

THE HONORABLE JOHN C. COUGHENOUR

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SHANNON ANDERSON SAEVIK,

Plaintiff,

CASE NO. C19-1992-JCC

ORDER

v.

SWEDISH MEDICAL CENTER and
REBECCA DAY, individually and as Clinic
Operations Manager of its Organ Transplant
and Liver Center,

Defendant.

This matter comes before the Court on the parties' cross-motions for summary judgment (Dkt. Nos. 89, 93). Having thoroughly considered the parties' briefing and the relevant record, the Court finds oral argument unnecessary and, for the reasons explained herein, GRANTS Defendants' motion (Dkt. No. 89) and DENIES Plaintiff's motion (Dkt. No. 93).

I. BACKGROUND

In this employment discrimination case, Plaintiff brings suit against her former employer, Swedish Medical Center, and its former employee, Rebecca Day. (Dkt. Nos. 1-3 at 2-4, 90-1 at 19, 90-2 at 5-6, 91 at 2.) Plaintiff began working for Swedish as a patient services coordinator in 2008; she later worked as a referral scheduling coordinator for Swedish's Organ Transplant and Liver Center, which is where she met Ms. Day. (Dkt. Nos. 89 at 7, 93 at 4.) Initially, Plaintiff

1 and Ms. Day were colleagues. (*Id.*) However, in December 2018, Ms. Day was promoted to
2 Interim Nursing Manager/Clinic Manager. (*Id.*) From this point until her September 2019
3 termination, Plaintiff reported to Ms. Day. (*Id.*)

4 According to Swedish, it terminated Plaintiff for timecard fraud. (Dkt. No. 89 at 7–20.)
5 This followed prior disciplinary actions for insubordination and unprofessional conduct. (*Id.*)
6 Plaintiff takes issue with Swedish’s characterization. (Dkt. No. 112 at 2.) She asserts that her
7 employment history was good and her termination—which, according to Swedish, is based on an
8 on-the-clock off-site break—was pretextual. (*Id.*) Plaintiff alleges that, in fact, Ms. Day
9 orchestrated Plaintiff’s termination based on some sort of “vendetta.” (Dkt. Nos. 93 at 10; 112 at
10 7.) This was due, in part, to Plaintiff’s attempted whistleblowing and what Ms. Day deemed to be
11 Plaintiff’s excessive leave and accommodation requests, which she sought in order to address her
12 and her family member’s medical needs. (*See* Dkt. Nos. 1-3 at 2–4, 93 at 1–7.)

13 In the resulting complaint, Defendant asserts causes of action for violations of the
14 Washington Law Against Discrimination (“WLAD”), Wash. Rev. Code § 49.60.010 *et seq.*, and
15 the Family Medical Leave Act (“FMLA”) 29 U.S.C. § 2601 *et seq.*, as well as tort-based
16 wrongful termination and whistleblowing claims. (Dkt. No. 1-3 at 4–5.) The parties seek
17 summary judgment¹ on all claims. (*See* Dkt. Nos. 89, 93.)

18 **II. DISCUSSION**

19 **A. Legal Standard**

20 The Court shall grant summary judgment if the moving party shows that there is no
21 genuine dispute as to any material fact and that the moving party is entitled to judgment as a
22 matter of law. Fed. R. Civ. P. 56(a). In making such a determination, the Court must view the
23 facts and justifiable inferences to be drawn therefrom in the light most favorable to the
24

25 ¹ Plaintiff seeks judgment on all claims, but she titles her motion as one seeking partial
26 summary judgment; this is based on Plaintiff’s supposition that, if summary judgment is granted
to her on all of her claims, damages will need be determined at trial. (*See* Dkt. No. 93 at 1, 4.)

1 nonmoving party. *Anderson v. Liberty Lobby*, 477 U.S. 242, 255 (1986). Once a motion for
 2 summary judgment is properly made and supported, the opposing party must present specific
 3 facts showing that there is a genuine issue for trial. Fed. R. Civ. P. 56(e); *Matsushita Elec. Indus.*
 4 *Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986). Material facts are those that may affect the
 5 outcome of the case, and a dispute about a material fact is genuine if there is sufficient evidence
 6 for a reasonable jury to return a verdict for the non-moving party. *Anderson*, 477 U.S. at 248-49.

7 **B. WLAD Claims**

8 The WLAD prohibits employment discrimination based on, amongst other things, a
 9 physical disability. Wash. Rev. Code §§ 49.60.030(1), 49.60.180(1). Here, it is uncontested that
 10 Plaintiff's medical conditions, which at the time of her termination included median arcuate
 11 ligament syndrome, postural tachycardia syndrome, and recurring migraines, constitute such a
 12 disability. (*See* Dkt. No. 112 at 6, 11; *see generally* Dkt. Nos. 89, 110, 117.) Plaintiff asserts that,
 13 in order to accommodate this disability, she required shorter workdays and an extended work
 14 from home arrangement. (*See generally* Dkt. No. 1-3.) While Swedish was initially receptive to
 15 her accommodation requests, Plaintiff asserts that Swedish refused to continue her medical
 16 accommodations beyond May 2019² and eventually terminated her, in part, for requesting them.
 17 (*Id.*) Plaintiff brings WLAD claims for failure to accommodate, disparate treatment, hostile work
 18 environment, and retaliation. (*Id.* at 4–5.)

19 1. Failure to Accommodate

20 Plaintiff's briefing indicates that Swedish unlawfully denied her request to extend a work
 21 from home arrangement beyond May 2019 and that Plaintiff sought to extend the arrangement as
 22 a medical accommodation while recovering from a January 2019 surgery.³ (Dkt. Nos. 93 at 2, 6;

24 ² Up to this point it is undisputed that Plaintiff sought and received the accommodations
 25 requested, albeit through informal means. (*See* Dkt. No. 93 at 6.)

26 ³ Plaintiff's complaint also references Swedish's denial of a 2017 work-from-home
 request, (Dkt. No. 1-3 at 2), but her briefing does not address this allegation, (*see generally* Dkt.

1 112 at 7–11.) According to the WLAD, an employer must take steps “reasonably necessary to
2 accommodate an employee’s condition.” *Riehl v. Foodmaker, Inc.*, 94 P.3d 930, 934 (Wash.
3 2004). However, a claim based on a failure to accommodate must satisfy a notice element, *i.e.*,
4 the employee must be able to show that she provided her employer with notice of her disability,
5 thereby triggering the employer’s duty to adopt reasonable measures to accommodate the
6 disability. *Id.* at 934.

7 At issue here is whether Plaintiff can demonstrate that she provided sufficient notice. It is
8 uncontroverted that Swedish’s formal policies and procedures at the time required that she
9 document her request for a medical accommodation and its supporting basis through Swedish’s
10 third-party claims manager, Sedgwick Claims Management Services. (*See* Dkt. Nos. 89 at 18,
11 21; 112 at 10.) Defendants provide evidence that Plaintiff failed to document her need to
12 Sedgwick to extend her medical accommodation beyond May 2019, despite repeated instructions
13 to do so. (*See, e.g.*, Dkt. No. 90-6 at 121–22 (testimony from Swedish HR representative
14 Gabriella Madsen that she instructed Plaintiff to send the supporting medical information to
15 Sedgwick), Dkt. No. 91-1 (e-mail from Plaintiff dated May 20, 2019 conceding that she had not
16 yet sent in the appropriate documentation because she was “overwhelmed will all my doctor apts
17 [sic]”.)

18 In attempting to rebut Defendants’ evidence, Plaintiff provides the Court with what
19 appear to be erroneous citations to the record, (*see* Dkt. No. 112 at 8 n.26 (referencing page 34 of
20 Plaintiff’s deposition, which is not contained in the referenced declaration)), uncorroborated self-

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22 Nos. 93, 112, 118), so the Court will treat it as withdrawn. Plaintiff also alleges that Swedish
23 refused to allow her to work in an office with natural light, which was necessary to alleviate
24 Plaintiff’s migraine symptoms. (Dkt. No. 112 at 11.) But Defendants present uncontroverted
25 evidence that, in fact, Plaintiff received this accommodation. (*See* Dkt. No. 90-1 at 33–36
26 (testimony from Plaintiff confirming her use of an office with “large windows for natural
light”.) While Plaintiff suggests this was only begrudgingly provided, (*id.*), she provides no
argument or legal authority for the notion that *how* she received the accommodation is relevant
in determining whether Defendants violated the WLAD. (*See generally* Dkt. Nos. 93, 112.)

1 serving testimony, (*see, e.g.*, Dkt. No. 113-13 at 3), unsupported conjecture, (*see, e.g.*, Dkt. No.
2 93 at 3), and conclusory statements, (*see, e.g.*, Dkt. No. 112 at 3). None of which support the
3 assertions contained in her briefing and testimony that the documentation Defendants sought was
4 unnecessary and, in any event, that she provided it. Given the nature of the evidence presented to
5 the Court, Plaintiff fails to create a genuine factual dispute regarding her compliance with
6 Swedish’s notice requirements. *See Hernandez v. Spacelabs Med. Inc.*, 343 F.3d 1107, 1112 (9th
7 Cir. 2003); *Villiarimo v. Aloha Island Air, Inc.*, 281 F.3d 1054, 1061 (9th Cir. 2002), *see also*
8 *Gordon v. Virtumundo, Inc.*, 575 F.3d 1040, 1058 (9th Cir. 2009) (A court need not “comb
9 through the record to find some reason to deny a motion for summary judgment.”).

10 Summary judgment for Defendants is warranted on Plaintiff’s WLAD failure to
11 accommodate claim.

12 2. Disparate Treatment

13 Plaintiff asserts that Swedish terminated her in September of 2019 because of her
14 ongoing need for medical accommodations, *i.e.*, her disability.⁴ (Dkt. No. 93 at 10.) The WLAD
15 prohibits such conduct, so long as Plaintiff was capable of performing her job with the benefit of
16 reasonable accommodations. Wash. Rev. Code § 49.60.180; *Hines v. Todd Pac. Shipyards*
17 *Corp.*, 112 P.3d 522, 529 (Wash. Ct. App. 2005). When considering a disparate treatment
18 allegation such as this one, the Court utilizes the *McDonnell Douglas/Burdine* three-part burden
19 allocation framework. *Hines*, 112 P.3d at 529. Under this framework, Plaintiff first bears the
20 burden of proving a *prima facie* case of disparate treatment. *Id.* Once Plaintiff’s case is
21 established, the burden shifts to Defendants to present evidence of a legitimate non-
22 discriminatory reason for the adverse action. *Id.* Finally, the burden shifts back to Plaintiff to

23
24 ⁴ In her briefing to the Court, Plaintiff makes a number of additional allegations regarding
25 disparate treatment. (*See* Dkt. No. 112 at 14–18.) But she provides no argument or evidence
26 demonstrating that the alleged actions altered the terms and conditions of her employment. (*See*
generally Dkt. Nos. 93, 112.) Therefore, those allegations cannot support a disparate treatment
claim under the WLAD. *See Kirby v. City of Tacoma*, 98 P.3d 827, 833 (Wash. Ct. App. 2004).

1 show that Defendants’ asserted reason was merely a pretext. *Id.*

2 Assuming *arguendo* that Plaintiff establishes a *prima facie* case of disparate treatment,
3 Defendants present uncontroverted evidence of a legitimate non-discriminatory reason for
4 Plaintiff’s termination—time-card fraud. (*See* Dkt. No. 90-1 at 102 (Plaintiff’s testimony that she
5 took the break without clocking out to “caucus with the union”⁵.) Therefore, to avoid summary
6 judgment, Plaintiff must put forth at least some evidence suggesting pretext. She presents none.
7 (*See generally* Dkt. Nos. 93, 112.) Nor, frankly, is an allegation of pretext particularly plausible
8 in this instance, where it is uncontroverted that Swedish terminated not only Plaintiff, but the two
9 co-workers she took the break with—and Plaintiff was the only one of the three seeking medical
10 accommodations. (Dkt. No. 92 at 2.)

11 Summary judgment for Defendants is warranted on Plaintiff’s WLAD disparate treatment
12 claim.

13 3. Hostile Work Environment

14 In addition, Plaintiff alleges that Ms. Day and other Swedish personnel engaged in a
15 course of dealing that created a hostile work environment; this included Ms. Day’s frequent
16 insults and aggressions, her efforts to snoop into Plaintiff’s personal medical records, and Ms.
17 Madsen’s comments regarding Plaintiff’s need to return to work. (*See* Dkt. Nos. 93 at 11–12,
18 112 at 20.) To succeed in her hostile work environmental claim, Plaintiff must show, *inter alia*,
19 treatment sufficiently objectionable and pervasive so as to affect the terms or conditions of
20 employment *and* a connection between her protected class, *i.e.*, her disability, and the claimed
21 treatment. *See Balkenbush v. Ortho Biotech Prods., L.P.*, 653 F. Supp. 2d 1115, 1122 (E.D.
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24 ⁵ Plaintiff suggests that whether this was allowed under the collective bargaining
25 agreement is an issue of disputed fact. (*See* Dkt. No. 112 at 8.) But she puts forth no evidence,
26 other than her own uncorroborated testimony and a declaration from a co-worker lacking in
foundation, to support this contention. (*See* Dkt. No. 115 at 1–2.) Affidavits or declarations
supporting or opposing summary judgment must “set out facts that would be admissible in
evidence.” Fed. R. Civ. P. 56(c)(4).

1 Wash. 2009) (citing *Robel v. Roundup Corp.*, 59 P.3d 611, 616 (Wash. 2002)). As a matter of
2 law, Plaintiff cannot make this showing.

3 First, the majority of Plaintiff's allegations lack a clear connection to her disability. *See*
4 *Griffith v. Schnitzer Steel Industries, Inc.*, 115 P.3d 1065, 1070 (Wash. Ct. App. 2005). This
5 includes Ms. Day's alleged lack of concern for regional outreach programs, her "chaos-inducing
6 changes to established working procedures," Ms. Day's insults "perceived on behalf of the entire
7 staff," Ms. Day's acts of physical intimidation, and Ms. Day's obstructionism regarding
8 Plaintiff's participation in her son's medical care. (Dkt. No. 112 at 11–12, 20.)

9 Second, to the extent the conduct has that connection, the conduct is not sufficiently
10 severe or pervasive to have reasonably affected the terms of conditions of Plaintiff's
11 employment. *See Glasgow v. Georgia-P. Corp.*, 693 P.2d 708, 712 (Wash. 1985). This includes
12 Ms. Day's references to Plaintiff's "brain fog," Ms. Day's alleged snooping, Ms. Madsen's
13 comments regarding not wanting to see any more doctor's notes, and Ms. Madsen's directive to
14 Plaintiff "get your ass back to Seattle." (Dkt. No. 90-1 at 23.) "The WLAD is not intended as a
15 general civility code . . . not everything that makes an employee unhappy is an actionable
16 adverse action." *Alonso v. Qwest Commun. Co., LLC*, 315 P.3d 610, 617 (Wash. Ct. App. 2013).

17 Summary judgment for Defendants is warranted on Plaintiff's WLAD disability based
18 hostile work environment claim.

19 4. Retaliation

20 Finally, Plaintiff alleges that Defendants retaliated against her for seeking medical
21 accommodations. (Dkt. Nos. 93 at 12–13, 112 at 20–21.) As with her other WLAD claims,
22 Plaintiff must first establish a *prima facie* case of retaliation. *See Lodis v. Corbis Holdings, Inc.*,
23 292 P.3d 779, 786 (Wash. Ct. App. 2013). She fails in this task. As discussed above, *see supra*
24 Section II.B.1, her conclusory assertions and uncorroborated self-serving testimony, (*see* Dkt.
25 Nos. 112 at 20–21, 114 at 5), are insufficient to establish a *prima facie* case. *See Hernandez*, 343
26 F.3d at 1112; *Villiarimo*, 281 F.3d at 1061.

1 Summary judgment is warranted for Defendants on Plaintiff's WLAD retaliation claim.

2 **C. Tort-Based Claims**

3 Plaintiff also asserts that her termination (1) violated public policy and (2) constituted
4 impermissible retaliation for whistleblowing activities. (Dkt. Nos. 1-3 at 4–5, 93 at 17–19.)

5 1. Wrongful Termination

6 As a general rule, employees in Washington work at-will, meaning they can be
7 terminated for any lawful reason. *See Rose v. Anderson Hay & Grain Co.*, 358 P.3d 1139, 1141
8 (Wash. 2015). The tort of wrongful termination in violation of public policy is a narrow
9 exception to this doctrine. *See White v. State*, 929 P.2d 396, 407 (Wash. 1997). To successfully
10 bring a claim, Plaintiff must plead and prove that her termination was motivated by reasons that
11 contravene an important mandate of public policy. *Becker v. Cmty. Health Sys., Inc.*, 359 P.3d
12 746, 749 (Wash. 2015) (citing *Thompson v. St. Regis Paper Co.*, 685 P.2d 1081, 1089 (Wash.
13 1984)). The burden then shifts to the employer to plead and prove that the termination was
14 motivated by other, legitimate, reasons. *Id.* As discussed above, Defendants have already offered
15 evidence supporting legitimate reasons for Plaintiff's termination, for which Plaintiff presents no
16 contravening evidence. *See supra* Section II.B.2.

17 2. Whistleblowing

18 Plaintiff's briefing indicates that she was fired, in part, for insubordination and defiance.
19 (Dkt. Nos. 93 at 18, 112 at 23.) This followed (a) a refusal to sign after-the-fact time study forms
20 to support Medicare and Medicaid billing practices, (b) "call[ing] out her managers" for the
21 practice of placing transplant candidates into "deferral mode," and (c) report[ing] HIPAA
22 violations. (Dkt. No. 112 at 12–13.) But it is undisputed that Plaintiff was terminated for
23 timecard fraud—not insubordination or defiance. (*See generally* Dkt. Nos. 89, 93.) Moreover,
24 Plaintiff does not present evidence supporting her contention that Swedish's conduct was, in fact,
25 unlawful, and, therefore, an appropriate basis for whistleblowing. (*See* Dkt. Nos. 93 at 18, 112 at
26 23 (allegations lacking supporting citations to admissible evidence).) Nor does Plaintiff present

1 the Court with legal argument supporting the implied contention that a tort-based whistleblowing
2 claim can be sustained through allegations involving retaliatory progressive discipline actions
3 short of termination. (*See generally* Nos. 93, 112.) The Court need not consider allegations
4 “unsupported by citations to the record or legal authority.” *Cyntegra, Inc. v. IDEXX*
5 *Laboratories, Inc.*, 322 F. App’x 569, 571 n.2 (9th Cir. 2009); *cf. Indep. Towers of Wash. v.*
6 *Washington*, 350 F.3d 925, 929 (9th Cir. 2003) (“[J]udges are not like pigs, hunting for truffles
7 buried in briefs.”) (quoting *United States v. Dunkel*, 927 F.2d 955, 956 (7th Cir. 1991))).

8 Accordingly, summary judgment is warranted for Defendants on both of Plaintiff’s tort-
9 based claims.

10 C. FMLA Claim

11 Plaintiff’s remaining cause of action is based upon Swedish’s alleged interference with
12 her FMLA benefits. An employer may not “interfere with, restrain, or deny the exercise of or the
13 attempt to exercise, any right provided” under the FMLA. 29 U.S.C. § 2615(a)(1). Interference
14 includes “discouraging an employee from using such leave.” 29 C.F.R. § 825.220. Plaintiff’s
15 complaint and briefing assert numerous instances where Swedish allegedly interfered with and/or
16 denied various FMLA requests that Plaintiff sought in order to care for herself and her son over
17 the course of her employment. (*See* Dkt. Nos. 1-3 at 3–4, 93 at 13–16; 112 at 11, 21–22.) But
18 like her WLAD claims, she provides only uncorroborated self-serving testimony to support these
19 allegations. (*See* Dkt. Nos. 113-6 at 2–3, 120-12 at 2–7.) This is insufficient to withstand
20 Defendants’ motion for summary judgment. *Villiarimo*, 281 F.3d at 1061.

21 III. CONCLUSION

22 For the reasons described above, Defendants’ motion for summary judgment (Dkt. No.
23 89) is GRANTED and Plaintiff’s motion for summary judgment (Dkt. No. 93) is DENIED.
24 Plaintiff’s complaint (Dkt. No. 1-3) is DISMISSED with prejudice.

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1 DATED this 15th day of December 2021.
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8 John C. Coughenour
9 UNITED STATES DISTRICT JUDGE
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