

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

CIVIL ACTION NO. 3:02CV-243-H

WANDA JOHNSON

PLAINTIFF

v.

GALEN HEALTH INSTITUTES, INC.
d/b/a THE HEALTH INSTITUTE OF LOUISVILLE

DEFENDANT

JURY INSTRUCTIONS

Members of the Jury:

Now that you have heard all of the evidence and the argument of the attorneys, it is my duty to give you instructions as to the law applicable in this case.

It is your duty as jurors to follow the law as stated in the instructions, and to apply that law to the facts you find from the evidence. Do not to single out one instruction alone as stating the law but you should consider the instructions as a whole. Nor should you be concerned with the wisdom of any rule of law stated by the Court. You must apply the law given in these instructions whether you agree with it or not.

It is your duty to determine the facts, and in so doing you must consider only the evidence I have admitted in the case. The term "evidence" includes the sworn testimony of the witnesses and the exhibits admitted in the record. It is your own interpretation and recollection of the evidence that controls. The statements, objections, and arguments made by the lawyers are not evidence. What the lawyers have said to you is not binding upon you. You are permitted to draw reasonable inferences, deductions, and conclusions

from the testimony and exhibits which you feel are justified in the light of your own common sense.

In saying that you must consider all the evidence, I do not mean to suggest that you must necessarily accept all of the evidence as true or accurate. You are the sole judges of the credibility or believability of each witness and the weight to be given to the testimony of each witness. In determining the credibility of any witness, you may properly consider the demeanor of the witness while testifying, frankness or lack of it, and his or her interest in the outcome of the case, if any.

The weight of the evidence is not necessarily determined by the number of witnesses testifying as to the existence or nonexistence of any fact. You should be guided in your deliberations by the quality and credibility of the evidence you have heard.

In this case it is Plaintiff's responsibility to persuade you that Plaintiff's claim is more likely true than not. If Plaintiff fails to persuade you on every essential element of Plaintiff's claim, then you should find for the Defendant on that claim.

Instruction No. 1

Under Title IX of the Civil Rights Act of 1972, it is unlawful to retaliate against a student for exercising their right to file a sexual harassment claim. Plaintiff Wanda Johnson alleges that the Health Institute of Louisville unlawfully retaliated against her when it expelled her from school. To find for Wanda Johnson, you must be satisfied from the evidence that each of the following are true:

- (1) Wanda Johnson engaged in a protected activity; **and**
- (2) The Health Institute of Louisville knew that she engaged in a protected activity; **and**
- (3) The Health Institute of Louisville expelled her because she engaged in a protected activity.

For the purposes of this instruction, you are to assume that “protected activity” means Ms. Johnson opposed an unlawful sexual harassment practice which she reasonably believed had occurred or was occurring.

As to element (3) listed above, your concern should not be whether dismissing Plaintiff was a wise or good decision, but whether Defendant unlawfully retaliated against Plaintiff because she complained about sexual harassment.

If you find these three elements have been met, please find for the Plaintiff under Question No. 1 of the Verdict Form. Otherwise you must find for the Defendant.

If you have found for the Plaintiff in response to Question No. 1, please proceed to Instruction No. 2. Otherwise, you may return to the courtroom.

Instruction No. 2

If you find for Wanda Johnson on Question No.1, you may award her compensatory damages. Ms. Johnson bears the burden of proving that the Health Institute of Louisville caused her to suffer these damages. You should not award compensatory damages for speculative injuries, but only for those losses she has actually proved.

Ms. Johnson has requested damages for emotional distress. In order to be entitled to these damages, Ms. Johnson must prove that she has suffered mental anguish, humiliation, embarrassment, or stress, as a consequence of her unlawful expulsion rather than other causes. Ms. Johnson may not recover emotional damages unless she provides evidence of a genuine injury.

Ms. Johnson has also requested damages for her lost wages from the time of her expulsion until the present. These damages are determined by measuring the difference between Ms. Johnson's actual earnings for that period and those which she would have earned had she not been expelled.

When you are calculating lost wages you should keep in mind that, under the law, Ms. Johnson had a duty to mitigate. This means she had a duty to take reasonable steps to limit her losses. The Health Institute has the burden of proving that Ms. Johnson failed to mitigate. Therefore, if the Health Institute proves that Ms. Johnson unjustifiably failed to take a higher paying job available to her or failed to make reasonable efforts to find a better-paying job, you must subtract any amount she could have earned in that new job. You may also consider Ms. Johnson's failure to re-enroll in another nursing school like the Health Institute and whether, in doing so, she violated her duty to mitigate.

If you find that the law was violated but that Plaintiff has not proved any actual damages for emotional distress or lost wages, you may award nominal damages in the amount of \$1.

In awarding compensatory damages, if you decide to award them, you must be guided by dispassionate common sense. Computing damages may be difficult, but you must not let that difficulty lead you to engage in arbitrary guesswork. On the other hand, the law does not require a plaintiff to prove the amount of her losses with mathematical precision, but only with as much definiteness and accuracy as the circumstances permit.

Please enter the amount of your verdict, if any, for compensatory damages in Question No. 2 on the Verdict Form.

Please return to the courtroom.

Any verdict must represent the considered judgment of each juror. In order to return a verdict, it is necessary that each juror agree. Your verdict must be unanimous.

It is your duty as jurors, to consult with one another, and to deliberate with a view to reach an agreement, if you can do so without violence to individual judgment. You must each decide the case for yourself, but only after an impartial consideration of the evidence in the case with your fellow jurors. In the course of your deliberations, do not hesitate to reexamine your own views and change your opinion, if convinced it is erroneous. But do not surrender your honest conviction as to the weight or effect of the evidence, solely because of the opinion of your fellow jurors, or for the mere purpose of returning a verdict.

Upon retiring to the jury room, you will select one of your number to act as your foreperson. The foreperson will preside over your deliberations and will be your spokesperson here in Court. A verdict form has been prepared for your convenience. You will take this form to the jury room and, when you have reached unanimous agreement as to your verdict, you will have your foreperson fill in, date and sign the verdict upon which you unanimously agree with respect to each issue in this case; you will then return with your verdict to the courtroom.

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DEFENDANT

VERDICT FORM

Question No. 1:

Plaintiff _____

Defendant _____

Question No. 2:

Compensatory Damages:

\$ _____

FOREPERSON

Date: _____