

SHARON ZEICU,
Appellant,

v.

**Secretary, DEPARTMENT OF
CORRECTIONS,**
Respondent.

**RULING
ON MOTIONS**

Case No. 97-0013-PC

This matter arises from an appeal of a discharge, filed by the appellant, Sharon Zeicu, on February 20, 1997. On July 25, 1997, the Department of Corrections (DOC) filed a motion to compel the appellant to answer certain questions she refused to answer during the July 17, 1997 deposition proceeding, and if they prevail to award attorney fees and costs. In opposition of the motion, appellant cross-filed a motion to limit examination and discovery.

The DOC terminated appellant from employment on February 15, 1997, for filing four separate employment applications wherein she denied being convicted of any offense. In the letter of termination, DOC alleged appellant had been convicted of prostitution, criminal trespass and two city ordinance violations for retail theft.

At an unemployment compensation case hearing, held April 1, 1997, DOC was made aware that in 1980 or 1981, appellant had been indicted for homicide and that those charges were dismissed after she testified as a witness to the homicide. During her deposition, held July 17, 1997, appellant answered many questions relating to the homicide indictment, but refused to answer others. From the transcript of the deposition, the questions and answers to the questions at issue are:

Q. Now, how did the circumstances develop that led to the murder?

THE WITNESS. Excuse me. Does that have anything to do --

APPELLANT'S COUNSEL . We are not answering that question.
Period. . . .

Q. Now, when we got to your unemployment compensation hearing a few weeks ago - a few months ago, do you recall testifying at that hearing?

A. Yes. I recall that hearing.

Q. And do you recall bringing forward a certification of some kind from Houston, Texas, in regard to murder charges against you which had been dismissed?

A. Yes. There was a form. [My attorney] has all that information.

Q. And is that -

A. Or I was seeking the information. I believe I had it at that time then.

Q. Is that the same murder about which you have now chosen not to testify or was that a different murder?

A. It's the same case. There was only one, one.

Q. Weren't you charged with a murder?

A. I was served an indictment.

Q. For a murder?

A. Correct. . . .

Q. Whose murder were you indicted for?

APPELLANT'S COUNSEL : Again, we are done answering questions. She is advised not to answer that question. (Transcript, pages 21, 24, 25)

Respondent argues that it has a right to obtain the underlying facts of this homicide because they relate to the several reasons for appellant's termination: providing untruthful, inaccurate, and incomplete information to management. Respondent argues that its questions during the deposition were linked to appellant's defense.

In opposition, appellant argues that from November 21, 1996, through January 31, 1997, she was involved in four investigatory hearings and two pre-disciplinary hearings, where she was questioned extensively regarding her criminal record, and that DOC had a copy of her criminal record, including the homicide charge, for most, if not all, of those proceedings. Referring to the homicide incident, appellant claims she testified at that proceeding and afterwards, when she was told her charges were dismissed, she believed the dismissal included prior prostitution arrests.

Section 804.01(2)(a), Stats., authorizes discovery regarding "any matter, not privileged, which is relevant to the subject matter involved in the pending action":

It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

Here, appellant was discharged based on allegations contained in her letter of termination. The allegations leading to appellant's termination do not include the homicide incident, but respondent claims the homicide is linked to appellant's defense.

The question is whether information regarding the homicide victim and the circumstances surrounding the murder appears "reasonably calculated to lead to the discovery of admissible evidence."

The Commission agrees with respondent that the requested information is reasonably related to appellant's defense. Appellant contends she believed the charges of prostitution were withdrawn when the prosecutor chose to dismiss the homicide charge against her. Respondent is entitled to ask the two questions which are the subject of respondent's motion because they relate to the reasonableness of appellant's alleged belief. Information about the events which served as the basis for the prostitution and homicide charges could tend to show that it would have been less or more likely for someone in appellant's position to have believed that the prostitution charges had been withdrawn. Based on the deposition record and in consideration of the briefs submitted by the parties, the Commission believes the questions at issue are not inappropriate .

ORDER


Respondent's motion to compel discovery is granted and appellant's companion motion is denied. The parties will be provided an opportunity to request a hearing or submit further information relating to respondent's request for an award of expenses for its motion, pursuant to §804.12(1)(c), Stats.

Dated: September 10, 1997.

STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson


DONALD R. MURPHY, Commissioner


JUDY M. ROGERS, Commissioner

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