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Eighth Circuit Court of Appeals Affirms Dismissal of Case Based on Plaintiff's Dishonesty

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Last month, the U.S. Court of Appeals for the Eighth Circuit affirmed a sanction decision of the U.S. District Court for the District of Minnesota, ruling that the lower court's dismissal of the plaintiff's case for lying in her deposition was within the lower court's discretion. The federal Eighth Circuit encompasses Missouri, Minnesota, Iowa, Arkansas, Nebraska, North Dakota and South Dakota.

In *Deering v. Lockheed Martin et al*, an in-house lawyer, Deering, sued Lockheed Martin for discrimination and retaliation after Lockheed Martin fired her. The District Court granted summary judgment on Deering's discrimination claim, but the retaliation claim survived for trial.



The District Court dismissed the remaining retaliation claim before trial as a sanction based on evidence that Deering had been dishonest in the course of the litigation and misled Lockheed and the court about her wage loss mitigation efforts. Deering had falsely represented her job status in her deposition and did not correct this on her deposition errata sheet. In the weeks leading up to trial, Lockheed discovered two documents within trial exhibits that proved Deering had obtained new more lucrative employment, previously unknown and undisclosed. Lockheed filed an emergency motion for sanctions. The District Court characterized Deering's deceit as intentional, willful, and in bad faith, and proceeded to dismiss Deering's case with prejudice (meaning the court's decision was final and the case could not be refiled), and to award Lockheed almost \$100,000 in attorney's fees.

The primary issue for the Eighth Circuit was whether the District Court abused its discretion in ordering the extreme sanction of dismissal of the lawsuit. In ruling that the District Court did not abuse its discretion, the Eighth Circuit noted that multiple factors drove the District Court's decision to dismiss the case, including the length of Deering's deception, and the fact that Deering, as a lawyer, should have known the significance of the misrepresentation in terms of potential damages and cured the misrepresentation. The Eighth Circuit noted that Deering's "retaliation claim would have gone to a jury if she had not spent more than a year and a half misleading Lockheed and the district court about her employment." "The deception began at her deposition," the Eighth Circuit said, and she did not correct the misrepresentation on the deposition errata sheet she signed. "Instead, she doubled down on the deception," according to the Eighth Circuit. She continued to fail to disclose, even in a declaration, that she obtained another position making more money, which would have significantly decreased her claim for damages.

Key takeaways from this decision include:

- The importance of ensuring witnesses are well prepared before testifying or providing statements that can be used in evidence, whether depositions, testimony in unemployment hearings, written or verbal statements, service letter responses, etc.
- The importance of truthfulness and consistency in anecdotal evidence and documentary evidence.
- The importance of reviewing documents for the hidden "gems" that may be included.

If you have any questions regarding this decision and its impact for employers, contact the author, [Rosalee McNamara](#), or your regular Lathrop GPM attorney.