

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

LORI PHILLIPS, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF JUSTICE, Respondent.

Case ID: 10.0000

Case Type: PA

DECISION NO. 35735

Appearances:

John Verberkmoes, Representative, 4243 Savannah Court, Middleton, Wisconsin, appearing on behalf of Appellant Lori Phillips.

Amesia N. Xiong, Attorney, Department of Administration, Office of the Secretary, 101 East Wilson Street, 10th Floor, P.O. Box 7864, Madison, Wisconsin, appearing on behalf of Respondent State of Wisconsin Department of Justice.

DECISION AND ORDER

On August 8, 2014, Lori Phillips 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 Justice. The Commission assigned the appeal to Examiner William C. Houlihan who conducted a hearing on January 27, 2015, in Madison, Wisconsin. The parties filed post-hearing briefs and reply briefs which were received by March 26, 2015. The examiner issued his proposed decision on June 5, 2015. Appellant filed a timely objection and both parties submitted written argument.

Based on a review of the evidence and argument, the Commission issues the following Findings of Fact, Conclusions of Law and Order:

FINDINGS OF FACTS

1. Appellant Lori Phillips was employed as a Community Services Technician-Senior by the State of Wisconsin Department of Justice in the Office of Crime Victim Services' grants and administration unit.

2. Respondent Department of Justice ("DOJ") is an agency of the State of Wisconsin which houses the Office of Crime Victim Services ("OCVS"). The OCVS oversees the distribution of state and federal grants to various organizations which apply and compete for such grants. There is a competitive application process in effect for organizations seeking grant money.

3. On June 23, 2014, a Kenosha-based organization seeking a grant requested a particular form from Phillips.

4. Phillips provided the requested form to the individual.

5. When Phillips was questioned about providing the form, she denied having intentionally provided it to the prospective grant applicant.

6. On July 30, 2014, Phillips was discharged based upon violations of DOJ work rules.

Based on the above and foregoing Findings of Facts, the Commission 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 Justice had just cause to terminate Lori Phillips

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

ORDER

The discharge of Lori Phillips is affirmed.

Signed at the City of Madison, Wisconsin, this 22nd 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

The State of Wisconsin Department of Justice takes its grant finding responsibilities seriously. One of the areas of concern is that the process of awarding bids between competing entities is fair in all respects. Department restrictions emphasized to staff the duty to insure that no applicant be provided documents which might give it an advantage over other applicants. Clearly, Phillips erred when she provided the document identified as “CCR Application Forms.doc.” Compounding the impropriety was the fact that the applicant’s representative who received the document, Ms. Figgins-Hunter, was a longtime friend of Phillips.

The examiner concluded and we agree that there is some confusion as to whether the document itself was part of the application process or not. In any event, the provision of the document by Phillips to one of a number of applicants was remedied when the remaining applicants received a copy on June 30, 2014. The harm was to a certain extent mitigated. The conduct, however, that provides just cause for the termination was Phillips’ persistent denials that she sent the form in question to the applicants. That prevarication continued through the hearing in this matter.

Clearly, Phillips made a conscious decision to forward the CCR form to Figgins-Hunter. She subsequently denied having done so when questioned and pressed with the facts. On July 1, 2014, Phillips was asked if she sent the form to an applicant and replied “no.” We do not accept that as innocent confusion. The email chain demonstrates the contrary. The first two emails from Figgins-Hunter are specific in what is sought and why. There follows a search for the form and the wrong form was sent. Following consultation, Phillips sent Figgins-Hunter the form over the message “Try this one.” The process, which played out over three days, and message reflect a conscious decision to send the requested form

On July 14, 2014, Phillips indicated she must have hit “reply all” when attempting to send an email to Smith, but not to Figgins-Hunter. The email that preceded Phillips’ June 25, 2014 email was sent by Figgins-Hunter. No one was copied. It advises Phillips that the form previously submitted was not the right form. The logical consequence of hitting “reply all” to Figgins-Hunter’s email was to send the email to Figgins-Hunter. The message, “Try this one,” appears to respond to Figgins-Hunter’s question. Smith is added in to the response.

On July 21, 2014, Phillips indicated that she must have hit something else. The response continues to suggest that the form was sent to Figgins-Hunter inadvertently. That contention is not supported by the record. Phillips indicated that she was on the telephone with Smith in an effort to determine whether she had the correct form. It is that context that Phillips indicates that she must have inadvertently sent the form to Figgins-Hunter. If that were the case, and Smith confirmed that Phillips had identified the correct form, there is no explanation in the record as to why Phillips did not thereafter send the form to Figgins-Hunter. If Phillips believed the form was available to the public, and she determined that she had the right form, and believed she had not yet sent it to Figgins-Hunter, she would have either sent the form to Figgins-Hunter or checked to see if that was appropriate. Phillips did not resend the form to

Figgins-Hunter until directed to send it to all applicants on June 30, 2014, five days later. We reject the explanation. Phillips knowingly sent the form to Figgins-Hunter on June 25, 2014. Her subsequent explanations were a deliberate and continued effort to mask that fact.

The DOJ terminated Phillips in significant part due to her lack of truthfulness. It is not uncommon for employees who are confronted with questions or allegations as to inappropriate behavior to deny and deflect. That instinctive reaction typically gives way to a more frank discussion of the situation as facts are made known and exchanged. *See Sawall v. DOC*, Dec. No. 34019-D. Here, Phillips denied the obvious long after it was clear she sent the document. The investigation took three weeks. This is certainly adequate time to come to grips with the reality of the situation. At hearing, Phillips denied that she knowingly sent the form. The passage of time and repeated denials distinguish this case from *Sawall* cited above.

Phillips had previously received a written reprimand for untruthfulness. In that matter she had been directed to send out a series of thank you emails to certain individuals. Later in the day, she was asked if she had done so and replied yes. When asked to forward her work, she indicated that she was mistaken and that she became confused because she had sent out so many emails that morning she believed she had sent the requested thank you notes. The DOJ checked her email traffic of that morning and found that Phillips had not sent any emails out during the period in question. On March 25, 2014, three months before the events surrounding this proceeding, she was given a written warning for untruthfulness. The letter cited DOJ Work Rule #2.

At hearing, Phillips claimed she had never been given the DOJ Work Rules. When asked if she was familiar with DOJ Work Rule #2, based on her prior discipline, she indicated that she had not read the discipline letter. We regard that testimony as improbable.

This is a clear cut case of persistent untruthfulness by Phillips. Her discharge is fully supported by just cause.

Signed at the City of Madison, Wisconsin, this 22nd day of September 2015.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott, Chairman

Rodney G. Pasch, Commissioner

James J. Daley, Commissioner