

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

DAWN LAURIA, Appellant,

vs.

STATE OF WISCONSIN, DEPARTMENT OF CORRECTIONS, Respondent.

Case 273
No. 73225
PA(adv)-423

DECISION NO. 35062-A

Appearances:

Michael J. Kuborn, Curtis Law Office, 491 South Washburn Street, Suite 100, P.O. Box 2845, Oshkosh, Wisconsin, appearing on behalf of Dawn Lauria.

Laura Amundson, Department of Administration, Division of Personnel Management, 101 East Wilson Street, 4th Floor, P.O. Box 7855, Madison, Wisconsin, and William H. Ramsey, Deputy Legal Counsel, Department of Administration, 101 East Wilson Street, 10th Floor, P.O. Box 7864, Madison, Wisconsin, appearing on behalf of the State of Wisconsin, Department of Corrections.

DECISION AND ORDER

Dawn Lauria filed a timely appeal with the Wisconsin Employment Relations Commission contesting her discharge for allegedly violating Department of Corrections Work Rules #2, #4, #6, and #14. Hearing on the matter was held on January 26, 2015, at the Redgranite Correctional Institution, Redgranite, Wisconsin. The Hearing Examiner was William C. Houlihan. The parties filed written briefs and reply briefs, the last of which was received by May 29, 2015.

On September 18, 2015, Examiner Houlihan issued a proposed decision modifying the discharge to a ten-day suspension. The State of Wisconsin, Department of Corrections filed objections and the matter became ripe for Commission consideration on December 8, 2015.

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

FINDINGS OF FACT

1. Dawn Lauria was employed by the Wisconsin Department of Corrections as a Food Service Leader 2 at the Redgranite Correctional Institution and had permanent status in class at the time of her discharge.

2. The Department of Corrections is an agency of the State of Wisconsin and operates the Redgranite Correctional Institution, a correctional facility.

3. On December 24 and 25, 2013, Lauria engaged in horseplay with inmates in the kitchen of the Redgranite Correctional Institution. Her actions were recorded by the surveillance system which monitors the kitchen on an ongoing basis.

4. On January 6, 2014, Lauria was interviewed about the events of December 24 and 25, 2013. During the course of the interview, she readily admitted to some of the actions but denied others.

5. On March 11, 2014, Lauria was discharged for engaging in inappropriate behavior with inmates on December 24 and 25, 2013, and for failing to provide complete and accurate information in the subsequent investigation.

Based on the above and foregoing Findings of Facts, the Commission makes and issues the following:

CONCLUSIONS OF LAW

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

2. The State of Wisconsin, Department of Corrections had just cause within the meaning of § 230.34(1)(a), Stats. to discharge Dawn Lauria.

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

ORDER

The discharge of Dawn Lauria by the State of Wisconsin, Department of Corrections is affirmed.

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

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott, Chairman

Rodney G. Pasch, Commissioner

James J. Daley, Commissioner

MEMORANDUM ACCOMPANYING DECISION 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.

Dawn Lauria 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).

Lauria was employed by the Wisconsin Department of Corrections as a Corrections Food Service Leader 2 in the Redgranite Correctional Institution for a period of 3½ years prior to her termination on March 11, 2014. Lauria had no discipline on her record as of the date of her discharge.

At some point in late 2013 or early 2014, Michael Dittmann, the warden of the Redgranite facility, received an anonymous, handwritten note which invited the warden to review the tapes of the main kitchen to see "... Dawn favoring us blacks. ... calls us sexual pigs. Christmas [E]ve day [D]awn was acting like she was going to go around [sic] or two in a boxing match with []. The next day ... [D]awn put frosting on her hand and chased one of us brothers around the kitchen and put frosting on his shirt. She is always flirting with us [A]frican brothers." Prison officials do not know the identity of the note writer, but believe him to be an inmate.

There is an electronic surveillance system in place in the Redgranite facility, including the kitchen area, which monitors and records the activities of the facility. The letter caused the Redgranite management to review the kitchen tapes of December 24 and 25, 2013. Wendy Monfils reviewed the tapes and noted certain behaviors. Her observations were reduced to writing as follows:

Scraped frosting from the Hobart Mixer, which is the machine used to whip frosting, with her finger. With the frosting on her finger she chased an inmate around the baking area, and then smeared frosting onto two inmates shoulder areas.

While standing at the bakery sink station, she took the sink hose placed it above the shelving and directly sprayed at an inmate worker who was standing to the right of the post and behind the shelving unit.

Horseplay with another staff member in the inmate break area, during which they poke at each other in the arm and face. This behavior takes place in the area where inmates take breaks and is a common area of the kitchen.

Pulled on a cart as an inmate is attempting to roll the cart into a storage area to intentionally prohibit the inmate from completing his task.

The summary set forth in the first two paragraphs above accurately captures the essence of the tapes. We did not observe the behaviors described in the last two paragraphs.

On January 6, 2014, Lauria was interviewed about the events of December 24 and 25. In the course of the interview, she was forthcoming about certain occurrences and initially denied others. When confronted with the tape, she acknowledged the actions occurred, but indicated that she suffered from compromised memory arising out of a fall and head injury and could not recall the events which she had denied. Lauria indicated in her interview that the behavior was inappropriate and reflected a lapse in judgment.

Lauria was terminated by letter dated March 11, 2014. The discharge letter recited the behaviors set forth above and indicated that she had failed to provide complete and accurate information, citing her interview denials and belated admissions. The decision to impose termination, rather than a less severe sanction was explained: "Lying or providing false information; and horseplay with inmates, which is considered a form of fraternization, are considered serious acts of misconduct."

Lauria did suffer a head injury on January 22, 2012, when she fell on the ice, while at work, and hit her head. The record has a volume of documents relating to the diagnosis and treatment Lauria received beginning from the time she fell and continuing through an independent medical evaluation, arising from a workers compensation claim, conducted on November 14, 2014. The records focus on treatments related to headaches, migraines, seizure like episodes, insomnia, ringing in the ears, and susceptibility to stress.

The records also contain a number of references to memory. A neurological evaluation, dated March 16, 2012, indicated that recent memory loss is normal. Lauria reported a poor memory during a November 15, 2012 evaluation. On January 31, 2013, Dr. Xian Gu, her attending physician, indicated that her memory is better. However, on March 28, 2013, he reported that her memory is fuzzy. The progress notes from a June 13, 2013 visit indicated "She has memory issues. She cannot remember a recipe she has made many times. She has to be re-taught everything and writes everything down." The independent evaluation indicates that Lauria's "[m]emory is judged to be intact." The report does not provide an analysis or explanation for the declarative statement.

Lauria was disciplined for two reasons. The first is for engaging in the behavior of December 24 and 25, 2013. The second is for lying or providing false information.

Lauria engaged in the behavior for which she was charged. The interview notes and the termination letter accurately describe certain events captured on tape. Her behavior is not appropriate to her status in the kitchen. The tape reveals that the inmates were cautious and reluctant to participate. DOC argues that Lauria was an inappropriate role model. Had the inmates conducted themselves in this manner, it would have subjected them to discipline. This likely explains their reluctance to join in.

Lauria was not a corrections officer with security as her primary role. However, she was employed in a correctional facility where security is a matter of concern for all. Her role was not as an equal to the inmates. Lauria supervised their work and was a part of a security team that monitored their incarceration. Given the power imbalance in their relationship, it was an exercise in poor judgement to continue in the protracted horseplay as the inmates reflected caution about what was unfolding. Lauria appeared not to sense their discomfort. Her intent was to lighten the work environment. The effort went too far.

Had the inmates joined in to the extent and level of Lauria's actions, a chaotic scene could easily have ensued. Horseplay can lead to damage, injury or worse. It is commonly banned in the workplace.

There is a level of formality and detachment that necessarily exists between the inmates and prison employees. They are not peers. At some point, efforts at lightening the environment cross a line of familiarity. We believe that Lauria crossed that line. We further believe that Lauria took advantage of her position.

Lauria was interviewed on January 6, 2014. She was asked questions about horseplay with staff and she responded. She was asked if she talks in a flirtatious or sexual manner with the inmates and she replied "[n]o." She was asked if she has ever thrown things at inmates and she replied "[n]o." She was asked if she ever sprayed any of them with a sink hose and she replied "[n]o." She was asked if she smeared frosting on any inmates and she replied that she

“did hit an inmate with frosting, yes.” In subsequent questioning Lauria offered that was “[s]tupid judgement of mine.”

In further questioning, Lauria denied wiping frosting on other inmates and denied follow-up questions which asked if she grabbed carts being pushed by inmates or made inappropriate or sexual remarks to inmates.

Following a break, Lauria acknowledged that smearing frosting on an inmate and spraying water on an inmate were inappropriate.

Following a second break, Lauria was asked many of the same questions and denied the behaviors described. She was then shown the video and acknowledged the actions. During the conversation that surrounded the viewing of the video, Lauria indicated that she could not recall the actions being described and that she had hit her head and suffered from chronic memory issues. Even after being shown the video, she acknowledged that she engaged in the behavior, but indicated that she had no memory of the actions.

We conclude that Lauria’s misconduct summarized in Finding of Fact 3 is sufficient in and of itself to constitute just cause for discharge.¹ Her conduct constituted fraternization with inmates that created a security risk. While it is fortunate that no damage, injury or chaos resulted from her behavior, that good fortune does not diminish the extent of her misconduct.

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

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott, Chairman

Rodney G. Pasch, Commissioner

James J. Daley, Commissioner

¹ Given our conclusion, we need not determine the extent of Lauria’s failure to provide complete and accurate information during the investigation. We also need not act on Lauria’s request for attorney fees and costs.