

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

RANDY GAGE, Appellant,

vs.

DEPARTMENT OF CORRECTIONS, Respondent.

Case 198
No. 72016
PA(adv)-298

DECISION NO. 34086-A

Appearances:

Randy Gage, 3323 Sundet Road, Eau Claire, Wisconsin, appearing on his own behalf.

Paege Heckel, Chief Labor Relations Specialist, Office of State Employment Relations, 101 East Wilson Street, Madison, Wisconsin, appearing on behalf of Respondent Department of Corrections.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Randy Gage filed an appeal with the Wisconsin Employment Relations Commission on March 7, 2013, contesting his discharge by the Department of Corrections.

By Order dated March 26, 2013, the Commission designated Lauri A. Millot as Hearing Examiner.

The issue to be decided is as follows:

Whether there was just cause for the action of discharging the Appellant by letter dated November 26, 2012?

The matter was heard on July 30, 2013, in Eau Claire and July 31, 2013, in Madison before Hearing Examiner Millot. The parties filed briefs and responsive briefs, the last of which was received by January 3, 2014.

On March 6, 2014, Examiner Millot issued Proposed Findings of Fact, Conclusions of Law and Order concluding that there was just cause for the Appellant's discharge. No objections

were filed as to the proposed decision and the matter became ripe for Commission action on April 7, 2014.¹

Being fully advised in the premises, the Commission makes the following:

FINDINGS OF FACT

1. The Department of Corrections (hereinafter referred to as “DOC”) is an agency of the State of Wisconsin and administers the Division of Adult Institutions (hereinafter referred to as “DAI”), which provides medical, dental, and mental health services to inmates housed in correctional institutions including the Chippewa Valley Correctional Treatment Facility (hereinafter referred to as “CVCTF”). CVCTF is a 180 bed minimum security facility that principally provides short-term alcohol treatment services to inmates.

2. Appellant Randy Gage (hereinafter referred to as “Appellant”) was employed by the DOC for seven years in the capacity of Psychologist Licensed until his termination effective November 26, 2012.

3. Appellant initiated an impromptu counseling session with inmate RS on August 6, 2012, utilizing profanity and self-disclosure of his personal sexual assault history which caused RS discomfort. RS ultimately reported the interaction prompting the institution to investigate. The investigation expanded from solely the content of the interaction between Appellant and RS to a review of inmate case files which revealed that Appellant had failed to document all inmate mental health service contacts, failed to document inmate diagnoses, failed to provide required mental health services to inmates classified with serious mental health issues, and failed to meet the minimum standards for clinical contacts.

4. Appellant was discharged for violations of DOC Work Rules #1 – Insubordination, #2 – Failure to comply with written policies or procedures, #3 – Inattentiveness while on duty, #4 – Negligence, #6 – Falsification of records, #12 – Verbally threatening, intimidating, demeaning or interfering with inmate, and #20 – Failure to comply with rule or regulation of professional licensing agency.

5. Appellant deviated from DAI policy and procedure as it related to inmate clinical service provision and documentation in violation of Work Rule #2.

6. Appellant was inattentive in violation of Work Rule #3.

7. Appellant provided inmates with copies of documents, free of charge, in violation of Work Rule # 2.

¹Aside from certain editing, the text of this decision is identical to the text of Examiner Millot’s proposed decision. While we may have used different language if we were to write this decision ourselves, we find it unnecessary to do so here.

8. Appellant used profanity and sexually explicit self-disclosure as a technique during mental health sessions with inmates, including RS, in violation of Work Rule #2.

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 was just cause within the meaning of § 230.34(1)(a), Stats., for the Appellant's discharge.

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

ORDER

The decision to discharge is affirmed and the appeal is dismissed.

Dated at Madison, Wisconsin, this __20th day of May 2014.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott, Chairman

Rodney G. Pasch, Commissioner

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

Section 230.34(1)(a), Stats., provides in pertinent part the following as to employees of the State of Wisconsin:

An employee with permanent status in class ... may be removed, suspended without pay, discharged, reduced in base pay or demoted only for just cause.

Section 230.44(1)(c), Stats., provides that a State employee with permanent status in class:

... may appeal a demotion, layoff, suspension, discharge or reduction in base pay to the commission, if the appeal alleges that the decision was not based on just cause.

Gage had permanent status in class at the time of his discharge, and his appeal alleges that the discharge was not based on just cause.

The State has the burden of proof to establish that the employee was guilty of the misconduct and whether the misconduct constitutes just cause for the discipline imposed. *Reinke v Personnel Board*, 53 Wis.2d 123, 133 (1971); *Safransky v Personnel Board*, 62 Wis.2d 464, 472 (1974). The Commission's role is to make findings of fact which it concludes are "proven to a reasonable certainty, by the greater weight of credible evidence." *Reinke* at 138; *Safransky* at 472.

DOC disciplined Appellant for violating multiple work rules. Appellant admitted to three of the six charges (reflected in Findings of Fact #5 through #7), but contests the discharge asserting that the DOC was understaffed, that he performed his functions to the best of his ability given the staffing deficiency and lack of clerical assistance, and that his clinical work with inmate RS was entirely appropriate. Appellant further argues that his discharge was excessive.

DOC's interest in Appellant was triggered by Appellant's interaction with inmate RS on August 6, 2012. That interaction, which started with a simple clerical function and expanded into a two and one-half hour discussion, focused on Appellant's belief that the inmate was the victim of sexual assault. Appellant utilized an unconventional counseling technique which, in concert with the topic of the discussion and the inmate's admission, caused the inmate conflict and discomfort. Had RS not disclosed his discomfort to CVCTF staff, the DOC would not have initiated a total review of Appellant's case files and, therefore, would not have discovered the absence of documented mental health services in inmate client files. Self-disclosure is a recognized mental health service delivery technique. Appellant, as a professional, exercised discretion when electing to rely on this technique during his discussion with RS. However, Appellant failed to appropriately use this technique.

Appellant maintains that DOC's woefully inadequate staffing created an untenable situation wherein he was forced to choose between providing services and documenting services. However, the DOC was aware of the limited mental health human resources and, accordingly, prioritized Appellant's work responsibilities. The evidence establishes that Appellant provided some level short of the required mental health treatment service contacts and failed to document said mental health services in violation of both DAI policy and procedure and the norms of Appellant's profession.

Appellant points out the vast disparity in resources available to him, in comparison to the DOC, to defend his actions and ultimately his termination. There is no question that DOC had access to a greater number of DOC professional staff members to prepare and participate in Appellant's termination and appeal and that Appellant independently challenged his termination. But, there is no rule, policy, statute or standard which requires that both sides to a dispute are entitled to equal representation.

The evidence establishes that the Appellant was guilty of multiple work rule violations. The most egregious violations amount to a denial of mental health services to inmate clients. The severity of the violations establish just cause for the discharge.

Dated at Madison, Wisconsin, this 20th day of May 2014.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott, Chairman

Rodney G. Pasch, Commissioner