

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

MARK PETERSON, Appellant

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondents.

Case 265
No. 73196
PA(adv)-414

DECISION NO. 35031-A

Appearances:

Mark Peterson, W956 Main Laney Drive, Pulaski, Wisconsin, appearing on behalf of himself.

William H. Ramsey, Department of Administration, 101 East Wilson Street, 10th Floor, P.O. Box 7864, Madison, Wisconsin, appearing on behalf of Respondent State of Wisconsin Department of Corrections.

DECISION AND ORDER

Mark Peterson filed a timely appeal with the Wisconsin Employment Relations Commission disputing the decision of his employer, the State of Wisconsin Department of Corrections, to terminate his employment. The hearing in the matter was held on November 24 and 25, 2014, in Fond du Lac, Wisconsin, before Examiner Lauri A. Millot. Examiner Millot issued her proposed decision on July 8, 2015. The DOC filed timely objections and a brief in support. The Commission has reviewed the record in its entirety and consulted with Examiner Millot regarding her credibility impressions.

Based on the record in its entirety, the Commission issues the following Findings of Fact, Conclusions of Law and Order:

FINDINGS OF FACTS

1. Appellant Mark Peterson was employed as a Correctional Sergeant at the Drug Abuse Correctional Center (DACC) located in Winnebago, Wisconsin.

2. Respondent State of Wisconsin Department of Corrections is a state agency responsible for the treatment and supervision of inmates in the state correctional system.

3. The DACC is a minimum security facility housing 300 inmates and approximately 95 staff.

4. Peterson was discharged from his position on March 3, 2014, based upon a pattern of harassment, intimidation, and threatening behavior directed at supervisors and coworkers in violation of DOC work rules.

5. During the course of his employment from at least 2008 until his discharge, Peterson did in fact harass, threaten, and attempt to intimidate coworkers and supervisors both at work and while on administrative leave.

6. Peterson's pattern of threats, intimidation, and harassment was primarily although not exclusively directed at female employees of DOC.

7. Peterson's conduct had the consequence of interfering with the operation of the DACC.

Based on the above and foregoing Findings of Fact, the Commission 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, within the meaning of § 230.34(1)(a), Stats., for the decision to terminate the employment of Appellant Mark Peterson.

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

ORDER

The decision to terminate Appellant Mark Peterson is affirmed.

Signed at the City of Madison, Wisconsin, this 17th day of September 2015.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott, Chairman

Rodney G. Pasch, Commissioner

James J. Daley, Commissioner

MEMORANDUM ACCOMPANYING DECISION AND ORDER

Factual Background

Even a casual review of the record evidence and transcript of proceedings leaves one with the inescapable conclusion that Peterson was an incorrigible bully bent on using any means available to challenge and attack anyone who questioned his behavior.

In 2007 Captain Nancy Tierney had occasion to investigate three minor complaints regarding Peterson's behavior. Peterson became upset and attempted to ridicule Tierney and generally avoid direction from her. Over the course of the next two years, he circulated information about Tierney to fellow staff members and refused to follow directives. Peterson filed false reports about Tierney accusing her of fraternizing with inmates. He filed open records requests seeking her personnel records from her previous employers. In Tierney's view, Peterson became obsessed with her and she felt threatened and intimidated to the point of notifying law enforcement.

In October of 2012, DOC Social Worker Samantha Meyer filed a complaint against Peterson who had summoned her to a meeting in a breakroom and then denied her exit from the room. Several weeks later, Meyer and Social Worker Stephanie Henning reported that Peterson was "watching" them in a manner that they believed was inappropriate. These two incidents led to a multiyear obsession by Peterson which culminated in the issuance of an anti-harassment injunction of four years duration against Peterson on behalf of Meyer. The order was issued on November 19, 2014, after Peterson was terminated, but corroborates Meyer's fear of Peterson.

While Meyer's original complaints were being investigated in late 2012 into 2013, Peterson contacted Warden Quala Champagne and left a message threatening to contact police about further investigation of the Meyer report. During that period, Peterson also made open records requests regarding Captain Randy Sprangers, a supervisor at the DACC. On February 13, 2014, Peterson sent a long, rambling email to Edward Wall, Secretary of DOC, claiming that management at the DACC was harassing him and generally attacking Captain Sprangers.

On March 16, 2013, Peterson was placed on administrative leave at his own request. He indicated he was "agitated." Peterson reported he was on the brink of taking physical action against inmates. In the view of Captain Scott Taphorn, Peterson had developed a paranoid ideation with regard to inmates looking at him. He also focused, in meetings with Captain Taphorn, on complaints made by Meyer and Tierney and alleged mistreatment by Sprangers. After two such interviews Peterson was placed on administrative leave.

Peterson's focus on coworkers did not end with his departure from work. On May 20, 2013, the Village of Brandon Police Department began investigating the distribution of a

fraudulent DACC incident report which was circulated to local businesses. The “report” falsely portrayed Henning as having fraternized with an inmate. Henning was the DACC social worker who joined Meyer in her complaints about Peterson. Henning believed that Peterson had prepared and circulated the document.¹ The Winnebago County Sheriff’s Department investigated another falsified communication purportedly from Henning to a coworker containing derogatory information about another coworker. Henning believes Peterson was behind that effort as well.

On September 4, 2013, after a lengthy leave of absence, Peterson was summoned in to the DACC in order to facilitate his return to work. Peterson received a verbal warning known as a “job instruction” concerning his conduct surrounding the investigation of Meyer’s complaint over the October 15, 2012 confrontation.² Peterson repeatedly referred to Meyer as the “accuser,” and he was instructed to avoid interaction with the staff of social workers. He responded by indicating that he “would not take it lightly if Meyer crossed his path.” Peterson indicated he did not want Meyer to approach him and that if she were being attacked by an inmate he would call someone else. Peterson stated “he would dig up facts” and continued his tirade against Meyer and Henning. Peterson also indicated he would not take direction from Sprangers. Following the meeting, the decision was made to place Peterson back on administrative leave. Additional investigation was undertaken regarding the incidents that occurred while he was on the first leave.

Being placed back on leave after an absence of many months did not deter Peterson from continuing to harass other employees. In October of 2013, he left a threatening message for DOC Human Resources Director Andrea Bambrough. Peterson left her a phone message stating that if she did not call him back “I’m just going to have people calling you, possibly the police.” Similarly, the institution’s Personnel Director Kari Heilman received a message from Peterson demanding immediate resolution of a medical records issue or he would “contact the police in the morning.” The tone of both calls was threatening and intimidating.

Peterson was summoned back to work as part of an investigation of Meyer’s complaint, and he persisted with his obsessive behavior. He threatened to “escalate” and warned that he would continue to fight for up to ten years and that it was “personal.” The overall comments reflect an individual who had become consumed by the matter of the Meyer complaint.

On the whole, the record reflects the testimony of multiple employees, male and female, who were fearful of their personal safety. Even after Peterson’s discharge, Meyer felt compelled to obtain an injunction from the circuit court to avoid having to face Peterson in a hearing.

¹ During the DACC’s initial investigation of this incident, Henning did not name Peterson. She explained she did so out of fear of retaliation by Peterson.

² Peterson had taken the offensive approach when confronted with the Meyer complaint. He insisted that Meyer take a polygraph and went so far as to contact the Oshkosh Police Department in his quest for a polygraph.

Legal Analysis

At the onset, it is important to note that Peterson submitted no evidence nor did he testify on his own behalf. The State's case is basically un rebutted. We also note that the employment site is a penal institution, and we agree that it is very important for staff to be able to work in an environment free from harassing conduct by coworkers. Employees in a prison face the additional pressures of dealing with hundreds of convicted felons. As a witness noted, prison staff depend on coworkers for their collective safety far more than in a regular employment setting.

The examiner in this matter first went awry by analyzing this matter based upon Title VII employment discrimination law as interpreted by the now defunct state Personnel Commission. Prior to 2004, the state Personnel Commission had jurisdiction over Wisconsin Fair Employment Act claims raised by state employees against state employers. That body's decisions interpreting the WFEA may have relevance to current claims under § 111.31, *et seq.*, Stats., but have no bearing on just cause proceedings before this agency.³ The examiner's concern with whether Peterson's harassment of others was sexual or gender based is irrelevant. The point is that the employer maintained a rule generally prohibiting harassment and also barring conduct that might be considered "abusive, disorderly or disruptive." While the rule is rather unartfully drafted, it clearly prohibits harassing behavior. The examiner's decision to engraft a sexual or gender element on to the rule is simply incorrect.

The examiner also added a requirement that the employer prove that Peterson's behavior "unduly interfered with an individual's work performance" which while relevant to an employment discrimination proceeding has no bearing here. To be sure under *Safransky v Personnel Board*, 62 Wis.2d 464, 215 N.W.2d 379 (1974), the employer must demonstrate generally that the conduct would have a tendency to impair [Peterson's] performance or the efficiency of the group." That however is a significantly different burden than demonstrating that Peterson's conduct "unreasonably interfered with (another) individual's work performance." Clearly, there is no basis nor law or fact for imposing such a burden upon the state employer in this situation.⁴

In our review, we examine the entire course of Peterson's conduct and conclude that he engaged in a pattern of harassment against coworkers. Ultimately, the DOC had no alternative but to end the employment of Peterson.

³ Wisconsin Fair Employment Act claims by state employees were moved to the Equal Rights Division of the Department of Workforce Development in 2004 when the Personnel Commission was abolished.

⁴ The termination letter made a reference to provisions of DOC Executive Directive 7 which in turn references the "purpose or effect of unreasonably interfering with a person's work performance" language. That language, however, does not create a requirement that DOC prove the existence of such intent.

Signed at the City of Madison, Wisconsin, this 17th day of September 2015.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott, Chairman

Rodney G. Pasch, Commissioner

James J. Daley, Commissioner