NO. 94747-3

SUPREME COURT
OF THE STATE OF WASHINGTON

Court of Appeals No. 73847-0-1

VICTOR TERENCE WASHINGTON,

Petitioners,

v.

GROUP HEALTH COOPERATIVE,

Respondent.

Answer to Petition for Discretionary Review

Submitted by:

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I. INTRODUCTION

Petitioner Victor Washington seeks a new trial on his disability discrimination and failure to accommodate claims against Respondent Group Health Cooperative. The appellate court properly affirmed the verdict in favor of Group Health on Washington's claims holding that the trial court did not abuse its discretion in denying Washington's motion for a new trial where: (1) the verdict was substantially supported by the evidence; and (2) Washington failed to preserve challenges to allegedly prejudicial comments by Group Health's counsel. Simply stated, there exists no basis for this Court's review of the appellate court's opinion. Review should be denied.

II. RESTATEMENT OF THE CASE

A. Washington's Employment with Group Health.

1. Washington's Employment and Litigation History.

Washington worked for Tideworks from 2004 until terminated in 2005. (Verbatim Report of Proceedings ("RP") 52-53, 55) He later sent Tideworks a demand letter (the "McLeod Letter") claiming it discriminated again him and offering to accept a settlement payment.[1] (RP 223-226) and Trial Exhibit No. 56 ("Ex."). Washington was later employed by Starbucks from 2006 until terminated in May 2008. (RP 57, 197) Washington obtained a letter from

[1] Washington specifically claimed violations of the Washington Law Against Discrimination ("WLAD") and Americans with Disabilities Act ("ADA").

Starbucks confirming he was "employed by Starbucks Coffee Company as of August 31, 2006." (Exs. 170-171) Washington later sued Starbucks for race and disability discrimination representing that he was "a former employee of Starbucks." (Ex. 74, ¶¶ 3.1, 8.3-8.4)

2. Washington Accepts but Delays Employment with Group Health to Accommodate his Bankruptcy Petition.

In 2011, Washington applied for a Systems Engineer position with Group Heath. (RP 63-64) In his application, Washington identified "Seattle's Best Coffee"—not Starbucks—as his "current" employer.[2] (RP 188-190; Exs. 71-72) He also referred to himself by his middle name "Terence," rather than first name, "Victor" although all his Starbucks employment records refer to him as "Victor." (RP 195-196; Exs. 71-72, 161-163, 170-171) On February 9, 2012, Group Health offered Washington a Systems Engineer position with a target February 29, 2012 start date. (RP 219, 664; Ex. 71, at 5, Ex. 130) Washington accepted the offer but did not begin employment until April 6, 2012.[3] (Exs. 71, 75) Washington testified that it was his "desire" to start in April because he had several tasks to accomplish before beginning employment, including completing personal bankruptcy proceedings that he

[2] Despite Washington's claimed "understanding" that Starbucks and Seattle's Best Coffee are one wholly owned entity, it is uncontested that his Starbuck's employment was terminated in May 2008 and, thus, that he was not then employed by Starbucks (or Seattle's Best Coffee). (RP 57, 63-64, 197; Exs. 71-72)

[3] Adam Burton ("Burton"), Group Health Technical Network Manager, testified that desired for Washington to begin his employment as soon as possible. (RP 482, 491)

initiated on March 1, 2012. (RP 220) In those proceedings, on March 15, 2012 Washington filed a declaration in federal court swearing under penalty of perjury that he had no prospect of income. (RP 220-221)

3. Washington Does Not Notify Group Health of Any Alleged Disability During his Onboarding.

During his onboarding, Washington was asked to complete a demographic information form inquiring: "Are you an individual with a disability?" and "Are you a disabled veteran?" (RP 79-82; Ex. 4) Washington left the answers blank because he was "confused" by the questions and "did not know exactly how to fill [it] out." (RP 80-81; Ex. 4)

4. Washington is Argumentative with his Supervisor.

After starting with Group Health, Washington challenged the authority of his supervisor, Jon Sims, by arguing over his designated job title, asserting that he should be designated a *Senior* Systems Engineer. (RP 404-405) Washington refused to accept Sims' explanation that he had been hired to a non-senior position and "elevated" the issue by going directly to Burton, Sims' manager.[4] (RP 357, 404-405, 491) On July 13, 2012, Washington received a second-quarter performance review from Sims. (Ex. 9) In the review, Sims rated Washington as meeting expectations in some areas while noting areas for

[4] Burton affirmed Sims' explanation, but Washington continued to challenge his title and met again with Sims to dispute his designation. (RP 357, 404-405, 491) Sims had never before experienced a newly hired employee engage in such confrontational behavior. (RP 405)

improvement in others—including his argumentative attitude. *Id.* Sims believed that he could have been more critical in the review but chose not to so as to be supportive and mentoring. (RP 409-410)

5. Washington Resists Following Group Health's Change Management Policy.

As an employee in Group Health's Information Technology ("IT") department, Washington was required to follow Group Health's Change Management Policy.[5] (RP 407-408; Ex. 111) The Policy requires IT personnel to get pre-authorization before implementing proposed network changes and to document their proposed changes in "change tickets." (RP 683; Ex. 111, at 2). Washington repeatedly resisted following the Change Management Policy.[6] (RP 408-409) Group Health's Change Management Group regularly had to remind Washington to update specific projects in accordance with the Change Management Policy. (RP 248-253; Exs. 62-70) For example, Washington was repeatedly reminded to keep his change tickets up to date and to close them out. (RP 249-251; Exs. 62-65)

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[5] The Change Management Policy is designed to minimize the risk of disruptions to Group Health's business operations from changes to Group Health's network and to minimize the risk that a network failure to have a negative impact on patient care. *Id.* A Change Management Group was established at Group Health to be responsible for ensuring compliance with the Change Management Policy. (RP 251)

[6] On one occasion, Washington proposed making a change to the network during business hours. (RP 408-409) In response, Sims directed Washington to implement the change earlier in the morning to reduce risk of network service interruption. *Id.* Washington disregarded Sims' direction and met with Burton to challenge it. (RP 409, 493-496; Ex. 77) Burton found this to be Washington's *modus operandi*, testifying that Washington was regularly "argumentative" and failed to accept direction. (RP 496-497)

6. Washington Modifies his Work Schedule Without Permission for Personal Reasons.

Washington was hired to work from 7:30 a.m. to 4:00 or 5:00 p.m., yet he unilaterally changed his schedule to leave work at 1:00 p.m. (RP 126-127, 277, 406) When Sims noticed and asked why he was leaving early, Washington stated that it was "more convenient" to do so because he had been waking up earlier since his daughters with their mother in Australia. (RP 406) Washington did not inform Sims of any alleged medical condition or need for an adjusted schedule as an accommodation for any such condition.[7] (RP 406) Nor did Washington leave early for any health related reasons but instead did so to go on dates and had only two medical appointment during his Group Health employment. (RP 272-273) Instead, Washington sometimes left early to go on dates during the day. (RP 544) Washington told his coworker, Shain Hart, Senior Field Engineer, that he had recently joined an online dating site and was a looking for a "freak" with whom he could "pull tail," slang for having sex. *Id.* During conversations with Hart concerning his dating life, Washington referred to himself as a "Mac Daddy" and a "ladies man." *Id.*

7. Washington is Unwilling to Attend Afternoon Work Meetings and Perform his Share of On-Call Work.

All members of Group Health's IT Department were expected to attend

[7] Sims agreed to allow Washington to continue with his adjusted work schedule on a trial basis. *Id.*

team meetings during core business hours. (RP 404, 497) Due to Washington's self-imposed modified work schedule (described above), Washington was regularly not available to help the IT team address network incidents during business hours, which required others to attend team meetings in his place, which Sims and Burton each noted. (RP 410, 436, 497) On July 17, 2012 Washington missed a 3:00 p.m. meeting, citing a previous personal commitment. (RP 280-281; Ex. 103) He never claimed that he missed the meeting for any health-related reason.[8] (RP 282; Ex. 103)

All Network Engineers at Group Health were required to perform some work on an on-call basis. (RP 500-501; Ex. 3) On August 3, 2012, Burton informed Washington that he would be assigned to "on call" duty the following week for the first time. (RP 131-133, 501-502; Ex. 78) Washington responded curtly and challenged the assignment.[9] (RP 501-502; Ex. 78) Burton was surprised and frustrated by Washington's tone—particularly as Washington was a "probationary employee" and failure to "pull his weight" required his peers to "pitch in and do more work." (RP 502)

8. Washington Refuses to Resume Working his Regular Schedule.

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[8] Burton later spoke to Sims about Washington's unavailability, during which time he expressed stated to Sims: "[W]e need[] to talk with [Washington] because he's missing meetings that are happening later in the day." (RP 503)

[9] Specifically, Washington responded as follows: "No one discussed this with me. My daughters have been away for two months and they are flying in this week. There are a couple slots where I will not be able to cover. This is only about 2 days [sic] notice." (RP 501-502; Ex. 78)

When Sims returned from vacation on August 8, 2012, Washington asked to speak with him. (RP 413) During their conversation, Washington complained about Burton's directive that he be available for on-call work and requested that he be excused on the identified dates because he had a doctor appointment and because his daughters were returning from Australia. (RP 413-414) Sims agreed to excuse Washington from on-call duty. (RP 414) Sims also informed Washington of his awareness that Washington had missed multiple afternoon required meetings and directed Washington to resume his original schedule and remain in the office until at least 2:30 p.m. to attend such meetings. (RP 414). In response, Washington informed Sims that his directive was "unfair" and "wasn't right" and "refused to change back" to his original work schedule. (RP 414) Washington offered Sims no excuse for why he was unable to remain in the office until 2:30 p.m. each day. (RP 415) Sims and Washington ended their conversation with no agreement as to Washington's schedule other than that they would discuss the subject again later.[10] *Id.*

The next day Washington approached Sims as soon as Sims arrived to work at approximately 6:00 or 7:00 a.m. (RP 136-137, 416) He told Sims that he was angry about their conversation the previous day, expressing that Sims had treated him unfairly by requiring him to work until 2:30 p.m. (RP 416) Sims

[10] Sims had never before had a subordinate employee refuse to follow his direction regarding scheduling. *Id.*

asked Washington whether he had any family or medical conditions that prevented him from staying at work until 2:30 p.m., but Washington provided no information that either was the case.[11] *Id.* Instead, he referred only generally to his need to attend some upcoming medical appointments that were "heart-related." (RP 417-18) Washington did not inform Sims about any alleged medical conditions that impacted his ability to perform his job for which he needed an accommodation. (RP 417-418)

9. Sims Decides to Terminate Washington's Employment.

After his contentious conversations with Washington on August 8 and 9, 2012, Sims concluded that earlier issues with Washington's argumentative nature and insistence on doing thing his own way had been part of a larger pattern, not isolated incidents. (RP 420) Thus, during his August 9 conversation, Sims decided to terminate Washington's employment because he believed Washington was "a person that was argumentative" and unwilling to compromise in any way with regard to his work and work schedule. (RP 419)

Sims could not take immediate action on his termination decision directly after the August 9 meeting because he had volunteered to cook breakfast for another employee's retirement party that morning. (RP 367-369) While Sims was at the retirement breakfast, Washington sent Sims and Burton an email titled

[11] Sims tried to obtain from Washington the reason why he could not work until 2:30 p.m. on a regular basis but was unable to "get anything. It was just a constant argument." (RP 418)

"Medical Condition Notification." (Ex. 102) In the email, Washington stated: "This is notification I have a medical condition that I have been seeing doctors [sic] for some time. This morning I will be leaving early because I have a medical procedure undergo [sic] at UW Medicine." *Id.* Sims understood the email to refer to a single doctor appointment that Sims had already given Washington permission to attend during work hours. (RP 418-419, 724-725)

Sims returned to his desk at approximately 10:00 a.m. and contacted Amanda Gayles, IT Human Resources Consultant, to discuss his decision to terminate Washington. He also asked whether he must first put Washington on a performance improvement plan ("PIP"). (RP 369, 420) Gayles stated that no PIP was required because Washington was a probationary employee. (RP 420-421) Sims also forwarded Washington's "Medical Condition Notification" email to Gayles. (Ex. 102) Gayles perceived Washington's email to be a simple request for permission to miss work for a single medical appointment. (RP 724-727; Ex. 4) She nonetheless took steps to determine whether Washington was an individual with a disability who had need for an accommodation for a medical condition and found no indication or record of such.[12] *Id.* (RP 724-727; Ex. 4) Gayle also vetted Sims' proposed termination decision through a Human Resources peer review process to ensure the decision was appropriate and lawful

[12] Gayles reviewed Washington's onboarding documentation—namely, the "demographic information form" asking individuals to identify if they were an individual with a disability. (RP 724-727; Ex. 4)

and received approval of the decision from Burton and Pete Raustein, Director of IT Enablement before approving Washington's termination. (RP 727-731)

On Friday, August 10, 2012, with the approval of Gayles, Burton and Raustein, Sims terminated Washington's employment. (RP 729-730; Ex. 10) Sims did not believe Washington was a person with a disability who required any accommodation, and at no time did Washington inform Sims otherwise. (RP 434) In the termination memorandum Sims issued to Washington, Group Health cited five reasons for Washington's termination, namely, Washington's: (1) argumentative nature regarding his title and duties; (2) reluctance to conform to the Change Management Policy; (3) reluctance to work with his peers to review network changes; (4) argumentative nature regarding his working hours; and (5) conflict with management when discussing items of disagreement. (Ex. 10)

10. Washington Protests his Termination; Group Health Investigates and Validates Sims' Termination Decision.

Two days after his termination, Washington contacted Group Health to complain that he had been unlawfully terminated and denied a reasonable accommodation. (Ex. 19) Group Health investigated Washington's claims.[13] (RP 731-732). Through the investigation, Bonnie Butler, Human Resources

[13] Group Health also investigated Washington's assertion that he had been arriving significantly earlier than his standard 7:30 a.m. start time. (RP 744). Group Health's building-access records, however, reflected that Washington had not been arriving as early to work as he had claimed and had not been working eight hours per day while employed at Group Health. (RP 406, 746; Ex. 104)

Consulting Services Manager, spoke with Washington.[14] (RP 446- 448) Washington's co-workers also provided observations of Washington, which confirmed the bases upon which Sims had terminated Washington's employment.[15] (RP 734-735) Group Health concluded that Washington had not requested any reasonable accommodation.[16] (RP 748; Ex. 12).

B. Procedural History.

1. Washington Sues Group Health.

On May 13, 2013, Washington sued Group Health alleging disability and failure to accommodate discrimination in violation of the WLAD. (CP 1-4) He also alleged that Group Health retaliated against him in violation of the WLAD but voluntarily dismissed the claim before trial. (RP 1)

2. Washington Refuses During Discovery to Produce Records of his Military Service, Awards and Discharge.

On July 19, 2013, almost two years before trial, Group Health asked Washington to produce his military service records. (Appendix to Appellant's

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[14] Butler found Washington to be "very argumentative, and challenging" and noted that she understood "why leadership had taken the action they had." (RP 667-668; Ex. 25)

[15] Jim Keeffe, Network Engineer, reported that Washington "seemed angry" and aloof during team meetings and agreed with Sims' termination decision. (RP 567-568, 571) Rob Sumpter, a member of Washington's IT team, reported noting that Washington "disengaged" when team members disagreed with him and similarly agreed with Sims' termination decision. (RP 388, 685-688). Hart—with whom Washington regularly conversed about his personal life—similarly reported noting that Washington did not engage with other members of the team and acted "standoffish" and, on at least one occasion, aggressively. (RP 539)

[16] Gayles issued Washington a letter summarizing the outcome of the investigation and invited Washington to contact her if he believed there was any additional documentation or information Group Health should consider in support of his allegations. (RP 748; Ex. 12). Washington did not contact Gayles or dispute Group Health's findings. (RP 748)

Brief, at 24-25) Washington refused to produce any documents claiming he was "not in possession of records related to his military service." *Id.*, 24-25, 47-48. One month before trial, Group Health's counsel sent Washington's counsel a link to the Department of Veterans Affairs ("VA") website through which Washington could request a free replacement of his DD-214, a military document "that tells your dates of military service, any awards you received, your day of discharge, [and] your type of discharge." (Appendix to Appellant Brief, at 1; RP 215) Washington did not attempt to obtain a replacement DD-214 to produce in discovery. (RP 215)

3. The Trial Court Enters an Order in Limine on Washington's Prior Employment and Litigation History.

Prior to trial, Washington filed a motion in limine seeking to exclude evidence of his prior litigation, including the McLeod Letter and Washington's complaint against Starbucks. (CP 37-46) Group Health opposed Washington's motion, asserting that evidence of Washington's prior employment and litigation history was relevant to Washington's claims, to Group Health's defenses and to Washington's credibility. (CP 132-142) The court ruled that, though the McLeod Letter was inadmissible, Group Health could question Washington about his demand made to Tideworks through the McLeod Letter and about the Starbucks complaint for impeachment and to show Washington's knowledge. (RP 13-14)

At trial, Washington volunteered that he was terminated from Tideworks

because he had become "seriously ill" during his employment. (RP 53) In response, during cross examination Group Health asked whether Washington had claimed wrongful termination from Tideworks based on an alleged disability. (RP 223) After Washington responded that he did not recall, Group Health presented him with the McLeod Letter and asked whether he had claimed emotional distress, as he alleged in his Complaint against Group Health. (RP 223-224) Washington did not object to Group Health's inquiries. (RP 223-226)

4. During Trial Washington Provides Inconsistent Testimony Regarding his Military Service History.

At trial, Washington testified that he served in the Navy from 1984 until he was honorably discharged in 1991; yet in his resume he represented to Group Health that he served in the Navy from 1994 to 1998 and represented to Starbucks that his Navy service was from 1987 to 1991. (RP 208-209; Exs. 72, 165) Attempting to account for the discrepancies, Group Health asked Washington why he had not produced his DD-214 during discovery. (RP 215) After receiving evasive answers, Group Health asked: "I would think you would be proud of [your service] . . . is there a reason why you're holding this back?" (RP 216) Washington objected—which the Court sustained—but did not move to strike the inquiry from the record. (RP 217)

5. During Closing Arguments, Group Health Addresses Washington's Bankruptcy Filings, Military Record and Claimed Medical Diagnosis with No Objection from Washington.

In closing argument, Group Health argued that Washington had delayed his employment to the bankruptcy court that he was unemployed and had no prospect of income. (Supplemental Report of Proceedings ("Supplemental RP") 2-3) It also argued that at the time Washington presented such sworn testimony, he *had* a prospect of income given his anticipated Group Health employment, making his sworn testimony to the bankruptcy court dishonest. (Supplemental RP 3) Washington did not object to any of Group Health's assertions. *Id.*

Group Health also noted that Washington had not produced any documentary evidence of his Navy discharge; thus, there was no way to know whether "he was just being resistant in refusing . . . or if there's something fishy about his military experience."[17] (Supplemental RP 5-6) It highlighted that it invited Washington's attorney to clarify confusion regarding Washington's military history during re-direct examination—which he did not do—and reminded the jury that Washington could have shown the jury his veteran's card, which he allegedly had on the stand, but chose not to do so. *Id.* Washington did not object to any of Group Health's arguments.[18] (Supplemental RP 10-11)

6. The Jury Rule Rejects Washington's Claims, and The Trial Court Denies Washington's Motion for a New Trial.

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[17] Group Health did not claim that Washington had not served in the Navy; it merely pointed out a lack of documentary evidence to corroborate his testimony or explain why he gave inconsistent statements regarding his service. *Id.*

[18] The Court instructed the jury both before the trial and before closing arguments that lawyers' remarks and arguments are not evidence and should be disregarded if not supported by the evidence presented during trial. (CP 634-35)

The jury returned a unanimous verdict for Group Health finding that Washington did not meet his burden of proving his claims by a preponderance of the evidence. (CP 629, 703-704) Washington moved for a new trial claiming: (1) undue prejudiced by the admission of evidence of his bankruptcy and by questions to his psychiatrist; and (2) that the verdict was contrary to the evidence. (CP 653-661) The trial court denied Washington's motion. (CP 713)

7. The Appellate Court Properly Upholds the Jury's Verdict.

Washington appealed the trial court's denial of his motion for new trial asserting that the court abused its discretion in finding the verdict substantially supported by the evidence and that Washington had not been prejudiced by the admission of evidence of his bankruptcy or by questions to his medical providers. On appeal, Washington argued for the first time that he had been unduly prejudiced by statements made by counsel for Group Health during closing argument related to his personal life, bankruptcy proceedings, and military service. The appellate court upheld the jury's verdict, holding that the verdict was substantially supported by the evidence and that Washington failed to preserve for review his challenges to allegedly prejudicial comments by Group Health. *See* May 30, 2017 Unpublished Opinion (the "Opinion").[19]

[19] Because Washington does not appear to have submitted a copy of the Opinion with his Petition, Group Health provides a copy in Appendix A of its Answer.

III. ARGUMENT SUPPORTING DENIAL OF REVIEW

This Court may grant review under limited circumstances. *See* RAP 13.4(b). Washington appears to seek review under RAP 13.4(b)(1) and RAP 13.4(b)(4).[20] Washington's claims have no merit and review should be denied.

A. The Opinion is Not In Conflict with Any Decision by this Court.

Washington argues that the Opinion conflicts with a myriad of opinions of this Court. He is wrong.

1. The Opinion Holding that Washington Failed to Demonstrate Flagrant and Ill-Intentioned Misconduct is Not in Conflict with Any Decisions of this Court.

Washington argues that the appellate court failed to assess whether Group Health's counsel's alleged misconduct during trial[21] was "so flagrant so as not to require objection," which Washington claims is inconsistent with various opinions of this Court standing for the proposition that attorney misconduct requires a new trial "if there is a substantial likelihood that it affect [sic] the verdict."[22] The appellate court, however, engaged in the very assessment Washington claims it failed to make. Specifically, in assessing the

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[20] *See* RAP 13.4(b)(1) (providing for review if the decision is in conflict with a decision of the Supreme Court) and RAP 13.4(b)(4) (providing for review if the petition involves an issues of substantial public interest that should be determined by the Supreme Court).
[21] Washington claims that Group Health's counsel improperly questioned him about his former employment, bankruptcy and military service record and made prejudicial statements regarding the same opening statement and closing argument. *See* Petition, at 1-2, 10-13.
[22] *See* Petition, at 12-14.

alleged misconduct, the appellate court recognized that a claim of misconduct cannot be raised for the first time in a motion for new trial "unless the misconduct is so flagrant that no instruction could have cured the prejudicial effect." *See* Opinion, at 17-18. The court then held that Washington "fail[ed] to demonstrate that any of the[] comments were flagrant and ill-intentioned, obviating the need for contemporaneous objection." *See* Opinion, at 17-18.

2. The Opinion Does Not Conflict with *Goodman* or *Rideout*.

Washington argues that the Opinion conflicts with ***Goodman v. Boeing***, 127 Wn.2d 401, 899 P.2d 1265 (1995)—to the extent that the appellate court allegedly failed to assess whether Washington presented substantial evidence to establish that Group Health had knowledge of his disability (*i.e.*, "heart issues")—and ***In re Marriage of Rideout***, 77 P.3d 1174 (2003)—to the extent that the appellate court failed to review Washington's "Medical Condition Notification" email "as a matter of law to determine if the email was 'Notice of a Disability.'"[25] *See* Petition, at 15-17. Washington is wrong.

The appellate court properly found that Washington failed to present substantial evidence that he gave Group Health notice of his disability where there was "conflicting evidence at trial" and, thus, that there was substantial

[25] Washington makes the same argument in this regard in what he identifies in his Petition as "ISSUE 2" and "ISSUE 3" and asserts that the jury was improperly instructed that he bore the burden to prove both the existence of a disability and notice of the same. *See* Petition, at 14-17.

evidence to support the jury's verdict.[26] *See* Opinion, at 14-16. Such a finding is consistent with the standards articulated in ***Goodman*** requiring an employer to engage in an interactive dialogue with an employee "only after the employee has initiated the process by notice." ***Goodman***, 127 Wn.2d at 408. It was not, as Washington claims, for the appellate court to find that Washington met his burden of providing notice "as a matter of law."

3. **The Opinion is Not In Conflict with *Brundridge.***

Washington asserts the appellate court erred "when it determined that [he] could not bring the issue of Wrongful Termination in Violation of Public Policy," which Washington claims is in conflict ***Brundridge v. Flour Federal Services, Inc.,*** 164 Wn.2d 432, 191 P.3d 879 (2008).[23] There is no question that Washington did not plead in his Complaint—nor did the jury hear evidence regarding—any claim for wrongful discharge in violation of public policy. (CP 703-704) There exists no legal authority allowing a party to assert a claim for the first time on appeal. Thus, the Opinion does not conflict with ***Brundridge***.

4. **The Opinion is Not in Conflict *Allison* and *Wilmot.***

Washington claims that the Opinion conflicts with ***Allison v. Housing***

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[26] As described above, evidence presented at trial reflected that Washington failed to disclose any such disability during his employment onboarding process. *See also* Opinion, at 14-15. Additionally, conflicting testimony was presented as to whether Washington informed Sims that he had a disability when requesting an adjusted work schedule. *See id.*

[23] Washington claims ***Brundridge*** stands for the proposition that "a change in law during an Appeal can be brought up for the first time" on appeal and appears to assert that he should be permitted a new trial on a claim that was not presented to the jury. *See* Petition, at 18.

Authority, 118 Wn.2d 79, 821 P.2d 34 (1991) and ***Wilmot v. Kaiser Aluminum & Chem. Corp.***, 118 Wn.2d 46, 821 P.2d 18 (1991) because the appellate court failed to apply the "proximity of time" causation standards established in those decisions to his discrimination claims. *See* Petition, at 4-5, 19. In ***Allison***, this Court adopted the "substantial factor" causation standard for WLAD retaliation claims that was established in ***Wilmot*** for wrongful discharge claims.[24] Washington dismissed his retaliation claim before trial. (RP 1; CP 703-704) Thus, the Opinion does not conflict with ***Allison*** or ***Wilmot.***

5. The Opinion is Not in Conflict with *Scrivener.*

Washington claims the Opinion conflicts with ***Scrivener v. Clark College***, 181 Wn.2d 439, 334 P.3d 541 (2014) because the appellate court failed to apply the "final prong of pretext." [25] *See* Petition, at 20. "Washington courts use the burden-shifting analysis articulated in ***McDonnell Douglas*** . . . to determine the proper order and nature of proof *for* summary judgment." ***Scrivener***, 181 Wn.2d at 445. Where a trial court determines that a question of fact remains, "the 'shifting burdens' . . . drop from the case [and the] plaintiff [is] required to bear the ultimate burden of proving discrimination to the jury."[26] Thus, the Opinion is not in conflict with ***Scrivener***.

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[24] *See* ***Allison***, 118 Wn.2d at 96.
[25] *See* ***Scrivener***, 181 Wn.2d at 446-447 (third prong under burden shifting analysis established by ***McDonnell Douglas Corp. v. Green***, 411 U.S. 792 (1973) requires a plaintiff to produce sufficient evidence that defendant's articulated nondiscriminatory decision is pretext).
[26] ***Kastanis v. Educ. Employees Credit Union***, 122 Wn.2d 483, 491-492, 856 P.2d 96 (1993).

B. No Substantial Public Interest Requires This Court to Accept Review of the Opinion Affirming the Jury Verdict.

Washington appears to seek review under RAP 13.4(b)(4) by repeatedly asserting that the WLAD generally serves an important public interest.[27] It is not contested that the WLAD serves a substantial public interest and, thus, no determination by this Court is required. *See* RAP 13.4(b)(4) (providing for review where opinion "involves an issue of substantial public interest that should be determined by the Supreme Court").

C. This Court Should Award Fees and Costs Per RAP 18.1(j).

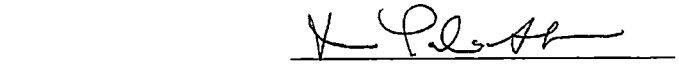
Washington submits the same frivolous arguments he raised before the Court of Appeals, but now in a *pro se* capacity, requiring Group Health to spend significant time attempting to make sense of his arguments. Group Health respectfully requests an award of fees and costs per RAP 18.1(j).

IV. CONCLUSION

No basis exists for this Court to accept review of the appellate court's Opinion. Accordingly, review should be denied.

RESPECTFULLY SUBMITTED this 18th day of September, 2017.

SEBRIS BUSTO JAMES



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[27] *See, e.g.*, Petition, at 12, 16.

Appendix A

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

VICTOR TERENCE WASHINGTON,	)	No. 73847-0-I
Appellant,	)	DIVISION ONE
v.	)	
GROUP HEALTH COOPERATIVE,	)	UNPUBLISHED
Respondent.	)	FILED: May 30, 2017

Cox, J. — Victor Washington appeals the judgment on a jury verdict for Group Health Cooperative concerning his claims of disability discrimination and failure to accommodate. The trial court did not abuse its discretion in denying his motion for a new trial. Washington failed to preserve for review his challenges to allegedly prejudicial comments by Group Health's counsel during opening statement, cross-examination, and closing. Accordingly, we do not further address those challenges. We affirm.

In April 2012, Victor Washington began working for Group Health Cooperative as a probationary employee. Washington's supervisor, Jim Sims, learned that Washington had changed his assigned work schedule when he noticed Washington leave early. Sims later spoke with Washington and

approved this change. There was conflicting evidence whether Washington explained to Sims that he needed the schedule adjustment due to his disabilities.

On August 8, 2012, Sims instructed Washington to return to his original work schedule. Washington responded that he had numerous upcoming doctor appointments and that he had heart issues. They did not agree on the schedule that would apply.

Sims and Washington resumed their discussion the next morning. Washington claims to have explained his medical conditions and the effect they had on him. There was evidence at trial that this conversation was "contentious." Sims "rescinded" Washington's changed work schedule. Later that morning, Washington e-mailed Sims and Sims's manager notifying them of his medical condition. Sims did not recall whether he read Washington's e-mail.

Later that day, Sims discussed Washington's potential termination with a Group Health human resources consultant. The next day, Sims terminated Washington's employment.

Washington commenced this suit against Group Health, alleging violations of Washington's Law against Discrimination (WLAD). A jury returned a verdict for Group Health on the only two claims that went to trial: failure to accommodate and disability discrimination. Washington then moved pro se for a new trial or reconsideration. He argued that the jury verdict was contrary to the evidence. He also argued that Group Health's counsel committed certain prejudicial misconduct during Washington's and a physician's cross-examination. The trial court denied Washington's motion and entered its judgment on the jury verdict.

Washington appeals.

NEW TRIAL MOTION

Washington argues that the trial court abused its discretion by denying his motion for a new trial. We disagree.

"A strong policy favors the finality of judgments on the merits."[1] Under CR 59(a)(7), trial courts may order a new trial after a jury has returned its verdict where "there is no evidence or reasonable inference from the evidence to justify the verdict." If the appellant unsuccessfully moved for a new trial under this rule and argued that the verdict was contrary to the evidence, we determine whether sufficient evidence supports the verdict.[2]

Evidence is sufficient to support the verdict where it is substantial.[3] Substantial evidence is the "'quantum of evidence sufficient to persuade a rational fair-minded person the premise is true.'"[4] We must view the evidence in

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[1] Harrell v. Dep't of Soc. and Health Servs., 170 Wn. App. 386, 408, 285 P.3d 159 (2012).

[2] Mears v. Bethel Sch. Dist. No. 403, 182 Wn. App. 919, 927, 332 P.3d 1077 (2014), review denied, 182 Wn.2d 1021 (2015).

[3] See id.

[4] McCleary v. State, 173 Wn.2d 477, 514, 269 P.3d 227 (2012) (quoting Sunnyside Valley Irrigation Dist. v. Dickie, 149 Wn.2d 873, 879, 73 P.3d 369 (2003)).

favor of the nonmoving party.[5] Additionally, the jury makes credibility determinations, which we do not review.[6]

We review for abuse of discretion the trial court's denial of a motion for a new trial under CR 59(a)(7).[7]

Disability discrimination is at issue in this case. Under RCW 49.60.180, a disabled employee has a cause of action for certain types of discrimination. The employee may allege that the employer discriminated against him because of his disability.[8] The employee may also allege that the employer failed to accommodate his disability.[9] These were the only two claims that went to trial against Group Health.

Disability Discrimination

Washington argues that the jury's verdict on his disability discrimination claim is contrary to the evidence. We disagree.

Under WLAD, an employer cannot "discriminate against any person in compensation or in other terms or conditions of employment because of . . . the presence of any sensory, mental, or physical disability."[10]

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[5] Mears, 182 Wn. App. at 927.

[6] State v. Hart, 195 Wn. App. 449, 457, 381 P.3d 142 (2016), review denied, 187 Wn.2d 1011 (2017).

[7] Millies v. LandAmerica Transnation, 185 Wn.2d 302, 316, 372 P.3d 111 (2016).

[8] Riehl v. Foodmaker, Inc., 152 Wn.2d 138, 145, 94 P.3d 930 (2004).

[9] Id.

[10] RCW 49.60.180(3); Riehl, 152 Wn.2d at 144-45.

Here, the trial court instructed the jury on the elements of a disability discrimination claim. According to those unchallenged instructions, Washington had the burden to prove the following factors:

> 1. That he has a disability;
> 2. That he is able to perform the essential functions of the job in question; and
> 3. That his disability was a substantial factor in Group Health Cooperative's decision to terminate him. Victor Washington does not have to prove that his disability was the only factor or the main factor in the decision. Nor does Victor Washington have to prove that he would have been retained but for his disability.[11]

The second element is not disputed on appeal.

Disability

Washington argues that he is disabled. The record shows evidence of a disability.

RCW 49.60.040(7)(a) defines a disability as "the presence of a sensory, mental, or physical impairment that: (i) Is medically cognizable or diagnosable; or (ii) Exists as a record or history; or (iii) Is perceived to exist whether or not it exists in fact." Under the statute, "impairment[s]" include cardiovascular, respiratory, and psychological disorders.[12]

Here, the trial court gave the jury a disability instruction consistent with the statute. Dr. Ganesh Raghu, a physician who treated Washington, testified at trial as a defense witness. He testified, as an expert, that he had clinically diagnosed Washington with sarcoidosis. He also testified that he did not confirm this diagnosis. And a later biopsy failed to show objective evidence of this condition.

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[11] Clerk's Papers at 644.

[12] RCW 49.60.040(7)(c)(i-ii).

We also note that Washington's medical records showed evidence of other medical conditions that could be classified as disabilities by the finder of fact.

We conclude there was, on this record, substantial evidence that Washington had a disability of sarcoidosis. This came in from Dr. Raghu, his treating physician and a defense witness at trial. Accordingly, Washington satisfied the first element of his disability discrimination claim.

Group Health argues that there was no evidence that Washington was disabled. The record, particularly the evidence provided at trial by its own expert witness, belies that argument. To the contrary, a jury could reasonably find, on this record, that Washington had a disability.

Discrimination and Rebuttal

Washington argues that he satisfied his next burden: to show that his termination was discriminatory. We conclude that he failed in this burden.

The employee bears the initial burden of making a prima facie case of unlawful discrimination.[13] Specifically, Washington had the burden to show that his disability was a substantial factor motivating Group Health's decision to terminate his employment.[14] Then the burden shifts to the employer to present "evidence that the employment action was based on legitimate, nondiscriminatory reasons to rebut the presumption of discrimination."[15] The

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[13] See Riehl, 152 Wn.2d at 150.

[14] Clerk's Papers at 644; see also Riehl, 152 Wn.2d at 149.

[15] See Riehl, 152 Wn.2d at 150.

employer's burden is one of production only.[16] If the employer satisfies its burden, the employee must show that the employer's reasons are pretext for discriminatory intent.[17]

At trial, Washington testified that he typically worked from 7:30 a.m. to 3:30 p.m. and asked Sims for an adjusted work schedule due to his medical conditions. Washington claims to have informed Sims of his difficulty staying asleep and his medical conditions.

Sims testified that Washington worked from 6:30 a.m. to 2:30 p.m. Sims became aware that Washington had unilaterally changed his schedule when he noticed Washington leave at 1:00 p.m. Sims asked Washington about this, and Washington explained that it was more convenient for him. Sims responded that it was "okay" and that they would "give it a try and see if this works." Sims testified that Washington did not identify any medical conditions or explain that he needed an adjusted schedule due to his disabilities.

On August 8, 2012, Sims instructed Washington to return to his original work schedule and leave at 2:30 p.m. Washington refused, responding that it was "unfair." When Sims asked for an explanation, Washington responded that he had numerous doctor appointments in the future and that he had heart issues. They could not agree on the schedule.

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[16] Id.

[17] Id.

Sims and Washington resumed their discussion the next morning. Sims did not recall at trial whether Washington used the word "accommodation." But he did mention a heart related medical appointment.

Washington testified that he explained his upcoming medical appointments, his heart condition, and the effect his medical conditions had on him.

Sims explained that he needed Washington "to be available" for meetings. The conversation was allegedly "contentious." But Sims "rescinded" Washington's changed work schedule.

Later that morning, Washington e-mailed Sims and Adam Burton, Sims's manager, notifying them of a medical condition and appointment. Sims did not recall whether he read Washington's e-mail.

Sims later discussed Washington's termination with a Group Health human resources consultant. The next day, August 10, 2012, Sims gave Washington formal notice of his employment termination. The notice stated the following:

> • Argumentative nature in accepting your job title and role: You were hired as a network engineer. Shortly after your start you began complaining about why you were not a "senior" engineer. This discussion took three days to resolve.
> • Reluctance to conform to Group Health's change management processes: You didn't want to open change tickets which document any systems changes. As you know, this is standard business practice for our work. It took three days of discussion to convince you to accept this standard work practice.
> • Reluctance to work with peers to complete a formal review process: Doesn't want to participate in the regular review process that involves major system's changes.
> • Argumentative nature in working with leadership to accept the standard working hours: You refuse to work the schedule you

> were hired to work. Shortly after starting your role, you changed your schedule and when asked by management to move back to your original schedule, you have refused[.]
>
> Based on your continued poor work behavior during your probationary period, your employment with Group Health is hereby terminated effective the date identified in the first paragraph of this memo.[18]

The jury heard Sims's testimony explaining his reasons for terminating Washington's employment. Sims testified that he started to recognize "a pattern" and that Washington was "argumentative and . . . wasn't going . . . to try to actually compromise . . . ." Sims further testified that he did not terminate Washington's employment due to his disability.

Other employees also testified about their interaction with, and impression, of Washington. For example, Burton expressed his concern to Sims about Washington's absence from meetings and Burton's dissatisfaction with Washington's work hours. Burton felt that Washington was not "pulling his share of the work" and was argumentative.

The jury found in its special verdict form that Washington did not meet his burden of proving his disability discrimination claim. This record supports that factual determination.

The termination memorandum and Sims's testimony at trial provided substantial evidence to demonstrate Group Health's legitimate and nondiscriminatory reasons to rebut the presumption of discrimination.

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[18] Report of Proceedings Vol. 2 (June 4, 2015) at 371-72; Trial Exhibit 10.

Washington argues that Sims treated him differently than other employees by "expecting him to have a standard schedule" while other employees did not. But Washington's schedule is irrelevant because it was not at issue in this case. The issue was whether Washington's disability was a substantial factor in Group Health's decision to terminate his employment, not readjust his schedule.

Pretext

Washington argues that he satisfied his burden of showing that Group Health's stated reasons were pretextual. We disagree.

An employee cannot establish that his employer's reasons are pretextual without evidence that the employer's articulated reason for its decision is "'unworthy of belief.'"[19] An employee may establish pretext if his employer's reasons "'(1) had no basis in fact, (2) were not really motivating factors for its decision, (3) were not temporally connected to the adverse employment action, or (4) were not motivating factors in employment decisions for other employees in the same circumstances.'"[20] The employee may also satisfy his burden by presenting sufficient evidence that discrimination was a substantial factor motivating the employer.[21]

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[19] Brownfield v. City of Yakima, 178 Wn. App. 850, 874, 316 P.3d 520 (2014) (quoting Kuyper v. Dep't of Wildlife, 79 Wn. App. 732, 738, 904 P.2d 793 (1995)).

[20] Scrivener v. Clark Coll., 181 Wn.2d 439, 447, 334 P.3d 541 (2014) (quoting Scrivener v. Clark Coll., 176 Wn. App. 405, 412, 309 P.3d 613 (2013), rev'd on other grounds, Scrivener, 181 Wn.2d 439, 442).

[21] Id.

An employer's lack of documentation regarding the employee's poor performance may provide "circumstantial evidence that the proffered discharge justifications were fabricated post hoc."[22] But "'[s]peculation and belief are insufficient to create a fact issue as to pretext. Nor can pretext be established by mere conclusory statements of a plaintiff who feels that he has been discriminated against.'"[23]

Here, Washington relies on the following facts to show that Group Health's stated reasons for terminating his employment were pretextual:

1) Washington did not receive a negative performance rating before his termination.
2) Sims did not provide documentation of any negative issues regarding Washington.
3) Sims allegedly knew of Washington's medical conditions when Washington requested an adjusted work schedule.
4) Sims began the process to terminate Washington's employment on the same day that Washington opposed his schedule readjustment.
5) Sims terminated Washington's employment shortly after receiving Washington's e-mail, which provided notification of his medical condition.

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[22] Griffith v. Schnitzer Steel Indus., Inc., 128 Wn. App. 438, 450, 115 P.3d 1065 (2005).

[23] Hines v. Todd Pac. Shipyards Corp., 127 Wn. App. 356, 372, 112 P.3d 522 (2005) (quoting McKey v. Occidental Chem. Corp., 956 F. Supp. 1313, 1319 (S.D. Tex. 1997) (court order)).

Whether these facts demonstrate that Group Health's reasons are "'unworthy of belief'" is at issue.[24] The trial testimony provided context in determining whether substantial evidence supports the jury's verdict.

Sims testified that Washington did not mention his medical conditions prior to their meetings in August. Sims also discussed his evaluation of Washington's performance, stating that he "could have been more critical" of Washington's performance. But because Washington was a new employee, Sims tried to "coach" and "steer" him. Sims also explained that Washington was argumentative about his work hours during their two meetings, which occurred after Washington's performance evaluation. Additionally, Washington had missed meetings after the performance evaluation and seemed withdrawn from the team during the meetings he attended.

Although Sims terminated Washington's employment soon after they discussed Washington's schedule and medical appointments, Sims testified that he made the decision due to Washington's behavior during these discussions. The jury was entitled to accept this testimony as credible, a determination not subject to our review.

In light of all the evidence presented to the jury, substantial evidence supports the jury's verdict that Washington "[d]id [not] meet his burden of proving his disability-discrimination claim by a preponderance of the evidence." Thus, Washington did not carry his final burden of showing that Group Health's stated reasons for his discharge were pretextual.

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[24] Brownfield, 178 Wn. App. at 874 (quoting Kuyper, 79 Wn. App. at 738).

Washington argues that the evidence "overwhelmingly showed that the termination was discriminatory" and that the jury did not have to choose between competing inferences. This simply is untrue in that the jury reasonably decided otherwise on the basis of substantial evidence.

Failure to Accommodate

Washington also argues that the jury's verdict on his accommodation claim is contrary to the evidence. We disagree.

Under WLAD, a disabled employee has a cause of action if he can demonstrate that his employer "failed to take steps reasonably necessary to accommodate the employee's disability."[25] "Employers have an affirmative obligation to reasonably accommodate the disability unless the employer can demonstrate that the accommodation would cause undue hardship to the employer's business."[26]

Here, the trial court instructed the jury on the elements of a failure to accommodate claim. According to those unchallenged instructions, Washington had the burden to prove the following factors:

> (1) That he had an impairment that is medically recognizable or diagnosable or exists as a record or history; and
> (2) That either
> (a) he gave Group Health Cooperative notice of the impairment; or
> (b) no notice was required to be given because Group Health Cooperative knew about his impairment; and

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[25] Sommer v. Dep't of Soc. and Health Servs., 104 Wn. App. 160, 172-73, 15 P.3d 664 (2001); see also RCW 49.60.180(2).

[26] Id. at 173.

(3) That the impairment had a substantially limiting effect on his ability to perform his job; and

(4) That he would have been able to perform the essential functions of the job in question with reasonable accommodation; and

(5) That Group Health Cooperative failed to reasonably accommodate the impairment.

. . . .[27]

On appeal, the parties dispute whether Washington presented substantial evidence to establish the first and seconds factors. As discussed previously in this opinion, Dr. Raghu's testimony and the medical record exhibits constitute substantial evidence of Washington's disabilities. Thus, Washington satisfied the first element of this claim. But we conclude that Washington failed to present substantial evidence to establish the second element—that he gave Group Health notice of his disability.

To satisfy the notice factor, the employee must inform his employer that a disability requiring accommodation exists.[28] The employee is not required to explain the full nature and extent of his disability.[29]

"[T]he employer's duty to determine the nature and extent of the disability does not impose an investigatory duty to question any employee suspected of a disability."[30] An employer's duty to inquire into an employee's disability "arises

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[27] Clerk's Papers at 643.

[28] Sommer, 104 Wn. App. at 173.

[29] Id.

[30] Goodman v. Boeing Co., 127 Wn.2d 401, 409, 899 P.2d 1265 (1995).

only after the employee has initiated the [accommodation] process by notice . . . ."[31]

Group Health provided substantial evidence that it lacked notice of Washington's disability. Sims testified that Washington did not mention his medical conditions prior to their first meeting in August. Additionally, Washington completed a "Demographic" questionnaire when he first started working for Group Health. The form had two disability questions and "yes" or "no" boxes for the employee to mark. The first question asked: "Are you an individual with a disability?" The second question asked: "Are you requiring a reasonable accommodation for a disability?" Washington did not mark any boxes.

At trial, Washington testified that he did not mark any boxes because he was "confused" and "did not know" how to complete the form. He explained that he informed a human resources employee about his medical conditions and disabilities. Washington told the employee that he was not requesting an accommodation at that point and did not believe he was "in need of that." The human resource employee allegedly told Washington to leave the boxes blank and that his supervisors would help him. The jury was entitled to decide whether this testimony was credible, a determination not subject to our review on appeal.

Washington also testified that he informed Sims of his medical conditions when he requested an adjusted work schedule. After Washington's meeting with Sims in August, Washington e-mailed Sims and Burton to notify them of a medical condition.

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[31] Id.

Determining whether Group Health had notice of Washington's disability was a question of fact for the jury.[32] The jury was entitled to determine what evidence was credible and what was not. From the conflicting evidence at trial, the jury found that Washington failed to "meet his burden" to establish his claim. Because this record shows there was substantial evidence to support that decision, there is no basis to overturn the trial court's discretionary determination to deny the motion for a new trial.

Washington argues that Group Health had an ongoing duty to accommodate him after it terminated his employment. But as we have discussed, Washington failed to establish the notice element of his claim. Because he failed to do so, there simply was no ongoing duty of Group Health.

COUNSEL MISCONDUCT

Washington argues that the trial court abused its discretion by denying his motion for a new trial due to Group Health's counsel's prejudicial misconduct. Because he failed to preserve this issue for review, we do not reach the substance of the claim.

CR 59(a)(2) permits a new trial due to the prevailing party's misconduct. Misconduct is distinct from merely aggressive advocacy.[33] "It is improper for

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[32] See Martini v. Boeing Co., 88 Wn. App. 442, 458, 945 P.2d 248 (1997), aff'd, 137 Wn.2d 357, 971 P.2d 45 (1999).

[33] Miller v. Kenny, 180 Wn. App. 772, 814, 325 P.3d 278 (2014).

counsel to invite the jury to decide a case based on anything other than the evidence and the law, including appeals to sympathy, prejudice, and bias."[34]

But absent an objection to counsel's comments, this claim "cannot be raised for the first time in a motion for a new trial unless the misconduct is so flagrant that no instruction could have cured the prejudicial effect."[35]

Here, Washington moved for a new trial after the jury entered its verdict. He argued in that motion that Group Health's counsel committed several specific acts of misconduct. Washington specifically referred to counsel's cross-examination regarding Washington's prior bankruptcy filing and Washington's physician. The trial court denied Washington's motion for a new trial, concluding that counsel's cross-examinations were proper.

We also note that Washington did not contemporaneously object to the comments he challenged in his motion for a new trial. This is an additional reason to deny relief on appeal.

On appeal, Washington raises new arguments that he did not make below. He now focuses on counsel's questions regarding Washington's former employers and a prior termination. Washington also focuses on counsel's alleged misconduct during opening statement and closing argument. The record shows that Washington failed to preserve these specific claims because he did not contemporaneously object. And he fails to demonstrate that any of these comments were flagrant and ill-intentioned, obviating the need for

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[34] M.R.B. v. Puyallup Sch. Dist., 169 Wn. App. 837, 858, 282 P.3d 1124 (2012).

[35] Sommer, 104 Wn. App. at 171.

contemporaneous objections. Thus, we will not consider these arguments any further.

RETALIATION, WRONGFUL DISCHARGE, AND DAMAGES

Washington contends that Group Health retaliated against him. This claim is not before us because Washington voluntarily dismissed it with prejudice before trial.

Washington also argues that Group Health terminated his employment in violation of public policy. But Washington did not assert this claim in his complaint, and the record shows that he makes this argument for the first time on appeal. Thus, we do not further consider this argument.[36]

Lastly, Washington asserts that Group Health cannot limit his damages because it cannot show that it discovered evidence of Washington's wrongdoing after it terminated his employment. Because there is no liability, damages are irrelevant.

We affirm the judgment on the jury verdict and the denial of the motion for new trial.

COX, J.

WE CONCUR:

[36] See RAP 2.5(a).

NO. 94747-3

SUPREME COURT
OF THE STATE OF WASHINGTON

Court of Appeals No. 73847-0-1

VICTOR TERENCE WASHINGTON,

Petitioners,

v.

GROUP HEALTH COOPERATIVE,

Respondent.

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing document, Answer to Petition for Discretionary Review was filed electronically with the court and thus served simultaneously upon the Petitioner, this 18th day of September, 2017.

/s/ Holly Holman
Holly Holman

SEBRIS BUSTO JAMES

September 18, 2017 - 1:01 PM

Transmittal Information

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Appellate Court Case Title:	Victor Terence Washington v. Group Health Cooperative
Superior Court Case Number:	13-2-19841-0

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