

Not To Be Published:

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CENTRAL DIVISION**

TERRY R. RAYMOND,

Plaintiff,

vs.

U.S.A. HEALTHCARE
CENTER-FORT DODGE, L.L.C., and
the parent corporation U.S.A.
HEALTHCARE, INC.,

Defendants.

No. C 05-3074-MWB

**MEMORANDUM OPINION AND
ORDER REGARDING PLAINTIFF'S
MOTION IN LIMINE**

This matter comes before the court pursuant to plaintiff Raymond's February 27, 2007, Motion In Limine (docket no. 30). Defendant U.S.A. Healthcare filed its Resistance To Plaintiff's Motion In Limine (docket no. 32) on March 9, 2007. Shortly after Raymond filed her Motion In Limine, the trial in this matter was rescheduled from March 26, 2007, to May 14, 2007, owing to a conflict in the court's calendar. *See* Order Resetting Trial (docket no. 31). As the rescheduled trial date approaches, the court finds that Raymond's motion in limine should now be resolved in order to assist the parties in their preparations for trial.

In her motion, Raymond first seeks an order excluding any evidence of offers of settlement or compromise. Raymond contends that such evidence is irrelevant and, thus, should be excluded pursuant to Rule 401 of the Federal Rules of Evidence. She also contends that such evidence should be excluded, presumably pursuant to Rule 403, because any probative value of the evidence is outweighed by unfair prejudice and would confuse

or mislead the jury regarding the issues in this case. Raymond does not, however, identify the prejudice, confusion, or misdirection that such evidence would engender. In its response, U.S.A. Healthcare not only does not resist, but joins, Raymond's motion in limine as it relates to evidence of offers to settle or compromise.

The court agrees with the parties that evidence of offers of settlement or compromise should be excluded. Indeed, Rule 408 of the Federal Rules of Evidence expressly provides as follows:

Evidence of (1) furnishing or offering or promising to furnish, or (2) accepting or offering or promising to accept, a valuable consideration in compromising or attempting to compromise a claim which was disputed as to either validity or amount, is not admissible to prove liability or invalidity of the claim or its amount. Evidence of conduct or statements made in compromise negotiations is likewise not admissible.

FED. R. EVID. 408 (exclusions and limitations omitted). Thus, the first category of evidence identified in Raymond's motion will be excluded.

In her motion, Raymond also seeks an order excluding any references to her dismissed claims or references to the claims that she filed with the Iowa Civil Rights Commission. Again, Raymond contends that this category of evidence should be excluded pursuant to Rules 401 and 403, although, again, she does not identify the prejudice, confusion, or misdirection that such evidence would engender. U.S.A. Healthcare does resist exclusion of this category of evidence. U.S.A. Healthcare points out that, in addition to the claim of retaliation for filing a workers' compensation claim that is now before the court, Raymond originally asserted, but voluntarily dismissed, a claim of retaliation for complaints to management regarding the inadequacy of the patient/nurse ratio at U.S.A. Healthcare and the sexually oriented activities of her co-workers and claims of disability discrimination in violation of federal and state law. U.S.A. Healthcare

argues that such evidence is clearly relevant to Raymond's claim that she was terminated as a result of filing a workers' compensation claim, because it is probative of whether there were other justifications for her termination. U.S.A. Healthcare contends that the probative value of this evidence of other justifications is high, while the risk of prejudice or confusion is low. U.S.A. Healthcare argues that this is so, because Raymond's own former contentions that there were other reasons for her discharge seem to belie her current contention that only retaliation for her workers' compensation claim explains her discharge. While Raymond's decision to assert other reasons for her termination, only to turn around and dismiss claims asserting those other reasons, may strike some jurors as confusing and cause them to doubt her remaining claims in this case, U.S.A. Healthcare contends that this confusion or prejudice is not the kind that outweighs the probative value of the evidence. If any restriction at all is imposed on this evidence, U.S.A. Healthcare contends that it should be narrow to avoid exclusion of probative evidence.

Contrary to U.S.A. Healthcare's contentions, the court concludes that any references to Raymond's dismissed claims or references to the claims that she filed with the Iowa Civil Rights Commission should be excluded. Indeed, the court finds U.S.A. Healthcare's resistance to exclusion of such evidence to be too clever by half. In its ruling on U.S.A. Healthcare's motion for summary judgment in this case, the court explored in considerable detail the extent to which "other justifications" for the allegedly retaliatory actions toward the plaintiff were relevant on a claim under Iowa law of retaliatory discharge for filing a workers' compensation claim. Memorandum Opinion And Order Regarding Defendants' Motion For Summary Judgment (docket no. 26), 14-21 (published at *Raymond v. U.S.A. Healthcare Center-Fort Dodge, L.L.C.*, 468 F. Supp. 2d 1047, 1056-61 (N.D. Iowa 2006)). At no point, however, did the court suggest that other justifications for adverse employment action *offered by anyone other than the employer*

were relevant to the analysis. Indeed, it is only *the employer's* motive, and hence, only *the employer's* proffered explanations for its action, that could possibly be relevant to the claim. *See, e.g., Raymond*, 468 F. Supp. 2d at 1059-60. Certainly, U.S.A. Healthcare does not intend to assert that it did not discharge Raymond in retaliation for filing of workers' compensation claims, but instead in retaliation for complaints to management regarding the inadequacy of the patient/nurse ratio at U.S.A. Healthcare and the sexually oriented activities of her co-workers or because of her disability. Thus, the *employee's* assertion, in the context of litigation, that there might have been other illegal conduct afoot simply has no relevance to proof of a claim that the employer terminated her for filing workers' compensation claims, and evidence of the *employee's* assertions of other illegal conduct, where such assertions have been withdrawn or dismissed, is properly excluded pursuant to Rule 401 of the Federal Rules of Evidence. FED. R. EVID. 401 ("Evidence that is not relevant is not admissible.").

Moreover, even if the court could be convinced that a former employee's suggestions of alternative illegal reasons for her discharge were somehow relevant to the employer's motives for its conduct, evidence of the former employee's suggestions of such alternative reasons could and would be excluded pursuant to Rule 403 of the Federal Rules of Evidence, because the limited probative value of such suggestions would be outweighed by the potential for prejudice and confusion of the jury. *See* FED. R. EVID. 403 (relevant evidence may be excluded if its probative value is outweighed, *inter alia*, "by the danger of unfair prejudice, confusions of the issues, or misleading the jury"). Evidence of such suggestions could unduly confuse the jury about whose motives and justifications are at issue on the retaliation claim, which is the precise confusion demonstrated in U.S.A. Healthcare's resistance to the motion to exclude this evidence. In the court's view, it would also be unfairly prejudicial, at least in the circumstances of this case, to impugn the

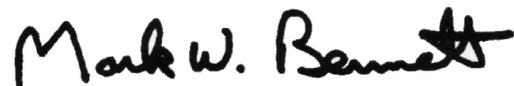
sincerity of the plaintiff's assertion of one claim that the court has found sufficient to go to a jury with the plaintiff's original assertion of other claims that she has voluntarily dismissed.

Finally, U.S.A. Healthcare contends that any order excluding the second category of evidence should be narrow, so as not to exclude evidence surrounding Raymond's assertion of other claims, the facts and circumstances underlying those claims, or other issues related to the case, such as the core questions regarding the reason that she was terminated and the amount of any damages. The court concludes, however, that an order specifically limited to exclusion of the evidence that Raymond actually seeks to exclude will not be overbroad. Raymond seeks to exclude only *references to her dismissed claims* and *references to the claims* that she filed with the Iowa Civil Rights Commission. She does not seek to exclude evidence of any *facts* relating to the circumstances surrounding her discharge.

THEREFORE, plaintiff Raymond's February 27, 2007, Motion In Limine (docket no. 30) is **granted in its entirety**. The parties and their witnesses are expressly precluded from (1) offering or alluding to any evidence of offers of settlement or compromise; and (2) making any references to Raymond's dismissed claims or making any references to the claims that she filed with the Iowa Civil Rights Commission.

IT IS SO ORDERED.

DATED this 5th day of April, 2007.



MARK W. BENNETT
U. S. DISTRICT COURT JUDGE
NORTHERN DISTRICT OF IOWA