

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

MARY JOAS, Appellant,

vs.

WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case 270
No. 73214
PA(adv)-420

DECISION NO. 35052-A

Appearances:

Mike Stahl, Field Representative, AFSCME Council 24, 8033 Excelsior Drive, Madison, Wisconsin, appearing on behalf of Mary Joas.

Amesia N. Xiong, Attorney, Office of Legal Counsel, Office of State Employment Relations, 101 East Wilson Street, 4th Floor, P.O. Box 7855, Madison, Wisconsin, appearing on behalf of State of Wisconsin Department of Corrections.

DECISION AND ORDER

On June 20, 2014, Mary Joas filed an appeal with the Wisconsin Employment Relations Commission pursuant to § 230.44(1)(c), Stats., asserting that she had been discharged without just cause by the State of Wisconsin Department of Corrections. The Commission assigned the appeal to Examiner Peter G. Davis who conducted a hearing on November 5 and 6, 2014, in Sturtevant, Wisconsin. The parties thereafter filed written argument by February 27, 2015.

On May 20, 2015, Examiner Davis issued a proposed Decision and Order concluding that Joas had been discharged for just cause. No objections were filed and the matter became ripe for Commission action on June 22, 2015.

Based on a review of the evidence and argument, the Commission makes and issues the following

FINDINGS OF FACT

1. The Department of Corrections is a State of Wisconsin administrative agency which operates prisons and correctional facilities, one of which is the Robert E. Ellsworth Correctional Center.

2. At the time of her discharge on April 3, 2014, Mary Joas had permanent status in class and was employed by State of Wisconsin Department of Corrections at the Robert E. Ellsworth Correctional Center as a teacher.

3. Joas became close friends with an inmate at Ellsworth.

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

CONCLUSIONS OF LAW

1. The Commission has jurisdiction to review this matter pursuant to § 230.44(1)(c), Stats.

2. By her conduct described in Finding of Fact 3, Mary Joas violated the State of Wisconsin Department of Corrections' fraternization policy.

3. Based on her violation of the fraternization policy, the State of Wisconsin Department of Corrections had just cause within the meaning of § 230.34(1)(a), Stats., to discharge Mary Joas.

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

ORDER

The discharge of Mary Joas is affirmed.

Signed at the City of Madison, Wisconsin, this 13th day of July 2015.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott, Chairman

Rodney G. Pasch, Commissioner

James J. Daley, 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 certain 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.

Mary Joas 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 as to Joas' discharge.

I. Was Joas Guilty Of Misconduct?

Both the State and Joas agree that it is substantial misconduct for an employee to become close friends with an inmate and thereby compromise the security and integrity of a correctional facility. Therefore, if Joas developed a close friendship with an inmate, it is undisputed that she engaged in misconduct. What is disputed is whether such a friendship existed.

In support of its contention that the friendship existed, the State cites evidence that Joas provided the inmate with food and crochet patterns, shared personal information with the

inmate, visited the inmate's sons at the Wisconsin State Fair and allowed the inmate to have inappropriate access to educational materials and facility information. Joas adamantly denies that she was friends with the inmate and disputes all of the State's evidence.

In our view, the dispute over whether Joas visited the inmate's sons at the Wisconsin State Fair provides a reasonable litmus test as to whether the alleged friendship existed. If, as alleged, Joas visited the inmate's sons while she attended the fair, her behavior in that regard provides clear evidence of a close friendship with the inmate.

It is undisputed that the inmate's sons were exhibiting livestock in the swine barn at the fair and that Joas attended the fair during the period of time the sons were present. Joas and a friend who accompanied her to the fair both testified that Joas never entered the swine barn and never interacted with the sons. The two sons both testified that Joas did stop by and separately visited with each of them. The inmate and the inmate's mother both provided testimony that supports the existence of the visit. Letters from the inmate to one of her sons provide further support for the existence of the visit.

Joas asserts that all of the evidence presented by the State as to the fair visit is part of an elaborate family-based conspiracy concocted by a desperate inmate who wanted but did not have a close relationship with Joas. However, whatever inclination we might have to accept Joas' conspiracy theory is eliminated by the photo lineup evidence presented by the State.

As part of its investigation,¹ the State asked both of the inmate's sons to view a page consisting of the photographs of seven women, one of whom was Joas. Aside from the alleged encounter at the fair, neither son had ever seen Joas before. One son immediately identified the picture of Joas as a person who visited him at the fair. The other son was not able to make a definitive identification but indicated that he thought the picture of Joas was the person who had visited him at the fair.

This photo lineup evidence provides substantial corroboration for the credibility of the testimonial and documentary evidence presented by the State as to the fair visit. This same evidence definitively undermines the credibility of Joas as to the fair visit, as well as her denial of all other aspects of any relationship with the inmate. We conclude that the visit did occur and, as previously discussed, that such a visit is persuasive evidence that Joas had a close friendship with the inmate. Consistent with Joas' lack of credibility as to the fair visit, we also credit the State's evidence as to certain other aspects of the friendship such as the sharing of personal information and providing food.²

¹ Joas attacks the fairness of the State's investigation. Assuming *arguendo* that the quality of an investigation can be a basis for overturning discipline even where, as here, the evidence presented to us clearly supports the existence of misconduct, we conclude the State's investigation was not inappropriate.

² Because we are satisfied that the evidence we have discussed definitively establishes the existence of a close friendship, we need not and do not resolve the factual disputes over crochet patterns and inappropriate access to educational and institutional materials.

II. Did Joas' Misconduct Constitute Just Cause for Discharge?

As discussed earlier in our decision, it is essentially undisputed that a close friendship with an inmate compromises the security and integrity of a correctional institution. We are satisfied that Joas' "misconduct has sufficiently undermined the efficient performance of the duties of employment" to establish just cause for her discharge.³

Signed at the City of Madison, Wisconsin, this 13th day of July 2015.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott, Chairman

Rodney G. Pasch, Commissioner

James J. Daley, Commissioner

³ In reaching this conclusion, we necessarily reject the Joas' contention that the discharge was motivated by retaliation against her for filing a harassment complaint against her supervisors.