

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

GEORGE B. SKIDMORE,)	
)	8:08CV1
Plaintiff,)	
)	
v.)	
)	MEMORANDUM AND ORDER
ACI WORLDWIDE, INC.,)	
)	
Defendant.)	
_____)	

This matter is before the court on the plaintiff's appeal, Filing No. [57](#), of the order of the United States Magistrate Judge granting defendant's motion for reasonable attorney fees and costs in connection with a motion to compel, Filing No. [56](#). This is an action for wrongful discharge under the Sarbanes-Oxley Act of 2002 ("Sarbanes-Oxley"), [18 U.S.C. § 1514A](#). In his complaint, plaintiff alleges a violation of Sarbanes-Oxley in the termination of his employment after he reported alleged wrongful conduct by ACI.

The magistrate judge found that the plaintiff's failure to timely produce his medical records required the defendant to incur unnecessary costs. On review of a decision of the magistrate judge on a pretrial matter, the district court may set aside any part of the magistrate judge's order that it finds is clearly erroneous or contrary to law. [28 U.S.C. § 636](#) (b)(1)(A); Fed. R. Civ. P. 72(a); [In re Lane, 801 F.2d 1040, 1042 \(8th Cir. 1986\)](#). See also [Bialas v. Greyhound Lines, Inc., 59 F.3d 759, 764 \(8th Cir. 1995\)](#) (noting "a magistrate is afforded broad discretion in the resolution of nondispositive discovery disputes").

Under Rule 37, the court must require the party whose conduct necessitated the motion, or his attorney, or both, to pay the movant's reasonable expenses incurred in making the motion, including attorney fees. Fed. R. Civ. P. 37(a)(5)(A). The plaintiff has

not presented circumstances that make the award unjust. Based on familiarity with the case, the magistrate judge was within his discretion to award reasonable expenses, including attorney fees, to the defendant. Defendant has not shown that the magistrate judge's findings are clearly erroneous or contrary to law. Accordingly,

IT IS ORDERED:

1. The plaintiff's appeal (Filing No. [57](#)) of the magistrate judge's order (Filing No. [56](#)) is denied.
2. The order of the magistrate judge (Filing No. [56](#)) is affirmed.
3. The plaintiff shall respond to the defendant's application for fees (Filing No. [60](#)) within 7 days of the date of this order.

DATED this 7th day of July, 2009.

BY THE COURT:

s/ Joseph F. Bataillon
Chief United States District Judge