

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

MATTHEW SEILER, Appellant,

vs.

STATE OF WISCONSIN, DEPARTMENT OF CORRECTIONS, Respondent.

Case 171
No. 71824
PA(adv)-265

DECISION NO. 33993-E

Appearances:

Kurt Kobelt, Arellano & Phebus S.C., 1468 N. High Point Road, Suite 102, Middleton, Wisconsin, appearing on behalf of Matthew Seiler.

Andrea Olmanson, Department of Corrections, 3099 E. Washington Avenue, P.O. Box 7925, Madison, Wisconsin, appearing on behalf of the State of Wisconsin, Department of Corrections.

DECISION AND ORDER ON FEES AND COSTS

On March 11, 2016, the Wisconsin Employment Relations Commission issued a Decision and Order concluding the State of Wisconsin, Department of Corrections did not have just cause to discharge Mathew Seiler but did have just cause to impose a ten-day suspension. On April 11, 2016, Seiler filed a motion for attorneys' fees and costs pursuant to § 227.485, Stats., and the State filed a statement in opposition to the motion on April 22, 2016.

Having considered the motion, we conclude that the State was substantially justified in taking its position in this litigation.

NOW, THEREFORE, it is:

ORDERED

The motion for attorneys' fees and costs is denied.

Signed at the City of Madison, Wisconsin, this 20th day of July 2016.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott, Chairman

Rodney G. Pasch, Commissioner

James J. Daley, Commissioner

**MEMORANDUM ACCOMPANYING DECISION AND
ORDER ON FEES AND COSTS**

Our ability to award attorneys' fees and costs in Chapter 230 discipline cases is limited by the provisions of § 227.485(3), Stats. A qualified prevailing party is entitled to fees and costs "unless the hearing examiner finds that the state agency which is the losing party was substantially justified in taking its position or that special circumstances exist that would make the award unjust."

To establish that its position was substantially justified, the State must demonstrate:

- (1) a reasonable basis in truth for the facts alleged;
- (2) a reasonable basis in law for the theory propounded; and
- (3) a reasonable connection between the facts alleged and the legal theory advanced.

Sheely v. Wisconsin Department of Health & Social Services, 150 Wis.2d 320, 337, 442 N.W.2d 1 (1989).

In our March 11, 2016 Decision and Order, we concluded that the State had proven Seiler's persistent dishonesty during its disciplinary investigation. Therefore, the State demonstrated a reasonable basis in truth for that alleged fact. In our decision, we further held that there are some instances in which dishonesty (particularly by a correctional officer) can warrant discharge under a just cause standard. Our holding in that regard establishes that the State has also demonstrated a reasonable basis in law for its disciplinary theory and a reasonable connection between the facts and that theory.

Given the foregoing, we conclude that the State was substantially justified in taking its position in this litigation and hereby deny the motion for attorneys' fees and costs. Because dishonesty by a correctional officer is serious misconduct that can be a reasonable basis for discharge, the fact that we rejected other bases advanced by the State for Seiler's discharge does not provide a persuasive basis for reaching a different conclusion.

We hereby incorporate this ruling into our March 11, 2016 Decision and Order.

Dated at the City of Madison, Wisconsin, this 20th day of July 2016.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott, Chairman

Rodney G. Pasch, Commissioner

James J. Daley, Commissioner