

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

ANGELINE WHITE, Appellant,

vs.

DEPARTMENT OF CORRECTIONS, Respondent.

Case 229
No. 72520
PA(adv)-352

DECISION NO. 34947-A

Appearances:

Jim Underhill, Director-Bureau of Labor Relations, Office of State Employment Relations, 101 East Wilson Street, 4th Floor, Madison, Wisconsin, appearing on behalf of the Department of Corrections.

Gordon Leech, Attorney/Managing Member, Consumer & Employment Law Center of Wisconsin, 4701 North Port Washington Road, Suite 101, Milwaukee, Wisconsin, appearing on behalf of Angeline White.

FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

Angeline White was discharged by the State of Wisconsin, Department of Corrections. She appealed her discharge to the Wisconsin Employment Relations Commission. Hearing on the discharge appeal was held in Glendale, Wisconsin, on June 25, 2014, before Examiner Raleigh Jones. The parties filed briefs which were received July 25, 2014.

On August 13, 2014, Examiner Jones issued a proposed decision upholding the discharge. No objections to the proposed decision were filed, and the matter became ripe for Commission action on September 13, 2014.

Having reviewed the record, the following findings are made.

FINDINGS OF FACT

1. Angeline White was hired as a Correctional Officer by the Wisconsin Department of Corrections (DOC) on January 5, 2009. She was promoted to Sergeant on November 17, 2011, and was working in that capacity when she was discharged on November 16, 2012.

2. DOC has a policy (Executive Directive 16 – Fraternalization Policy) which prohibits relationships between DOC employees and anyone under the legal custody or supervision of DOC. Executive Directive 16 requires that DOC employees report any current or contemplated relationship that might violate the policy and provides a specific procedure for seeking an exemption from the prohibitions.

3. On December 5, 2011, White signed a statement acknowledging receipt of the Fraternalization Policy. A portion of the statement provides:

I understand it is my responsibility to report any possible conflicts with the policy to my supervisor. If necessary, I will request an exception to the policy.

4. White had a serious personal relationship which was prohibited by Executive Directive 16. She did not report the relationship and did not seek an exemption for that relationship.

5. DOC discharged White for the violations of Executive Directive 16 identified in Finding of Fact No. 4.

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

CONCLUSION OF LAW

1. The State of Wisconsin, Department of Corrections, had just cause within the meaning of § 230.34(1)(a), Stats., to discharge Angeline White for her violation of Executive Directive 16.

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

ORDER

Pursuant to § 230.44(4)(c), Stats., the discharge of Angeline White is affirmed.

Signed at the City of Madison, Wisconsin, this 27th day of October 2014.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott, Chairman

Rodney G. Pasch, Commissioner

**MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSION 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.

Angeline White had permanent status in class at the time of her discharge and her 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 (1971); *Safransky v Personnel Board*, 62 Wis.2d 464 (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." As to discharge, the Court in *Safransky* observed that:

Only if the employee's misconduct has sufficiently undermined the efficient performance of the duties of employment will "cause" for termination be found.

Here, the State has met its burden of proof to establish that White was guilty of misconduct by violating the Fraternalization Policy she was obligated to be aware of and to follow. White concedes as much but argues that the State has not met its burden to establish that discharge is the appropriate level of discipline for her misconduct.

White first asserts that discharge is too severe a penalty because she honored the spirit of the Fraternalization Policy. She notes that she did report her initial contact with the individual once she learned he was under DOC supervision. In effect, she argues that thereafter it became the State's obligation to follow-up with her to determine if the initial contact had developed into a serious relationship. We disagree. It is the employee who has the obligation to report relationships covered by the Fraternalization Policy. Reporting an initial contact falls far short of reporting the relationship that followed. Further, in addition to the failure to report, White never sought an exemption for the relationship. She clearly did not honor the spirit or the letter of the Fraternalization Policy.

White contends that discharge is too severe a penalty for her violation of the policy. She correctly notes that she did not attempt to influence the manner in which the individual was treated by DOC nor did she force the individual into the relationship. In her view, this distinguished her situation from others who were discharged for violating the policy.

The evidence does not support the conclusion that all other violations of the policy involved influence or coercion. More importantly however, the purpose of the policy is to avoid employees placing themselves in situations where they may seek to influence the manner in which individuals under DOC supervision are treated. Furthermore, once the relationship becomes known to others, it can permanently undermine the employee's credibility. Therefore, we are satisfied that the State has met the *Safransky* test of establishing that White's misconduct "has sufficiently undermined the efficient performance of the duties of employment" so as to create "just cause" for her discharge.

Signed at the City of Madison, Wisconsin, this 27th day of October 2014.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott, Chairman

Rodney G. Pasch, Commissioner