

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

MARIO STEGER, Appellant,

vs.

STATE OF WISCONSIN, DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0097

Case Type: PA

DECISION NO. 36345

Appearances:

Mario Steger, 1224 Winston Drive, Edgerton, Wisconsin, appeared on his own behalf.

Katharine Ariss Department of Corrections, 3099 E. Washington Avenue, P.O. Box 7925, Madison, Wisconsin, appeared on behalf of State of Wisconsin, Department of Corrections.

DECISION AND ORDER

On November 2, 2015, Mario Steger filed an appeal with the Wisconsin Employment Relations Commission pursuant to § 230.44(1)(d), Stats., asserting that he should have been selected by the State of Wisconsin, Department of Corrections to fill a vacant Correctional Sergeant position. The Commission assigned the appeal to Examiner Karl R. Hanson who conducted a hearing on February 9, 2016, in Oregon, Wisconsin, and on March 15, 2016, in Madison, Wisconsin. The parties filed written arguments and responses, the last of which was received on May 2, 2016.

On May 17, 2016, Examiner Hanson issued a proposed decision concluding the State of Wisconsin, Department of Corrections did not commit an illegal act or an abuse of discretion when it did not appoint Mario Steger. On May 20, 2016, Mario Steger filed objections to the proposed decision. The State of Wisconsin, Department of Corrections did not file a response to Mario Steger's objections, and the matter became ripe for Commission consideration on June 1, 2016.

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

FINDINGS OF FACT

1. Mario Steger is employed as a Correctional Officer 2 by the State of Wisconsin, Department of Corrections.

2. The State of Wisconsin Department of Corrections is an agency of the State of Wisconsin.

3. In October 2015, the State of Wisconsin, Department of Corrections did not select Mario Steger for appointment to a vacant Correctional Sergeant position at its Oakhill Correctional Institution (“OCI”) located in Oregon, Wisconsin.

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)(a), Stats.

2. The State of Wisconsin, Department of Corrections did not commit an illegal act or an abuse of discretion, within the meaning of § 230.44(1)(d), Stats., when it did not appoint Mario Steger to a vacant OCI Correctional Sergeant position.

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

ORDER

The appeal is dismissed.

Signed at the City of Madison, Wisconsin, this 22nd day of June 2016.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott, Chairman

Rodney G. Pasch, Commissioner

James J. Daley, Commissioner

MEMORANDUM ACCOMPANYING DECISION AND ORDER

Sections 230.44(1)(a) and 230.44(1)(d), Stats., provide that the Commission has jurisdiction to hear appeals from individuals alleging that a personnel action related to the hiring process within the classified service was illegal or an abuse of discretion. Mario Steger has the burden to establish by a preponderance of the evidence that the State of Wisconsin, Department of Corrections' failure to appoint him to a vacant Correctional Sergeant position at OCI was either illegal or an abuse of discretion.

Within the meaning of § 230.44(1)(d), Stats., an illegal act is one that is contrary to civil service statutes (subch. II, ch. 230, Stats.) or the administrative rules promulgated thereunder. *Rakowski v. DWD*, Dec. No. 33231-B (WERC, 01/12) (internal citations omitted).

An abuse of discretion occurs within the meaning of § 230.44(1)(d), Stats., when an agency exercises discretion "to an end or purpose not justified by, and clearly against reason and evidence." *Id.* (internal citations omitted). "If an exercise of discretion is not clearly against reason and evidence, the Commission may not reverse an appointing authority's hiring decision merely because it disagrees with that decision in the sense that it would have made a different decision if it had substituted its judgment for that of the appointing authority." *Id.* (internal citations omitted).

Steger produced no evidence suggesting that DOC acted illegally when he was not hired in October 2015 for a vacant Correctional Sergeant position at OCI.

At the conclusion of the interviews conducted for the vacant position, Steger was ranked first on a list of 13 candidates. OCI Warden Daniel Westfield did not promote Steger to the vacant Correctional Sergeant position. Instead, the candidate ranked last, as number 13, was hired for the position.

Steger had a better disciplinary history, longer tenure in corrections, higher level of education, and more experience than the candidate who was selected. DOC reported to the Office of State Employment Relations that Steger's unfavorable references were the reason why he was not hired for the position.

Steger received generally positive references from the three individuals he provided for that purpose. Westfield discounted those references, however, based upon his personal knowledge of Steger's work performance at OCI. Westfield concluded that Steger did not demonstrate the interpersonal skills he considered necessary and critical for the position. One reference alluded to such concerns as well.

On an evaluation prepared for a reporting period ending May 6, 2013, Steger received "does not meet standards" ratings for two job performance standards: "Courteous and tactful" and "Responds positively to constructive criticism from supervision."¹

¹ The evaluations that OCI supervisors prepared for Steger, to the extent that they did so in a timely manner, generally characterized his performance as satisfactory. Prior to his May 6, 2013 performance evaluation,

The comments corresponding to those ratings respectively provided: “Officer Steger at times yells or uses profanity towards other staff and inmates. He tends to overreact and his emotions tend to override good judgment” and “Officer Steger could respond to constructive criticism better. At times can develop somewhat of an attitude when being counseled.”

On his May 6, 2014 and May 6, 2015 evaluations, Steger received “meet[s] standards” ratings for every job performance standard. The comments related to the major job duty “To establish appropriate interpersonal relationships” on the 2015 evaluation, however, provide: “Officer Steger has always been respectful and courteous to this reviewer. He has shown a tendency to become very defensive when he is questioned by a supervisor about his behavior. He needs to improve his ability to take constructive criticism.”

Westfield, the appointing authority, testified that he did not select Steger for the Correctional Sergeant position because his demeanor toward staff and inmates and interpersonal and communication skills were unsatisfactory for the Correctional Sergeant position. Steger was never formally counseled or disciplined for such concerns other than the 2013 and 2015 evaluations. Steger complains that the incidents upon which Westfield and other supervisors relied to form judgments about his interactions with others were misconstrued, exaggerated, or simply incorrect. He produced sufficient evidence to raise a legitimate question regarding the veracity of the incidents upon which DOC officials based their judgments.

DOC sufficiently rebutted the evidence presented by Steger and demonstrated that Westfield had sufficient evidence to reasonably conclude that Steger’s interpersonal interactions with others were not at the level he expected or desired for Correctional Sergeants. Steger, who has the burden in this matter, failed to prove that Westfield’s decision was against reason and evidence.²

For that reason, Steger’s appeal must be and is dismissed.

Steger’s last performance evaluation prepared contemporaneously with his duties was for a period ending January 20, 2009, when he was employed at the Green Bay Correctional Institution. In October 2015, after Steger raised concerns about OCI’s failure to provide him with evaluations and feedback, OCI supervisors prepared evaluations of Steger for 2013 (duplicative), 2014, and 2015.

² Steger regularly fulfills the duties of a Correctional Sergeant at OCI when such positions are temporarily vacant for a shift. The decision of OCI supervisors to temporarily entrust Steger with such duties based upon operational necessity does not obviate Westfield’s discretion to not permanently assign such duties to Steger for the reasons stated above.

Signed at the City of Madison, Wisconsin, this 22nd day of June 2016.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott, Chairman

Rodney G. Pasch, Commissioner

James J. Daley, Commissioner