorandum, is **GRANTED** in part and **DENIED** in part.

A. Plaintiff shall, within ten (10) days of this Order, comply with the instructions in Part II, pages 10-12, of this Memorandum and Order.

B. Defendant's request for evidence relating to Plaintiff's attorney's fees incurred in this case is denied.

3. Plaintiff's Motion In Limine To Preclude Certain Witnesses From Testifying at Trial (Doc. 18), which the Court deems as a Motion to Compel Defendant to Answer Certain Interrogatories, is **GRANTED**.

A. Defendant is **ORDERED** to provide the Plaintiff with a brief but specific description of the nature of the intended testimony of each of the eight witnesses identified in its pre-trial memorandum within 10 days of the date of this Order.

B. Plaintiff shall have thirty (30) days in which to depose any of those eight witnesses should it choose to do so after Defendant's submission as directed by the Court in subparagraph 3A of this Order.

BY THE COURT:

JAMES MCGIRR KELLY, J.