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**WASHINGTON STATE
SUPREME COURT**

SUPREME COURT NO. 94747-3

IN THE WASHINGTON STATE SUPREME COURT

VICTOR TERENCE WASHINGTON,

Plaintiff-Appellant,

v.

GROUP HEALTH COOPERATIVE,

Defendant-Respondent.

PETITION FOR REVIEW FROM COURT OF APPEALS DIV. 1

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ORIGINAL

filed via
PORTAL

1. IDENTITY PETIONER REPLYING TO ANSWER

Pursuant to RAP 13.4 (d) Petitioner, Victor Terence Washington files this reply to the answer in which respondent put forth the issue that the Petition for Review (PFR) is frivolous and that respondent should be awarded damages.

2. RELIEF SOUGHT

Pursuant to RAP 13.4(d) A party may file a reply to an answer if the answering party seeks review of issues not raised in the Petition for Review. The Petition for Review (PFR) presents important questions of Washington State Law Against Discrimination. And Defense engaged in Prejudicial Misconduct So Flagrant and ill-intentioned that an Instruction would not have cured the prejudice. The Petition for Review (PFR) should be accepted and assertion that this PFR is frivolous should be rejected.

3. STATEMENT OF FACTS RELEVANT TO ISSUE OF RESPONDANT ASKING FOR ATTORNEY FEES ALLEDGING THE PETITION FOR REVIEW IS FRIVOLOUS

On 4 August 2017 Mr. Washington filled Petition for Review (PFR) per RAP 13.4 (b)(1, 2 and 4) regarding a Court of Appeals Division 1 decision regarding the Washington State Law Against Discrimination (WLAD) of Failure to accommodate, Disability Discrimination. And Court of Appeals neglected to discuss and analyze Misconduct so Flagrant and ill-Intentioned no Instruction would have cured the Prejudice. The PFR discusses the Misconduct was so pervasive and caustic, it was impossible for any Jury to see beyond it. The Misconduct was meant to bypass justice and it worked by subverting the process. *See PFR, Defense Closing (Appendix of PFR), Appellants brief, Appellants response brief, Motion for New Evidence and Appendix motion for new evidence refers to which found in Appendix of Opening Brief.*

Mr. Washington's PFR focused on specific matters of Washington State Law Against Discrimination. The Court of Appeals Div. 1 did not apply the WLAD as required by statute, by controlling case law from this Supreme Court and Court of Appeals Div. 1. The PFR

specifically discusses no less than 12 of this Supreme court decisions that the PFR uses to show the numerous issues law regarding the WLAD and Flagrant Prejudicial Misconduct. Defense alleges the PFR is frivolous while disregarding the issues raised in the PFR numerous conflicts Supreme Court rulings, RCW 49.60 and the relevancy to RAP 13.4 are all detailed in the PFR. The following is an abbreviated summary:

Issue 1 of the PFR involves Flagrant Prejudicial Misconduct of Ill-intent that no Instruction would have cured.

- A. The Court of Appeals err in no review or considering this issue. Court of Appeals did not decide this case as per RAP 12.1(a) "issues set forth in the briefs". This Supreme Court's Palmer v. Jensen; found it unacceptable when "The Court of Appeals limited its analysis...under CR 59(a)(5) and neglected to analyze Other parts of Cr 59(a)."
- B. The misconduct materially affected Mr. Washington's substantial rights under CR 59(a), Alcoa v Aetna Gas, and deprived Mr. Washington of a fair trial. And the misconduct materially affected Mr. Washington's substantial rights, thus requires a New Trial under CR59(a), *Restraint of Glassmann*, 175 Wn.2d 696, 704, 286 P.3d 673 (2012), *State v. Walker* 180 Wn.2d 1002, 321 P.3d 1206 (2014), *Alcoa v. Aetna Cas. & Sur. Co.*, 998 P.2d 856 (Wash. 2000)
- C. Court of Appeals did not apply this Supreme Court **criteria in *State v. Walker and Restraint of Glassman*** to determine if defense attorney's "*misconduct was so flagrant and ill-intentioned that an instruction would not have cured the prejudice.*". Court of Appeals simply said no contemporaneous objections and went no further. The PFR points out the two are different legal principles. The issue of Flagrant Misconduct so Ill-Intention no instruction could have cured in a WLAD case was completely neglect by the Court of Appeals. The issues in this matter discuss and show rampant dishonesty and numerous acts to Prejudice from opening to closing.

1. Defense communicated to the Jury that Mr. Washington likely

engaged in Bankruptcy fraud during his uneventful bankruptcy. Closing 1-4, RP 220,224.

2. At closing he told the Jury that Mr. Washington's Bankruptcy was "one of the darker deceptions that we heard in this case." Defense Closing pg 2.
 3. Defense told the Jury Mr. Washington who is African American is a "Big Mac Daddy". (Successful Pimp...Marriam Webster) RP 271, 544-545.
 4. Other actions at closing included character vouching, more than 15 creative ways of telling the Jury Mr. Washington is liar and defense attorney miss informed the Jury of respective burdens under the WLAD. See Defense closing.
- D. The degree and character of the overall misconduct was uniquely caustic and pervasive from opening to closing. The PFR has attached to it Defense's closing argument. Mr. Washington believes this Supreme Court reading the closing argument alone will give the court a starting place of the misconduct. These acts of Flagrant Misconduct in a WLAD case per written statue of RCW 49.60 (WLAD) should have been view and considered with the "Highest Priority" with respect to the Importance the legislature puts on the WLAD for this States citizens.

Attached to the PFR is Defense's closing and if the court reads the first 7 pages the court will find that in this WLAD case defense dishonestly asserts Mr. Washington irrelevant Bankruptcy was criminal fraud and that his US Military Service was also some form of fraud. For greater details of Flagrant Ill-intentioned Misconduct that no instruction could have cured, See PFR, Appellants Brief (New evidence is in appendix), Appellants Response Brief and PFR.

**Attached here is Appellant's Motion for New Evidence Response that informs on the Intentional acts of dishonesty to deceive the Jury to believe Mr. Washington was lying About being US Military Veteran. This Motion reference documents that are in the Appendix of Appellants Opening Brief.

**Appellants Response Brief details with references to evidence to show the Court numerous acts of Dishonest by defense to Prejudice.

Issue 2 The Court of Appeals ruled Mr. Washington needed to give more than just the simple "Notice of disability" that the WLAD and controlling caselaw require. See *Goodman v. Boeing, Martini v. Boeing, Sommer v. DSHS*. This Supreme Court's Goodman v. Boeing states the Employer once on notice of a disability is to "Investigate further into the nature and impact" of employee's disability.

The Court of Appeals Div. 1 is now adding an extra element onto the Employees burden. Now the Court of Appeals Div. 1 expects an Employee to give notice **PLUS** connect the disability with a specific accommodation need/request before the employer is required to "investigate further into the nature and impact of disability ". The Court of Appeals Div. 1 ruling states, " *There was conflicting evidence whether Washington explained to Sims that he needed the schedule adjustment due to his disabilities.* "Pg 2. As Mr. Washington PFR discusses, this is NOT the law it is NEW Law.

This decision allows an employer to skip a major part of the **Interactive Process** to "Investigate further into the nature and impact" of employee's disability. Id The actual law (*Goodman v. Boeing, Martini v. Boeing, Sommer v. DSHS*) as discussed does not require an employee give anything in addition of Notice of Disability which then shifts burden to Employer to initiate the Interactive process.

Court of Appeals believes employees are required to have this extra requirement of Notice of disability **PLUS** in this case to link Mr. Washington's " heart issue " with the schedule adjustment conflicts before burden shifts to employer. This conflicts with numerous decisions including this courts, *Goodman v. Boeing*. And Court of Appeals Div1, *Frisino v. Seattle School District No. 1, Wash. Ct. App., Div. One, No. 63994-3-1*

(March 21, 2011); *Martini v. Boeing Co.*, 137 Wn.2d 357, 971 P.2d 45 (1999); *Sommer v. DSHS*, 104 Wn. App.160, 173 (2001). Defense says this is Frivolous.

Under this issue what defense refers to as frivolous also include the following:

- a. Did the Court of Appeals err when they used Jury instructions instruction for their analysis and not the law as required under CR 59a7
- b. The Court of Appeals applied the wrong standard of review when it did not apply the law to its findings of Fact that acknowledge GHC's admits and concedes they knew Mr. Washington had heart issues. RP 394-395 (*Please see Appendix of this document pg 14-15*). Court of Appeals found substantial evidence of Disability. To establish liability all that was required was "Notice of Disability".

Issue 3, The Court of Appeals failed to follow this Supreme Court's *Re Marriage Rideout* in which this Supreme Court found, "*written documentation can often be determined as a matter of Law*". *Re Marriage Rideout*, 110 Wash. As simple as it sounds, the Court of Appeals determines matters of Law under the WLAD not a Jury.

- a. The Court of Appeals believes and uncontested email "Medical Condition Notification" in which they describe as "***notifying them {GHC} of a medical condition and appointment.***" Is a Jury question. The PFR discusses how email says what it says and there finding of fact issue for a Jury. The Court of Appeals applies the incorrect standard of review. As the PFR discusses the Email that states "Medical Condition Notification" is a issue of law not fact if it is Notice of Disability. This should have been reviewed de novo under RCW 49.60, *Goodman v. Boeing*, *Martini v. Boeing*, *Sommer v. DSHS*.
- b. The PFR discusses how the Court of Appeals is deciding WLAD cases against the intent of the WLAD.
This issue Defense is saying is Frivolous.

Issue 4, That is before the Supreme Court concerns if an issue may be brought forward for the first time on Appeal if it is based on new law determined during the Appeal. The Supreme court in its own words in This Supreme Court's *Brundridge v. Fluor Federal Services* (Wash. 2008) discusses that, yes, a new determination of law can be brought up on appeal for the first time. This Supreme court discussed federal precedent that supported such and inferred their acceptance of such. In this case the Court of Appeals says that a new issue decided during an appeal cannot be brought up for the first time on appeal.

Here, this Supreme Court during Mr. Washington's Appeal reformulated the law of Wrongful Discharge in Violation of Public Policy under this Court's *Rose v. Anderson Hay and Becker v. Cmty. Health Sys.* This Supreme Court also stated in *Brundidge* that it had not as yet specifically ruled on this matter of law in any of its rulings in our State. The PFR brings to the Court an area of law that this Supreme court can now officially and specifically clarify and resolved and give lower courts absolute direction on.

In addition, WLAD cases required the Court of Appeals to apply RCW 49.60.020 and this Supreme Court's *Allison v. Housing Authority* to "*be construed liberally for the accomplishment of the purposes thereof...a policy of the highest priority*". By not applying the Courts reformulation of Wrongful Termination, the question before this Supreme Court is did the Court of Appeals not comply with WLAD's intent when the Court of Appeals construed the law narrowly not liberally for the accomplishments of its purpose as the WLAD requires. This is part in parcel of what defense says is frivolous.

Issue 5, defense is asserting an Order Limine which was in place by the trial court is a frivolous part of the PFR as well. The question in the PFR is did the

Court of Appeals err when they believe an Order of Limine is NOT a rolling objection? This is a fundamental part of Law that order limine is a rolling objection, however Court of Appeals did not discuss this as briefed in any way. Defense violated the order laminae in their closing when discussed prior litigation as a tool of Prejudice against Mr. Washington. The order did not allow this. The Court of Appeals stated there was no contemporaneous objection. However, since an Order Limine was already in place a rolling objection was therefore in place.

ISSUE 6, Defense is saying it is Frivolous file a PFR that shows that a Court of Appeals is not confirming to legal standards as directed by this Supreme Court. This Supreme Court's *Allison v. Housing authority of Seattle (1991)* "*stressed the desirability of conformity between the standards of causation for retaliatory discharge and for discrimination claims*" ? *Allison v. Housing Authority of City of Seattle, 821 P.2d 34* (Wash. 1991). The Court of Appeals in conflict with this Supreme Court's *Allison* when it does not uniformly apply causation for retaliatory discharge under *Wilmot v. Kaiser Aluminum* to a WLAD disability discrimination claims as argued in Mr. Washington's brief ? *Id.*

1. The Court of Appeals err when it did not apply this Court's *Allison and Wilmot related to conformity of Standards of Causation.*

Allison v. Housing Authority established *Wilmot v. Kaiser*, should have been applied in this case when "proximity of time" is causation to establish improper motive and thus liability. Under *Wilmot* liability was established when a, "*worker filed a workers'*

compensation claim, that the employer had knowledge of the claim, and that the employee was discharged." Wilmot, at 69.

In this disability discrimination case there is proximity time of a few hours of Mr. Washington giving notice of heart issues (disability) and related work schedule needs. RP 394-395, Appeals opinion pg 7-8. Here, Mr. Washington told his supervisor he could not change his schedule due to heart related issues and was terminated a few hours later.

The fact is that Defense believes conformity between laws is frivolous and Mr. Washington should pay their attorney fees.

Issue 7, The Court of Appeals when analyzing if disability discrimination occurred does not apply this courts fundamental ruling of how to determine Pretext under *Scrivener v. Clark College*, 181 Wn.2d 439, 447, 334 P.3d 541 (WASH 2014). To establish liability of disability discrimination, first a prima facia case is needed and then pretext under controlling law of *Scrivener* is needed. Court of appeals applied its own unique standard for pretext not this Courts *Scrivener*.

The Court of Appeals believes a post termination letter can be used as substantial evidence to replace an actual pretext analysis under the WLAD. At least that is what the Court of Appeals does. The PFR discusses that the Court of Appeals going forward with this perception of law in the future, will for all intents and purposes invalidate a significant part of the WLAD in employment discrimination cases. At the very least it will cause a lot more activity in the Courts and hurt the Public that the WLAD is supposed to protect. Defense believes this is frivolous to matters of law and public importance.

There are numerous issues of law in the PFR in which the Court of Appeals views WLAD are against legislative intent and will proceed in err in future case and thus this Supreme Courts guidance is required. The PFR notifies this Supreme Court that the Court of Appeals is not working in the boundaries and direction of the statues, controlling law and rules established by this court.

5. GROUNDS FOR RELIEF

The general rule is that each party bears its own attorney fees. *Seattle School Dist. No. 1 v. State*, 90 Wn.2d 476 585 P.2d 71 (1978). RAP 18.1(j) discusses that an party must have both prevailed in the Court of Appeals and received an award of fees in order to be eligible to seek fees under this rule. Defense did not seek nor was awarded attorney fees in the Court of Appeals. From Defense's response their focus is an award of fees as a sanction for frivolous claim.

Standards for evaluating whether an appeal was frivolous is found in *Streater v. White*, 26 Wn. App. 430, 435, 613 P.2d 187, rev. denied, 94 Wn.2d 1014 (1980), the Court of Appeals held that a court should consider the following that apply here are: (1) all doubts should be resolved in favor of the appellant; (2) the record should be considered as a whole; (3) an appeal that is affirmed simply because the arguments are rejected is not frivolous; (4) an appeal is frivolous if there are no debatable issues upon which reasonable minds might differ, and it is so totally devoid of merit that there was no possibility of reversal. This standard was adopted by the Supreme Court in *Millers Casualty Ins.. Co. v. Briggs*, 100 Wn.2d 9, 665 P.2d 887 (1983). Also see the Supreme courts in *Boyles v. Retirement Systems*, 105 Wn.2d 499, 716 P.2d 869 (1986). See, e.g., *Mahoney v. Shinpoch*, 107 Wn.2d 679, 732 P.2d 510 (1987).

**RAP 18.9 provides the appellate court with authority to sanction the assertion of a frivolous claim or defense and with the authority to sanction the use of the appellate rules or procedures for harassment or delay. RAP 18.9 CR 11; *Rich v. Starczewski*, 29 Wn. App. 244, 628 P.2d 831, rev. denied, 96 Wn.2d 1002 (1981); *Bryant v. Joseph Tree*,

119 Wn.2d 210, 829 P.2d 1099 (1992). Defense assertion of frivolous as detailed in facts is abusing rules and procedures for harassment. When this is combined with numerous instances of Flagrant Misconduct, this Supreme Court is needed to view and understand the persistent pattern of defense acts that have the ends to subvert justice. *See PFR, Appellants Brief (New evidence is in appendix), Appellants Response Brief, Appellants Motion for New Evidence and Appellants Motion for New Evidence Reply.*

ARGUMENT

The facts section of this document and the PFR both specifically discuss about a dozen conflicts the Court of Appeals Div 1 has in deciding important issues of law under the WLAD that conflict with the Washington State Supreme Court, WLAD RCW 49.60 and Court of Appeals own Div 1 rulings. The direction the Court of Appeals is going in with deciding and analyzing WLAD cases severely constrain and weaken the WLAD. The facts sections here and with PFR itself have detailed this.

A. Flagrant Prejudicial Misconduct so Ill-intentioned no Instruction would have cured.

Mr. Washington's motion for new evidence (*See appendix pg 1-10 of this filling*) related to this onslaught of Misconduct to make Mr. Washington appear to be various forms of a Criminal including a fraudulent veteran to the Jury. This key issue of Flagrant Prejudicial Misconduct was not reviewed by the Court of Appeals. Defense Attorney's name was all over Veteran records that he requested and received before trial. *See Appendix pg 11-13 of this filling.*

Mr. Washington filed new evidence that irrefutably established and detailed how Defense fabricated facts to the Jury and manipulated the legal process at trial. *See Appellants Motion for New Evidence response brief, Appellants Opening Brief and the Appendix of Appellants opening brief has the documents the Motion for new Evidence refers to.*

Defense attorney engaged in misconduct and dishonesty making Mr. Washington military service as fake to the Jury throughout trial. Id. Defense attorney ignored his direct knowledge of Mr. Washington being an honorable and proud Veteran to effect

the verdict by prejudice and inflaming the Jury. *See Appendix pg 11-13 of this filing.* As stated in *State v. Walker*, these acts by defense attorney *“misconduct was so flagrant and ill-intentioned that an instruction would not have cured the prejudice.”* *Id* None of this whatsoever was reviewed by the Court of Appeals.

Defense attorney’s main argument against Prejudicial Misconduct is Plaintiff is responsible for his bad conduct that had *“no legitimate purpose”* (*State v. Walker*) but to effect the trial outcome. Defense is in essence saying he can do whatever he desires regardless of the law and the rules of conduct if any plaintiff does not object.

Aggressive advocacy has its limits and does not include falsely attack ones uneventful Bankruptcy as fraudulent or attacking a US Military Veteran as likely being a fake Veteran or refereeing to Mr. Washington as a Big Mac daddy (Success Pimp...Marriam Webster). These issues had no place in a disability discrimination trial.

Mr. Washington brings this Courts attention to the 3 examples below of Defense’s closing argument in a Disability Discrimination case to make Mr. Washington’s Military Veteran Service out to be a scam or fraud. *Closing Argument in PFR Appendix pg 4-6* The PFR has a copy of the closing for this Supreme Courts review. This is just a part a small part of the Misconduct.

1. *“If he was a decorated war veteran, you would think he would want to present that to you as a way of bolstering his credibility”*
2. *“We never saw that veteran’s card. And in fact if there was a veteran’s card in his wallet, why didn’t he ever produce it to Group Health. It Just doesn’t add up”*
3. *“If Mr. Washington was a veteran you would he would want to have a that record to show his daughters”*

Defense says this issue Flagrant Prejudicial Misconduct so ill-intentioned does not require an objection is frivolous. Considering the misconduct was pervasive and built on the foundation of repeated dishonesty, exemplifies defense believes it is ok for them to fabricate a narrative throughout trial such as this one example of attacking a US Military Veteran as not being a Veteran. Defense's closing argument is the epitome of what this Supreme court defined and discuss in Walker and Glassman as Prejudicial Misconduct so flagrant that no Instruction could have cured. And their many other acts of misconduct. *See PFR, Appellants Brief (New evidence is in appendix), Appellants Response Brief and PFR.* Appellants Response Brief details with references to evidence to show the Court numerous acts of Dishonest by defense to Prejudice. *See Appendix pg 1-10 of this documents attachments as file.*

In fact defense in this case far and away exceeds the misconduct that was present in Walker and Glassman. *See PFR, Appellants Brief (New evidence is in appendix), Appellants Response Brief and PFR.*


The Court of Appeals by not reviewing one bit of these actions of Misconduct with Walker and Glassman criteria gives the employers, the law firm the implicit ok to engage in these type of acts to subvert the law. The fact Defense is so bold to ask for attorney fees when they engage these well plan Prejudicial acts, should speak volumes of what they will do in the future. In fact, what have they already done that has gone un noticed without scrutiny ? The Public is at risk when officers of the Court believe these actions are ok and that anyone who comes forward is filling a frivolous PFR.

This will happen again and again and word will get out that this is an effective defense against the WLAD. And Veterans can and should be very concerned about having their Veteran service and medals they earned from that service used against them in Court of Law. Systematic dishonesty should not defeat justice.

CONCLUSION:

For the foregoing reasons, the Petition for Review should be Granted and attorney fees rejected for the PFR is not Frivolous. Defense's intent was well planned effort to subvert Justice. The greater Public and this States Citizens and very much US Military Veterans are in serious risk of bad acts. This Supreme Court is needed, this is of very high Public Importance.

DATED this 3 day of October 2017.

 seattle Washington

Victor Terence Washington PRO SE

FILED
SUPREME COURT
STATE OF WASHINGTON
10/3/2017 11:55 AM
BY SUSAN L. CARLSON
CLERK

APPENDIX

ORIGINAL

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Court of Appeals No. 73847-0-1
KCSC Case No: 13-2-19841-0

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

VICTOR WASHINGTON,
Appellant,

v.

GLOBAL HEALTH
COOPERATIVE,

Respondent.

REPLY TO RESPONSE IN
OPPOSITION TO
APPELLANT'S MOTION TO
INCLUDE ADDITIONAL
EVIDENCE ON REVIEW

A. Identity of Moving Party

The moving party in this action is Victor Washington ("Mr. Washington"), Appellant in this Court and Plaintiff in the trial court.

B. Reply

The issue before the court concerns admitting additional evidence in a disability discrimination appeal action that is necessary to show the severe prejudicial misconduct and willful misrepresentations by GHC that used Mr. Washington's military service to mislead and inflame the jury to

believe Mr. Washington faked being a US Military Veteran. RP 46, 208-210, 213-216, Defense Closing 5-6. GHC in their response states that both parties had an opportunity to present all evidence before trial and the new evidence is “irrelevant.” Defense response 1-2. This contention overlooks the fact that one of the substantial issues on appeal is GHC’s severely prejudicial misconduct and willful misrepresentations at trial to divert the jury’s attention away from disability discrimination and focus instead on portraying Mr. Washington as a fraudulent veteran. Defense closing 5-6, RP 215-216. The new evidence will show the court that GHC had numerous veteran medical documents that irrefutably identified Mr. Washington as a military veteran, but they recklessly ignored this evidence in order to influence the jury verdict. *See Appendix to Opening Brief.*

GHC in their response focuses on the fact that they “asked Washington why he had not produced his DD-214” in front of the jury. Defense Response 4. But, GHC is missing the point. A DD-214 is a military document that shows dates of service, type of discharge and medal/decorations a veteran has earned. GHC made the assertion in front of the jury that they asked Mr. Washington specifically for his DD-214 during the discovery process, but this was untrue. *See New Evidence Appendix.* The new evidence shows that GHC only “asked Mr. Washington to produce documents relating to any military service which

was from 20 years ago. Mr. Washington's attorney responded that he had no documents from his service in his possession and objected that GHC's request was overly broad and not calculated to lead to anything admissible. Id. GHC knew about these pretrial arguments, but omitted information about them in front of the jury. Instead, they portrayed to the jury that they asked for the DD-214 and Mr. Washington never provided it. GHC asked Mr. Washington in trial, "I'm wondering why you wouldn't produce the DD-214 when you were asked to in the course of this discovery and why you wouldn't identify any awards you had." RP 216.

The aforementioned question was deceptive, GHC made it appear as though Mr. Washington intentionally did not comply with a discovery request. Defense closing 6. The interrogatories and request for production Mr. Washington seeks to admit as additional evidence in this matter shows this Court that the DD-214 was not specifically requested during the discovery process as GHC portrayed. GHC only requested it after the discovery process had concluded. They requested it one month prior to trial and wanted it four days later. *See Appendix to Opening Brief.*

Defense Response 2

- 1. DATES ON RESUME IS WHAT GHC SAYS ALLOWS THEM TO INFER TO THE JURY THAT MR. WASHINGTON'S MILITARY SERVICE AS SUSPICIOUS IS UNFOUNDED**

GHC states in their response that their questions on Mr.

Washington military service and focus on his DD-214 during this disability discrimination trial was because Mr. Washington gave the incorrect dates of military service to a previous employer and on GHC's resume. Defense Response 4, Defense Closing 5-6, RP 215-216. The two different date ranges as Mr. Washington explained in trial are both correct and is a result of when a veteran has what is called split military service. RP 209. Split service is when a veteran leaves the military on his or her own volition and then after some time he or she makes the personal decision to rejoin the military. Numerous honorable veterans have split service, and this produces two different date ranges for a veteran, as Mr. Washington explained at trial. Id. At trial Mr. Washington began explaining in greater detail to the jury about split military service. While testifying, Mr. Washington offered to explain about the split service when he said, "Can I explain?" GHC's replied "No" and then GHC, "wanted to move on." RP 211. The dates on Mr. Washington's resume that GHC referred to in their response concerning the dates of military service of 1994-1998 on his resume was a simple mistake. The mistake, as Mr. Washington stated at trial does him a disservice because he served during the time of the first Persian Gulf War and proudly earned a "National Defense Service Medal" during the first Persian Gulf War; which Mr. Washington also referred to as a "Persian Gulf Service Medal." RP 209-210. Being that GHC knew about the split service and had numerous

documents in their possession evidencing that Mr. Washington served in the military, their reasoning of trying to get to the bottom of alleged inconsistencies on Mr. Washington's resume is unfounded. Id, Defense response 4, Defense Closing 6.

2. EVIDENCE OF DISCOVERY REQUESTS

The excerpts below from the written additional evidence offered by Mr. Washington shows that GHC never specifically requested or mentioned Mr. Washington's DD-214 during the discovery process. The discovery requests were the following:

Interrogatory No. 12 "Have you ever been a member of the armed forces? If so, describe the branch in which you served, the nature of your responsibilities, your highest rank or rat attained, where you were stationed, any military service awards and if discharged, the date and type of discharge. See Additional Evidence Page 76.

Request for Production No. 12: Produce all documents relating to any military service described in your answer to interrogatory No. 12. See Additional Evidence Page 76, 82, 105.

The additional evidence Mr. Washington offers shows that GHC never asked for the DD-214 specifically during the discovery process. Yet, they made it a huge issue in trial, stating the following when during their cross examination of Mr. Washington:

Example 1: "...responded back that you were going to—you were not going to produce a copy of that DD-214." RP 216.

Example 2: "I'm wondering why you wouldn't produce the DD-214 when you were asked in the course of this discovery, and why you wouldn't identify any awards you had." RP 216.

GHC made an issue out of something they never requested in the

discovery in order to make Mr. Washington out to be a “gamer”, a person who’s “life is a pattern of poor choices, deceptions”, who has a “deceptive side” as they disparaged him in the opening statement and closing argument. RP 39, Defense closing 1, 6.

3. GHC ONLY ASKED FOR THE DD-214 LESS THAN ONE MONTH PRIOR TO TRIAL AFTER THE DISCOVERY PROCESS HAD CONCLUDED

GHC admits in their response that they sent Mr. Washington an email on May 4, 2015, less than a month before trial asking him for a copy of his DD-214. What GHC fails to disclose is that this email was the first time Mr. Washington ever requested Mr. Washington’s DD-214. It is undisputed that the email requesting the DD-214 came over six weeks past the discovery deadline of March 31, 2015

In their response regarding this email, GHC states, “nor does the email from Group Health’s counsel show any impropriety.” Defense Response 11. The email does show planned and organized prejudicial misconduct especially when coupled with the discovery that shows they never requested the DD-214 by name during the discovery process. This is contrary to GHC at trial asking Mr. Washington why, “I’m wondering why you would not produce your DD-214.” RP 216.

The date of the email is May 4, 2015 and GHC gave Mr. Washington until May 8, 2015 to produce the DD-214. The link within the email establishes it was impossible to receive the document from the

Government in 4 days. *See Additional Evidence Appendix*. This DD-214 is not available to download online which the Government site confirms, however GHC gave the jury the false impression it was available online which further added to their efforts to prejudice Mr. Washington regarding falsities of his military service.

Q: And you responded back that you were going to – you were not going to produce a copy of that DD-214.

A: Okay, I don't know. I – I don't know what my – why my attorney said.

Q: And it would have taken a matter of minutes to do so? RP 216.

GHC induce the jury to believe in their closing argument that Mr. Washington was not a recipient of the “National Defense Service Medal” for service during the first Persian Gulf War. RP 210.

“If he was a decorated war veteran, you would think he would want to present that to you as a way of bolstering his credibility.” Defense closing 6. The DD-214 aside, the aforementioned sentence alone is a clear example of GHC making Mr. Washington's military service appear fraudulent when in fact they had numerous documents evidencing that he served in the military. These documents have been provided in Appellant's motion to include additional evidence because it is important for this Court to see what was in GHC's possession in order to measure the level of severe prejudicial misconduct that took place during the trial.

**4. VETERAN RECORDS AND VETERANS CARD IS
RELEVANT TO A SUBSTANTIAL ISSUE ON APPEAL**

GHC in their response states, "Despite claiming to have the veteran's card on his person at trial, Washington did not attempt to introduce it into evidence or even show it to the jury as an illustrative." Exhibit Defense Response 5. GHC goes on to focus their response to continue to propagate that they did not know Mr. Washington was a veteran and that they simply were only helping the jury to understand that during their closing. GHC suggests they just simply "reminded the jury that Washington could have shown the jury his veteran's card but chose not to do so." Defense Response 6. GHC's actions were not a reminder. Rather, they were an effort to make his military service suspicious to the jury as the quote from their closing argument shows:

"I invited — excuse me — Mr. Washington sat in that chair and sought to say I have a veteran's card in my pocket. I invited his attorney to ask him about that when it was his turn to ask questions. We never saw the veteran's card. And in fact if there was a veteran's card in his wallet, why didn't he ever produce it to Group Health. It just doesn't add up." Defense closing 6

The additional evidence of Mr. Washington's veteran records and his veteran card will show this Court the following:

1. GHC at the very least engaged in reckless ignorance because their attorneys who made this claim very much knew and had Mr. Washington's veterans medical documentation that has their name and address on it showing they had Mr. Washington veteran medical records in their possession. *New Evidence Appendix* Page 108, 155.

2. GHC had more than 40 pages of Mr. Washington's veteran health records that use the word "veteran" or "vet" more than 40 times. GHC misled the jury to believe there was doubt in trial, "if there was veterans card in his wallet, why didn't he ever produce it to Group Health?" Defense closing 6. This evidence shows GHC very much knew Mr. Washington was a veteran and it is common knowledge that almost every type of medical coverage has some form of ID. Thus, GHC's only purpose was to prejudice Mr. Washington in front of the jury with willful misrepresentations. This is one of the substantial issues on appeal that Mr. Washington presents in his opening brief.

The evidence of the veteran medical records are necessary to establish that GHC had substantial evidence in their possession indicating that Mr. Washington was a veteran and should not have been presenting to the jury otherwise. It is incorrect when GHC in their response stated that, "Washington's VA medical records were produced during discovery, and he had access to those records throughout the trial." Defense Response 15. Mr. Washington could not have foreseen GHC using this prejudicial ploy to discredit his military service. Mr. Washington presenting evidence of his military service in trial does not undo the damage and prejudicial misconduct GHC caused with their inferences and accusations in the closing argument and when cross-examining Mr. Washington. Based on all of the evidence GHC had of his service, it was improper to make the jury

believe something fraudulent was in play.

For all of the aforementioned reasons, the appellant respectfully requests that this Court allow the aforementioned additional evidence on review. Appellant has outlined each element as required by RAP 9.11(a) in its original motion.

RESPECTFULLY SUBMITTED this 19th day of April, 2016.

LAW OFFICE OF COREY EVAN PARKER

Corey Evan Parker

Corey Evan Parker
Attorney for Appellant



4200 23rd Avenue West
 Seattle, WA 98199-1283
 Tel: 206-285-6322
 Fax: 800-238-7307

RECORDS OF	Victor Terence Washington
RECORD LOCATION	VA Puget Sound Health Care System
CASE NAME	Washington vs. Group Health
ATTENTION	Jeffrey James ATTN: Eve Rashby
ADDRESS	Sebris Busto James 14205 S.E. 36th st. ste 325 Bellevue WA 98006
COMMENT	Medical Records
	Shubbry Samoun

- | | | | | |
|--|--|--|---|--|
| Record Retrieval
• Authorization Creation
• Subpoena Creation
• Process Service
• Scheduled Follow-up | Document Production
• High Volume Copy
• On-Site Copy Service
• Load File Creation
• Rush Service Available | Court Reporting
• Northwest Region
• Rush Transcript
• E-File Delivery
• Videographer | Deposition Scheduling
• Northwest Region
• Deposition Rooms Available
• Real-Time CR
• Calendaring | Electronic Delivery
• CD Delivery
• Secure FTP Site
• OCR
• Document Management Support |
|--|--|--|---|--|

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Handwritten initials and a circled number 11.



DEPARTMENT OF VETERANS AFFAIRS
Puget Sound Health Care System
1660 South Columbian Way
Seattle, WA 98108-1597

American Lake Division
Tacoma, WA 98493-3000

In Reply Refer To: ISS/IIIMS/
S007 ROI

Seattle Division
Seattle WA 98108-1597

DECLARATION OF RECORDS CUSTODIAN

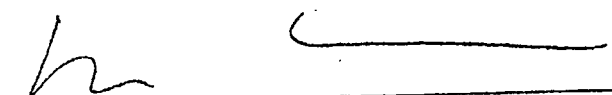
RE: Victor Washington
DATE OF BIRTH: 2/21/1968
SSN: [REDACTED]

Rose Guevara makes the following declaration pursuant to 28 U.S.C. § 1746:

I, Rose Guevara, am the Medical Records Technician at the VA Puget Sound Health Care System, Seattle, WA. As such, I am the custodian of veterans' medical records and am responsible for releasing those records pursuant to federal law. I have custody of the original medical records of Victor Washington. VA records of the identity, diagnosis or treatment of a patient may not be disclosed by VA except as authorized by federal law. The law precludes disclosure of these records without the prior written consent of the subject of the records. In this case James LaPenske Jr., has executed such consent. VA policy determines when and how these records may be disclosed, in accordance with applicable federal law, without the veteran's prior written consent. Pursuant to the applicable statutes, a true and correct copy of Victor Washington's medical records in our custody are enclosed.

I declare under penalty of perjury that the foregoing declaration is true and correct.

Executed April 14, 2014.


ROSE GUEVARA, R.O.I. Medical Records Technician
VA Puget Sound Health Care System



VAPS 000001

Authorization to Release Health Care Information

Patient's Name: Victor Terence Washington

Previous Name: NT

Date of Birth: February 21, 1966

SSN: [REDACTED]

I request and authorize VA Puget Sound Health Care System
1660 S. Columbian Way
Seattle WA 98108

to release health care information and medical records of the patient named above to the following:

Jeffrey A. James (Attorney for Defendant)
Sebris Busto James
14205 SE 36th Street, Suite 325
Bellevue, WA 98006

James W. Beck (Attorneys for Plaintiff)
Gordon Thomas Honeywell
1101 Pacific Avenue, Suite 2100
P.O. Box 1157
Tacoma, WA 98401-1157

A true and accurate photocopy of the information and/or records is acceptable in lieu of the original.

This request and authorization applies to:

All health care information from January 1, 2003 through the present, including, but not limited to, office notes, reports, correspondence, memoranda, chart notes, billings, examinations, test results, emergency room records, medication sheets, nurse's notes, radiology reports, x-rays, operative reports, pharmaceutical records, pathology reports, telephone records, and clinical records, pertaining to medical and mental health care, including history, condition, diagnosis, treatment and prognosis, as well as records of third parties and/or other health practitioners contained in records.

The purpose of this request and authorization is: Court/Litigation related

I understand that my express consent is required to release any health care information relating to testing, diagnosis, and/or treatment for HIV (AIDS virus), sexually transmitted diseases, psychiatric disorders/mental health, or drug and/or alcohol use. If the condition described above relates to any of these medical conditions, and I have been tested, diagnosed, or treated for HIV (AIDS virus), sexually transmitted diseases, psychiatric disorders/mental health, or drug and/or alcohol use, you are specifically authorized to release all health care information relating to such diagnosis, testing, or treatment.

I understand that once the health care information is disclosed, the person or organization that receives it may re-disclose it, and the information would then no longer be protected by federal HIPAA privacy regulations. I understand that signing this authorization does not impact my ability to obtain health care benefits (treatment, payment or enrollment).

I understand that I may revoke at any time my consent for the release of the health care information and records specified above, provided that VA Puget Sound Health Care System has not already relied on this authorization for release.

[Signature]
(Signature of patient or patient's authorized representative)

31 March 2014

Date Signed

UNLESS REVOKED EARLIER IN WRITING, THIS AUTHORIZATION EXPIRES 90 DAYS AFTER THE DATE IT IS SIGNED

[Signature] 13

1 Q Is it your understanding that several doctor appointments would
2 require FMLA leave, or be covered under FMLA for a new
3 employee?

4 A That was up for HR or other people to discuss. So I figured I
5 would let -- I'd escalate it up to that point and let him talk
6 that direction, if he needed to. So I -- I was going to hook
7 him up with HR to talk about FMLA if he needed to.

8 Q So at that point you understood that the FMLA somehow applied
9 to Mr. Washington's request for doctor appointment -- several
10 doctor appointments?

11 A I did not know that it applied to it, no.

12 Q Okay. So then what was your motivation for bringing that up?

13 A I was just trying to work with Mr. Washington, which was not
14 giving me any reasons why he didn't want to go back to the work
15 schedule he had already been working for several months.

16 Q Okay. You already that FMLA covers serious health conditions,
17 right?

18 A That is correct.

19 Q And is it your testimony here under oath in front of the jury
20 that Mr. Washington never mentioned his medical health
21 conditions to you?

22 A He told me he had lots of doctor appointments, and he had to go
23 to the University of Washington Medical for heart issues.

24 Q Yet you admit you were the one who brought up FMLA on August
25 9th?

14

1 A That's correct.
2 Q Okay. Do you have any recollection whether he brought up the
3 word accommodation on August 9th?
4 A I don't recall him saying accommodation on the 9th.
5 Q Okay. Mr. Washington mentioned his heart condition?
6 A That's correct.
7 Q He -- he did?
8 A He mentioned that he had a heart thing that he had to go to the
9 University of Washington for.
10 Q He had a heart thing?
11 A That's correct.
12 MR. JAMES: Asked and answered.
13 THE COURT: Sustained.
14 Q (By Mr. Black) Did he mention he had sarcoid?
15 A No.
16 Q Cardiomyopathy?
17 A Not that I recall, no.
18 Q Not that you recall?
19 A No, he did not.
20 Q Which one is it?
21 A No.
22 Q Did your boss, Mr. Burton, express dis-satisfaction with
23 Mr. Washington's work hours?
24 A Yes.
25 Q Was he the only one?

VICTOR WASHINGTON - FILING PRO SE

October 03, 2017 - 11:55 AM

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 94747-3
Appellate Court Case Title: Victor Terence Washington v. Group Health Cooperative
Superior Court Case Number: 13-2-19841-0

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A copy of the uploaded files will be sent to:

- jaj@sebrisbusto.com
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