

April 12, 2007

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

---

No. 06-40996  
Summary Calendar

---

DAVID CARPENTER,

Plaintiff-Appellee.

versus

TYLER INDEPENDENT SCHOOL DISTRICT,

Defendant-Appellant,

-----  
Appeal from the United States District Court  
for the Eastern District of Texas  
USDC No. 6:05-CV-124  
-----

Before KING, HIGGINBOTHAM, and GARZA, Circuit Judges.

PER CURIAM:\*

The district court did not abuse its discretion in awarding Carpenter front-pay damages, even though the court declined to award back-pay damages because of Carpenter's failure to mitigate those back-pay damages. See Giles v. General Electric Co., 245 F.3d 489, 490 (5th Cir. 2001); DeLoach v. Delchamps, Inc., 897 F.2d 815, 822-33 (5th Cir. 1990). And, given its broad equitable powers in USERRA cases, 38 U.S.C. § 4323(e); Coffy v. Republic Steel

---

\* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

Corp., 447 U.S. 191, 196 (1980), the district did not abuse its discretion in awarding one year's salary without considering Carpenter's prospective \$7-per-hour future income. Consequently, the court did not err in awarding Carpenter attorneys' fees. 38 U.S.C. § 4323(h)(2); Buckhannon v. Bd. and Care Home, Inc. v. West Va. Dep't of Health & Human Resources, 532 U.S. 598, 602 (2001). In his brief, Carpenter attempts to cross-appeal the district court's upholding the jury's finding of no damages, but Carpenter never filed a notice of appeal, hence we cannot entertain his argument. FED. R. APP. P. 4(a)(3); see, e.g., Positive Black Talk, Inc. v. Cash Money Records, Inc., 394 F.3d 357, 365 n.5 (5th Cir. 2004).

AFFIRMED.