

ORIGINAL

SUPERIOR COURT OF WASHINGTON FOR YAKIMA COUNTY

DAWNE HYDE,

Plaintiff,

NO. 16-2-595-39

vs.

STATE OF WASHINGTON,

Defendant.

JURY INSTRUCTIONS

DATED: December 19, 2022

Elisabeth Tutsch

Judge Elisabeth Tutsch

ORIGINAL

INSTRUCTION NO. 1

It is your duty to decide the facts in this case based upon the evidence presented to you during this trial. It also is your duty to accept the law as I explain it to you, regardless of what you personally believe the law is or what you personally think it should be. You must apply the law from my instructions to the facts that you decide have been proved, and in this way decide the case.

The evidence that you are to consider during your deliberations consists of the testimony that you have heard from witnesses and the exhibits that I have admitted during the trial. If evidence was not admitted or was stricken from the record, then you cannot to consider it in reaching your verdict.

Exhibits may have been marked by the court clerk and given a number, but they do not go with you to the jury room during your deliberations unless they have been admitted into evidence. The exhibits that have been admitted will be available to you in the jury room.

In order to decide whether any party's claim has been proved, you must consider all of the evidence that I have admitted that relates to that claim. Each party is entitled to the benefit of all of the evidence, regardless of who introduced it.

You are the sole judges of the credibility of the witness. You are also the sole judges of the value or weight to be given to the testimony of each witness. In considering a witness's testimony, you may consider these things: the opportunity of the witness to observe or know the things they testify about; the ability of the witness to observe accurately; the quality of a witness's memory while testifying; the manner of the witness while testifying; any personal interest that the witness might have in the outcome or the issues; any bias or prejudice that the witness may have shown; the reasonableness of the witness's statements in the context of all of the other evidence; and any

other factors that affect your evaluation or belief of a witness or your evaluation of his or her testimony.

One of my duties has been to rule on the admissibility of evidence. Do not be concerned during your deliberations about the reasons for my rulings on the evidence. If I have ruled that any evidence is inadmissible, or if I have asked you to disregard any evidence, then you must not discuss that evidence during your deliberations or consider it in reaching your verdict.

The law does not permit me to comment on the evidence in any way. I would be commenting on the evidence if I indicated my personal opinion about the value of testimony or other evidence. Although I have not intentionally done so, if it appears to you that I have indicated my personal opinion, either during trial or in giving these instructions, you must disregard it entirely.

As to the comments of the lawyers during this trial, they are intended to help you understand the evidence and apply the law. However, it is important for you to remember that the lawyers' remarks, statements, and arguments are not evidence. You should disregard any remark, statement, or argument that is not supported by the evidence or the law as I have explained it to you.

You may have heard objections made by the lawyers during trial. Each party has the right to object to questions asked by another lawyer, and may have a duty to do so. These objections should not influence you. Do not make any assumptions or draw any conclusions based on a lawyer's objections.

As jurors, you have a duty to consult with one another and to deliberate with the intention of reaching a verdict. Each of you must decide the case for yourself, but only after an impartial consideration of all of the evidence with your fellow jurors. Listen to one another carefully. In the

course of your deliberations, you should not hesitate to re-examine your own views and to change your opinion based upon the evidence. You should not surrender your honest convictions about the value or significance of evidence solely because of the opinions of your fellow jurors. Nor should you change your mind just for the purpose of obtaining enough votes for a verdict.

As jurors, you are officers of this court. You must not let your emotions overcome your rational thought process. You must reach your decision based on the facts proved to you and on the law given to you, not on sympathy, bias, or personal preference. To assure that all parties receive a fair trial, you must act impartially with an earnest desire to reach a proper verdict.

Finally, the order of these instructions has no significance as to their relative importance. They are all equally important. In closing arguments, the lawyers may properly discuss specific instructions, but you must not attach any special significance to a particular instruction that they may discuss. During your deliberations, you must consider the instructions as a whole.

INSTRUCTION NO. 2

The following is merely a summary of the claims of the parties. You are not to consider the summary as proof of the matters claimed; and you are to consider only those matters that are established by the evidence. These claims have been outlined solely to aid you in understanding the issues.

Plaintiff Dawne Hyde claims her Defendant Washington State Department of Social and Health Services (DSHS) retaliated against her in violation of the Washington State Employee Whistleblower Protection Act.

Ms. Hyde alleges she was initially perceived to be a whistleblower and later became a whistleblower, that she was subjected to workplace reprisals or retaliatory actions for being perceived as a whistleblower and later, for being a whistleblower. She seeks damages proximately caused by DSHS' whistleblower retaliation.

DSHS denies Ms. Hyde's claims of whistleblower retaliation and affirmatively alleges there were legitimate non-retaliatory reasons for the alleged workplace reprisals or retaliatory actions.

In addition, DSHS denies the nature and extent of Plaintiff's claimed damages.

INSTRUCTION NO. 3

The State of Washington is the Defendant. The Department of Social and Health Services is an Agency within the State. The State can act only through its officers and employees. Any act or omission of an officer or employee is the act or omission of the State.

The law treats all parties equally whether they are government entities or individuals. This means that government entities and individuals are to be treated in the same fair and unprejudiced manner.

INSTRUCTION NO. 4

The evidence that has been presented to you may be either direct or circumstantial. The term “direct evidence” refers to evidence that is given by a witness who has directly perceived something at issue in this case. The term “circumstantial evidence” refers to evidence from which, based on your common sense and experience, you may reasonably infer something that is at issue in this case.

The law does not distinguish between direct and circumstantial evidence in terms of their weight or value in finding the facts in this case. One is not necessarily more or less valuable than the other.

INSTRUCTION NO. 5

A witness who has special training, education, or experience may be allowed to express an opinion in addition to giving testimony as to facts.

You are not, however, required to accept their opinion. To determine the credibility and weight to be given to this type of evidence, you may consider, among other things, the education, training, experience, knowledge, and ability of the witness. You may also consider the reasons given for the opinion and the sources of his or her information, as well as considering the factors already given to you for evaluating the testimony of any other witness.

INSTRUCTION NO. 6

Certain evidence has been admitted in this case for only a limited purpose. This evidence may be considered by you only for the purpose for which it was admitted. It may not be considered by you for any other purpose. Any discussion of the evidence during your deliberations must be consistent with this limitation.

Specifically, Exhibits 19, 135, 137, 176, and 228 were admitted solely for the purpose of notice to DSHS. You may not consider those exhibits for the truth of the events referenced therein.

INSTRUCTION NO. 7

When it is said that a party has the burden of proof on any proposition, or that any proposition must be proved by a preponderance of the evidence, or the expression “if you find” is used, it means that you must be persuaded, considering all the evidence in the case bearing on the question, that the proposition on which that party has the burden of proof is more probably true than not true.

INSTRUCTION NO. 8

The Washington State Employee Whistleblower Protection Act provides that employees should be encouraged to disclose, to the extent not expressly prohibited by law, improper governmental actions, and it is the intent of the legislature to protect the rights of state employees making these disclosures.

INSTRUCTION NO. 9

The Washington State Employee Whistleblower Protection Act provides the following definitions:

- A. “Whistleblower” means:
- (i) An employee who in good faith reports alleged improper governmental action to the auditor or other public official; or
 - (ii) An employee who is perceived by the employer as reporting, whether they did or not, alleged improper governmental action to the auditor or other public official; or
 - (iii) An employee who in good faith provides information to the auditor or other public official, and an employee who is believed to have reported asserted improper governmental action to the auditor or other public official, or to have provided information to the auditor or other public official, but who, in fact, has not reported such action or provided such information.
- B. “Auditor” means the Office of the State Auditor.
- C. “Good faith” means the individual providing the information or report of improper governmental activity has a reasonable basis in fact for reporting or providing the information. An individual who knowingly provides or reports, or who reasonably ought to know he or she is providing or reporting, malicious, false, or frivolous information, or information that is provided with reckless disregard for the truth, or who knowingly omits relevant information is not acting in good faith.
- D. “Gross mismanagement” means the exercise of management responsibilities in a manner grossly deviating from the standard of care or competence that a reasonable

person would observe in the same situation.

- E. “Gross waste of funds” means to spend or use funds or to allow funds to be used without valuable result in a manner grossly deviating from the standard of care or competence that a reasonable person would observe in the same situation.
- F. “Improper governmental action” means any action by an employee undertaken in the performance of the employee's official duties:
 - (i) Which is a gross waste of public funds or resources as defined in this section;
 - (ii) Which is in violation of federal or state law or rule, if the violation is not merely technical or of a minimum nature;
 - (iii) Which is of substantial and specific danger to the public health or safety; or
 - (iv) Which is gross mismanagement.
- G. “Improper governmental action” does not include personnel actions, for which other remedies exist, including but not limited to employee grievances, complaints, appointments, promotions, transfers, assignments, reassignments, reinstatements, restorations, reemployments, performance evaluations, reductions in pay, dismissals, suspensions, demotions, violations of the state civil service law, alleged labor agreement violations, reprimands, claims of discriminatory treatment, or any action which may be taken under Washington civil service laws, or other disciplinary action except as provided in the Washington State Employee Whistleblower Protection Act.
- H. “Public official” means the attorney general’s designee or designees; the director, or equivalent thereof in the agency where the employee works; an appropriate number of individuals designated to receive whistleblower reports by the head of

each agency; or the executive ethics board.

- I. “Substantial and specific danger” means a risk of serious injury, illness, peril, or loss, to which the exposure of the public is a gross deviation from the standard of care or competence which a reasonable person would observe in the same situation.
- J. “Use of official authority or influence” includes threatening, taking, directing others to take, recommending, processing, or approving any personnel action such as an appointment, promotion, transfer, assignment including but not limited to duties and office location, reassignment, reinstatement, restoration, reemployment, performance evaluation, determining any material changes in pay, provision of training or benefits, tolerance of a hostile work environment, or any adverse action under Washington civil service laws, or other disciplinary action.

INSTRUCTION NO. 10

To establish his claim for whistleblower retaliation, Ms. Hyde must prove by a preponderance of the evidence that:

1. She is a whistleblower; and
2. She was subjected to at least one reprisal or retaliatory action.

If Ms. Hyde fails to prove either of these elements, you must find for the State.

If Ms. Hyde proves both of these elements, you must find for Ms. Hyde unless the state proves by a preponderance of the evidence that:

1. There have been a series of documented personnel problems or a single, egregious event; or
2. That the agency action or actions were justified by reasons unrelated to the employee's status as a whistleblower and that improper motive was not a substantial factor.

INSTRUCTION NO. 11

Under the Washington State Employee Whistleblower Protection Act, “reprisal or retaliatory action” means, but is not limited to, any of the following:

- (i) Denial of adequate staff to perform duties;
- (ii) Frequent staff changes;
- (iii) Frequent and undesirable office changes;
- (iv) Refusal to assign meaningful work;
- (v) Unwarranted and unsubstantiated letters of reprimand or unsatisfactory performance evaluations;
- (vi) Demotion;
- (vii) Reduction in pay;
- (viii) Denial of promotion;
- (ix) Suspension;
- (x) Dismissal;
- (xi) Denial of employment;
- (xii) A supervisor or superior behaving in or encouraging coworkers to behave in a hostile manner toward the whistleblower;
- (xiii) A change in the physical location of the employee's workplace or a change in the basic nature of the employee's job, if either are in opposition to the employee's expressed wish;
- (xiv) Any other action that is inconsistent compared to actions taken before the employee engaged in conduct protected by this chapter, or compared to other employees who have not engaged in conduct protected by this chapter.

INSTRUCTION NO. 12

As an employer, DSHS can exercise business judgment and make business decisions. You may not second-guess DSHS' business judgment or business decisions except to the extent the agency proves by a preponderance of the evidence that the action was justified by reasons unrelated to the employee's status as a whistleblower and improper motive was not a substantial factor.

Placing an employee on alternative assignment or removing supervisory authority over employees pending an investigation into allegations against the employee is not a reprisal or retaliatory action if the agency proves by a preponderance of the evidence that the action was justified by reasons unrelated to the employee's status as a whistleblower and improper motive was not a substantial factor.

INSTRUCTION NO. 13

“Substantial factor” means a significant motivating factor in bringing about the employer’s decision. “Substantial factor” does not mean the only factor or the main factor in the challenged act or decision.

INSTRUCTION NO. 14

It is the duty of the court to instruct you as to the measure of damages. By instructing you on damages, the court does not mean to suggest for which party your verdict should be rendered.

If your verdict is for Plaintiff Dawne Hyde, you must determine the amount of money that will reasonably and fairly compensate her for such damages as you find were proximately caused by the acts of DSHS.

You should consider the following elements:

- (1) The reasonable value of lost past earnings and fringe benefits, from the date of the wrongful conduct, if any, to the date of trial;
- (2) The reasonable value of lost future pension; and
- (3) The emotional harm to Ms. Hyde caused by DSHS's wrongful conduct, if any, including pain and suffering, emotional distress, loss of enjoyment of life, humiliation, personal indignity, embarrassment, fear, anxiety, and/or anguish experienced and with reasonable probability to be experienced by her in the future.

The burden of proving damages rests with the party claiming them, and it is for you to determine, based upon the evidence, whether any particular element has been proved by a preponderance of the evidence.

Any award of damages must be based upon evidence and not upon speculation, guess, or conjecture. The law has not furnished us with any fixed standards by which to measure pain and suffering, emotional distress, loss of enjoyment of life, humiliation, personal indignity, embarrassment, fear, anxiety, and/or anguish. You must be governed by your own judgment, by the evidence in the case, and by these instructions.

INSTRUCTION NO. 15

The term "proximate cause" means a cause which in a direct sequence produces the events or injuries complained of and without which such events or injuries would not have happened.

There may be more than one proximate cause of an event or injury.

INSTRUCTION NO. 16

In calculating any damages for future economic loss, you should determine the present cash value of pension benefits from today until the time the plaintiff may reasonably be expected to fully recover from the continuing effects of the retaliation decreased by any projected future earnings from another employer. These damages may not continue beyond the date of retirement.

“Present cash value” means the sum of money needed now which, if invested at a reasonable rate of return, would equal the amount of loss at the time in the future when the earnings would have been received.

The rate of interest to be applied in determining present cash value should be that rate which in your judgment is reasonable under all the circumstances. In this regard, you should take into consideration the prevailing rates of interest in the area that can reasonably be expected from safe investments that a person of ordinary prudence, but without particular financial experience or skill, can make in this locality.

In determining present cash value, you may also consider decreases in value of money that may be caused by future inflation.

INSTRUCTION NO. 17

Litigation-induced emotional distress and/or litigation-induced stress are not recoverable as damages in this lawsuit.

INSTRUCTION NO. 18

When you begin to deliberate, your first duty is to select a presiding juror. The presiding juror's responsibility is to see that you discuss the issues in this case in an orderly and reasonable manner, that you discuss each issue submitted for your decision fully and fairly, and that each one of you has a chance to be heard on every question before you. Deliberations are to occur only in the jury room when all ^{of} ~~twelve~~ jurors are present.

You are all officers of the court and must evaluate the evidence with an open mind free of bias or prejudice. If during your deliberations, you become concerned that the discussions are being influenced by preconceived bias or prejudice, you must bring this to the attention of the other jurors so that the issue may be fairly discussed among all members of the jury.

You will be given the exhibits admitted in evidence and these instructions. You will also be given a special verdict form that consists of several questions for you to answer. You must answer the questions in the order in which they are written, and according to the directions on the form. It is important that you read all the questions before you begin answering, and that you follow the directions exactly. Your answer to some questions will determine whether you are to answer all, some, or none of the remaining questions.

During your deliberations, you may discuss any notes that you have taken during the trial, if you wish. You have been allowed to take notes to assist you in remembering clearly, not to substitute for your memory or the memories or notes of other jurors. Do not assume that your notes are more or less accurate than your memories.

You will need to rely on your notes and memory as to the testimony presented in this case. Testimony will rarely, if ever, be repeated for you during your deliberations.

If, after carefully reviewing the evidence and instructions, you feel a need to ask the court a legal or procedural question that you have been unable to answer, write the question out simply and clearly. For this purpose, use the form provided in the jury room. In your question, do not state how the jury has voted, or in any other way indicate how your deliberations are proceeding. The presiding juror should sign and date the question and give it to the bailiff. I will confer with the lawyers to determine what response, if any, can be given.

In order to answer any question on the special verdict form, ⁹~~ten~~ jurors must agree upon the answer. It is not necessary that the jurors who agree on the answer be the same jurors who agreed on the answer to any other question, so long as ⁹~~ten~~ jurors agree to each answer. *et*

When you have finished answering the questions according to the directions on the special verdict form, the presiding juror will sign the verdict form. The presiding juror must sign the verdict whether or not the presiding juror agrees with the verdict. The presiding juror will then tell the bailiff that you have reached a verdict. The bailiff will bring you back into court where your verdict will be announced.

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STATE OF WASHINGTON
YAKIMA COUNTY SUPERIOR COURT

DAWNE HYDE,

Plaintiff,

vs.

STATE OF WASHINGTON,

Defendant.

NO. 16-2-00595-39

SPECIAL VERDICT FORM

We, the jury, make the following answers to the questions submitted by the court:

Question No. 1: Has Ms. Hyde proved by a preponderance of the evidence that she was a "whistleblower" under the Washington State Employee Whistleblower Protection Act?

ANSWER: _____ Yes _____ No

Question No. 2: Has Ms. Hyde proved by a preponderance of the evidence that DSHS subjected Ms. Hyde to one or more workplace reprisals or retaliatory actions under the Washington State Employee Whistleblower Protection Act?

ANSWER: _____ Yes _____ No

INSTRUCTION: *If you answered "No" to Question Nos. 1 or 2, skip the remaining questions, sign and date this Special Verdict Form, and notify the bailiff that you have reached a verdict. If you answered "Yes" to Questions Nos. 1 and 2, proceed to Question No. 3.*

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Question No. 3: Has DSHS proved by a preponderance of the evidence that there have been a series of documented personnel problems or a single, egregious event, or that the DSHS's action or actions were justified by reasons unrelated to Ms. Hyde's status as a whistleblower and that improper motive was not a substantial factor?

ANSWER: _____ Yes _____ No

INSTRUCTION: *If you answered "Yes" to Question No. 3, skip the remaining questions, sign and date this Special Verdict Form, and notify the bailiff that you have reached a verdict. If you answered "No" to Question No. 3, proceed to Question No. 4.*

Question No. 4: Has Ms. Hyde proved by a preponderance of the evidence that DSHS's actions proximately caused her damages?

ANSWER: _____ Yes _____ No

INSTRUCTION: *If you answered "No" to Question No. 4, skip Question No. 5, sign and date this Special Verdict Form, and notify the bailiff that you have reached a verdict. If you answered "Yes" to Question No. 4, proceed to Question No. 5.*

Question No. 5: What do you find to be the amount of Ms. Hyde's damages?

A. Economic Loss:

1. Back Pay: \$ _____

2. Lost Pension: \$ _____

B. Emotional Harm: \$ _____

DATE: _____

PRESIDING JUROR

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