

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

AMY LARAMORE, Appellant

vs.

STATE OF WISCONSIN, DEPARTMENT OF CORRECTIONS, Respondent

Case ID: 1.0049

Case Type: PA

DECISION NO. 36151

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 April 6, 2015, Amy Laramore filed a timely appeal with the Wisconsin Employment Relations Commission asserting the State of Wisconsin, Department of Corrections had discharged her without just cause. Hearing on the matter was held on August 20, 2015, in Oshkosh, Wisconsin, by Examiner Lauri A. Millot. The parties filed post-hearing briefs and reply briefs whereupon the record was closed on October 20, 2015.

On January 12, 2016, Examiner Millot issued a proposed decision upholding the discharge. Laramore filed objections to the proposed decision on February 5, 2016, and the State filed a response on February 16, 2016.

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

FINDINGS OF FACT

1. At the time of her discharge, Amy Laramore was a sergeant working at the Oshkosh State Correctional Institution and had permanent status in class.

2. The Department of Corrections (DOC) is a State agency responsible for the operation of adult correctional facilities, including the Oshkosh State Correctional Institution (OSCI), a medium secure facility located in Oshkosh, Wisconsin. Judy Smith is the Warden at OSCI.

3. On September 29, 2014, when training a new female correctional officer, Laramore asked an inmate to make a mildly inappropriate remark to the new officer to see if she would respond appropriately. The inmate complied with Laramore's request.

4. On September 29, 2014, when training the new female correctional officer referenced in Finding of Fact 3, Laramore asked an inmate to hide a pill in his mouth to see if the new officer would detect that the medication had not been taken. The inmate complied with Laramore's request.

Based on the above and foregoing Findings of Fact, 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. State of Wisconsin, Department of Corrections did not have just cause within the meaning of § 230.34(1)(a), Stats., to discharge Amy Laramore.

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

ORDER

The discharge of Amy Laramore is modified to a ten-day suspension and the State of Wisconsin, Department of Corrections shall reinstate Laramore and make her whole for all lost wages and benefits.

Dated at the City of Madison, Wisconsin, this 13th day of April 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.

Amy Laramore 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).

Laramore admits the conduct that led to her discharge. While we concur with DOC that her actions constituted serious misconduct, we conclude that her misconduct did not provide just cause for discharge.

On September 29, 2014, Laramore, new employee Kahly O'Boyle, and other staff were at the desk area of the "R" Building. Laramore was training O'Boyle. As part of the training, Laramore called inmate Wedgeworth to the desk and asked him to say something mildly inappropriate to Boyle. Wedgeworth departed the area, went to his room, and then returned and said to O'Boyle, "your walk is mesmerizing." O'Boyle informed Wedgeworth that his comment was inappropriate. Laramore and O'Boyle immediately discussed Wedgeworth's comment, and Laramore explained to O'Boyle that she should be prepared for comments of that nature from inmates. Laramore complimented O'Boyle on her handling of the comment and informed O'Boyle that, based on its content, if a similar "real life" comment was made to O'Boyle, she should report it to a sergeant.

On that same date, Laramore was responsible for dispensing medication to inmate Payton. As part of O'Boyle's training, Laramore opened the narcotics box, removed the narcotic pill, verified that the medication was Payton's, and then gave the pill to O'Boyle to dispense to Payton. Unbeknownst to O'Boyle, Laramore had previously directed Payton to conceal his pill under his tongue rather than swallow it. Laramore's intent was for Payton to demonstrate to O'Boyle how easy it is for an inmate to disguise swallowing medication.

O'Boyle gave Payton the pill which he put in his mouth. She then asked to look in Payton's mouth at which time O'Boyle noticed that Payton had not swallowed the pill. O'Boyle directed Payton to swallow the pill. Laramore then discussed with O'Boyle proper medication distribution procedures and her performance.

While her conduct was well-intentioned, it reflected a serious lack of judgment and created a potential security risk. Where, as here, inmates are asked to violate the standard rules of conduct, at a minimum uncertainty is sown as to whether rules need to be followed. At worst, inmates may seek to manipulate Laramore's conduct in a manner that generates potentially dangerous favoritism. By her conduct, Laramore also violated the protocol for administering narcotics to inmates.¹

While there is certainly a case to be made that discharge is warranted, we conclude otherwise primarily based on the three-day suspension received by another sergeant for misconduct involving inmates at the same institution from the same warden and in the same timeframe as Laramore's discharge. Borkowsky was suspended for a litany of offenses and transgressions (that violated two of the same work rules violated by Laramore) including having destroyed inmate request slips for use of institution amenities, having delayed dispensation of inmate prescription medications, having directed subordinate staff to deny inmates their rights, having referred to inmates in derogatory language, having acted unprofessional with staff, and having disrespected supervision. We concur with Laramore's contention that Borkowsky's misconduct was more substantial than hers and yet he received substantially lesser discipline. In the face of this disparate treatment, we conclude that the discharge should be reduced to a ten-day suspension.²

Signed at the City of Madison, Wisconsin, this 13th day of April 2016.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott, Chairman

Rodney G. Pasch, Commissioner

James J. Daley, Commissioner

¹ We reject DOC's contention that Laramore's conduct constituted fraternization, an offense which we agree generally establishes just cause for discharge. By her conduct, she did not create the personal and ongoing relationship that typifies fraternization and creates a bona fide security risk.

² Laramore receives a lengthier suspension than Borkowsky because a prior demotion mars her otherwise meritorious 15 years of service.