

COPY

STATE OF WISCONSIN

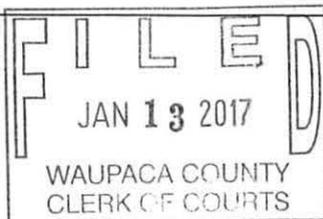
CIRCUIT COURT
BRANCH I

WAUPACA COUNTY

DAWN LAURIA,

PETITIONER,

V.



Case No. 2016CV33

WISCONSIN EMPLOYMENT RELATIONS
COMMISSION AND WISCONSIN DEPARTMENT
OF CORRECTIONS,

[RE: WERC Dec. No. 35062-A]

RESPONDENTS.

DECISION

Petitioner Dawn Lauria, commenced this proceeding for judicial review of a decision of the Wisconsin Employment Relations Commission (WERC). WERC decided that the Wisconsin Department of Corrections (DOC) had just cause to discharge Lauria. Lauria was a food service worker at the Red Granite Correctional Institution. (RGCI)

WERC decided the DOC had just cause to discharge Lauria because of her conduct on December 24 and 25, 2013 for engaging in horseplay, practical jokes and other disruptive or unsafe behavior with inmates. They found that such conduct clearly had a tendency to impair the performance of Lauria's duties and the efficiency of the group with which she worked. Her behavior was found to be unprofessional in that it breached professional boundaries between staff and inmates and compromised her ability to provide effective supervision of inmates, and that it compromised the safety and security of the institution. The behavior that WERC found that constituted just cause consisted of the following: Lauria placed frosting on her finger, chased an inmate around the baking area, and smeared frosting on the shoulders of two inmates; Lauria sprayed an inmate with a sink hose at the bakery sink station; Lauria engaged in horseplay with another staff member (Officer Polk) in the inmate break area, involving pinching and poking each other in the arm and face; and Lauria impeded an inmate from rolling a cart into a storage area. This investigation into Lauria's workplace behavior was commenced after an anonymous note believed to have come from an inmate, indicated that she was engaging in inappropriate behavior with mostly black inmates in the food service area. Many inmates participated in preparing meals and cleaning up in the food service area of RGCI.

After the anonymous note was received RGCI commenced an investigation of Lauria's behavior. During an interview she admitted some of the behavior but contended she did not remember some of the alleged behavior because she claimed she had memory issues because of a slip and fall at work that occurred in January 2012 when she lost consciousness and was off work

for 3 to 4 months. Lauria indicated that if a video showed that she engaged in behavior that she could not recall, that she probably committed the behavior because the video would not lie. The original discipline decided by the hearing examiner was to suspend Lauria for 10 days, but the respondent DOC appealed to the WERC and after a review hearing the WERC authorized dismissal and that is the action Lauria appeals in the above case.

The WERC correctly states the applicable law concerning judicial review of this administrative decision so there is no need to repeat that. I agree that WERC's interpretation of Wisconsin civil service law is entitled to great weight deference, i.e. WERC conclusions of law must be affirmed if they are reasonable. I agree with WERC's counsel that its interpretation is entitled to great weight deference for all the reasons set out on page 11 of its brief. Even if the due weight standard of review is appropriate, that still supports the decision made in this case by the WERC.

While I do not find the initial discipline of 10 days suspension inappropriate, I also agree that it is WERC's decision that is subject to administrative review, and as long as a reasonable basis exists to find "just cause" to support WERC's decision it is binding on judicial review. "Just cause" exists when employee's conduct has a tendency to impair the performance of the employee's duties, or the efficiency of the group with which the employee works. It also exists for conduct unbecoming of an employee that violates important and fundamental standards of propriety and that is so flagrant or serious that retaining the employee will undermine the public confidence in state service. I agree that the "frosting caper" that she admitted, in a vacuum, is not a particularly heinous transgression when no physical harm occurred to anyone. But it does represent truly inappropriate behavior when committed with inmates. The same could be said about using a sink hose sprayer to get inmate(s) wet. Horseplay is a very good description of that behavior. Petitioner seems to contend that WERC improperly determined that Lauria engaged in fraternization with inmate(s). I agree with WERC that there is no dispute that she engaged in horseplay with the inmates and that her discharge letter noted that horseplay with inmates is considered a form of fraternization. Whether fraternization is defined by DOC's rules or not is immaterial because the use of that word, if not a synonym, is a descriptively accurate word which sums up Lauria's behavior. WERC agreed with DOC when it concluded that Lauria's conduct crossed the line of formality and detachment that necessarily must exist between inmates and prison employees. That is a well taken reasonable conclusion and a reasonable inference from that conclusion is that Lauria's conduct could have created a security risk.

It is also important to note that the alleged behavior occurred on successive days. While it is not absolutely clear to me what occurred on December 24 from that which occurred on December 25, 2013, it is clear that the alleged behavior happened on consecutive days. This demonstrates a pattern, albeit short, of repeating the horseplay or inappropriate behavior. While some of the behavior was difficult to see on tape, it nevertheless occurred and in an area where inmates were entitled to access. (I believe this was the poking and pinching with Officer Polk.) While it is undisputed that no damage, injury or chaos resulted from said behavior, good fortune does not diminish the extent of her misconduct. It is not unreasonable for DOC to believe that constant vigilance by inmate workers/employees is imperative to maintain an environment that ensures safety for all individuals working in the food service area. It is not unreasonable to

extrapolate that seeing Lauria or any other worker behave in that fashion on successive days could be reasonably construed by inmate workers that horseplay behavior would be encouraged or receptively received by Lauria or other workers which is contrary to maintaining the discipline necessary to ensure the successful operation of this type of service in a penal institution.

The least onerous ground for WERC's decision, in my opinion, was its belief that Lauria failed to provide complete and accurate information during the investigation. This was based on her claim that her memory was faulty because of her head injury. DOC and RGCI believe that it is important to trust reports from staff. Academically, I agree. Lauria's memory and recollection of her horseplay was incomplete initially when she said she didn't remember all of the allegations but video would tell the truth. After being shown the video of her behavior she admitted she was guilty of horseplay and did not exercise good judgment.

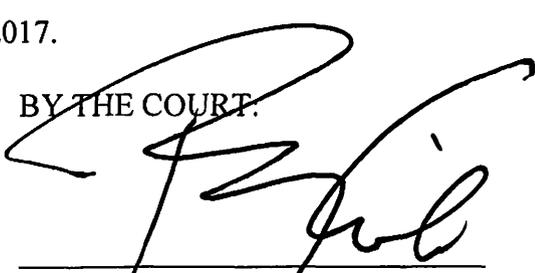
I'm equivocal about Lauria's contention that her head injury in 2012 was the cause of her not remembering all of her horseplay. If she has such a medical consequence from her slip and fall, it is not synonymous with saying she lost the mental acuity to intentionally shade her recollections of her behaviors in order to cast herself in the best light. WERC saw her memory lapse(s) as the later. No medical record/evidence excludes WERC's position about Lauria's recalcitrant cooperation.

Regardless, the real crux of Lauria's transgressions was the horseplay/practical jokes that WERC found collapsed the professional boundaries necessary between staff and inmates. As such, WERC was legally entitled to find that Lauria's behavior constituted serious acts of misconduct and justified a more serious level of discipline than suspension, even if this was Lauria's first disciplinary action. As stated in her discharge letter, as a correctional food service leader, she was responsible for setting an example for inmate workers she supervised. Her repeated horseplay breached the correct level of decorum she was required to meet. WERC imposed an appropriate reasonable discipline based upon the evidence presented.

I adopt the position of WERC in all respects and make it my own. The law does not allow substitution of a different reasonable opinion by the judge conducting the judicial review as long as there is substantial evidence to support the findings and conclusions that were made by an administrative agency. Attorney Rice is directed to prepare the appropriate judgment in conformance herewith.

DATED this 13th day of January, 2017.

BY THE COURT:



Hon. Philip M. Kirk
Circuit Court Branch I