

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

KARRIE A. SCHMITTINGER, Appellant,

vs.

DEPARTMENT OF CORRECTIONS, Respondent.

Case 168
No. 71812
PA(adv)-261

DECISION NO. 33986-B

Appearances:

Troy Bauch, Field Representative, Wisconsin State Employees Union, AFSCME Council 40, AFL-CIO, 8033 Excelsior Drive, Suite C, Madison, Wisconsin, appearing on behalf of the Appellant, Karrie Schmittinger.

Paegge Heckel, Labor Relations Specialist-Chief, Office of State Employment Relations, 101 East Wilson Street, Fourth Floor, Madison, Wisconsin, appearing on behalf of the Respondent, State of Wisconsin Department of Corrections.

Ms. Schmittinger appeals a one-day suspension issued on July 20, 2012. A timely grievance was filed and the matter was heard on May 8, 2013 before Examiner Lauri A. Millot. Examiner Millot issued a proposed decision on September 9, 2013 recommending that the suspension be upheld. On October 8, 2013, Schmittinger's representative filed a timely appeal to the Commission. After reviewing the record in its entirety, together with argument of the parties, the Commission issues the following:

FINDINGS OF FACT

1. Respondent Department of Corrections (hereinafter referred to as "DOC") is an agency of the State of Wisconsin and administers the Division of Community Corrections.
2. The Division of Community Corrections (hereinafter referred to as "DCC") is responsible for the supervision of released offenders who are in probation or parole status.

3. DOC employs Probation and Parole Agents who are responsible for offender supervision.

4. Appellant Karrie A. Schmittinger has been employed by DOC for 11 years as a Probation and Parole Agent and, at all times material hereto, worked out of the Lac du Flambeau office.

5. Schmittinger supervised offender Justin Taddey for eight months in 2008 while she was employed at the Price County office of the DCC.

6. At that time, Justin Taddey resided with and worked for his father, David Taddey.

7. In February or March 2012, Schmittinger began dating David Taddey.

8. In February and March 2012, Justin Taddey was under the supervision of the DOC.

9. The DOC maintains a policy requiring employees to disclose relationships with various relatives of offenders.

10. Schmittinger knew or should have known Justin Taddey's status.

11. Schmittinger failed to disclose her relationship with David Taddey to the DOC contrary to the work rule and received a one-day disciplinary suspension for failing to do so.

Based on the above and foregoing Findings of Fact, the Commission makes and issues the following

CONCLUSIONS OF LAW

1. The Wisconsin Employment Relations Commission has jurisdiction over this matter pursuant to § 230.44(1)(c), Stats.

2. There is just cause for the disciplinary suspension imposed upon Schmittinger.

Based on the above and foregoing Findings of Fact and Conclusions of Law, the Commission makes and issues the following

ORDER

The disciplinary action imposed upon Schmittinger is affirmed.

Dated at Madison, Wisconsin, this 23rd day of January 2014.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott, Chairman

Rodney G. Pasch, Commissioner

**MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER**

The Department of Corrections maintains a work rule which limits social relationships between employees and offenders who are under the supervision of the DOC. The work rule also requires the reporting of relationships with various relatives of offenders. The DOC at its discretion may “exempt” the relationship with the relatives or bar it outright. The rule limits not only personal relationships but employment and residence relationships as well.

The rule is broad in its sweep but such “anti-fraternization” policies are common in penal organizations. *See gen. Akers v. McGinnis*, 352 F.3d 1030 (6th Cir. 2004). In any event, Schmittinger does not challenge the rule itself or its application to her. Schmittinger’s claim is simply that she was unaware of the rule and, alternatively, even if she was aware of the rule, she would not have known that Justin Taddey was a current “offender” at the time she began dating David Taddey.

The claimed lack of knowledge of the work rule is a non-starter. The evidence demonstrated that Schmittinger had received the rule and acknowledged having read and understood it. More importantly, given the high risk involved with employment in the corrections field, it is particularly important that employees familiarize themselves with work rules and policies.

As to Schmittinger’s claim that she was unaware of Justin Taddey’s status as an offender when she began dating his father, we conclude that she knew or should have known of his status. The same is true of the assertion that she was unaware that David Taddey was the father of Justin Taddey.

Schmittinger had supervised Justin Taddey for eight months and then revoked his probation. If his last name was Smith and she was working in Milwaukee, the failure to make the connection may have been plausible. Here, we have an unusual last name that should have triggered some connection. In the investigatory interview conducted by the DOC, Schmittinger acknowledged that she knew Justin Taddey was then currently under supervision and that she knew David Taddey was the father. Her explanation was that she thought the policy only applied to relationships with the offender.

Clearly, Schmittinger knew that she was dating the father of an offender. In fact, it was the offender who alerted the DOC to the relationship. It is Schmittinger’s obligation as an employee to know the rules and follow them.

While the result may appear harsh – the budding romance is extinguished in addition to the disciplinary action, it is not our job to second guess the DOC’s decision. As the Seventh Circuit deserved in *Keeney v. Heath*, 57 F.3d 579, 581 (1995):

Judges should be cautious about disparaging disciplinary and security concerns expressed by the correctional authorities. American jails are not safe places, and judges should not go out of their way to make them less safe.

That concern is no less important as it applies to the probation and parole system.¹

Dated at Madison, Wisconsin, this 23rd day of January 2014.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott, Chairman

Rodney G. Pasch, Commissioner

¹ Schmittinger offered the testimony of several agents who had various types of contact with offenders or their relatives. None of the circumstances were comparable to Schmittinger's situation. Further, the fact that a coworker avoided discipline without showing employer knowledge is of no evidentiary value.