NO. 1043121

IN THE SUPREME COURT FOR
THE STATE OF WASHINGTON

LIAM RILEY,

Plaintiff/Appellant,

vs.

CITY OF TACOMA,

Defendant/Respondent.

CITY OF TACOMA'S ANSWER TO APPELLANT'S PETITION FOR REVIEW

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I. Identity of Respondent, Relief Requested, and Introduction

Petitioner, Liam Riley ("Riley"), brought employment claims against Respondent, City of Tacoma ("City"). After Riley had a full and fair opportunity to present all of his evidence in the matter at trial, the trial court concluded that it was "crystal clear" Riley failed to cooperate with the City through the accommodation process. The trial court dismissed Riley's claims pursuant to CR 50. After review, Division II of the Court of Appeals ("Division II") came to the very same conclusion – that there was *no evidence* in the record upon which a reasonable jury could find in favor of Riley. Accordingly, in an unpublished opinion, Division II affirmed the trial court's dismissal of Riley's claims. App. A.

In affirming the trial court's dismissal of Riley's claims, the Court of Appeals followed existing and long-standing precedent – both from this Court and the Washington State Courts of Appeals. Riley cannot establish a basis for review by this Court and his arguments to the contrary are without merit. His *Petition for Review* ("Petition") should be denied.

II. Restatement of the Issues

1. Does an employee's confusion about the requirements of WLAD excuse his failure to engage in the interactive process and failure cooperate with the employer's accommodation efforts?

2. Does Riley demonstrate any conflict between the underlying Court of Appeals unpublished decision and any decision by the Washington State Supreme Court, or any conflict between decisions of the Washington State Appellate Courts, so as to warrant review under RAP 13.4 (b)(1)or (2)?

3. Does Riley articulate any issue of substantial public interest that is at issue in the underlying Court of Appeals unpublished decision upon which this Court should decide under RAP 13.4(b)(4)?

III. Facts Relevant to Answer

A. The Court of Appeals correctly states the relevant facts, but Riley does not.

The one-sided statement of the case presented by Riley in his *Petition* should be disregarded. An extremely detailed and objective statement of the case is contained in Division II's decision. App. A at 2-26. However, in light of the assertions made by Riley in his *Petition*, a few facts warrant emphasis here:

- The record demonstrates Riley never provided any medical documentation to the City that established a nexus between his disability and his ability to perform the essential functions of his job. 2RP 11, 155-158; App A at 32.

- On several occasions, in response to requests from the City for medical information, Riley responded not only refusing to provide the requested information but also explicitly forbidding the City from having any direct contact with his medical providers. RP 1268, Exs. 139, 150, 155 p.5.

- It was confirmed through an independent medical examination that Riley *could* perform all of the essential functions of his job *without* accommodation of any kind. Ex. 170.

- Throughout the accommodation process, Riley received assistance from both private counsel and his labor union. RP 1347-48; Ex. 146; Ex. 113; CP 175.

- Through discovery below, Riley produced text message communications between himself and his labor union representative wherein Riley clearly demonstrates his understanding of the accommodation process, unequivocally states he is "rejecting" the City's accommodation efforts, and asserts the City is attempting to "force him down the ADA road." Ex. 113 p.13-15.

- Riley produced text communications between himself and his labor union representative that occurred during the interactive process wherein Riley states he is **intentionally and knowingly rebuffing** the City's accommodation efforts because allowing the City to accommodate him would be detrimental to this lawsuit. Ex. 113 p.15.

B. The appellate decision below precisely and carefully considers and applies this Court's jurisprudence and that of the lower appellate courts.

Division II came to the only logical conclusion that could be reached in this matter – Riley engaged in gamesmanship and intentionally failed to cooperate with the City in his request for an accommodation. Despite numerous requests from the City, Riley never provided *any* medical documentation that established a nexus between his disability and his ability to perform the essential functions of his job. App. A at 32. After a *de novo* review of the record and taking the evidence in the light most favorable to Riley, Division II correctly concluded "Riley failed to provide required medical documentation: he was at best inconsistent as to whether he was requesting an accommodation, at times refusing to explore accommodation based on his disability, and he actively resisted reassignment as an accommodation." App A. at 32. Further, Division II rejected Riley's argument that he failed to cooperate with the City because he was confused by the accommodation process since Riley's argument ignores uncontroverted clear and substantial evidence to the contrary presented at trial. Id. at 34.

Division II correctly applied this Court's holding in Riehl v. Foodmaker, Inc., 152 Wn.2d 138, 94 P.3d 930 (2004) *abrogated on other grounds by* Mikkelsen v. Pub. Util. Dist. No. 1 of Kittitas County, 189 Wn.2d 516, 404 P.3d 464 (2017), when it found that an employee's failure to adequately communicate essential information to the employer or to provide medical confirmation or documentation ***is a basis*** for dismissing the employee's claim as a matter of law.

In Riehl, this Court mandated that in order to establish a failure to accommodate claim, an "employee must come forward at summary judgment or trial with competent evidence establishing a nexus between the disability and the need for accommodation. This ensures that an employer violates its duty to accommodate only where the employee has proved a medical nexus exists and the employer fails to provide reasonable accommodations, absent a showing of undue hardship." Id., at 142. This Court further held: "the court has established a clear rule that where an employee determines he or she needs accommodation for a disability but fails to provide a medical nexus between the disability and the need for accommodation,

accommodation is not medically necessary. If accommodation is not medically necessary, it is unreasonable to require an employer to provide accommodation." Id., at 147. "An employer may require medical documentation to show a nexus between the medical condition and the need for accommodation." Id., at 148.

The record here demonstrates that despite more than twelve (12) written requests from the City over a more than eighteen-month period, Riley never provided the City *any* medical documentation that established a nexus between Riley's alleged disabilities and his need for an accommodation. 2RP 158-161; Exs. 149, 150, 151, 153, 154, 155. Riley admits that in response to requests from the City regarding Riley's medical condition(s) and the impact thereof on his ability to perform the essential functions of his job, Riley either: (1) responded to the City refusing to provide the requested information and explicitly forbidding the City from contacting his medical providers or (2) Riley simply failed to respond at all. 2RP 11-14.

Division II also correctly applied Division I's holdings in Frisino v. Seattle School Dist. No. 1, 160 Wn. App. 765, 780, 249 P.3d 1044 (2011)("The employee has a duty to cooperate with the

employer's efforts by providing information about the employee's disability and qualifications, meaning their ability to perform the various functions of their position.") and Gamble v. City of Seattle, 6 Wn. App. 2d 883, 888, 431 P.3d 1091 (2018)(In order to prevail on a case for a failure to reasonably accommodate a disability, the plaintiff must present to the employer "medical documentation establish[ing] a reasonable likelihood that engaging in the job functions without an accommodation would create a substantially limiting effect[.]")

Despite clear Washington law, Riley suggests a jury should have been allowed to conclude that he cooperated in the accommodation process based on incomplete medical information and production of letters from his primary care provider, Dr. Seaholm. But Riley's position ignores that: (1) none of the evidence in the record, including Dr. Seaholm's letters, identified how Riley's disability impacted his ability to perform the essential functions of his position; and, (2) simultaneous to Riley's requests for accommodation, Dr. Seaholm's letters to the City repeatedly indicated that Riley *could return* to work **without restrictions.** *See* 2RP 157-58; Ex. 175.

The record clearly establishes that the City went to great lengths to understand the accommodation Riley needed – specifically the City sought input from Riley's medical providers to establish the limits his medical conditions created in his ability to perform the essential functions of his job, but none of the information provided by Riley informed the City as to how Riley's disability impacted his ability to perform the essential functions of his position. Moreover, the uncontroverted evidence demonstrates that Riley *intentionally* blocked the City's ability to communicate with his medical providers and that Riley refused to provide the requested clarification because he did not want an accommodation. Ex. 113 p.13-15.

Riley argues that despite the numerous communications from the City, and even with the assistance of private counsel and his union representative, he was confused about the accommodation process as well as his obligation to cooperate and provide medical documentation to the City. Riley wrongly contends that his alleged confusion should excuse his failure to cooperate – but his position is unsupported by any precedent.

Moreover, Riley's position is belied by the record, as both the trial court and Division II appropriately concluded that the record undeniably establishes that Riley *did* understand the accommodation process and the medical information the City was seeking, but *intentionally undermined the City's efforts* for the purpose of furthering this litigation. 2RP 387; App. A at 17.

Based on the evidence Riley presented at trial, the trial court correctly concluded no reasonable juror could find that Riley cooperated with the City during the accommodation process as required – and after a *de novo* review of the record, Division II agreed.

IV. Procedural History

Riley filed his first employment related lawsuit, stemming from the same events discussed herein, against the City in the United States District Court ("USDC") in December 2019. CP 514. After more than a year of litigation, in January 2021, the City notified Riley's counsel that it intended to file summary judgment as to all of Riley's claims. CP 515. Almost immediately thereafter, Riley voluntarily dismissed his claims in the USDC. Id. Nine months later, in August 2021, Riley refiled his employment related

claims, this time in Pierce County Superior Court. Id. Through his second lawsuit, Riley asserted the following claims: (1) failure to accommodate under WLAD; (2) Retaliation under WLAD; (3)Intentional Infliction of Emotional Distress ("IIED"); (4) Wrongful Termination under WLAD; and, (5) Hostile Work Environment under WLAD. Id.

The City moved for summary judgment on all claims. Pierce County Superior Court Judge, Thomas Quinlan, dismissed Riley's claims of retaliation and hostile work environment. CP 431-36. The trial court denied the motion as to the failure to accommodate claim and limited the claims of wrongful termination and IIED. Id. In its *Order Granting Partial Summary Judgment*, the trial court concluded as a matter of law that "prior to his medical separation, Plaintiff was notified by Tacoma it was considering doing so and he was provided information with options to avoid separation; Plaintiff did not engage in the medical separation accommodation process, did not provide medical information requested and did not respond to several communications from the City." CP 435. The trial court indicated that it was unclear whether an employee's failure to cooperate in

the interactive process was dispositive of the failure to accommodate claim, and to that end, the trial court certified for review the following questions:

> Does an employer have a duty to accommodate an employee when the employee fails to provide medical information explaining the nature and extent of the employee's disability and how the disability impacts the employee's ability to perform the essential functions of his job?

> Is an employer liable for failing to accommodate an employee when the employee does not engage with the employer in the interactive process?

App. B.

Based on the trial court's *Order Granting Certification*, the City sought interlocutory review, but its request was denied. App. C.

The matter proceeded to trial, and the Honorable Judge Chushcoff[1] presided. Prior to the commencement of trial, Riley voluntarily dismissed his IIED claim. Trial proceeded on the failure to accommodate and wrongful termination claims only. At the

[1] The matter was transferred from Judge Quinlan (who presided of the City's summary judgment motion) to Judge Chushcoff (who presided over the trial) due to a judicial rotation.

close of Riley's case, the City moved under CR 50 for judgment as a matter of law on several bases. *See* 2RP 369:1-375:14.

The trial court granted the City's CR 50 motion, dismissing both the failure to accommodate and wrongful termination claims. The trial court explained that although it "rarely" grants CR 50 motions, here, even considering the evidence presented during Riley's case-in-chief in a light most favorable to Riley, it was "crystal clear" that Riley did not cooperate with the City's efforts in the reasonable accommodation process. 2RP 401. The trial court concluded that Riley "didn't cooperate because he did not want to go through the ADA process. Now he's suing them because they didn't do it. I got a problem with that. And although I rarely do this, I'm going to grant the [CR 50] motion." Id.

Riley sought review by Division II of the summary dismissal of the hostile work environment claim, the granting of his voluntary CR 41 motion for dismissal of the IIED claim, the CR50 dismissal of the failure to accommodate claim[2], and the trial court's denial

[2] Riley did not appeal the trial court's summary judgment dismissal of his retaliation claim to Division II; also, Riley did not appeal the trial court's CR 50 dismissal of his wrongful termination claim to Division II. Through his *Petition*, Riley does not challenge Division II's holding affirming dismissal of his hostile work environment claim or affirming dismissal of his IIED claim. As such, the only issues before this Court are review of: (1) Division II's

of his motion in limine attempting to block introduction of some historic medical records. In a split decision, Division II affirmed the trial court's dismissal of Riley's failure to accommodate claim finding that "there is no substantial evidence or reasonable inference to sustain a conclusion that Riley fulfilled his obligation to cooperate with the City and to provide the medical documentation the City was entitled to obtain. A fair-minded, rational person could not conclude that Riley adequately cooperated in the interactive process with the City." App. A at 36.

Division II did not reach a conclusion as to the admission of the medical records as it found that issue irrelevant based on Riley's failure to cooperate. Id., at footnote 3. Additionally, Riley did not include argument or explanation related to his IIED claim, as such Division II declined to address this issue[3]. Id.

Riley now seeks review of Division II's decision affirming the CR 50 dismissal of Riley's failure to accommodate claim and the

affirmation of the CR 50 dismissal of the failure to accommodate claim; and, (2) the trial court's ruling permitting the admission of historic medical information.

[3] The dissent opined that it would affirm the trial court's ruling as to both the dismissal of the IIED claim and also the admission of the historic medical records. App. A, at 83-84.

trial court's ruling allowing the introduction of limited historic medical information. See *Petition*.

V. Reasons This Court Should Deny Review

The true focus of Riley's *Petition* rests on his position that Division II erred in assigning weight to the evidence when arriving at its decision. See, e.g., *Petition* at 19 (asserting that "Division Two erred when it looked at the City's defensive evidence in the light most favorable to the [*sic*] to them."). However, even if Division II erred (which it did not) such an error is not a proper basis upon which this Court can accept review:

> [P]erceived injustice should not be the focus of attention in the petition for review. Although the well-drafted petition should awaken in the court uncertainty whether justice has been done, RAP 13.4(b) does not allow review simply to correct isolated instances of injustice. The Supreme Court, in passing upon a petition for review, is not operating as a court of error, but rather is functioning as the highest policy-making judicial body of the state. Its concern is with the general state of the law, not particular applications of it, whether involving the state constitution, statutory or regulatory law, or the common law. The court grants review when it is convinced that a significant point of law must be decided or clarified.

Washington Appellate Practice Deskbook (WSBA) §18.2.

Because the Washington Supreme Court is not an "error-correcting" court, its review is limited to certain categories of

cases in the exercise of its discretion within the Rules of Appellate Procedure. See RAP 13.4(b). Here, Riley has not identified a significant point of law that this Court needs to decide. Accordingly, this Court should decline Riley's invitation for this Court to review this matter substantively.

A. Riley fails to identify any conflict between the decision of Division II below and the decisions of this Court, thus his request for review under RAP 13.4(b)(1) must be denied.

Riley bases his argument that review is warranted under RAP 13.4(b)(1) upon this Court's holding in H.B.H. v. State, 192 Wn.2d 154, 429 P.3d 484 (2018). *Petition* at 13. H.B.H. has no application here. H.B.H. involved claims by former foster children who asserted that the State was negligent in protecting them from abuse that occurred during their placement in a foster home. Id., at 158. The trial court incorrectly determined that the State owed the children no duty during pre-adoption foster care and dismissed the matter under CR 50. Id., at 159. On review, Division II reversed the H.B.H. trial court, finding that a special relationship existed between the State and the plaintiffs giving rise to a common law duty. Id., at 158-59. This Court affirmed Division II's

holding in H.B.H. as to application of the common law duty and also explained that by applying the correct duty (which the trial court failed to do) the plaintiffs had enough evidence upon which a reasonable jury could find in their favor. Id., at 181. Differentiating H.B.H., there is no dispute as to the application of duty by the trial court in Riley's case. As such, there is no conflict between Division II's holding below and this Court's opinion in H.B.H.

Similarly, Riley's reliance on Schmidt v. Coogan, 162 Wn. 2d 488, 173 P.3d 273(2007) misses the mark. *Petition* at 15. As Riley correctly explains, a plaintiff must come forward with "enough evidence so that a reasonable jury could return a verdict in her [i.e., the plaintiff's] favor." *Petition* at 16. Through his *Petition*, Riley fails to acknowledge that he produced **no evidence** to establish that he gave the City the medical information which it was entitled to, and Riley fails to acknowledge that the uncontroverted evidence established that he intentionally failed to cooperate in the accommodation process. For those reasons, the trial court determined that there was *no evidence*

upon which a reasonable juror could find in Riley's favor, and after *de novo* review Division II agreed.

Riley cannot demonstrate **any conflict** between Division II's holding below and previous decisions of this Court – the request for review set out in the *Petition* based on RAP 13.4(b)(1) should be denied.

B. Riley fails to identify any conflict between the Washington Appellate Courts, thus his request for review under RAP 13.4(b)(2) must be denied.

Riley bases his argument that this Court should accept review under RAP 13.4(b)(2) on what he describes as "a subtle conflict" between Division II's holding below and Division I's unpublished holding in Singh v. State, 2021 Wn. App. LEXIS 2083 (2021). *Petition* at 18. Riley's argument is without merit.

As Riley recognizes, the Singh court held:

> Claims under the WLAD are **typically** inappropriate for resolution at summary judgment "because the WLAD 'mandates liberal construction' and the evidence 'will **generally** contain reasonable but competing inferences of both discrimination and nondiscrimination that must be resolved by a jury.

Id., at 20 internal citations omitted [emphasis added].

The language in Singh is clear, but here, Riley attempts to recharacterize this holding in order to create a "subtle conflict" that does not actually exist. If Riley's expansive interpretation of Singh was adopted by this Court, all causes of action arising from the WLAD would be immune from CR 56 and CR 50 dismissal. The Washington Courts and Legislature have not offered any support for such a massive change to WLAD litigation. Riley's attempt to rewrite the holding in order to create a "subtle conflict" between the Appellate Divisions is unpersuasive.

Additionally, Riley fails to explain how his interpretation of Singh can be reconciled with this Court's holding in Riehl, wherein this Court made clear that the "employee must come forward at summary judgment or trial with competent evidence establishing a nexus between the disability and the need for accommodation." Riehl, 189 Wn.2d at 142. Riley's failure in this regard is due to the undeniable fact that this Court's holding in Riehl cannot be reconciled with Riley's interpretation of Singh.

The issue here is not that there is competing evidence as Riley suggests, instead, the issue is that Riley cannot point to *any competent evidence* to establish that he provided the City medical

evidence to establish a nexus between his disability and his alleged need for an accommodation. As such the trial court properly dismissed his claim, and Division II correctly affirmed the trial court's ruling. There is no viable argument that this Court should consider the *Petition* pursuant to RAP 13.4(b)(2).

C. Riley focuses on alleged errors by the trial court but fails to present any issue of substantial public interest that this Court should determine, thus his request for review under RAP 13.4(b)(4) must be denied.

At trial, Riley moved pursuant to RCW 49.60.510 to exclude all medical evidence and medical records that documented medical evaluation and/or treatment which occurred two or more years prior to Riley submitting his accommodation claim. RP 16-50; CP 479-482. Through the Pierce County Superior Court trial, Riley sought damages arising from his claimed PTSD and high blood pressure conditions. Riley argued his PTSD and high blood pressure conditions were proximately caused by his conflicts with his City coworkers and the City's failure to accommodate him. Riley attempted to sanitize the record by preventing the City from presenting historic medical evidence for several reasons. First, Riley wished to block evidence of his conflicts with coworkers at

his previous place of employment, which were more severe than the conflicts he reported with his City coworkers. Notably, Riley's medical records evidenced that Riley's conflicts with coworkers predating his City employment resulted in similar medical symptoms. The subject records establish that Riley's claimed PTSD symptoms predated his employment with the City. A second reason Riley wished to exclude his historic medical evidence was that Riley's medical records evidenced Riley's high blood pressure condition existed for many years prior to his employment with the City. After carefully considering the parties arguments, the trial court determined that some of Riley's medical records (those related **only** to his on-going high blood pressure and those demonstrating prior symptoms of PTSD) dating back more than two years were highly relevant to his current claims. Based on that finding, the trial court denied Riley's motion to exclude and permitted the admission of limited historic medical evidence that related specifically to Riley's alleged high blood pressure and PTSD conditions. RP 49-52.

On appeal, Riley argued that the trial court erred when it permitted the admission of the aforementioned limited historic

medical evidence at trial. Division II did not address this issue as it concluded that admission of the subject medical records at trial was not relevant to the issue on appeal[4]. App. A, footnote 3.

Now, through his *Petition,* Riley argues for the first time that the trial court erred when it allowed the City to admit medical evidence that "included things about Riley's erectile disfunction." *Petition* at 30. Riley further claims that "the record bears out that the City sought the older records not to explain why it couldn't accommodate Riley but to paint him in a bad light to the jury." Id. Riley claims this is a "matter of substantial public interest" upon which this Court should accept review. However, **Riley omits a key fact from his *Petition***. In an obvious effort to bolster his potential damage claim, at trial Riley voluntarily offered the following testimony on direct examination:

MR. MCCANNA:

> Q. My question to you, Mr. Riley, was, was what impact have these experiences had on your love life?

[4] The dissent did address the inclusion of the medical records and concluded it would affirm the trial court's denial of Riley's motion to limit the admission of these records.

A. It's had a big impact not only to the frequency, but the ability to perform…I ended up having to start using Viagra to even perform…

RP 508:10-17.

On cross examination, the City's Attorney elicited the following clarification:

MS. YOTTER:

Q. Okay. Now, you also mentioned to the jury in your testimony last week that you're currently experiencing issues with erectile dysfunction; is that right?

A. I am.

Q. And you attribute that to the City of Tacoma?

A. No. I attribute it to the stress that I have from what happened to me at the City.

Q. And why do you attribute that to the stress from the City?

A. Because I never had a problem with it before I started having anxiety and having anxiety and stress from what happened to me at work.

RP 668:9-20.

Riley's medical records clearly contradicted the above testimony. In response to Riley's direct testimony, the trial court allowed the City to introduce *limited* medical records and testimony for the purpose of establishing that (1) Mr. Riley's

erectile dysfunction began in 2015, at least four years *before* Riley's request for an accommodation from City; and, (2) Riley's primary care physician held the medical opinion that Riley's erectile dysfunction was *not attributable* to the employment issues or stress Riley alleged to have experienced while working at the City. RP 670:11-671:18; 938:15-941:11.

Not only does Riley fail to disclose his own key testimony to this Court (that excerpted above), but he essentially asks this Court to interpret RCW 49.60.510 as a complete bar to the introduction of *any* historic medical records, even for the purpose of impeachment. Under Riley's theory, a plaintiff could create a claim or bolster his request for damage by intentionally or mistakenly testifying contrary to all medical records that existed more than two years prior. Even if the defendant was aware of the impeachment evidence in the plaintiff's historic medical records, the defendant would be barred from using *any* of the impeachment evidence – simply because the evidence relates to medical evaluation of treatment that occurred two years prior. This argument is contrary to law and precisely why the Legislature

included a provision allowing the trial court to make an exception to this statue. RCW 49.60.510 (2)(a).

Riley has not identified any matter of substantial public interest at play herein that could justify consideration by this Court. As such, Riley cannot meet the criteria for review under RAP 13.4(b)(4) and his *Petition* should be denied.

VI. Conclusion

As outlined herein, Riley's *Petition* fails to identify a precedential conflict with a prior opinion of this Court, fails to identify a conflict between the Washington Appellate Courts, and, fails to identify any matter of substantial public interest that requires this Court's attention.

Rather, Riley's *Petition* focuses on his position that there was an injustice because Division II erred by – allegedly – not construing the evidence in a light most favorable to Riley. Riley does not dispute that he failed to provide the City with medical records that established a nexus between his claimed medical condition/disability and his ability to perform the essential functions of his job. Instead, Riley argues his failure to cooperate should be excused because, despite the assistance of counsel

and union representation, he did not understand the accommodation process or his obligation to cooperate in the interactive process. As the trial court and Division II both independently concluded, Riley's argument is belied by evidence in the record that conclusively establishes that Riley understood the accommodation process but intentionally obstructed the City's accommodation efforts in order to further this litigation.

Riley fails to establish review is warranted under RAP 13.4(b). Accordingly, Riley's *Petition* should be denied.

This document contains 4757 words, excluding the parts of the document exempted from the word count by RAP 18.17.

DATED this 18th day of September, 2025

CHRIS BACHA, City Attorney

By: */s/ Michelle N. Yotter*
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Attorney for Respondent City of Tacoma

CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on September 18, 2025, I filed with the Supreme Court of Washington and delivered through the Court's portal a copy of the foregoing City of Tacoma's Answer to Plaintiff's Petition for Review and this Certificate of Service by email pursuant to agreement to the following:

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Dated this 18th day of September, 2025, at Tacoma, Washington

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APPENDIX A

Riley v. City of Tacoma

Court of Appeals of Washington, Division Two

September 12, 2024, Oral Argument; May 20, 2025, Filed

No. 58295-3-II

Reporter
2025 Wash. App. LEXIS 945 *; 2025 LX 52507

LIAM ***RILEY***, *Appellant*, v. THE CITY OF ***TACOMA***, *Respondent*.

Notice: RULES OF THE WASHINGTON COURT OF APPEALS MAY LIMIT CITATION TO UNPUBLISHED OPINIONS. PLEASE REFER TO THE WASHINGTON RULES OF COURT.

Subsequent History: Reported at *Riley v. City of Tacoma, 2025 Wash. App. LEXIS 997 (May 20, 2025)*

Prior History: **[*1]** Appeal from Pierce County Superior Court. Docket No: 21-2-06979-9. Judge signing: Honorable Bryan E Chushcoff. Judgment or order under review. Date filed: 05/25/2023.

Riley v. City of Tacoma, 2020 U.S. Dist. LEXIS 267614, 2020 WL 13579500 (W.D. Wash., Nov. 25, 2020)

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For Respondent: Michelle Nicole Yotter, Attorney at Law, ***Tacoma***, WA; Barret Joseph Schulze, City of ***Tacoma***, City Attorney Office, ***Tacoma***, WA.

Judges: Authored by Rebecca Glasgow. Concurring: Anne Cruser. Dissenting: Bernard Veljacic.

Opinion by: Rebecca Glasgow

Opinion

¶1 GLASGOW, J. — Liam ***Riley*** was a mechanic for the City of ***Tacoma***'s fire department. ***Riley*** experienced conflict with his coworkers in the fire garage over the distribution of parts and what music the mechanics would listen to while working. The conflicts increased ***Riley***'s physical symptoms of anxiety, and he had to be taken to the hospital multiple times for high blood pressure.

¶2 ***Riley*** sued the City, alleging in part that the City failed to accommodate his disability under the *Washington Law Against Discrimination, chapter 49.60 RCW.*[1] He also claimed that he experienced a hostile work environment as a result of his disability. The trial court dismissed the hostile work environment claim on summary judgment. The failure to accommodate claim proceeded to trial, and after ***Riley*** presented his **[*2]** evidence, the City moved for judgment as a matter of law. The trial court dismissed that claim as well and ***Riley*** appeals.

¶3 The trial court properly dismissed the failure to accommodate claim because the undisputed evidence established that ***Riley*** failed to cooperate with the City during the interactive process for evaluating ***Riley***'s need for accommodation. Despite several clear requests from the City, ***Riley*** failed to provide requested medical documentation addressing the nexus between his disability and his ability to perform the essential functions of his job. ***Riley***'s lack of cooperation was fatal to his claim. The trial court also properly dismissed the hostile work environment claim because ***Riley*** failed to establish more than isolated incidents of hostility and he did not offer any evidence they were a result of his disability. We affirm.

FACTS

I. BACKGROUND

A. ***Riley***'s Work for the City and His Medical Conditions

¶4 ***Riley*** began working for the City of ***Tacoma*** as a mechanic for the City's fire department in 2013. He primarily worked on fire department vehicles and equipment in the only fire garage in the City's fire department. ***Riley*** repaired fire department vehicles and equipment, including **[*3]** tasks such as welding and fabricating.

¶5 Starting in 2013, ***Riley*** suffered from numerous health problems, including marked obesity, chronic fatigue, mood swings, irritability, and joint pain. ***Riley*** also had high blood pressure for many years before he started working for the City. He sought treatment from multiple physicians and specialists including Dr. Norman Seaholm, who was his physician for at least 12 years. ***Riley*** began testosterone injections as part of his treatment.

B. ***Riley***'s Initial Request to the City, His Interpersonal Conflicts, and His Workplace Blood Pressure Spike

¶6 In 2018, ***Riley*** began to report conflict with his coworkers. Generally, he complained that they did not provide him with parts and supplies in a timely way, and coworkers were rude and disrespectful to him. For example, ***Riley*** testified that his coworkers called him the boss's "pet and his golden boy" and said "that [***Riley***] would get away with everything." 4 Verbatim Rep. of Proc. (VRP) at 245. ***Riley*** also testified that one of his coworkers Carol Haeger once raised her hand at him as if she was going to slap him but did not. ***Riley*** said another coworker told ***Riley*** on multiple occasions he was going to "kick [his] **[*4]** ass." 6 VRP at 712-13. ***Riley*** reported that

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[1] ***Riley*** also brought claims for intentional infliction of emotional distress and wrongful termination. ***Riley*** voluntarily dismissed his claim for intentional infliction of emotional distress, and ***Riley*** does not raise any issue regarding dismissal of the wrongful termination claim on appeal.

this personal conflict caused him stress and anxiety, and he felt that he needed to get help beyond his direct supervisor, Don Voigt.

¶7 In January 2018, ***Riley*** texted Chief Patrick McElligott and reported that he was "being illegal[l]y discriminated against." Ex. 108.001. He complained about Haeger not getting parts and supplies for him to be able to do his job. After ***Riley*** sent this text, he had a meeting with McElligott and Voigt, where he also complained about arguments over what radio station should be played in the garage. After the meeting, things got better for about six months.

¶8 On June 13, 2018, ***Riley*** argued with Haeger over auto parts, and he reported that Haeger screamed at him. ***Riley*** said that Haeger had purposefully violated garage protocol and placed boxes behind the vehicle he was working on and he ran them over. Fire department personnel checked his blood pressure and reported to him that it was 228 over 140. An ambulance took ***Riley*** to the hospital where he had a similarly high blood pressure reading. ***Riley*** complained that while he was on the gurney, Haeger looked at him with "hate and disdain." 4 VRP at 254.

C. ***Riley***'s Ongoing Issues **[*5]** with Workplace Conflict and the City's Response

¶9 About two weeks after ***Riley***'s June 13, 2018, emergency room visit, Seaholm cleared ***Riley*** to return to work with no restrictions. The letter from Seaholm noted that work stress played a role in ***Riley***'s elevated blood pressure, but medications had gotten his blood pressure under control.

¶10 There continued to be conflict among workers in the fire department garage. The City conducted a "Climate Assessment," which is an in-depth internal investigation. Clerk's Papers (CP) at 658. The City concluded that ***Riley*** did have personality conflicts with two coworkers. The City found that ***Riley*** participated in the conflict. The record confirms that ***Riley*** engaged in name-calling, foul language, and physical intimidation of coworkers and supervisors. The City's assessment did not find that anyone's safety was at risk.

¶11 Nine months later, in March 2019, ***Riley*** again experienced elevated blood pressure at work and was taken to the hospital. Seaholm wrote a letter stating that ***Riley***'s blood pressure spike was the result of workplace conflict and noted that ***Riley*** was at high risk for stroke. Even so, Seaholm released him to go back to work without restrictions. **[*6]**

D. ***Riley***'s Request for Accommodation and the City's Response

¶12 In early April 2019, ***Riley*** asked for a workplace accommodation, specifically to be assigned "'*somewhere else in the city that is [a] safe and healthy work environment*.'" Ex. 136.002. The City's Disability and Leave Management Office began an interactive accommodation process with ***Riley***. The City explained that when an employee has experienced a medical condition that impacts their ability to perform the essential functions of their position, they may be entitled to a reasonable accommodation. Examples of reasonable accommodations include restructuring of a position, changes in work schedule, acquiring or modifying equipment, or, as a last resort, reassignment to an entirely different position. Because the fire garage was the only location where fire mechanics worked, the City could not simply transfer ***Riley*** to another location as a fire mechanic. Reassignment to a different position was a possible accommodation, but the City explained that reassignment would be a last resort.

¶13 The first step in the interactive process was completion of a medical questionnaire about ***Riley***'s disability and whether he could perform the essential **[*7]** functions of his position. The City sent ***Riley*** a release that would have allowed his medical providers to communicate directly with the City. ***Riley*** never executed this release.

¶14 The City then sent ***Riley*** the questionnaire for his medical providers to complete. In the meantime, ***Riley*** sent the City an email expressly forbidding the City to have contact with his medical providers. In this email, ***Riley*** also stated that he was represented by counsel.

¶15 In late May 2019, Seaholm and ***Riley***'s mental health therapist, Karey Regala, completed the medical questionnaire. Seaholm stated that ***Riley***'s anxiety, high blood pressure, and high risk for cardiac events began in 2016, and he anticipated these conditions would last at least another year. He also checked a box stating that limitations would be permanent. Seaholm recited ***Riley***'s recent episodes of high blood pressure, warned of a significant risk of a catastrophic cardiac event, and explained that "[c]urrent work conflicts appear to be playing a significant role." Ex. 140.004. Seaholm explained that treatment included medication for blood pressure and anxiety, as well as therapy. When asked what major life activities were affected, Seaholm only **[*8]** listed concentration and focus. Seaholm did not evaluate whether there were any essential functions of ***Riley***'s position that ***Riley*** could not perform.

¶16 Regala also filled out the medical questionnaire. She explained that according to ***Riley***, his anxiety symptoms occurred when he had negative interactions with certain people at work. She checked the box on the questionnaire that stated ***Riley***'s restrictions were temporary and explained: "[p]er client report, anxiety and stress, including panic attack episodes[,] would cease if client could perform work duties in a safe and healthy environment." Ex. 140.005. Regala recommended in the questionnaire that, "***Riley*** can perform all job duties necessary provided he be placed in a role where his work environment be deemed safe and healthy, where on a daily basis he doesn't feel threatened or bullied by fellow co-workers." Ex. 140.007.

¶17 Neither questionnaire stated ***Riley*** could not perform any particular essential function of his position without accommodation. Nor did either questionnaire state that he could not continue to work in the fire garage. These are the only medical questionnaires that ***Riley*** ever submitted to the City.

¶18 After this, ***Riley*** filed **[*9]** a complaint with the United States Equal Employment Opportunity Commission (EEOC). However, the EEOC was unable to conclude that any laws were being violated.

¶19 In early June 2019, the City offered ***Riley*** a temporary transfer to a different work location, which he accepted. The City explained, "This opportunity is temporary and **is not** being offered as permanent assignment nor is it related to any accommodation process." CP at 718.

¶20 Around the same time, the City met with ***Riley*** and his union representative to discuss reassignment as a reasonable accommodation. At the meeting, the City explained that additional medical information may be needed. The City followed up in writing by explaining that in order to continue the accommodation process, it would need to obtain information from

Riley's medical providers about the nexus between his conditions and his ability to perform the essential functions of his job.

¶21 Immediately following the meeting, ***Riley*** emailed the City stating that he wanted to "freeze" the accommodation process until further notice and explaining that he had told his medical providers that he was "terminating the ADA reasonable accommodation process." Ex. 142.001. ***Riley*** felt his **[*10]** temporary workplace was safe and free from retaliation. He then confirmed again that he wanted the accommodation process to stop. The City therefore stopped the accommodation process and closed ***Riley***'s accommodation file.

¶22 It is undisputed that at no point after this did ***Riley*** ever provide the additional information from his medical providers that the City requested about the nexus between his medical conditions and his ability to perform the essential functions of his job.

¶23 ***Riley***'s temporary position at the electrical shop ended in mid-July 2019. ***Riley*** did not experience any high blood pressure episodes while at the electrical shop. He returned to his position at the fire garage.

¶24 Seaholm then sent another letter to the City stating ***Riley***'s accommodation request needed to be reinstated. ***Riley*** also called the City and asked to reengage in the accommodation process. ***Riley*** directed the City to work directly with his attorney. The City's attorney sent an email to ***Riley***'s attorney that explained again that the previously submitted medical forms did not state what essential functions of ***Riley***'s mechanic job that he could not perform as a result of his conditions. The City also explained that **[*11]** it needed updated medical information. Finally, the City's attorney noted that the reasonable accommodation process was not the proper forum for addressing personality conflicts with coworkers. ***Riley***'s attorney did not respond.

¶25 About a month later, in mid-August, ***Riley*** was again transported to the hospital due to his blood pressure. The emergency provider at the hospital released ***Riley*** that day. Seaholm sent a letter to the City stating that ***Riley***'s malignant hypertension was related to conflicts at work and advised "he be allowed a permanent transfer, before he suffers a disabling event." Ex. 148.003. That same day, Seaholm sent a separate letter stating ***Riley*** could return to work "assuming he is returning to a safe and supportive work environment." Ex. 148.004. Seaholm testified that neither of these letters placed any restrictions on ***Riley***'s return to work. A few days later, ***Riley*** was put on light-duty data entry away from the garage, possibly due to an unrelated elbow injury.

¶26 On August 22, 2019, the City followed up with ***Riley***'s attorney having received no response to its prior email. On August 26, ***Riley***'s attorney responded to the City's email and directed the City to work directly **[*12]** with ***Riley*** on the accommodation process. In the meantime, ***Riley*** experienced another blood pressure spike despite the fact that he was not working in the garage at the time.

¶27 The City then sent ***Riley*** an email explaining again that his medical providers had not provided necessary information about whether he could perform the essential functions of his job as a fire garage mechanic. Moreover, it had been more that three months since the prior

medical questionnaires were submitted. The City also provided a letter for ***Riley***'s medical providers explaining that it needed "medical documentation explaining the functional limitations of Mr. ***Riley***'s ability to perform the essential functions of his position." Ex. 153.002 (emphasis omitted). In another follow-up letter, the City stated clearly that ***Riley*** would need to submit a new medical questionnaire with the required information.

¶28 ***Riley*** attempted to rely on the prior medical questionnaires and declined to submit new ones. The City explained again that "under the reasonable accommodation process, a reassignment may be provided to an employee who, because of a disability **can no longer perform the essential functions of his/her current position, [*13]** with or without reasonable accommodation. The information you have recently provided from Dr. Seaholm referenced the working environment (workplace, job site); however, [it] does not provide information regarding your ability to perform the *essential functions* of your position." Ex. 150.001. The City also provided the specific medical questionnaire form that needed to be completed.

¶29 Trying again, the City followed up with ***Riley*** about the questionnaire seeking additional information regarding the specific essential functions of his job he could not perform. The questionnaire asked what essential work activities ***Riley*** could not do and whether certain devices or equipment could help him do those tasks. ***Riley*** did not respond to any of these inquiries. Over the next four weeks, between mid-September and mid-October, the City contacted ***Riley*** three times seeking the same information. ***Riley*** still did not respond. In addition, Seaholm testified that he would have been willing to provide information to the City.

¶30 On November 8, 2019, after nearly four months of trying to obtain the necessary medical information from ***Riley***'s attorney, ***Riley***'s medical providers, and ***Riley*** himself, the City emailed **[*14]** ***Riley*** and stated that based on the lack of response, it would have to close ***Riley***'s accommodation request.

¶31 ***Riley***, who was still represented by counsel, expressed confusion and frustration because he had already turned in medical questionnaires. Despite the City's multiple explanations in writing, and its letter directed to ***Riley***'s medical providers stating exactly what the City needed, as well as the medical questionnaire form, ***Riley*** said he did not understand what information was required.

¶32 In November 2019, the City continued to repeat its explanation of what additional information it needed from ***Riley***'s medical providers, and ***Riley*** continued to refuse to provide additional medical questionnaires. The City continued to explain that ***Riley***'s original, filled out questionnaires did not provide sufficient information. It is undisputed that although he was represented by counsel, ***Riley*** never returned a new questionnaire with additional information.

¶33 In later November 2019, after additional problems with ***Riley***'s blood pressure, Seaholm sent another letter strongly advising that ***Riley*** receive a permanent transfer "before he suffer[ed] a disabling event." Ex. 175.004. But Seaholm did not return **[*15]** the medical questionnaire. In early December, Seaholm sent a similar letter "strongly advis[ing] that [***Riley***] be allowed a permanent transfer, before he suffers a disabling event." Ex. 175.006. But neither ***Riley*** nor Seaholm provided the questionnaire, and Seaholm did not provide the information

about ***Riley***'s ability to perform the essential functions of his position that the City needed. In December 2019, ***Riley*** sued the City in federal court. This lawsuit was eventually dismissed.

¶34 In mid-January 2020, ***Riley*** was transported to the hospital again due to anxiety symptoms while he was at work. Seaholm sent another letter stating in part: "For [***Riley***'s] own health and safety he needs to be placed into an alternative work environment. If these episodes continue to recur, he is at very high risk of experiencing an acute cardiovascular event such as stroke or myocardial infarction." Ex. 202.014. The City then contacted ***Riley*** acknowledging that he seemed to be seeking reassignment due to his medical condition and asked to meet with him again to discuss the reassignment process. ***Riley*** called the City and left a voicemail stating he was *not* requesting a transfer under ADA, but was requesting a **[*16]** voluntary transfer due to his hostile work environment.

¶35 On January 24, the City sent ***Riley*** a follow-up email seeking clarification as to whether or not ***Riley*** was seeking an accommodation due to his medical conditions. ***Riley*** responded later that day but did not answer the question. Ex. 202.017. The City asked again that same day:

> To confirm, [a]re you declining to engage in the reasonable accommodation process (under the ADA) that the [City] office would assist you in due to your medical condition?

Ex. 202.016. ***Riley*** responded that day, stating,

> I'm not declining anything. I welcome any help I can get. But you have told me several times stress claims due to bullying and harassment are not covered under [the ADA]. So how could you help me under [the ADA] if I don't qualify in your opinion.

Id. The City responded that afternoon and said for the third time:

> Please let us know if you are seeking [our] assistance in the ADA accommodation process due to your medical condition(s). If not, we do not need to meet with you and the interactive process will remain closed.

Id. At the same time, ***Riley*** was also texting with his union representative, and he asserted in these texts that the City was trying **[*17]** to "force" him to cooperate with the reasonable accommodation process to the detriment of his pending litigation. Ex. 113.015.

¶36 Also that day, ***Riley*** emailed his boss asking about the status of his paid leave and stated that the City's disability office told him he did not qualify for its services. ***Riley***'s boss responded, "the [City] has reached out to you to determine if you would like an accommodation due to medical disability and they have not received a response from you yet." Ex. 202.022. The City offered ***Riley*** paid leave time for meetings to address his request for accommodation, if he chose to pursue that route. ***Riley*** expressed a willingness to meet, but he did not accept this offer to reopen the accommodation process, nor did ***Riley*** submit the medical questionnaire necessary to proceed with exploring reasonable accommodations.

¶37 On January 27, ***Riley*** was again transported to the hospital due to anxiety symptoms. ***Riley*** then contacted the City regarding a transfer to a different department. A human resources representative responded,

> I'm happy to schedule a time for a phone call or meeting with you. As we discussed before, the Fire Marine Diesel Mechanic position only exists in the Fire **[*18]** Garage, so there isn't another position in the City in your classification to transfer to. You can, however, apply for another position in the City or request a voluntary demotion and we can discuss those options.

Ex. 30. ***Riley*** applied for other jobs but was not selected for any. Specifically, he applied for a welding position but was not hired. ***Riley*** inquired as to why he was not qualified for the welding position, and he received the following response:

> We had subject matter experts evaluate the supplemental questions that you answered during the application process-during this process they were unable to see any information on candidates (names, etc). You did pass minimum qualifications, but as this is a classified list, the supplemental question review was the test. Unfortunately your score was not high enough to be placed on the eligible list.

Ex. 21A. In addition, evidence demonstrated that ***Riley***'s welding certificate had expired in 2014. None of these communications involved a direct request from ***Riley*** for accommodations due to disability, nor did he submit the necessary medical questionnaires.

¶38 On January 28, 2020, Seaholm sent a letter stating that for ***Riley***'s health and safety, **[*19]** he needed to be "placed into an alternative work environment" due to hypertensive crises and that "[i]f these episodes continue to recur, he is at very high risk of experiencing an acute cardiovascular event such as stroke or myocardial infarction. Ex. 175.008. Neither ***Riley*** nor Seaholm submitted the medical questionnaire regarding the essential functions of ***Riley***'s position.

¶39 In March 2020, ***Riley*** submitted to an independent medical evaluation. Unlike the questionnaires completed by ***Riley***'s health care providers in late May 2019, the independent medical examination conducted a review of all of the functions and requirements listed in ***Riley***'s job analysis, and the independent medical examiner approved ***Riley*** to perform the job of fire and marine mechanic without limitation or accommodation. Despite the City's repeated requests for a complete medical questionnaire, ***Riley*** has offered no contrary review of the essential functions of his job from any medical provider.

¶40 Several weeks passed, and then on April 27 ***Riley*** was transported again to the hospital. None of the people with whom ***Riley*** usually had conflicts was present at the fire garage that day.

¶41 On May 5, a nurse practitioner sent a letter **[*20]** stating ***Riley*** was seen at the emergency department for chest pain and hypertension. While the nurse believed ***Riley*** could perform his job duties without limitations, he asked for a transfer to a different department for ***Riley***'s "emotional and physical well being." Ex. 160. That same day, Seaholm sent a letter to the City stating that ***Riley*** could no longer work at the fire garage. In all prior instances, ***Riley*** had been cleared to return to work; this was the first time that any medical provider told the City without equivocation that ***Riley*** could not return to work and that he could no longer work at the garage at all.

¶42 As a result, also on May 5, ***Riley*** was placed on unpaid medical leave until he could provide documentation he was cleared physically and mentally to work at the fire garage. Then, on June 23, Seaholm sent a letter stating that ***Riley*** had been diagnosed with posttraumatic stress disorder (PTSD) due to work conditions. ***Riley*** did not seek to reengage in the reasonable accommodation process at this time, nor did he provide the medical questionnaires that the City had requested.

¶43 While on leave from the City, ***Riley*** obtained another job at a gun manufacturer where he was able to perform **[*21]** all of the functions of that position without accommodation. Nevertheless, the City continued to try to engage in the accommodation process with ***Riley***, this time explaining to his attorney that it was willing to explore reassignment as an accommodation and noting ***Riley***'s refusal to engage in this process previously. ***Riley*** did not respond.

¶44 After several months of medical leave from the City, the City sent ***Riley*** an email on November 10, 2020, stating that working in the fire garage was an essential function of his position of fire mechanic. No other fire mechanic positions were available at the City.

> As we have explained, reassignment options can be explored as part of the reasonable accommodation process under the *Americans with Disabilities Act (ADA)*. Therefore, if you are requesting a reassignment as a reasonable accommodation, this office (Disability and Leave Management (DLM)) remains ready and willing to assist you if you wish to re-engage in the process.

Ex. 164.001. The email also stated that if the City did not receive a response requesting accommodations or medical clearance saying ***Riley*** could work at the fire garage by November 30, 2020, the City would begin medical separation. ***Riley*** did not respond.

¶45 On December **[*22]** 7, the City sent ***Riley*** a letter with its intent to medically separate him on December 31. The letter stated that "[t]he separation would be based on [***Riley***'s] inability to perform the essential functions (work in the Fire Garage) for an undetermined duration." Ex. 165.002.

¶46 On December 17, while ***Riley*** was on medical leave, Seaholm sent a new letter, this time reverting to his prior position that ***Riley*** *could* work at the fire garage, but ***Riley*** was told to avoid encounters with coworkers he could not get along with:

> [***Riley***] has a known history of recurrent hypertensive crises, all requiring ER care and all triggered by highly stressful encounters with his prior coworkers at the fire garage. [***Riley***] is physically and mentally capable of working at any work site, including the above fire garage, *but was told to avoid encounters that may lead to the hypertensive crises that had plagued him over the last couple of years*. Historically, per my discussions with [***Riley***], these had consistently been triggered by his prior coworkers. He is no longer experiencing them now.

Ex. 203.022 (emphasis added). Seaholm testified inconsistently about whether he intended this letter to release ***Riley*** to work on **[*23]** the fire garage again. Around the same time, ***Riley*** emailed the City and argued that he had not been treated fairly. But ***Riley*** did not agree to engage in the accommodation process, he did not seek reassignment within the City's

employment, and he did not offer to provide the medical questionnaire that the City required as part of the accommodation process.

¶47 On December 23, the City sent ***Riley*** another letter and yet another copy of the medical questionnaire indicating that it interpreted Seaholm's December 17 letter to mean ***Riley*** could return to work in the fire garage. The City emphasized that working at the fire garage was an essential component of ***Riley***'s position as a fire mechanic, and he could not work in the fire garage if he were required to avoid all interaction with other employees. The City sought clarification as to whether Seaholm thought ***Riley*** could return to work at the garage or not. ***Riley*** never responded, nor did he ever return the medical questionnaire confirming he could return to work, and on January 11, 2021, the City medically separated ***Riley***.

II. PRETRIAL

¶48 ***Riley*** sued the City in Pierce County Superior Court in August 2021, claiming failure to accommodate, retaliation, **[*24]** intentional infliction of emotional distress, wrongful termination, and hostile work environment. The trial court dismissed ***Riley***'s hostile work environment and retaliation claims on summary judgment. The trial court also granted partial summary judgment on ***Riley***'s intentional infliction of emotional distress claim; the only part of this claim that survived was as it related to interactions ***Riley*** had with fire department leaders in the hospital. ***Riley***'s failure to accommodate claim survived the City's motion for summary judgment, along with the wrongful termination claim.

¶49 Prior to trial, ***Riley*** moved to voluntarily dismiss the remainder of his intentional infliction of emotional distress claim. The court granted this motion. ***Riley*** also filed a motion in limine seeking to exclude evidence of his medical records created prior to 2018 and those records unrelated to the specific diagnosed conditions ***Riley*** alleged. The court denied this motion.

III. TRIAL [2]

A. Testimony

¶50 At trial, ***Riley***'s physician and mental health counselor both testified that aside from his personal conflicts with his coworkers, ***Riley*** could perform all of the essential functions of his job as a fire mechanic. They also testified **[*25]** that the accommodation ***Riley*** needed was to be moved away from coworkers he was having conflict with and to have "cooperative and congenial relationships with his fellow coworkers." 7 VRP at 953. They explained that working with people he had conflict with exacerbated ***Riley***'s physical symptoms of stress.

¶51 Dr. Peter Blanck, an expert on organizational behavior and accommodations, testified that he believed the City's interactive process in accommodating ***Riley*** was deficient. However, he did not list the extensive communications from the City in the list of things he considered when forming his opinion. Blanck also testified that it would not be appropriate to make an employee who is entitled to an accommodation compete for a new position if he meets the minimum qualifications for that position. He testified that if an employee is entitled to an accommodation and meets the minimum requirements for an open position, the "employee would get that

[2] Evidence supporting the above facts was elicited at trial.

position per the EEOC guidance and other guidance, because otherwise that would kind of neuter the whole point of the reassignment process." 8 VRP at 1016.

¶52 However, Blanck acknowledged that a "foundational step" and a "threshold action[ ]" for an employer **[*26]** in the disability accommodation process "is to determine how the employee is limited in his ability to perform the essential functions of his job." 8 VRP at 1037. Blanck testified that medical conditions can change over time and he noted "[t]hey often do." 8 VRP at 1042. He also stated that an employer can seek updated information about a person's medical condition, and it could be prudent for an employer to require up-to-date information. The City's witness testified that ***Riley*** never got to the reassignment phase. And Blanck acknowledged that if no reassignment was requested, then an employer could follow the normal competitive process when an employee applied for a different job with the same employer. Finally, it was undisputed that the EEOC was "unable to conclude" that any laws were violated. CP at 756.

¶53 When ***Riley*** testified, he said that he was confused about the entire process. He felt he was passed back and forth among City employees, and he was never offered a reasonable accommodation that did not require him to work at the garage where his interactions with his coworkers were making him ill.

B. Judgment as a Matter of Law

¶54 At the conclusion of the presentation of ***Riley***'s evidence, **[*27]** the City moved for judgment as a matter of law. The City conceded that ***Riley*** had medical disabilities. The City argued in relevant part that there was no dispute that ***Riley*** could perform all of the essential functions of his job, and thus he had no disability requiring accommodation because it was not enough that he simply had a personality conflicts with certain coworkers. There was no dispute that if he were permitted to work on a garage without coworkers, he could perform every function of his job as a fire and marine mechanic. Moreover, providing new coworkers is not a reasonable accommodation as a matter of law. The City also argued ***Riley*** failed to show he adequately cooperated with the City in the interactive process.

¶55 The trial court agreed with the City's last argument and concluded that ***Riley*** did not cooperate in the accommodation process. The trial court ultimately granted the City's motion and dismissed ***Riley***'s accommodation claim.

¶56 ***Riley*** appeals.

ANALYSIS

I. FAILURE TO ACCOMMODATE

¶57 ***Riley*** argues the trial court erred in dismissing his claim as a matter of law under *CR 50* because there were disputes of fact. Specifically, ***Riley*** argues the trial court erred in finding that he did not sufficiently **[*28]** cooperate in the accommodation process because there was substantial evidence showing he cooperated. We disagree.

A. Burden and Standard of Review

¶58 We review a trial court's decision on a motion for judgment as a matter of law de novo. *Davis v. Microsoft Corp., 149 Wn.2d 521, 530-31, 70 P.3d 126, (2003)*. "A motion for judgment as a matter of law must be granted 'when, viewing the evidence in the light most favorable to the nonmoving party, the court can say, as a matter of law, there is no substantial evidence or reasonable inference to sustain a verdict for the nonmoving party.'" *Id. at 531* (quoting *Sing v. John L. Scott, Inc., 134 Wn.2d 24, 29, 948 P.2d 816 (1997)*). "Substantial evidence" is evidence "'sufficient … to persuade a fair-minded, rational person of the truth of a declared premise.'" *Id.* (alteration in original) (quoting *Helman v. Sacred Heart Hosp., 62 Wn.2d 136, 147, 381 P.2d 605 (1963)*).

B. Reasonable Accommodation and Duty to Cooperate

¶59 The *Washington Law Against Discrimination, chapter 49.60 RCW*, makes it unlawful to discharge an employee because of any sensory, mental, or physical disability. *Gibson v. Costco Wholesale, Inc., 17 Wn. App. 2d 543, 555, 488 P.3d 869 (2021)*. An employer must accommodate an employee with a disability unless the accommodation would be an undue hardship. *Id.* Ideally, the employer and employee should engage in a flexible interactive process to determine whether the employee is entitled to an accommodation and, if so, what the accommodation will be. *Id.*

¶60 An "essential job function" **[*29]** is "a job duty that is "fundamental, basic, necessary, and indispensable to filling a particular position." *Id. at 559*. Employers are not required to eliminate essential job functions, nor are they required to create new positions to accommodate a disability. *Id. at 560*; *Davis, 149 Wn.2d at 534*. Thus, an employee must show that they can perform the essential functions of their job either without an accommodation or with an accommodation that does not undermine the essential functions. *See Davis, 149 Wn.2d at 536*. For example, where long hours and travel were essential functions that an employee could not perform because of his disability, a disabled employee was not entitled to have his job restructured to significantly reduce the hours worked as an accommodation. *Id. at 535-36*.

¶61 However, reassignment to another position has been an available accommodation where the employee can no longer perform the essential functions of their current job even with accommodation, though reassignment is a last resort. *See id.* (turning to reassignment only after other accommodations were ineffective because Davis could not perform the essential functions of his current job under any circumstances). Where reassignment is the appropriate path, the accommodation process envisions **[*30]** an exchange where the employer and employee communicate openly to achieve the best match between the employee's capabilities and available positions. *Id. at 536-37*.

¶62 Regardless of the type of accommodation requested, the Washington Law Against Discrimination requires a flexible, interactive process and a sharing of information between employer and employee. *Frisino v. Seattle School Dist. No. 1, 160 Wn. App. 765, 779-80, 249 P.3d 1044 (2011)*. The employee must initiate the process through notice to the employer that the employee has an impairment that affects their ability to perform their work. *Id.* The impairment must be shown through the interactive process to exist in fact. *RCW 49.60.040(7)(d)*. The employee has a duty to cooperate with the employer's efforts by providing

information about the employee's disability and qualifications, meaning their ability to perform the various functions of their position. *Frisino, 160 Wn. App. at 780*.

¶63 To decide whether an accommodation is reasonable, specific job functions and the impact of a disability on those job functions should be evaluated. *Riehl v. Foodmaker, Inc., 152 Wn.2d 138, 146, 94 P.3d 930 (2004)*. An employer may require medical documentation to show a nexus between the medical condition and the need for accommodation. *Id. at 148*. The employee must provide "medical documentation establish[ing] a reasonable likelihood that engaging in the job functions **[*31]** without an accommodation would create a substantially limiting effect." *Gamble v. City of Seattle, 6 Wn. App. 2d 883, 888, 431 P.3d 1091 (2018)*; *RCW 49.60.040(7)(d)(i)-(ii)*. The accommodation process requires that the employee must supply sufficient information so an employer can evaluate whether an accommodation may be needed. *Wurzback v. City of **Tacoma**, 104 Wn. App. 894, 899, 17 P.3d 707 (2001)*.

¶64 The employee also has a duty, "flow[ing] from the mutual obligations of the interactive process," to continue to communicate with the employer throughout the process. *Frisino, 160 Wn. App. at 783*. "A good faith exchange of information between the parties is required whether the employer chooses to transfer the employee to a new position or to accommodate the employee in the current position." *Id. at 780*. An employee's failure to adequately communicate essential information to the employer or to provide medical confirmation or documentation can be a basis for dismissing the employee's claim as a matter of law. *Riehl, 152 Wn.2d at 148-49, 149 n.6* (finding doctor's notes not enough); *Mackey v. Home Depot USA, Inc., 12 Wn. App. 2d 557, 586-87, 459 P.3d 371 (2020)*.

C. ***Riley***'s Failure to Cooperate and Communicate

¶65 For purposes of its *CR 50* motion, the City did not dispute that ***Riley*** had a disability. Instead, the City argued that ***Riley***'s failure to accommodate claim was properly dismissed because even considering the facts in the light most favorable to ***Riley***, ***Riley*** did not adequately cooperate and communicate with **[*32]** the City. We agree that there is undisputed evidence that ***Riley*** failed to provide required medical documentation: he was at best inconsistent as to whether he was requesting an accommodation, at times refusing to explore accommodation based on his disability, and he actively resisted reassignment as an accommodation.

¶66 Despite the City's numerous clearly stated requests (including at least six requests in writing), ***Riley*** failed to provide updated and complete medical questionnaires, which amounted to a failure to meet his obligation to provide medical documentation showing the nexus between his medical condition and the need for accommodation. Although ***Riley*** submitted questionnaires from his doctor and mental heath counselor in May 2019, they did not identify limitations in ***Riley***'s ability to perform his job and they did not provide an assessment of his ability to perform the essential functions of his job in light of his disability. The only full evaluation of ***Riley***'s ability to perform essential functions was an independent medical evaluation that concluded that he could perform his job without limitation. Moreover, soon after ***Riley*** submitted the May 2019 questionnaires, he withdrew **[*33]** from the accommodation process for several weeks, and he never provided updated questionnaires over the next year and a half, despite multiple clear requests from the City.

¶67 ***Riley*** asserts that the letters from Seaholm were adequate substitutes, but they were not. Seaholm repeatedly cleared ***Riley*** to return to work in the fire garage without restriction. Seaholm's letters also focused on ***Riley***'s relationships with his coworkers, not the nexus between his disability and the functions of his job. Only in late 2020 did Seaholm conclude and communicate to the City that ***Riley*** could no longer work in the garage at all. When the City received that determination, it began the process of exploring reassignment, but ***Riley*** actively resisted reassignment as an accommodation and then stopped communicating with the City at all.

¶68 ***Riley*** also contends that Blanck's testimony, when viewed in the light most favorable to ***Riley***, should have prevented the trial court from dismissing his accommodation claim. But Blanck testified that medical conditions can change over time, and he acknowledged an employer can seek updated information about a person's medical condition. Nothing about Blanck's testimony overcomes **[*34]** the undisputed evidence that ***Riley*** failed to provide the necessary medical documentation and failed to otherwise cooperate in the interactive process.

¶69 ***Riley*** also claims that his failures were the result of understandable confusion. But this argument ignores the evidence presented at trial, including multiple clear written communications from the City explaining it needed updated medical questionnaires. This argument also ignores undisputed communications between ***Riley*** and his union representative showing that ***Riley*** was resisting reassignment as an accommodation because he thought it would harm his litigation position. Finally, ***Riley*** was represented and had the assistance of counsel who could explain the process to him and intervene with the City if necessary.

¶70 In sum, there is no substantial evidence or reasonable inference to sustain a conclusion that ***Riley*** fulfilled his obligation to cooperate with the City and to provide the medical documentation the City was entitled to obtain. A fair-minded, rational person could not conclude that ***Riley*** adequately cooperated in the interactive process with the City. Therefore, the trial court did not err when it dismissed his reasonable accommodation **[*35]** claim.

II. HOSTILE WORK ENVIRONMENT

¶71 ***Riley*** argues the trial court erred in dismissing his hostile work environment claim at summary judgment because there were questions of material fact. We disagree.

¶72 We review orders granting summary judgment de novo. *Dean v. Fishing Co. of Alaska, 177 Wn.2d 399, 405, 300 P.3d 815 (2013)*. Summary judgment is appropriate when "'there is no genuine issue as to any material fact' and 'the moving party is entitled to a judgment as a matter of law.'" *Id.* (quoting *CR 56(c)*).

¶73 A plaintiff in a disability based hostile work environment case must prove, among other things, that they experienced unwelcome harassment because of their disability. *Robel v. Roundup Corp., 148 Wn.2d 35, 45, 59 P.3d 611 (2002)*. "Casual, isolated, or trivial incidents [of harassment] do not affect the terms or conditions of employment to a sufficiently significant degree to violate the law." *Crownover v. Dept. of Transp., 165 Wn. App. 131, 146, 265 P.3d 971 (2011)*. Further, the harassing conduct "'must be so extreme as to amount to a change in the

terms and conditions of employment.'" *Id.* (quoting *Adams v. Able Bldg. Supply, Inc., 114 Wn. App. 291, 297, 57 P.3d 280 (2002)*).

¶74 ***Riley*** failed to satisfy the requirement that the alleged harassment by his coworkers affected the terms and conditions of his employment. The conduct ***Riley*** complained of was not so extreme as to satisfy this element. *Id.* Despite the serious reactions ***Riley*** had to his coworkers' claimed behavior, the **[*36]** incidents were trivial. Only two of the alleged incidents even come close to being nontrivial—***Riley*** alleged one coworker raised her hand as if to slap ***Riley*** and another threatened to "kick [***Riley***'s] ass." 6 VRP at 713. The first was an isolated incident. And ***Riley*** presented no evidence that the threat was because of his disability. Therefore, ***Riley*** failed to establish a *prima facie* case that he was subject to a hostile work environment, and the trial court did not err in dismissing this claim at summary judgment.[3]

ATTORNEY FEES

¶75 ***Riley*** requests attorney fees on appeal under *RAP 18.1(a)-(b)* and *RCW 49.60.030(2)*. Because ***Riley*** does not prevail, we decline to award him attorney fees on appeal.

CONCLUSION

¶76 We affirm.

¶77 A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with *RCW 2.06.040*, it is so ordered.

CRUSER, C.J., concurs.

Dissent by: VELJACIC

Dissent

¶78 VELJACIC, J. (DISSENT) — Liam ***Riley*** appeals the trial court's dismissal of his claims against the City of ***Tacoma***. He argues the court erred in granting the City's motion for judgment as a matter of law on his failure to accommodate claim.[4] He argues the court erred in earlier

[3] In his brief, ***Riley*** includes an assignment of error and an issue regarding the dismissal of his claim of intentional infliction of emotional distress. But he does not include any further argument or explanation of this issue in the text of his brief. As a result, we need not address this argument further.

Riley also argues that the trial court erred when it denied his motion in limine to exclude evidence of health problems he had before he worked for the City. But because such evidence is not relevant to the determinative issues in this appeal—whether ***Riley*** adequately cooperated in the accommodation process and whether he experienced a hostile work environment—and we decline to remand for retrial, we need not address this issue further.

[4] Specifically, ***Riley*** assigns error to the court's grant of the City's *CR 50* motion dismissing all of ***Riley***'s remaining claims (which would have included the wrongful termination claim). However, ***Riley*** provides no argument in his brief regarding the wrongful termination claim. As such, we do not address it. *See State v. Elliott, 114 Wn.2d 6, 15, 785 P.2d 440 (1990)* ("This court will not consider claims insufficiently argued by the parties.").

granting **[*37]** summary judgment dismissing his intentional infliction of emotional distress and hostile work environment claims. He also argues the court erred in denying his motion in limine to exclude certain medical records at trial.

¶79 Since substantial evidence or a reasonable inference exists to persuade a rational fair-minded person that the City of ***Tacoma*** failed to accommodate ***Riley***, and that ***Riley*** was confused about the accommodation process, I would reverse the trial court's grant of the City's motion for judgment as a matter of law. However, I agree with the majority to affirm the trial court's summary dismissal of ***Riley***'s intentional infliction of emotional distress and hostile work environment claims as well as its denial of ***Riley***'s motion to exclude medical evidence at trial.

FACTS

I. FACTUAL BACKGROUND

A. ***Riley***'s Position and Early Medical Conditions

¶80 ***Riley*** began working for the City of ***Tacoma*** as a fire and marine diesel mechanic in 2013. He predominantly worked on-site in the only fire garage in the fire department. However, occasionally work was required in the field, at the boathouse, or wherever the fire boat was located. ***Riley***'s duties consisted of repairing fire department vehicles **[*38]** and equipment, including tasks such as welding and fabricating.

¶81 ***Riley*** testified that between 2014 and 2016, he suffered from numerous health problems including fatigue, pain, and feeling like his legs were on fire. He sought treatment from multiple physicians including Dr. Norman Seaholm, who had been his physician for at least 12 years. Dr. Seaholm testified that ***Riley*** had high blood pressure for many years before he started working for the City.

B. ***Riley***'s Initial Request to the City, Conflicts, and Blood Pressure Spikes

¶82 ***Riley*** testified that he communicated these health problems to Donald Voigt, his direct supervisor, and Voigt changed ***Riley***'s duties so he could continue working. ***Riley*** said that in response, his coworkers called him "Don's pet and his golden boy" and said "that [***Riley***] would get away with everything." 4 Rep. of Proc. (RP) at 245. He testified that this caused him stress and anxiety and he felt that he needed to get help beyond Voigt.

¶83 In January 2018, ***Riley*** texted Chief Patrick McElligot and reported that he was "being illegally discriminated against." Ex. 108, at 001.[5] The text message complained of one of his coworkers, Carol Haeger, not getting parts and supplies for **[*39]** him to be able to do his job. ***Riley*** testified that this text message did not contain all the instances of him being discriminated against, but, rather, the message was just him reporting that it was happening. ***Riley*** testified that after he sent this text, he had a meeting with McElligot and Voigt. He testified that after that meeting things got better for about six months.

[5] ***Riley*** testified that prior to 2018 he complained to Voigt, his direct supervisor, firefighters, coworkers, and battalion chiefs, but not in written form.

¶84 ***Riley*** testified that on June 13, 2018, he got into a conflict with Haeger over auto parts, during which Haeger screamed at him. ***Riley*** said that Haeger had purposefully violated garage protocol and placed boxes behind the vehicle he was working on, and he ran them over. Fire Department personnel checked his blood pressure and reported to him that it was 228 over 140.[6] Due to this blood pressure spike, ***Riley*** was transported to the hospital from work via ambulance. ***Riley*** said that while he was on the gurney, Haeger looked at him with "hate and disdain." RP (May 3, 2023) at 254.

C. ***Riley***'s Additional Communications with the City

¶85 ***Riley*** informed Voigt that he was at the hospital and why he had to be taken there. ***Riley*** also testified he told John Pappuleas, Voight's supervisor at the time,[7] "what was happening," including things **[*40]** like harassment and bullying and "how it was affecting [him]." 4 RP at 267. ***Riley*** testified that he met with Pappuleas on June 15 and felt that the harassment would stop based on Pappuleas's response to his first transport but that was not the case.

¶86 On June 27, Dr. Seaholm sent a letter which stated:

> [***Riley***] was seen in the emergency department on 6/13/2018 for a critically elevated blood pressure, requiring urgent management in order to prevent a potentially catastrophic medical event. Work stress certainly played a role in his emergency visit and it was recommended that he remain off work until his blood pressure was more appropriately controlled. He has since been started on medications and his blood pressure is now under better control. He was given the release to return to work as of 6/26/2018.

Ex. 175, at 001.

¶87 ***Riley*** documented and complained of other instances of conflict in the workplace, including Haeger calling him names, swearing at him, arguing over who should close the gate at night, Haeger giving him dirty looks, and shushing him. ***Riley*** testified that Haeger once raised her hand at him as if she was going to slap him, however, he believed his documentation of this incident **[*41]** was stolen. ***Riley*** also testified that another coworker, Paul Howard, harassed him. ***Riley*** said that Howard told Voigt that ***Riley*** was not doing his job well. ***Riley*** also said that he and Howard got into conflicts over what radio station to listen to in the garage. ***Riley*** said that Howard told him on multiple occasions he was going to "kick his ass," but that his documentation of this incident was also part of the stolen documents. 6 RP at 712-13.

D. The City Takes the Position that there Exists a Personality Conflict, But Not Discrimination; ***Riley***'s Blood Pressure Spikes Continue

¶88 In February 2019, Shelby Fritz, from human resources, conducted a "[c]limate [a]ssessment" where she met privately with all employees and "review[ed] practices and processes in place at the Fire Garage." Clerk's Papers (CP) at 659. Fritz concluded there was no support for ***Riley***'s claims that he was discriminated against or bullied at work, but that he did have personality conflicts with Haeger and Howard. However, she stated several of his

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[6] Hospital records document that his blood pressure at this time was 221 over 138.

[7] McElligot retired and was replaced by Pappuleas.

coworkers considered him to be the "catalyst for the interpersonal conflicts." CP at 660. Fritz maintained that this climate assessment was "not an investigation." Ex. 24.

¶89 On February **[*42]** 6, Dr. Seaholm sent a second letter stating that ***Riley*** was at high risk for a cardiovascular event and resolution to work conflict was key to his recovery.

¶90 ***Riley*** had a second transport to the hospital on March 19. His blood pressure was 236 over 134. During this hospital visit, ***Riley*** testified Pappuleas "burst into [his] room and started yelling at [him]." 6 RP at 620.

¶91 On March 25, Dr. Seaholm sent a third letter stating that ***Riley*** had two emergent transports relating to work conflict and that he was at high risk of stroke if his blood pressure spikes occurred one too many times.

E. ***Riley***'s Request for Accommodations and Interactions with the City's Disability and Leave Management Office and Human Resources (HR) Office

¶92 In April 2019, the City reached out regarding accommodations. On April 22, the Disability and Leave Management office (DLM) sent ***Riley*** a questionnaire for his medical providers to complete. This questionnaire had written at the top that ***Riley*** requested to be "'somewhere else in the city that is [a] safe and healthy work environment.'" Ex. 136, at 002 (emphasis omitted).

¶93 On May 29, ***Riley*** returned two copies of this questionnaire. Dr. Seaholm completed the questionnaire and **[*43]** checked the box that stated ***Riley***'s restrictions were on a permanent basis. Dr. Seaholm also stated that

> [h]ypertension is usually a risk factor for cardiovascular events over several decades. [***Riley***] however has required emergent transport to [the emergency room] from work due to headaches and blood pressure of 236/164 on 3/19/19. That is an immediate risk for catastrophic cardiovascular event. Current work conflicts appear to be playing a significant role.

Ex. 140, at 004.

¶94 Karey Regala, ***Riley***'s mental health therapist, also filled out the medical questionnaire. She checked the box on the questionnaire that stated ***Riley***'s restrictions were on a temporary basis and regarding the anticipated duration stated:

> Per client report, anxiety and stress, including panic attack episodes would cease if client could perform work duties in a safe and healthy environment.

Ex. 140, at 005.

¶95 Regala recommended in the questionnaire that,

> Per client report, Mr. ***Riley*** can perform all job duties necessary provided he be placed in a role where his work environment be deemed safe and healthy, where on a daily basis he doesn't feel threatened or bullied by fellow co-workers.

Ex. 140, at 007.[8]

¶96 On June 3, Pappuleas sent **[*44]** ***Riley*** a letter that stated:

> You recently requested to be moved to a different working location. I was made aware of a temporary need for assistance at the Electrical Shop related to changes in staff availability. Given your request, I thought you might be interested in this temporary work assignment during the staffing shortage.
>
> ... .
>
> This opportunity is temporary and **is not** being offered as permanent assignment nor is it related to any accommodation process.

CP at 718. ***Riley*** accepted the temporary assignment and contacted DLM to "freeze" the accommodations process until further notice because he was in a safe and healthy work environment. Ex. 142, 001.

¶97 The temporary position at the electrical shop ended on July 15, 2019. ***Riley*** did not experience any high blood pressure episodes while at the electrical shop.

¶98 On July 16, Dr. Seaholm sent another letter, his fourth, stating ***Riley***'s Americans with Disabilities Act (ADA) accommodation request needed to be re-instated because he had to return to the fire garage.

F. ***Riley*** Re-Engages the Accommodations Process; the City Takes the Position that ***Riley*** Could Perform All the Essential Functions of His Job Without Accommodation

¶99 On July 19, ***Riley*** called **[*45]** DLM and requested to re-engage in the accommodations process. ***Riley*** directed DLM to work directly with his attorney because he "didn't understand the process." 9 RP at 1348. On July 24, the City's attorney sent an e-mail to ***Riley***'s attorney that stated in part:

> Before Mr. ***Riley*** *withdrew* his reasonable accommodation request, information provided to the DLM team indicated that *Mr.* ***Riley*** *could perform all of the essential functions of his position without an accommodation; his issue involved conflicts with his coworkers*. Karey Regala, Mental Health Therapist, noted on May 20, 2019 that "Per client report, Mr. ***Riley*** can perform all job duties necessary provided he be placed in a role where his work environment be deemed safe and healthy where on a daily basis he doesn't feel threatened or bullied by fellow co-workers." Updated medical information will be sought as part of the re-engagement in the interactive process and the DLM team will respond appropriately. However, the reasonable accommodation process is not the proper forum for addressing *personality conflicts*.

Ex. 147, at 001 (emphasis added).

¶100 On August 12, ***Riley*** was again transported to the hospital due to his blood pressure.

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[8] After this, on June 3, 2019, ***Riley*** filed a complaint with the Equal Employment Opportunity Commission (EEOC). However, the EEOC was "unable to conclude" that any laws were violated. CP at 756.

¶101 On August **[*46]** 15, in addition to his responses to the first questionnaire, Dr. Seaholm sent a fifth letter stating that ***Riley*** required another emergent transport due to malignant hypertension relating to conflicts at work and strongly advised "he be allowed a permanent transfer, before he suffers a disabling event." Ex. 202, at 012. Dr. Seaholm noted that "when [***Riley***] [was] transferred to another department his hypertensive emergencies ceased." Ex. 202, at 012. That same day, Dr. Seaholm sent another letter stating ***Riley*** could return to work "assuming he is returning to a safe and supportive work environment." Ex. 175, at 003.[9]

¶102 On August 20, ***Riley*** began working at the training center on light duty because of an elbow injury. On August 23, ***Riley*** stated he had an "altercation with Bruce Bouyer," experienced a hypertensive crisis, and transported himself to the hospital. 9 RP at 1356-57.

¶103 On August 26, ***Riley***'s attorney responded to the City's e-mail and directed DLM to work directly with ***Riley***.

¶104 On September 13, DLM sent ***Riley*** an e-mail stating that his medical providers had not determined he could not perform the essential functions of his job. DLM also stated,

> Since you withdrew from the interactive process, **[*47]** our office recently received updated medical information. The information from Dr. Seaholm referenced the working environment (workplace, job site), however, he did not provide information regarding your ability to perform the essential functions of your position.
>
> In an effort to get clarification about your ability to perform the essential functions, we would need to have a medical questionnaire completed. If you would like to continue in the process, let me know and I can send you a medical questionnaire.

Ex. 150, at 002.

¶105 ***Riley*** responded four days later stating:

> my doctor filled out a medical question[naire] and you accepted it the first time, it is the same and stands.

Ex. 150, at 001.

¶106 On September 19, DLM responded to ***Riley*** and stated the following:

> Yes, we do still have the medical questionnaire your providers filled out several months ago. However those medical questionnaires were submitted as part of your original reasonable accommodation (r/a) request. Once you notified our office that you wanted to withdraw from the process, that closed down your request. As explained, our office takes no further reasonable accommodation efforts when an employee withdraws. When you asked to engage **[*48]** in the process our efforts start over. As part those efforts, we need clarification.
>
> … In regards to you being moved. As explained, under the reasonable accommodation process, a reassignment may be provided to an employee who, because of a disability can

[9] It is unclear if this letter accompanied the other letter sent that day. Because of this lack of clarity, we do not include this letter in our Dr. Seaholm letter count.

> **no longer perform the essential functions of his/her current position,** with or without reasonable accommodation. The information you have recently provided from Dr. Seaholm referenced the working environment (workplace, job site); however, does not provide information regarding your ability to perform the essential functions of your position.

Ex. 150, at 001.

¶107 DLM sent ***Riley*** a second questionnaire seeking additional information regarding the specific essential functions of his job he could not perform. The questionnaire inquired into whether ***Riley*** could do things like sit, stand, reach overhead, or drive for a certain number of hours. It also inquired into what key work activities ***Riley*** could not do, and whether certain devices or equipment could help him do those tasks.

¶108 On November 8, DLM e-mailed ***Riley*** and stated in part:

> The purpose of this email … is to notify you that due to a lack of response to our requests for medical documentation **[*49]** supporting your request for a reassignment under the ADA, the DLM office cannot move forward with a reasonable accommodation and will therefore close your request with no further action.

Ex. 155, at 006.

¶109 ***Riley*** responded to DLM that same day apparently expressing confusion and frustration because he had already turned in medical questionnaires and did not understand what additional information was needed.

¶110 Then, on November 21, DLM responded stating that it had the original questionnaires ***Riley*** turned in, but that it needed additional clarification. ***Riley*** responded again appearing to express confusion, frustration, and even mistrust of the process.

¶111 DLM responded:

> I'm sorry that you are unhappy with the response, but we have worked hard to help you within the guidelines of the ADA and are simply unable to assist you further in the reasonable accommodation process without this information (medical questionnaire dated September 19, 2019).

Ex. 155, at 004.

¶112 ***Riley*** responded, "those are the ones I turned in my medical providers said they stand and to turn them back in[,] so you have had them the whole time." Ex. 155, at 003.

¶113 In subsequent e-mails, DLM attempted to clarify that the September 19 medical **[*50]** questionnaire was different than the two original medical questionnaires Regala and Dr. Seaholm provided. ***Riley*** never returned this second questionnaire from September 19.

G. Dr. Seaholm Sends Additional Letters; ***Riley*** Undergoes Another Blood Pressure Spike and Emergency Transport; the Parties Continue Their Dispute in Writing.

¶114 On November 22, Dr. Seaholm sent a sixth letter stating ***Riley*** required several emergent transports due to malignant hypertension related to work conflicts and that he strongly advised ***Riley*** receive a permanent transfer "before he suffer[ed] a disabling event." Ex. 175, at 004.

¶115 On December 3, Dr. Seaholm sent a seventh letter stating his same concerns about ***Riley*** and "strongly advis[ing] that [***Riley***] be allowed a permanent transfer, before he suffers a disabling event." Ex. 175, at 006.

¶116 On January 14, 2020, ***Riley*** was transported to the hospital for a fifth time due to a blood pressure spike.

¶117 On January 16, Dr. Seaholm sent an eighth letter stating in part:

> For [***Riley***'s] own health and safety he needs to be placed into an alternative work environment. If these episodes continue to recur, he is at very high risk of experiencing an acute cardiovascular event such as stroke **[*51]** or myocardial infarction.

Ex. 202, at 014.

¶118 On January 22, DLM sent ***Riley*** an e-mail stating that ***Riley***'s department made it aware he may be requesting reassignment due to his medical condition and that it wanted to meet with him the next day to discuss the process.

¶119 ***Riley*** called DLM and left a voicemail stating he was not requesting a transfer under ADA, but was requesting one due to his hostile work environment.

¶120 ***Riley*** responded to DLM's e-mail on January 23 and stated:

> I am happy to cooperate in any way possible. I must stress though, I am being told by my doctor and therapist that I need to be placed in and [sic] alternative work environment due to the episodes that only happen in my current work environment due to bullying, harassment and the hostile work environment that I've be[e]n subject to for over 2 years of officially reporting and longer than that with just reporting to my supervisor verbally.
>
> I am still requesting a voluntary transfer to another department as I have be[e]n requesting for over a year now. I have requested this transfer due to the fact that the fire department and HR refuse to rectify the situation and against my doctors recommendations knowingly put me in harm[']s **[*52]** way by returning me to a hostile work environment causing me 3 more life threatening ambulance rides to the [emergency room]ER from work.
>
> As you have stated several times my case is not covered under the [ADA] guidelines in your opinion so I am glad that you are willing to meet and talk about my voluntary transfer. I would like to bring representation if that is ok. Also do you have a list of available jobs for me to look over when we meet.

Ex. 202, at 018.

¶121 On January 24, DLM sent ***Riley*** a follow-up e-mail seeking clarification as to whether or not ***Riley*** was seeking an accommodation due to his medical conditions. ***Riley*** responded later that day and said:

> I know you don't assist in voluntary transfers. I'm not sure why they had you contact me … [sic] this recent event stemmed from me needing to be ambulance transported from work a 4th time and my doctors note that resulted because of it. He stated that I needed to be removed yet again and placed in a safe and healthy work environment[,] they put me on paid

administrative leave, and I'm waiting to hear what the plan is. [P]lease put me in contact with someone who can help me with moving me to a healthy and safe work environment.

Ex. 202, **[*53]** at 017. The DLM office responded that same day and said:
To confirm, [a]re you declining to engage in the reasonable accommodation process (under the ADA) that the DLM office would assist you in due to your medical condition?

Ex. 202, at 016. ***Riley*** responded that day stating:

I'm not declining anything. I welcome any help I can get. But you have told me several times stress claims due to bullying and harassment are not covered under [ADA]. So how could you help me under [ADA] if I don't qualify in your opinion.

Ex. 202, at 016. DLM responded that afternoon and said:
Please let us know if you are seeking the DLM Office's assistance in the ADA accommodation process due to your medical condition(s). If not, we do not need to meet with you and the interactive process will remain closed.
Ex. 202, at 016.

¶122 On January 24, ***Riley*** e-mailed Pappuleas asking about the status of his paid leave and stating that the ADA office told him he did not qualify for services.

¶123 On January 25, Pappuleas e-mailed ***Riley*** and stated:

If I understand correctly, the DLM office has reached out to you to determine if you would like an accommodation due to medical disability and they have not received a response from you yet. **[*54]** From what I understand, ADA does not address interpersonal conflicts but does cover medical disabilities, so I believe that may be something you could ask them about. If you are interested in re-engaging with Liz at the DLM office on Monday, you will be granted an extension of Administrative Paid Leave for that day and will not need to report to the Fire Garage. If you are not interested in re-engaging with the DLM office regarding what resources may be available to you, you are to report to your regular assignment at the Fire Garage.
Ex. 202, at 022.

¶124 ***Riley*** responded:

I do not have a medical disability covered by their department. They have told me they can[ ]not assist me with this. I asked them to put me in contact with who could help me with my transfer[,] per my doctors note he recommends you put me in a safe and healthy work environment free from bullying and retaliation … he also states if this is not done I'm at high risk of stroke or heart attack. …

[S]o let me know if I'm hearing you rite[sic]… if I don't re engage with the DLM department that can[']t help me because they don't cover my condition, I'm to return to the fire garage against my doctor["]s wishes where you **[*55]** are knowingly putting me in to harm[']s way again, rather than finding a temporary or permanent transfer location for me to be moved to so I don't have another cardiovascular event?
Ex. 202, at 021.

¶125 Pappuleas responded:

> I am not aware of all the resources available to you at the DLM office but I know they have reached out to you late Friday with more information. I am not sure if you have seen the email and [were] able to respond.
>
> As you are aware, the fire garage has had multiple reviews and a climate assessment performed to evaluate the fire garage environment. Each time the garage has been shown to be a safe place to work. The fire department would not support anything less.
>
> If you do not wish to reach out to the DLM office on Monday and do not feel comfortable reporting to your assignment at the fire garage I believe you may have leave available that you may use if you wish. If you wish to take leave, make sure to let your supervisor know.

Ex. 202, at 021.

¶126 On January 27, ***Riley*** was transported to the hospital a sixth time due to a blood pressure spike.

¶127 ***Riley*** contacted Fritz regarding his request to transfer to a different department. Fritz responded:

> I'm happy to schedule a time for a phone **[*56]** call or meeting with you. As we discussed before, the Fire Marine Diesel Mechanic position only exists in the Fire Garage, so there isn't another position in the City in your classification to transfer to. You can, however, apply for another position in the City or request a voluntary demotion and we can discuss those options.

Ex. 30, at 1. ***Riley*** applied for jobs, but was not selected for any. Specifically, he applied for a welding position but was not hired. ***Riley*** inquired as to why he was not qualified for the welding position, and he received the following response:

> We had subject matter experts evaluate the supplemental questions that you answered during the application process-during this process they were unable to see any information on candidates (names, etc). You did pass minimum qualifications, but as this is a classified list, the supplemental question review was the test. Unfortunately your score was not high enough to be placed on the eligible list.

Ex. 21A, at 3.

¶128 On January 28, Dr. Seaholm sent a ninth letter stating that for ***Riley***'s health and safety he needed to be "placed into an alternative work environment" due to hypertensive crises, and that "[i]f these episodes continue **[*57]** to recur, he is at very high risk of experiencing an acute cardiovascular event such as stroke or myocardial infarction. Ex. 175, at 008.

¶129 On April 27, ***Riley*** was transported for the seventh time to the hospital because of a blood pressure spike. Haeger and Howard were not present at the fire garage that day.[10]

[10] Before this event, on March 24, 2020, Dr. Robert Thompson conducted an independent medical examination of ***Riley***. In an addendum to his initial report, on August 12, 2020, Dr. Thompson concluded that ***Riley*** did not suffer a "hypertensive crisis"

¶130 On May 5, Advanced Registered Nurse Practitioner, Anthony Stephens, sent a letter stating ***Riley*** was seen at the emergency department for chest pain and hypertension and that while he believed ***Riley*** could perform his duties without limitations, he asked for a transfer to a different department for ***Riley***'s "emotional and physical well being." Ex. 160, at 001. That same day, Dr. Seaholm sent a tenth letter stating ***Riley*** could return to work the next day but needed to be placed in an alternative work location.

¶131 On May 5, ***Riley*** was placed on unpaid medical leave until he could provide documentation he was cleared physically and mentally to work at the fire garage.[11] Pappuleas stated that this leave was an accommodation. Then, on June 23, Dr. Seaholm sent a letter (his eleventh) stating that ***Riley*** had been diagnosed with post-traumatic stress disorder (PTSD) due to work conditions.

¶132 DLM **[*58]** sent ***Riley*** an e-mail on November 10, 2020, stating in part:

> It is our understanding that the Human Resources Department (Assistant Director Shelby Fritz) and your Department previously informed you that working in the Fire Garage is an essential function of your position. Additionally, they confirmed there are no options for you to perform that work anywhere else because there are no other Fire and Diesel Mechanic positions within the City; therefore, you cannot be "transferred" to another department as a Fire and Diesel Mechanic.
>
> As we have explained, reassignment options can be explored as part of the reasonable accommodation process under the *Americans with Disabilities Act (ADA)*. Therefore, if you are requesting a reassignment as a reasonable accommodation, this office (Disability and Leave Management (DLM)) remains ready and willing to assist you if you wish to re-engage in the process.

Ex. 164, at 001. The e-mail also stated that if DLM did not receive a response requesting accommodations or medical clearance saying ***Riley*** could work at the fire garage by November 30, 2020, the City would begin medical separation.

¶133 On December 7, the City sent ***Riley*** a letter with its intent to medically separate him on December 31. The **[*59]** letter stated "[t]he separation would be based on [***Riley***'s] inability to perform the essential functions (work in the Fire Garage) for an undetermined duration. Ex. 165, at 002.

¶134 On December 17, while ***Riley*** was on medical leave, Dr. Seaholm sent a twelfth letter stating:

> [***Riley***] has a known history of recurrent hypertensive crises, all requiring ER care and all triggered by highly stressful encounters with his prior coworkers at the fire garage. [***Riley***] is physically and mentally capable of working at any work site, including the above fire garage,

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during his episodes at work, but rather, his "acute reactions" to these events "pose[d] no danger to Mr. ***Riley***'s health." Ex. 171, at 002-003.

[11] *But see* Ex. 203, at 010 (noting ***Riley*** was on medical leave from April 27, 2020 to January 2021).

but was told to avoid encounters that may lead to the hypertensive crises that had plagued him over the last couple of years. Historically, per my discussions with [***Riley***], these had consistently been triggered by his prior coworkers. He is no longer experiencing them now.

Ex. 203, at 022. ***Riley*** e-mailed DLM and the City and stated in part:

I have still not be[e]n able to gain access to my city email to find the quote. But at one time I was offered reasonable accommodations if and only if I said my high blood pressure events were due to my own medical condition. At that point I replied to that department and … stated that I wanted a transfer **[*60]** so bad but refused to lie to get it. I am a person of the highest integrity and even though I wanted it more than anything I would not sacrifice my integrity to get it. Then again recently when the DLM department offered reasonable accommodations, I asked on what grounds would I be granted accommodations because I was told previously that I did not qualify under my condition. They never gave me an answer.

As far as me applying for other jobs to transfer out of the hostile work environment that the city refused to fix. I applied for several jobs being told each time I did not qualify. Especially notably the 3 times I applied for the welder fabricator job. Where I have 25+ years[']experience and it is part of my job dut[ie]s at the fire garage. I was told I do not qualify for that job all 3 times even when speaking to a HR rep[resentative] in person over the phone explaining my experience.

I again [ ] ask all of you, please help me! That is all I have done from the beginning is ask for help. It has gone un[ ]answered even when my situations were verified and validated in meetings with Don Voight, Chief Pap[p]ul[ea]s, Chief [B]ouyer, Shelby [F]ritz, [J]ude Kelly, my union rep[resentative] **[*61]** [T]ommy [H]unt and myself. Even when the hostile environment and bullying was verified and validated that it happened, nothing was done to correct the situation. And I ended up in the [emergency room] several more times with ambulance rides from work.

Ex. 166, at 001.

¶135 On December 23, DLM sent ***Riley*** another letter and third medical questionnaire indicating that it interpreted Dr. Seaholm's December 17 letter to mean ***Riley*** could return to work in the fire garage. ***Riley*** never responded or returned the medical questionnaire confirming he could return to work there, and on January 11, 2021, the City medically separated ***Riley***.

II. PRETRIAL

¶136 ***Riley*** brought suit against the City in August 2021, claiming failure to accommodate, retaliation, intentional infliction of emotional distress, wrongful termination, and hostile work environment. ***Riley***'s hostile work environment and retaliation claims were dismissed on summary judgment. Partial summary judgment was granted on ***Riley***'s intentional infliction of emotional distress claim. The only part of this claim that survived was as it related to interactions ***Riley*** had with fire department leaders in the hospital. ***Riley***'s failure to accommodate claim survived **[*62]** the City's motion for summary judgment, along with the wrongful termination claim as it related to the other remaining claims.

¶137 Prior to trial, ***Riley*** moved to dismiss the remainder of his intentional infliction of emotional distress claim. The court granted this motion.

> [***RILEY***'S COUNSEL]: … [S]o with respect, in the interest of judicial economy, Mr. ***Riley*** moves to dismiss the outrage[12] claim.
>
> [THE COURT]: Okay. Obviously, we're right under *CR 41* to dismiss it anytime before we get to the end, so, obviously, that's fine. That will be granted.

1 RP at 4.

¶138 ***Riley*** also filed a motion in limine seeking to exclude evidence of medical records prior to 2018 and unrelated to the specific diagnosed conditions ***Riley*** alleged.

¶139 The court denied this motion concluding that this was a "unique claim … because of the emotional or psychological component to it" and the fact that an "emotional injury [was] causing a physical problem." 1 RP at 42, 47. The court reasoned, for example, that records pertaining to stressful events that occurred at his previous place of employment and its connection to his PTSD were directly related to his current claim and would determine what accommodations might have been appropriate. **[*63]**

> THE COURT: … I do think Mr. ***Riley***'s claim is relatively unique. Not that[ ] it's singular or that there's no one else in the world that's got a similar situation, but most of the time when we're dealing with something like this, a failure to accommodate a disability, we're talking about a physical or sensory limitation of some sort. And that's not what we're talking about here. … That's why I think these are unusual circumstances.

1 RP at 51-52.

II. TRIAL[13]

¶140 At trial, Dr. Peter Blanck, an expert on organizational behavior and accommodations, testified that the City's interactive process in accommodating ***Riley*** was deficient. The following exchange also took place:

> [***RILEY***'S COUNSEL]: … Is it appropriate for an employer to require a disabled person known to be disabled by the employer to compete for positions within their organization?
>
> [DR. BLANCK]: If you mean for purposes of reassignment, then it would not be appropriate to have the employee compete for that position if he is otherwise qualified for that position. Again, the employee does not have to be the best qualified.
>
> [***RILEY***'S COUNSEL]: If an employee meets minimum qualifications for a position that is open and the Defendant knew **[*64]** that, what should they have done?

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[12] "'Outrage' and 'intentional infliction of emotional distress' are synonyms for the same tort." *Kloepfel v. Bokor, 149 Wn.2d 192, 193 n.1, 66 P.3d 630 (2003)*.

[13] Evidence supporting the above facts was elicited at trial.

> [DR. BLANCK]: Well, then the employee would get that position per the EEOC guidance and other guidance, because otherwise that would kind of neuter the whole point of the reassignment process.

8 RP at 1016. Elizabeth Marlenee from DLM testified that ***Riley*** never got to the reassignment phase because he never returned the medical questionnaire seeking additional information.

¶141 ***Riley*** testified that he was confused about the entire process, stating:

> I was very confused about the whole situation because the DLM department would refer me to HR. And then HR would say, but it's a medical condition because you're getting medically transported in your notes, so go back to DLM. And DLM was like, we can't help you; go back to HR. And it was back and forth the whole time. And it seemed like no one was really listening to each other or the issues at hand.
>
> Meanwhile, I just kept getting transported and kept asking for help. I probably sent hundreds of e-mails with daily reports of what was going on, what was happening to me, how I felt, my fears. Just saying, I'll go anywhere; I'll do anything.
>
> I knew that they weren't going to rectify the situation in the fire garage because **[*65]** they refused to even do an investigation or follow personnel management policies, which they say zero tolerance on the policies, but they didn't even initiate the policies.
>
> And I just said, I'll go anywhere, I'll do anything. I don't care what I have to do just as long as I don't have to go back there because I feel like I'm going to die there.

RP (May 16, 2023) at 331-32.

A. Judgment as a Matter of Law

¶142 At the conclusion of ***Riley***'s case, the City moved for judgment as a matter of law. The City conceded that ***Riley*** had medical disabilities, however, it argued he did not qualify for an accommodation because he could perform the essential functions of his job.

¶143 The City argued that ***Riley***'s requested accommodation, new coworkers, was unreasonable as a matter of law. The City also argued that ***Riley*** failed to show he was qualified for an open position within the City and, therefore, was not entitled to reassignment. Finally, the City argued ***Riley*** failed to show he cooperated in the accommodations process.

¶144 The court agreed with the City's last argument and concluded that ***Riley*** did not cooperate in the accommodations process, rejecting his argument that he was confused by being bounced by the City **[*66]** between DLM and HR.

¶145 The court ultimately granted the City's motion and dismissed ***Riley***'s claim.

¶146 ***Riley*** appeals.

ANALYSIS

I. Failure to Accommodate

¶147 ***Riley*** argues the trial court erred in dismissing his claims under *CR 50* because there were disputes of fact. Specifically, ***Riley*** argues the trial court erred in finding that he did not

cooperate in the accommodations process because there was substantial evidence showing he cooperated. The City argues that ***Riley*** did not cooperate in the interactive process and therefore, the City had no duty to accommodate him.

¶148 The City also argues three alternative bases for why the trial court did not err in dismissing this claim. The City argues that ***Riley*** was not entitled to an accommodation because he could perform all the essential functions of his job, that the accommodation he sought was new coworkers which was unreasonable as a matter of law, and that he failed to show there was a "preexisting and vacant position within the City for which he was qualified." Br. of Resp. at 54. I find these alternative bases unpersuasive, and agree with ***Riley*** because substantial evidence or a reasonable inference existed to persuade a fair-minded, rational person he was entitled **[*67]** to an accommodation, cooperated in the accommodations process (even though confused by the City's conduct), sought an accommodation that was not unreasonable as a matter of law, was qualified for an existing vacant position, and the City failed to accommodate him.

A. Legal Principles

¶149 We review a trial court's decision on a motion for judgment as a matter of law de novo. *Davis v. Microsoft Corp., 149 Wn.2d 521, 530, 70 P.3d 126 (2003)*. "A motion for judgment as a matter of law must be granted 'when, viewing the evidence most favorable to the nonmoving party, the court can say, as a matter of law, there is no substantial evidence or reasonable inference to sustain a verdict for the nonmoving party.'" *Id. at 531* (quoting *Sing v. John L. Scott, Inc., 134 Wn.2d 24, 29, 948 P.2d 816 (1997)*). Substantial evidence is evidence "'sufficient … to persuade a fair-minded, rational person of the truth of a declared premise.'" *Id.* (quoting *Helman v. Sacred Heart Hosp., 62 Wn.2d 136, 147, 381 P.2d 605 (1963)*). "Credibility determinations are within the sole province of the jury. … Assessing discrepancies in the trial testimony and weighing the evidence are also tasks within the sole province of the jury." *State v. Wilson, 141 Wn. App. 597, 608, 171 P.3d 501, 507 (2007)*.

¶150 "***WLAD*** [Washington Law Against Discrimination] requires an employer to reasonably accommodate an employee with a disability unless the accommodation would pose an undue hardship." *Frisino v. Seattle Sch. Dist. No. 1, 160 Wn. App. 765, 777, 249 P.3d 1044 (2011)*. In order to accommodate **[*68]** an employee, "the employer must affirmatively take steps to help the employee with a disability to continue working at the existing position or attempt to find a position compatible with the limitations." *Id. at 778*. Thus, "[r]easonable accommodation … envisions an exchange between employer and employee where each seeks and shares information to achieve the best match between the employee's capabilities and available positions." *Goodman v. Boeing Co., 127 Wn.2d 401, 408-09, 899 P.2d 1265 (1995)*. Further, "[w]hen interpreting ***WLAD***, we are particularly mindful that 'a plaintiff bringing a discrimination case in Washington assumes the role of a private attorney general, vindicating a policy of the highest priority.'" *Jin Zhu v. N. Cent. Educ. Serv. Dist.-ESD 171, 189 Wn.2d 607, 614, 404 P.3d 504 (2017)* (quoting *Marquis v. City of Spokane, 130 Wn.2d 97, 109, 922 P.2d 43 (1996)*). Therefore, "the legislature and Washington courts require that … ***WLAD***'s provisions must be given 'liberal construction.'" *Id.* (quoting *Marquis, 189 Wn.2d at 108*).

¶151 Accommodation claims present two main questions. *Wilson v. Wenatchee Sch. Dist., 110 Wn. App. 265, 269, 40 P.3d 686 (2002)*. First, does the employee have a disability under the ***WLAD***? *Id.* Second, does the employer have a duty to reasonably accommodate the disability, and if so, has it satisfied this duty? *Id. at 269-70*.

B. Analysis

1. ***Riley*** Had a Disability Under ***WLAD***

¶152 "In 2007, the legislature amended the ***WLAD*** to adopt a definition of "disability," and specify when an employee is **[*69]** eligible for accommodation for a disability." *Johnson v. Chevron U.S.A., Inc., 159 Wn. App. 18, 28, 244 P.3d 438 (2010)*. A disability is "a sensory, mental, or physical impairment" which is (1) "medically cognizable or diagnosable," (2) "[e]xists as a record or history," or (3) [i]s perceived to exist whether or not it exists in fact." *RCW 49.60.040(7)(a)(i)-(iii)*. "A disability exists … whether or not it limits the ability to work generally or work at a particular job." *RCW 49.60.040(7)(b)*.

¶153 Here, medical records show and the City conceded ***Riley*** has a disability.

2. Substantial Evidence or a Reasonable Inference Existed for a Fair-Minded, Rational Person to Conclude the City Had a Duty to Accommodate ***Riley***

¶154 The mere presence of a disability does not qualify an employee for an accommodation. Rather, the employer's duty to accommodate is triggered when the employer becomes aware of the employee's disability and physical limitations. *Goodman, 127 Wn.2d at 408-09*. Therefore, to qualify for reasonable accommodations, the employee's impairment must be known to the employer or "shown through an interactive process to exist in fact" and (1) the impairment must substantially limit the employee's ability to perform his job, or (2) "[t]he employee must have put the employer on notice of the existence of an impairment, and medical documentation **[*70]** must establish a reasonable likelihood that engaging in job functions without an accommodation would aggravate the impairment to the extent it would create a substantially limiting effect."[14] *RCW 49.60.040(7)(d)(i)-(ii)*.

¶155 Here, in the light most favorable to ***Riley***, substantial evidence existed for a fair-minded, rational person to conclude that the City was aware of ***Riley***'s disability and his physical limitations. Dr. Seaholm wrote on at least twelve occasions that ***Riley***'s continued work in the fire garage would continue to result in dangerous blood pressure spikes and provided significant risk of myocardial infarction or stroke. These numerous letters from Dr. Seaholm, in addition **[*71]** to similar letters from Regala and Stephens provided sufficient evidence on which a rational person could conclude that if ***Riley*** engaged in his job duties without an

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[14] *RCW 49.60.040(7)(c)* defines "impairment" as including:

(i) Any physiological disorder, or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological, musculoskeletal, special sense organs, respiratory, including speech organs, cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine; or

(ii) Any mental, developmental, traumatic, or psychological disorder, including but not limited to cognitive limitation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

accommodation, his health problems would have been aggravated "to the extent it would [have] create[d] a substantially limiting effect." RCW 49.60.040(7)(d)(ii). This is especially the case given that each time he was placed back into his work environment, he continued to experience blood pressure spikes requiring emergent transport to the hospital.

i. Cooperation

¶156 The City argues that ***Riley*** did not cooperate in the interactive process and therefore, the City had no duty to accommodate him. I disagree, because viewing the facts in the light most favorable to ***Riley***, substantial evidence or a reasonable inference existed to persuade a fair-minded rational person that ***Riley*** cooperated in the accommodations process, even if he appeared to be confused and later viewed his efforts as futile.

¶157 ***Riley*** stated that DLM conveyed to him that ADA accommodations did not cover his disability. ***Riley*** testified he was "confused about the whole situation" because

> the DLM department would refer me to HR. And then HR would say, but it's a medical condition because you're **[*72]** getting medically transported in your notes, so go back to DLM. And DLM was like, we can't help you; go back to HR. And it was back and forth the whole time. And it seemed like no one was really listening to each other or the issues at hand.

RP (May 16, 2023) at 331. ***Riley*** even directed DLM to work directly with his attorney because he "didn't understand the process." 9 RP at 1348.

¶158 Further, ***Riley*** engaged in extensive communication with his employer and with DLM regarding accommodations. He submitted two medical questionnaires that Dr. Seaholm and Regala provided. Dr. Seaholm also sent twelve letters that consistently specified ***Riley***'s health problems were due to his workplace conditions and that he needed to be moved elsewhere for his safety.

¶159 While ***Riley*** was inconsistent as to whether or not he requested reasonable accommodations through the ADA process, the communication from ***Riley*** and his treatment providers continued after he withdrew, then re-engaged with the accommodation process. There was at least one period of time, for example, in July 2019 when he requested to re-engage in the accommodations process, from which a fair-minded rational person could infer he was requesting ADA **[*73]** accommodations.

¶160 In July 2019, when ***Riley*** returned to the fire garage after his temporary assignment, Dr. Seaholm sent a letter stating, "[b]ecause [***Riley***] has had to return to the inciting work environment his ADA accommodations must be re-instated as previously specified." Ex. 202, at 010. ***Riley*** also testified that on July 19 he would have requested to re-engage in the accommodations process. It was not until January 2020 that ***Riley*** called DLM and left a voicemail stating he was not requesting a transfer under the ADA. However, even then, when ***Riley*** was asked if he was declining to engage in the accommodations process he stated:

> I'm not declining anything. I welcome any help I can get. But you have told me several times stress claims due to bullying and harassment are not covered under [ADA].

Ex. 202, at 016. Viewing the evidence in the light most favorable to ***Riley***, a rational person could find that these exchanges suggest that ***Riley*** requested reasonable accommodations and only waivered in his request because the City confused him as to whether or not his disability was covered.

¶161 Further, the City's assertion that ***Riley*** needed to provide further information so it could determine what **[*74]** functions of the job ***Riley*** could not perform, does nothing to negate the substantial evidence or reasonable inference, in the light most favorable to ***Riley***, that ***Riley*** was cooperating. Instead, it underscores the need for a jury determination. This is especially true given the evidence contrary to the assertion that ***Riley*** needed to provide more information. For example, while the City asserted that it could not move forward with the accommodations process because it needed clarification as to what essential functions ***Riley*** could not perform, the City's own medical separation letter to ***Riley*** admitted that the essential function ***Riley*** could not perform was being in the fire garage.

¶162 The majority focuses on the fact that ***Riley*** did not return the second medical questionnaire and concludes that this "amounted to a failure to meet his obligation to provide medical documentation showing the nexus between his medical condition and the need for an accommodation." Maj. opinion at 22. But this conclusion fails to account for all the medical information that ***Riley*** submitted to the City, some of which was provided after re-engaging in July 2019.

¶163 The City's contention that it needed even more medical **[*75]** documentation informing it of the essential functions of the position that ***Riley*** could not perform does not conclude the matter. Rather, ***Riley***'s provision of numerous letters from his providers and his testimony that the City confused him about the process, amounts to substantial evidence or a reasonable inference from which a fair-minded rational person could conclude that the City had been provided enough information, or that ***Riley*** was confused by the City's conduct in repeated requests for information and referrals to the different departments; this is an issue for the jury, especially in light of the fact that the City acknowledged exactly which essential function ***Riley*** could not perform, rendering their request for information dubious. But again, this is a question for the jury.

¶164 The majority opinion also concludes that ***Riley*** was not confused despite his testimony, because the City clearly communicated that it needed updated medical questionnaires. But whether ***Riley*** was in fact confused is for a jury to determine. His testimony that he was confused, in spite of the City's contention that it needed updated medical questionnaires, amounts to substantial evidence or a reasonable inference **[*76]** from which a fair-minded rational person could conclude the City had confused him. Again, this is a question for the jury.

¶165 And the majority appears to discount testimony by ***Riley***'s expert Dr. Blanck. I understand that reasons to doubt the credibility of Dr. Blanck's testimony can contribute to a reviewing court's determination of whether a fair-minded rational person would find in favor of the City. But in this case, I view the same testimony cited by the majority as creating a determination for a jury.

¶166 The majority references *Riehl v. Foodmaker, Inc.* in which the court held that a doctor's note stating that the employee had PTSD, that was sent five months after the employee's termination was insufficient to show a nexus between the employee's disability and his need for reasonable accommodations. *152 Wn.2d 138, 149 n.6, 94 P.3d 930 (2004)*, *abrogated on other grounds by Mikkelsen v. Pub. Util. Dist. No. 1 of Kittitas County, 189 Wn.2d 516, 404 P.3d 464 (2017)*.

¶167 *Riehl* states that the requirement that the employee establish a nexus between the disability and need for accommodation "is not burdensome; it simply requires evidence in the record that a disability requires accommodation." *Id.* at 148.

> Competent evidence establishing a nexus between a disability and the need for accommodation will vary depending on how obvious **[*77]** or subtle the symptoms of the disability are. Medical expert testimony may or may not be required depending on the obviousness of the medical need for accommodation in the sound discretion of the court. Where the disability and need for accommodation is obvious, such as a broken leg, the medical necessity burden will be met upon notice to the employer, and the inquiry will not be if accommodation is needed, but rather what kind of accommodation is needed. However, in the case of depression or PTSD, a doctor's note may be necessary to satisfy the plaintiff's burden to show some accommodation is medically necessary. *Although a doctor may not be able to prescribe a specific form of accommodation, a letter or note will provide a sufficient nexus between the disability and the need for accommodation*.

Id. (emphasis added).

¶168 In the light most favorable to ***Riley***, Dr. Seaholm's letters can fairly be read to convey that the duty ***Riley*** could not perform was his job *in the fire garage*. Given the communicative efforts he and his providers undertook and the content of those letters, which in the light most favorable to ***Riley***, repeatedly conveyed the need for an alternative work environment, in addition **[*78]** to ***Riley***'s testimony that he was confused, there exists substantial evidence or a reasonable inference from which a fair-minded rational person could conclude that ***Riley*** cooperated.

ii. *Snyder* Does Not Bar Claim as a Matter of Law

¶169 The City argues *Snyder v. Medical Service Corp. of Eastern Washington, 145 Wn.2d 233, 35 P.3d 1158 (2001)*, bars ***Riley***'s claim because his requested accommodation was new coworkers. I disagree. And this is a significant point because the City's conduct appears to derive from the notion that it need not accommodate a request for new coworkers for personality conflicts. While *Snyder* does speak to such circumstances, ***Riley***'s circumstance is different from that in *Snyder*.

¶170 In *Snyder*, a case manager was diagnosed with PTSD after several conflicts at work involving her "authoritarian" and "belligerent" supervisor, Hall. *Id. at 237*. She asked to report to a different supervisor or be transferred to another department, because her physician would not allow her to work under Hall. *Id. at 237-38*. Snyder took a job somewhere else and ultimately filed suit against her employer, alleging, among other things, that her employer failed to accommodate her disability. *Id. at 239*.

¶171 The *Snyder* court held that a claimant is not entitled to an accommodation "simply because she has a personality conflict with [a] supervisor." **[*79]** *Id. at 241*. Further, it established that an employer has no duty to accommodate an employee's disability by providing them with a new supervisor. *Id. at 242*.

¶172 Unlike Snyder, ***Riley*** did not simply have a personality conflict. Instead, a reasonable person could conclude he had significant objective and observable physical health problems in the form of dangerously high blood pressure spikes that stemmed from his mental health diagnosis. While these problems were exacerbated by conflicts in the workplace, a reasonable person could conclude they were present even outside of such interactions because ***Riley*** was transported to the hospital on a day the conflicting coworkers were not there. While ***Riley*** stated that his medical problems were exacerbated/caused by the *work conflicts* he experienced, substantial evidence or a reasonable inference exists for a fair-minded rational person to conclude he requested an accommodation because of his *medical disability*. Dr. Seaholm's letters requested that ***Riley*** be allowed a transfer, not because he could not get along with his coworkers, but rather to prevent a "disabling event." Ex. 202, at 012.

¶173 ***Riley***'s disability, doctor's notes, interactions with DLM and HR, and DLM's own **[*80]** medical questionnaire, all establish that ***Riley*** did not request to have new coworkers, which *Snyder* prohibits as being an unreasonable accommodation. ***Riley***'s providers' letters requesting that ***Riley*** be allowed an alternative work environment conveyed that due to the dangerous blood pressure spikes related to his mental health diagnosis, ***Riley*** could not work at that location. ***Riley***'s health care providers suggested "an alternative work environment," "a permanent transfer," or a "safe and healthy" work environment, to prevent worsening of his health problems. Ex. 140, at 002; Ex. 175, at 006; Ex. 202, at 012, 014.

¶174 In the first medical questionnaire that DLM requested ***Riley***'s physicians complete, DLM stated that ***Riley*** requested to be "'somewhere else in the city that is [a] safe and healthy work environment.'" Ex. 136, at 002. ***Riley*** stated that he never requested his coworkers be removed, rather, he wanted to be "placed in a safe and healthy work environment." CP at 104.

¶175 Substantial evidence or a reasonable inference existed for a fair-minded rational person to conclude that ***Riley***'s impairment would substantially limit his ability to perform a duty of his job, namely work *at that location*, because **[*81]** one cannot perform their job if they are regularly being transported to the ER. Therefore, since ***Riley***'s claim was not based on mere personality conflicts but instead was based on objectively observable physical manifestations of a mental health diagnosis, and he did not request new coworkers, *Snyder* does not bar his claim.

iii. Essential Functions of Job

¶176 The City argues that ***Riley*** was not entitled to an accommodation because he could perform all the essential functions of his job. I disagree.

¶177 ***Riley*** does not have to show that he could not perform the essential functions of the job. Rather, as explained above, he has to show that his impairment would "substantially limit[ ] … [his] ability to perform his … job" or that "medical documentation … establish[es] a reasonable

likelihood that engaging in job functions without an accommodation would aggravate [his] impairment to the extent it would create a substantially limiting effect." RCW 49.60.040(7)(d)(iii).

¶178 Here, viewing the facts in the light most favorable to ***Riley***, substantial evidence or a reasonable inference existed to persuade a fair-minded rational person that ***Riley***'s impairment would substantially limit his ability to perform his job, and medical **[*82]** documentation also established "a reasonable likelihood that engaging in job functions without an accommodation would aggravate [his] impairment to the extent it would create a substantially limiting effect." RCW 49.60.040(7)(d)(ii). While ***Riley***'s medical notes generally stated that ***Riley*** could perform his job functions, the notes conditioned his performance on his being "placed in an alternative work location." CP at 758. Dr. Seaholm's letters also cautioned that if ***Riley*** was placed back into the fire garage, he was at "risk of experiencing an acute cardiovascular event such as stroke or myocardial infarction." Ex. 175, at 008. These medical notes establish a reasonable likelihood that if ***Riley*** engaged in his job functions without an accommodation, his impairment would be aggravated such that it would create a "substantially limiting effect." RCW 49.60.040(7)(d)(i). This limiting effect was at least dangerously high blood pressure spikes, emergent transports to the hospital, and according to Dr. Seaholm could include stroke. Further, the City's own medical separation letter to ***Riley*** stated that he could not perform the essential functions of his job.

iv. Qualified for Position

¶179 The City argues ***Riley*** failed to show there was a "preexisting **[*83]** vacant position for which he [was] qualified." Br. of Resp't at 55.

¶180 Insofar as ***Riley*** requested to be reassigned to a different position, he had to prove that he was "'qualified to fill a vacant position.'" *See* Wilson, 110 Wn. App. at 270 (quoting Pulcino v. Fed. Express Corp., 141 Wn.2d 629, 639, 9 P.3d 787 (2000), *overruled in part by* McClarty v. Totem Elec., 157 Wn.2d 214, 137 P.3d 844 (2006)).

¶181 Viewing the facts in the light most favorable to ***Riley***, a fair-minded rational person could infer that ***Riley*** was qualified for the welding position he applied for. Dr. Blanck's testimony at trial that an employee who met minimum qualifications should get the job in conjunction with the e-mail ***Riley*** received from HR stating he "did pass minimum qualifications" amounted to sufficient evidence or a reasonable inference of qualification. Ex. 21A, at 3.

ATTORNEY FEES

¶182 ***Riley*** requests attorney fees on appeal under *RAP 18.1(a)-(b)* and RCW 49.60.030(2). While RCW 49.60.030(2) allows for the recovery of attorney fees under chapter 49.60 RCW, since ***Riley***'s case has not been adjudicated, to award fees now would be premature. As such, I would remand for the trial court to determine if the award of attorney fees is appropriate at the conclusion of ***Riley***'s claim.

CONCLUSION

¶183 I would reverse the dismissal of ***Riley***'s failure to accommodate claim and remand for a new trial. However, I would affirm the dismissal of ***Riley***'s intentional **[*84]** infliction of emotional distress and hostile work environment claims. I would also affirm the denial of ***Riley***'s motion in

limine to exclude certain medical records. I would remand to the trial court for proceedings consistent with this dissent.

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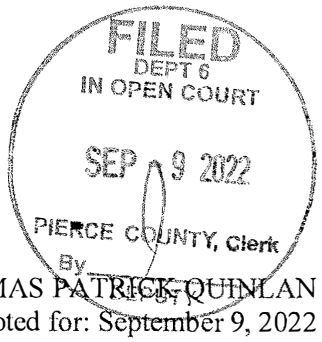
APPENDIX B



THE HONORABLE THOMAS PATRICK QUINLAN
Motion Noted for: September 9, 2022
Without Oral Argument

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

LIAM RILEY, PLAINTIFF vs. CITY OF TACOMA, A MUNICIPAL CORPORATION, AND TACOMA FIRE DEPARTMENT, DEFENDANTS.	No. 21-2-06979-9 ORDER GRANTING DEFENDANT'S MOTION TO CERTIFY ORDER FOR INTERLOCUTORY DISCRETIONARY REVIEW UNDER RAP 2.3(b)(4)

THIS MATTER came before the Court on Defendant City of Tacoma's Motion for Certification Under RAP 2.3(b)(4). The Court has considered the following pleadings as well as the other files and records in this case:

1. *Defendant City of Tacoma's Motion for Certification.*
2. *The Plaintiff's Response with no opposition;*
3. *The records and files herein.*

Tacoma City Attorney
Civil Division
747 Market Street, Room 1120
Tacoma, WA 98402-3767
253-591-5885 / Fax 253-591-5755

Pursuant to PCLR 7(a)(10), the Court exercised its discretion and did not entertain or request oral agreement on the matter.

Now being fully informed, and based upon the foregoing, the Court makes the following findings-of-fact, to wit:

1. Plaintiff had ongoing interpersonal conflict(s) with his coworkers.
2. Plaintiff's medical provider provided documentation informing the City that Plaintiff was being treated for anxiety and panic, hypertension with sometimes severe fluctuations in blood pressure and liver inflammation.
3. Plaintiff's medical provider further informed the City that Plaintiff's "current work stressors play a highly significant role in all of these conditions and some form or resolution to the conflict he is experiencing at work is paramount to his recovery."
4. Plaintiff made a request for accommodation due to hypertension issues resulting from stress and conflicts in the work environment.
5. Plaintiff's medical provider testified under oath that each of Plaintiff's medical transports resulted from conflicts in the workplace that created stress.
6. Plaintiff's medical provider testified under oath that the accommodation Plaintiff needed was "a cooperative and congenial relationship with his coworkers."

Based on the foregoing, it is

ORDERED that the Defendant City of Tacoma's Motion for Certification is GRANTED, and, the Court herby certifies the following issues to the Court of Appeals:

Tacoma City Attorney
Civil Division
747 Market Street, Room 1120
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1. Does an employer have a duty to accommodate an employee when the only way to accommodate the employee's disability is by providing the employee with new coworkers?

2. Does an employer have a duty to accommodate an employee when the employee fails to provide medical information explaining the nature and extent of the employee's disability and how the disability impacts the employees ability to perform the essential functions of his job?

3. Is an employer liable for failing to accommodate an employee when the employee does not engage with the employer in the interactive process?

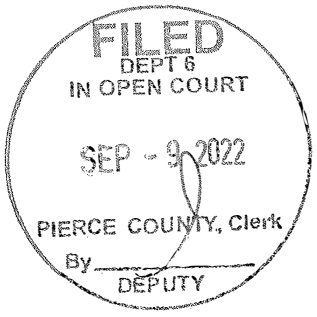
DONE In Open Court this 9th day of September 8, 2022.

THOMAS P. QUINLAN

Presented by:

WILLIAM FOSBRE, City Attorney

By: */s/Michelle N. Yotter*
Michelle N. Yotter, WSBA #49075
Barret J. Schulze, WSBA #45332
Deputy City Attorneys, Counsel for Defendants



Approved as to Form, Notice of Presentment Waived:

McCanna Law PLLC

By: _____
James K. McCanna, WSBA #22565
Attorney for Plaintiff

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APPENDIX C

Filed
Washington State
Court of Appeals
Division Two

November 30, 2022

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

LIAM RILEY, Respondent, v. CITY OF TACOMA, A MUNICIPAL CORPORATION, AND TACOMA FIRE DEPARTMENT, Petitioner.	No. 57351-2-II RULING DENYING REVIEW

The City of Tacoma (the City) seeks discretionary review of the trial court's August 19, 2022 Order Granting Partial Summary Judgment, which granted the City summary judgment on some claims by Liam Riley and denied summary judgment on other claims. Concluding that the City has not demonstrated that discretionary review is appropriate under RAP 2.3(b)(1) or 2.3(b)(4) this court denies review.

FACTS

Riley was employed by the City as a Fire and Marine Diesel Mechanic from May 6, 2013, until January 11, 2021 when he was medically separated from the position. Riley alleges that during his employ with the City, "yelling, screaming, [and] retaliation" took place at the Fire Garage, and that several coworkers, including his supervisor, verbally attacked him. Mot. for Disc. Rev., Appendix at 54 (boldface omitted). The verbal attacks

included name calling and cussing, which Riley found offensive. Riley believed one coworker would "kick [his] ass" because that coworker threatened to do so on several occasions. Mot. for Disc. Rev., Appendix at 59 (boldface omitted). He alleges he was the subject of general false accusations, and his "integrity was questioned unjustifiably." Mot. for Disc. Rev., Appendix at 54 (boldface omitted). According to Riley, he was prevented from receiving a promotion and training, and from earning overtime. He believed his coworkers may have been motivated to treat him poorly because they were jealous of his productivity and of his involvement with Tacoma Fire Department charities.

Workplace Investigations

In January 2018, Riley informed the City he believed he was the target of "illegal discrimination" which impacted his ability to perform the duties of his job. Mot. for Disc. Rev., Appendix at 15. Then Assistant Fire Chief Patrick McElligot promptly met with Riley and his supervisor. Riley acknowledged the work environment improved until Chief McElligot retired in June of 2018. In the summer of 2018, Riley renewed his complaints to McElligot's replacement John Pappuleas, and to the International Association of Machinists and Aerospace Workers ("IAM"). Riley identified two co-workers at the Fire Garage that "he labeled 'his harassers'" as senior Fire and Marine Diesel Mechanic Paul Howard, and Parts Technician Carol Haeger. Riley claimed to Pappuleas that both were contributing to an "unsafe" work environment. Mot. for Disc. Rev., Appendix at 281. Riley told Pappuleas he wanted the City to terminate Haeger and Howard. In response to Riley's complaint, Pappuleas met with each of the employees at the Fire Garage. All of the employees reported: "Mr. Riley, Paul and Carol had very similar personalities and did not get along with each other. . . . [and] that Mr. Riley was an active participant in the

conflict." Mot. for Disc. Rev., Appendix at 281. And all of the employees told Pappuleas that they felt safe at the Fire Garage. At the conclusion of this investigation, Pappuleas found no grounds for taking disciplinary action against Haeger or Howard, and he did not find support for any unlawful or discriminatory conduct. Pappuleas was in contact with IAM throughout his investigation. On September 5, 2018, IAM notified Pappuleas its grievance was "closed" after conducting its own "investigatory measures[.]" Mot. for Disc. Rev., Appendix at 291-92.

Around the same time Riley complained to Pappuleas and IAM, Riley also contacted Human Resources Director, Shelby Fritz. Fritz stated Riley's complaints "seemed to stem from the parts ordering process, and work orders he asserted were improperly completed." Mot. for Disc. Rev., Appendix at 237. In response, Fritz conducted a "Climate Assessment," which is a process utilized by the City to conduct a broad investigation where "all employees in the workplace are interview[ed], and many different types of issues can be reviewed and/or addressed." Mot. for Disc. Rev., Appendix at 237-38. In February 2019, as part of the Climate Assessment, all current employees and two former employees of the Fire Garage were interviewed to review "practices and processes in place" in the workplace. Mot. for Disc. Rev., Appendix at 238. Fritz concluded one process involving completion of work orders was "antiquated" but "found no evidence . . . that Mr. Riley's work orders were being completed in a manner different in any way from any other employee performing the same type of work." Mot. for Disc. Rev., Appendix at 238. Additionally, Fritz found no evidence Riley was the target of bullying, harassment or discrimination at the garage. Rather, Fritz found that "several of [Riley's] coworkers considered Mr. Riley to be the catalyst for the interpersonal conflicts

occurring at the Fire Garage," and that Riley, Haeger and Howard did not get along. Mot. for Disc. Rev., Appendix at 239.

On June 3, 2019, Riley filed a Notice of Charge of Discrimination with the Equal Employment Opportunity Commission (EEOC) alleging he suffered two medical events resulting from a hostile work environment, and that he was the target of retaliation for submitting a reasonable accommodation request.

Reasonable Accommodation

Riley had chronic high blood pressure and he was treated for this condition as early as 2006. He was diagnosed with post-traumatic stress disorder (PTSD) due to work related conditions on June 23, 2020. Riley was transported to the emergency room six times as a result of stressful situations at work which had caused spikes in his blood pressure.

In the spring of 2019, Riley requested a "transfer." Mot. for Disc. Rev., Appendix at 239. At that time, Senior Human Resources Analyst, Elizabeth Marlenee, worked within the City's Disability and Leaves Management Office (DLM), which is responsible for administering reasonable accommodations pursuant to Washington State Law against Discrimination (WLAD). On April 4, 2019, Marlenee contacted Riley by email at the request of Fritz. Marlenee provided Riley with information on how to pursue a reasonable accommodation. Specifically, she explained DLM obtains additional information from a healthcare provider using a questionnaire after the process is initiated. Riley responded to Marlenee requesting a reasonable accommodation. Rather than directing DLM to coordinate completion of the questionnaire, Riley submitted a letter from his physician, Norman Seaholm, M.D., dated March 25, 2019. Dr. Seaholm reported Riley's medical

issues of "anxiety and panic, hypertension with sometimes severe fluctuations in blood pressure and liver inflammation" meant Riley was "at high risk for a cardiovascular event," and that "[h]is current work stressors play a highly significant role in all these conditions and some form of resolution to the conflicts he is experiencing at work is paramount to his recovery." Mot. for Disc. Rev., Appendix at 383.

After reviewing Seaholm's letter, the DLM office determined that the information contained in the letter was "not clear on what specific essential functions (job tasks) Mr. Riley was unable to perform, as a result of his health issues/condition." Mot. for Disc. Rev., Appendix at 364. On April 4, 2019, Marlenee emailed Riley outlining DLM's reasonable accommodation process. Marlenee's email provided Riley with a web link for additional information in the City's accommodation process, and also informed Riley that "[a] key piece to the process is having medical that provides information relating to your ability to perform the essential functions." Mot. for Disc. Rev., Appendix at 377. A week later, Marlenee sent emails restating DLM's request that a medical questionnaire be completed by Riley's doctor in order for them to move forward in the reasonable accommodation process: [MDR APP AT 364]

> I can provide you with the medical questionnaire to take to your treating healthcare provider. Another options is if you prefer we can send the questionnaire on your behalf, we can do that. In order for us to send it, we will need you to sign a release (attached).
>
> Please feel free to let us know what your preference is.

Mot. for Disc. Rev., Appendix at 379. On May 29, 2019, Riley submitted the completed medical questionnaire to Marlenee and directed the City to communicate with him or his attorney, but not to contact his doctor directly. On May 30, 2019, Riley sent an email to DLM inquiring when he would be "moved somewhere safe." Mot. for Disc. Rev., Appendix

at 397. He expressed concern due to his heart rate and blood pressure and added he was scared he would die. On June 17, 2019, Riley emailed DLM to request that it "freeze the process until further notice" because he was moved to "the electrical division" where he believed the work environment was "safe and healthy." Mot. for Disc. Rev., Appendix at 401. On June 18, 2019, after meeting with Riley, Marlenee notified Riley that the interactive process ended at his request. On June 24, 2019, DLM sent a determination letter informing Riley that it will take no further action and considered the matter closed.

On July 19, 2019, Riley contacted Marlenee and requested to re-engage in the reasonable accommodation process, and three days later Marlenee sent Riley an email confirming Riley's requests. On September 13, 2019, Marlenee requested an updated letter and medical questionnaire to be completed by Riley's medical provider in order to determine whether Riley's health condition prevented him from performing essential functions of his current position. Despite sending several follow-up emails in September and October, Riley never responded with the requested information.

On November 8, 2019, Marlenee sent Riley an email informing him his renewed request for a reassignment as a reasonable accommodation would be closed due to "a lack of response to . . . requests for medical documentation" in support of the request. Mot. for Disc. Rev., Appendix at 419. A letter including a detailed timeline of DLM's attempts to obtain the medical questionnaire was mailed to Riley from DLM on the same date. Riley responded to the email later that day stating he provided the questionnaires, but also that he was waiting for information from DLM regarding "what additional info [it] needed" from the two questionnaires he submitted. Mot. for Disc. Rev., Appendix at 423. On November 25, 2019, DLM informed Riley that the two medical questionnaires he

turned in were insufficient, and it required further clarification from Riley's doctor regarding the medical notes. On November 27, 2019, Riley alleges a lack of explanation by DLM created "confusion" and also complained about the slow response time from the department. Mot. for Disc. Rev., Appendix at 425.

On January 22, 2020, DLM emailed Riley and requested a meeting after receiving a possible reassignment request from his department. Riley agreed to meet with DLM, but further explained he was seeking a transfer due to what he believed was a hostile work environment. On January 24, 2020, Marlenee sent the following email:

> We are attempting to obtain clarification on whether or not you are requesting an accommodation due to your medical condition(s). Our office is responsible for administering the reasonable accommodation program for City of Tacoma employees. Our efforts are done in support of the guidelines under the Americans with Disabilities Act (ADA), and in adherence with the Washington State Law against Discrimination (WLAD).
>
> The reason we are seeking this clarification is after we reached out to you on January 22, 2020 . . . you called our office and left a message. In the message you expressed that you are not seeking an [sic] reassignment under the ADA due to your medical condition(s), but rather, a transfer "*due to hostile work environment*."

Mot. for Disc. Rev., Appendix at 437 (underscore and italics in original). Later that day, Riley responded:

> I know you don't assist in voluntary transfers, I'm not sure why they had you contact me[.] [T]his recent event stemmed from me needing to be ambulance transported from work a 4th time and my doctors note that resulted because of it. He stated that I needed to be removed yet again and placed in a safe and healthy work environment[.] [T]hey put me on paid administrative leave, and I'm waiting to hear what the plan is. [P]lease put me in contact with someone who can help me with moving me to a healthy and safe work environment[.]
> Thank you,
> Liam Riley

Mot. for Disc. Rev., Appendix at 437. Marlenee then asked Riley if he is "declining to engage in the reasonable accommodation process . . . that the DLM office would assist you due to your medical condition[.]" Mot. for Disc. Rev., Appendix at 436. Riley responded, "I'm not declining anything. I welcome any help I can get. But you have told me several times stress claims due to bullying and harassment are not covered . . . . So how could you help me . . . if I don't qualify in your opinion[.]" Mot. for Disc. Rev., Appendix at 436.

At the request of the City, Riley underwent a fitness for duty evaluation conducted by Mario Alinea, M.D., on March 3, 2020.

On May 5, 2020, Pappuleas placed Riley on an unpaid medical leave of absence. The leave was to last until Riley can "provide documentation clearing [him] both mentally and physically to work in the Fire [G]arage in [his] position as a Fire Marine Diesel Mechanic." Mot. for Disc. Rev., Appendix at 313.

On November 10, 2020, DLM sent a letter to Riley attempting to re-engage in the reasonable accommodation process. The letter was sent to Riley by DLM at the request of Fire Chief, Toryono Green. Riley was informed his options were reassignment as a potential accommodation, or, to provide medical documentation clearing him to work. Riley was given 20 days to respond if he intended to seek an accommodation.

On December 17, 2020, Riley submitted a new letter from Dr. Seaholm, who reported.

> [Riley] has a known history of recurrent hypertensive crises, all requiring ER care and all triggered by highly stressful encounters with his prior coworkers at the fire garage. [Riley] is physically and mentally capable of working at any work site, including the above fire garage, but was told to avoid encounters that may lead to the hypertensive crises that had plagued him

> over the last couple of years. Historically, per my discussions with [Riley], these had consistently been triggered by his prior coworkers. He is no longer experiencing them now.

Mot. for Disc. Rev., Appendix at 447.

On December 23, 2020, the City sent Riley and Dr. Seaholm letters seeking clarification regarding Riley's ability to return to work and perform essential job functions. The letters also informed them that there had been no staffing changes at the Fire Garage. Because the City did not receive a response, on January 14, 2021, Green sent a letter to Riley informing him he had been medically separated as of January 11, 2021.

Procedural History

In August 2021, Riley filed a complaint against the City alleging claims for Failure to Accommodate, Retaliation for Filing Claims, Intentional Infliction of Emotional Distress, Wrongful Termination in violation of WLAD, and Hostile Work Environment. The City filed a Motion for Summary Judgment Dismissal of all Claims. Riley filed a response and appended a preliminary declaration and a supplemental declaration from expert witness, Dr. Peter Blanck. On August 19, 2022, the trial court issued an order granting partial summary judgment. It granted summary judgment dismissing in full the Retaliation for Filing Claims and Hostile Work Environment claims. It granted summary judgment dismissing some, but not all, of the Intentional Infliction of Emotional Distress claims. It denied summary judgment as to the Failure to Accommodate claims, finding that there were genuine material issues of fact in dispute as to whether: "(a) [Riley] was qualified to perform his job with or without reasonable accommodation; (b) [Riley] gave Tacoma notice of his disability and its limitations; and (c) [the City] failed to adopt medically

necessary measures to accommodate a disability after notice." Mot. for Disc. Rev., Appendix at 11. And it denied summary judgment as to the Wrongful Termination claim.

On September 9, 2022, the trial court granted the City's Motion for Certification which included six Findings of Fact and three issues.

ANALYSIS

Washington strongly disfavors interlocutory review, and it is available only "in those rare instances where the alleged error is reasonably certain and its impact on the trial is manifest." *Minehart v. Morning Star Boys Ranch, Inc.*, 156 Wn. App. 457, 462, 232 P.3d 591, *review denied*, 169 Wn.2d 1029 (2010); *Right-Price Recreation, LLC v. Connells Prairie Cmty. Council*, 146 Wn.2d 370, 380, 46 P.3d 789 (2002), *cert. denied sub. nom Gain v. Washington*, 540 U.S. 957 (2004). This court may grant discretionary review only when:

> (1) The superior court has committed an obvious error which would render further proceedings useless;
> (2) The superior court has committed probable error and the decision of the superior court substantially alters the status quo or substantially limits the freedom of a party to act;
> (3) The superior court has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by an inferior court or administrative agency, as to call for review by the appellate court; or
> (4) The superior court has certified, or all the parties to the litigation have stipulated, that the order involves a controlling question of law as to which there is substantial ground for a difference of opinion and that immediate review of the order may materially advance the ultimate termination of the litigation.

RAP 2.3(b). The City seeks discretionary review under RAP 2.3(b)(1) and (4).

Summary judgment is appropriate if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there

is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. CR 56(c); *Vallandigham v. Clover Park Sch. Dist. No. 400*, 154 Wn.2d 16, 26, 109 P.3d 805 (2005). "The appellate court engages in the same inquiry as the trial court, with questions of law reviewed *de novo* and the facts and all reasonable inferences from the facts viewed in the light most favorable to the nonmoving party." *Christensen v. Grant Cty. Hosp. Dist. No. 1*, 152 Wn.2d 299, 305, 96 P.3d 957 (2004).

Certification Order

First, the City argues discretionary review is appropriate under RAP 2.3(b)(4) because the trial court has certified at least one question of law as to which there is substantial ground for difference of opinion, and that immediate review may materially advance the ultimate termination of this litigation. It contends that the City did not have a duty to accommodate Riley as a matter of law. In response, Riley argues the trial court did not conclude that the order involves any controlling question of law as to which there is substantial ground for a difference of opinion; rather it certified three "theoretical issues" to be considered by this court along with six findings of fact. Resp. to Mot. for Disc. Rev. at 12. Further, he argues the trial court did not certify that immediate review of any controlling question of law may materially advance the ultimate termination of the litigation.

The relevant portion of the trial court's Order Granting Defendant's Motion to Certify Order for Interlocutory Discretionary Review Under RAP 2.3(b)(4) (Certification Order) is as follows:

[T]he Court herby [sic] certifies the following issues to the Court of Appeals:

> 1. Does an employer have a duty to accommodate an employee when the only way to accommodate the employee's disability is by providing the employee with new coworkers?
> 2. Does an employer have a duty to accommodate an employee when the employee fails to provide medical information explaining the nature and extent of the employee's disability and how the disability impacts the employees ability to perform the essential functions of his job?
> 3. Is an employer liable for failing to accommodate an employee when the employee does not engage with the employer in the interactive process?

Mot. for Disc. Rev., Appendix at 2-3.

The Certification Order also contains several facts arguably related to the nature of the reasonable accommodation sought by Riley. The Certification Order does not contain any language certifying it involves a controlling question of the law as to which there is substantial ground for a difference of opinion. The Certification Order does not contain any language certifying that immediate review of the order may materially advance the ultimate termination of the litigation. Rather, the Certification Order looks like an order certifying a question from federal court to our Supreme Court under RAP 16.16. That rule does not provide for certifications from the trial court to this court. Therefore, the City does not show that discretionary review is not appropriate under RAP 2.3(b)(4).

Duty to Accommodate

WLAD prohibits employers from discriminating against any person in conditions of employment because of "the presence of any sensory, mental, or physical disability." RCW 49.60.180(3). An employer has a duty to offer reasonable accommodations to an employee once it becomes aware of the employee's disability and any resulting physical limitations. *Goodman v. Boeing Co.*, 127 Wn.2d 401, 408, 899 P.2d 1265 (1995). "The

employee bears the burden or giving the employer notice of the disability." *Goodman*, 127 Wn.2d at 408. After receiving notice, the employer must take "positive steps" to accommodate the employee. *Goodman*, 127 Wn.2d at 408 (quoting *Holland v. Boeing Co.*, 90 Wn.2d 384, 388-89, 583 P.2d 621 (1978)). "The employee . . . retains a duty to cooperate with the employer's efforts by explaining [his] disability and qualifications." *Goodman*, 127 Wn.2d at 408. "Reasonable accommodation thus envisions an exchange between employer and employee where each seeks and shares information to achieve the best match between the employee's capabilities and available positions." *Goodman*, 127 Wn.2d at 408-409.

The City argues the trial court committed obvious error because it did not follow *Snyder v. Medical Serv. Corp. of Eastern Washington*, 145 Wn.2d 233, 35 P.3d 1158 (2001). In *Snyder*, the plaintiff Snyder, had a supervisor who was described by many in the office as "authoritarian," "belligerent," and as a "harassing-type supervisor" who would publicly embarrass employees. *Snyder*, 145 wn.2d at 237. Snyder reported she suffered from PTSD to her employer and requested to either be transferred out of her department, or to begin reporting directly to a different supervisor as an accommodation. The court held that while employers do have a duty to reasonably accommodate employees with disabling limitations, "there is no duty under WLAD to reasonably accommodate an employee's disability by providing [him] with a new supervisor." *Snyder*, 145 Wn.2d at 242.

Riley responds *Snyder* is distinguishable and that *Frisino v. Seattle Sch. Dist. No. 1*, 160 Wn. App. 765, 249 P.3d 1044, *review denied*, 172 Wn.2d 1013 (2011) is controlling. Frisino was a teacher who experienced sensitivity to airborne toxins, dust,

mold, and other irritants; a disability under WLAD. *Frisino*, 160 Wn. App. at 770. She developed "respiratory symptoms" from exposure to toxins present in her classroom. *Frisino*, 160 Wn. App. at 770. One day Frisino left work for the emergency room complaining of respiratory distress. *Frisino*, 160 Wn. App. at 772. After extended efforts by the school district to remediate the classroom, and to provide a new classroom as an accommodation, Frisino was terminated for failing to return to her position. *Frisino*, 160 Wn. App. at 776. The court reversed the trial court's decision to grant summary judgment in favor of the school district because a question of fact existed as to whether the duty shifted back to the employer in what was an ongoing interactive process. *Frisino*, 160 Wn. App. at 783-784.

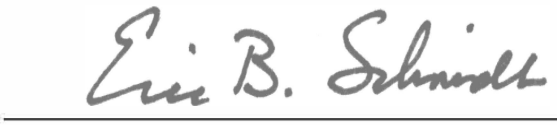
When viewing the facts and all reasonable inferences in the light most favorable to Riley, the City does not show that the trial court committed an obvious error in finding a question of material fact exists as to whether Riley's request for reassignment was a request for a new supervisor. Riley made complaints to McElligot, Pappuleas, Chief Green, to IAM, and to Fritz that he was unable to perform his job due to the actions and processes led by a coworker who was a source of conflict. Because a question of material fact exists as to whether the City took positive steps to accommodate Riley after receiving notice of his disability, the trial court did not commit obvious error in denying the City's motion for summary judgment on Riley's Failure to Accommodate claim.

Nor does the City show that further proceedings are useless. Claims other than the Failure to Accommodate claim remain to be adjudicated. Thus, the City does not show that discretionary review is appropriate under RAP 2.3(b)(1).

CONCLUSION

The City does not demonstrate that review is appropriate under RAP 2.3(b)(1) or (4). Accordingly, it is hereby

ORDERED that the City's motion for discretionary review is denied.



Eric B. Schmidt
Court Commissioner

cc: Michelle N. Yotter
James McCanna
Hon. Thomas P. Quinlan

September 18, 2025 - 12:16 PM

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	104,312-1
Appellate Court Case Title:	Liam Riley v. City of Tacoma
Superior Court Case Number:	21-2-06979-9

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