

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF IOWA  
CENTRAL DIVISION

CHARLES VANDER LINDEN,

Plaintiff,

vs.

CENTRAL IOWA HOSPITAL  
CORPORATION,

Defendant.

No. 3:08-cv-00189-JAJ

**FINAL  
JURY INSTRUCTIONS**

**INSTRUCTION NO. 1**  
**INTRODUCTION / DUTIES / BURDEN**

MEMBERS OF THE JURY:

Now that you have heard the evidence, it becomes my duty to give you the instructions of the Court as to the law applicable to this case.

It is your duty as jurors to follow the law as stated in the instructions of the Court, and to apply the rules of law so given to the facts as you find them from the evidence.

Counsel will quite properly refer to some of the governing rules of law in their arguments. If, however, any difference appears to you between the law as stated by counsel and that stated by the Court in these instructions, you of course are to be governed by the instructions.

You are not to judge the wisdom of any rule of law stated by the Court. Regardless of any opinion you may have as to what the law ought to be, it would be a violation of your sworn duty to base a verdict upon any other view of the law than that given in the instructions of the Court; just as it would be a violation of your sworn duty, as judges of the facts, to base a verdict upon anything but the evidence in the case.

Justice through trial by jury must always depend upon the willingness of each individual juror to seek the truth as to the facts from the same evidence presented to all the jurors; and to arrive at a verdict by applying the same rules of law, as given in the instructions of the Court.

Whenever a party must prove something, they must do so by the preponderance of the evidence. Preponderance of the evidence is evidence that is more convincing than opposing evidence. Preponderance of the evidence does not depend upon the number of witnesses testifying on one side or the other.

The fact that one of the parties in this lawsuit is a corporation should not affect your decision. All persons are equal before the law, and corporations, whether large or small, are entitled to the same fair and conscientious consideration by you as any other person.

**INSTRUCTION NO. 2**  
**EVIDENCE**

You shall base your verdict only upon the evidence and these instructions. Evidence is: (1) testimony in person; (2) exhibits received by the Court; and (4) facts stipulated by the parties. Evidence may be direct or circumstantial. The weight to be given any evidence is for you to decide. The following are not evidence: (1) statements, arguments, questions and comments by the lawyers; (2) objections and rulings on objections; and (3) anything you saw or heard about this case outside the courtroom.

You will decide the facts from the evidence. Consider the evidence using your observations, common sense and experience. You must try to reconcile any conflicts in the evidence; but, if you cannot, you will accept the evidence you find more believable. In determining the facts, you may have to decide what testimony you believe. You may believe all, part or none of any witness's testimony. There are many factors which you may consider in deciding what testimony to believe, for example: (1) whether the testimony is reasonable and consistent with other evidence you believe; (2) the witness' appearance, conduct, intelligence, memory and knowledge of the facts; (3) whether the witness has given statements in the past that are inconsistent with his or her testimony at trial; and (4) the witness' interest in the trial, their motive, candor, bias and prejudice.

A witness may be discredited or impeached by contradictory evidence or by evidence that at some other time the witness has said or done something, or has failed to say or do something, which is inconsistent with the witness's present testimony. If you believe that any witness has been impeached and thus discredited, it is your exclusive province to give the testimony of that witness such credibility, if any, as you may think it deserves.

**INSTRUCTION NO. 3**  
**DISCRIMINATION**

In this case, the plaintiff sues the defendant, claiming the defendant discriminated against him based on his age by failing to offer the plaintiff a second-year family medicine resident position.

In order to recover on the plaintiff's discrimination claim, he must prove all the elements of his claim by the preponderance of the evidence:

*First*, the defendant did not offer the plaintiff a second-year family medicine resident position; and

*Second*, that the plaintiff's age was a determining factor in the defendant's decision not to offer him the position.

If any of the above elements has not been proven by the preponderance of the evidence, your verdict must be for the defendant and you need not proceed further in considering this claim.

"Age was a discriminating factor" only if the defendant would have offered the position to the plaintiff but for his age; it does not require that age was the only reason for the decision made by the defendant. You may find age was a determining factor if you find the defendant's stated reasons for its decision were not the real reasons, but a pretext to hide age discrimination.

**INSTRUCTION NO. 4**  
**BUSINESS JUDGMENT**

You may not return a verdict for the plaintiff just because you might disagree with the defendant's decision or believe it to be harsh or unreasonable. Defendant is entitled to make its own subjective personnel decisions, absent intentional age discrimination.

**INSTRUCTION NO. 5**  
**COMPENSATORY DAMAGES**

If you find in favor of the plaintiff, then you must award him such sum as you find by the preponderance of the evidence will fairly and justly compensate the plaintiff for any damages you find the plaintiff sustained as a direct result of the defendant's conduct. The plaintiff's claim for compensatory damages includes two distinctive types of damages and you must consider them separately:

*First*, you must determine the amount of any wages and fringe benefits you find the plaintiff would have earned in his employment with the defendant if he had been offered a second-year family medicine resident position and commenced employment on August 28, 2006, through August 27, 2008, the date such employment would have lawfully ended, minus the amount of earnings and benefits from other employment received by the plaintiff during that time.

*Second*, you must determine the amount of emotional distress damages sustained in the past as a result of the defendant's wrongful actions. Emotional distress may include anxiety, humiliation, loss of self-esteem and loss of enjoyment of life. The amount you assess for emotional distress damages cannot be measured by any exact or mathematical standard. You must use your sound judgment based on an impartial consideration of the evidence. Your judgment must not be exercised arbitrarily or out of sympathy or prejudice, for or against the parties.

You are also instructed that the plaintiff has a duty under law to "mitigate" his damages – that is, to exercise reasonable diligence under the circumstances to minimize his damages. Therefore, if you find that the defendant has proved by a preponderance of the evidence that the plaintiff failed to seek out or take advantage of any employment opportunity that was reasonably available to him, you must reduce his damages by the amount he reasonably could have avoided if he had sought or taken advantage of an opportunity.

**INSTRUCTION NO. 6**  
**QUOTIENT VERDICT**

In arriving at an item of damage you cannot arrive at a figure by taking down an estimate or each juror as to an item of damage, and agreeing in advance that the average of those estimates shall be your item of damage.

**INSTRUCTION NO. 7**  
**WILLFULNESS**

If you find in favor of the plaintiff under Instruction No. 3, then you must decide whether the conduct of the defendant was “willful.” You must find the defendant’s conduct was willful if you find by the preponderance of the evidence that, when the defendant did not offer the second-year family medicine resident position to the plaintiff, the defendant knew it was acting in violation of the federal law prohibiting age discrimination, or acted with reckless disregard of that law.

**INSTRUCTION NO. 8**  
**AFTER-ACQUIRED EVIDENCE**

If you find the plaintiff proved his claim of discrimination, as explained in Instruction No. 3, by the preponderance of the evidence, then you must answer the following question on your verdict form:

Question No. 1: Has it been proved by the preponderance of the evidence that, even if the plaintiff had been offered a second-year family medicine resident position to commence on August 28, 2006, the defendant would have terminated the plaintiff's employment by December 7, 2007, the plaintiff made a misrepresentation to Iowa Board of Medicine?

**INSTRUCTION NO. 9**  
**DELIBERATIONS**

In conducting your deliberations and returning your verdict, there are certain rules you must follow.

*First*, when you go to the jury room, you must select one of your members as your foreperson. That person will preside over your discussions and speak for you here in court.

*Second*, it is your duty, as jurors, to discuss this case with one another in the jury room. You should try to reach agreement if you can do so without violence to individual judgment, because a verdict must be unanimous.

Each of you must make your own conscientious decision, but only after you have considered all the evidence, discussed it fully with your fellow jurors, and listened to the views of your fellow jurors.

Do not be afraid to change your opinions if the discussion persuades you that you should. But do not come to a decision simply because other jurors think it is right, or simply to reach a verdict. Remember at all times that you are not partisans. You are judges - judges of the facts. Your sole interest is to seek the truth from the evidence in the case.

*Third*, if you need to communicate with me during your deliberations, you may send a note to me through the court security officer, signed by one or more jurors. I will respond as soon as possible either in writing or orally in open court. Remember that you should not tell anyone - including me - how your votes stand numerically.

*Fourth*, your verdict must be based solely on the evidence and on the law which I have given to you in my instructions. Your verdict must be unanimous. Nothing I have said or done is intended to suggest what your verdict should be - that is entirely for you to decide.

*Finally*, the verdict form is simply the written notice of the decision that you reach in this case. You will take this form to the jury room, and when each of you has agreed on the verdict, your foreperson will fill in the form, sign and date it, and advise the court security officer that you are ready to return to the courtroom.

**DATED** this XX<sup>th</sup> day of November, 2008.

  
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JOHN A. JARVEY  
UNITED STATES DISTRICT JUDGE  
SOUTHERN DISTRICT OF IOWA

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF IOWA  
CENTRAL DIVISION

CHARLES VANDER LINDEN,

Plaintiff,

vs.

CENTRAL IOWA HOSPITAL  
CORPORATION.

Defendant.

No. 4:07-cv-00189-JAJ

**VERDICT FORM**

**QUESTION NO. 1.** Did the plaintiff prove his claim of discrimination, as described in Instruction No. 3, by the preponderance of the evidence?

**YES** \_\_\_\_\_

**NO** \_\_\_\_\_

If the answer to Question No. 1 is “yes”, then answer Question Nos. 2 and 3. If the answer to Question No. 1 is “no”, do not answer Question Nos. 2 and 3.

**QUESTION NO. 2.** Did the defendant prove by the preponderance of the evidence that, even if the plaintiff had been offered a second-year family medicine resident position to commence on August 28, 2006, the defendant would have terminated the plaintiff’s employment by December 7, 2007, because the plaintiff made a misrepresentation to the Iowa Board of Medicine?

**QUESTION NO. 3.** Determine the amount of damages the plaintiff sustained for:

Back Pay \$ \_\_\_\_\_

Emotional Distress \$ \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
Foreperson

\_\_\_\_\_  
Juror

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Juror

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Juror

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Juror

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