

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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AMY LARAMORE, Appellant

vs.

STATE OF WISCONSIN, DEPARTMENT OF CORRECTIONS, Respondent

Case ID: 1.0049

Case Type: PA

DECISION NO. 36151-A

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**Appearances:**

Sally A. Stix, Attorney, Stix Law Offices, 700 Rayovac Drive, Suite 117, Madison, Wisconsin, appearing on behalf of Appellant Amy Laramore.

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 Respondent State of Wisconsin, Department of Corrections.

**DECISION AND ORDER ON FEES AND COSTS**

On April 13, 2016, the Wisconsin Employment Relations Commission issued a Decision and Order concluding the State of Wisconsin, Department of Corrections did not have just cause to discharge Amy Laramore but did have just cause to impose a ten-day suspension. On May 12, 2016, Laramore filed a motion for attorneys' fees and costs pursuant to § 227.485, Stats., and the State filed a statement in opposition to the motion on June 1, 2016.

Having considered the motion, we conclude that the State was substantially justified in taking its position in this litigation.

NOW, THEREFORE, it is:

**ORDERED**

The motion for attorneys' fees and costs is denied.

Dated at the City of Madison, Wisconsin, this 20th day of July 2016.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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James R. Scott, Chairman

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Rodney G. Pasch, Commissioner

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James J. Daley, Commissioner

**MEMORANDUM ACCOMPANYING DECISION AND  
ORDER ON FEES AND COSTS**

Our ability to award attorneys' fees and costs in Chapter 230 discipline cases is limited by the provisions of § 227.485(3), Stats. A qualified prevailing party is entitled to fees and costs "unless the hearing examiner finds that the state agency which is the losing party was substantially justified in taking its position or that special circumstances exist that would make the award unjust."

To establish that its position was substantially justified, the State must demonstrate:

- (1) a reasonable basis in truth for the facts alleged;
- (2) a reasonable basis in law for the theory propounded; and
- (3) a reasonable connection between the facts alleged and the legal theory advanced.

*Sheely v. Wisconsin Department of Health & Social Services*, 150 Wis.2d 320, 337, 442 N.W.2d 1 (1989).

Here, there was no dispute as to the truth of the facts alleged. Laramore admitted the conduct which triggered her discharge.

As to the issue of whether there was a reasonable basis in law for the theory propounded, we determine that the State did have such a basis. As we concluded in our decision, Laramore's misconduct was serious and warranted substantial discipline.

Laramore's motion for fees and costs focuses on the third element of the fees and costs analysis. She asserts that because the State knew that it had imposed lesser discipline on another comparable employee, it lacked a reasonable connection between the facts alleged and the legal theory advanced. While it is true that we overturned Laramore's discharge based on disparate discipline, our decision in that regard does not establish that the State lacked a reasonable connection between the facts and the discharge. As we noted in our Decision and Order, even in the face of the disparate discipline, "there is certainly a case to be made that discharge is warranted ...." In addition, the State made a reasonable though ultimately unpersuasive effort to distinguish the disparate disciplinary scenario that led us to reduce the discharge to a ten-day suspension. Therefore, the State also satisfied the third element.

In light of the foregoing, we conclude that the State was substantially justified in taking its position in this litigation and hereby deny the motion for attorneys' fees and costs.

We hereby incorporate this ruling into our April 13, 2016 Decision and Order.

Dated at the City of Madison, Wisconsin, this 20th day of July 2016.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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James R. Scott, Chairman

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Rodney G. Pasch, Commissioner

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James J. Daley, Commissioner