

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

DEREK RAISANEN, Appellant

vs.

STATE OF WISCONSIN, DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0096

Case Type: PA

DECISION NO. 36396-A

DEREK RAISANEN, Appellant

vs.

STATE OF WISCONSIN, DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0134

Case Type: PA

DECISION NO. 36397-A

Appearances:

Mark DeLorme, AFSCME Wisconsin Council 32, 701 North 8th Street, Manitowoc, Wisconsin, appearing on behalf of Derek Raisanen.

Deborah Rychlowski, Department of Corrections, 3099 E. Washington Avenue, P.O. Box 7925, Madison, Wisconsin, appearing on behalf of State of Wisconsin Department of Corrections.

This is an appeal of two non-selection decisions made by the Wisconsin Department of Corrections. In October of 2015 and March of 2016, Appellant Derek Raisanen was rejected as an applicant for two separate correctional officer positions. He appealed those denials and during the pendency of the appeals, DOC sought written discovery from Raisanen. Ultimately,

the examiner issued an order in response to a motion to compel directing Raisanen to respond by August 16, 2016, under penalty of a recommended dismissal. Raisanen did respond on August 16, 2016. DOC renewed its motion to dismiss for failure to respond to discovery and failure to prosecute. The matter has been referred to the Commission following submissions of written arguments, together with the discovery and the responses.

DECISION AND ORDER DENYING MOTION TO DISMISS

Derek Raisanen was employed as a correctional officer for the State of Wisconsin for at least ten years prior to a work-related injury which occurred in August of 2010. He worked intermittently until May of 2012 when he had surgery on his back. Raisanen was released with permanent restrictions preventing his returning to work as a correctional officer. He was returned to work in March of 2013 at DOC in a clerical position. The position pays less than what he previously earned as a correctional officer. Raisanen remains employed.¹

In October of 2015 and again in March of 2016, Raisanen applied for correctional officer positions and was rejected. It is those denials which form the basis for his assertions that DOC violated § 230.44(1)(d), Stats. In order to sustain such a claim, Raisanen must establish that DOC's decision was "illegal or an abuse of discretion."

While Raisanen's claims were pending before an examiner appointed by the Commission, counsel for DOC submitted 25 interrogatories (many of which included multiple subparts), 5 requests for production, and 27 requests for admission.

It is important to note that unlike most Class 3 proceedings under Chapter 227 here the parties are by statute allowed to appear by an attorney or "by any other agent." Historically, those other "agents" appearing on behalf of individual employees have been current or former union representatives. Typically, those agents are not conversant with the discovery process. They are familiar with and often experienced in labor arbitration matters which do not involve prehearing discovery.

Here, Raisanen was initially represented by such an agent who largely ignored the discovery requests. On July 8, 2016, with a new examiner in place and a new agent representing Raisanen, a conference was conducted by the examiner.² During the conference call, the new representative, Mark DeLorme, acknowledged that the earlier responses to the discovery were inadequate. DeLorme was given an additional deadline of August 1, 2016 to respond to the now long overdue discovery. That deadline was missed and DeLorme did his

¹ The above facts were drawn from the decision of the examiner in Raisanen's duty disability claim issued on July 13, 2015.

² Examiner Lauri Millot left the agency and the matter was reassigned to Examiner Danielle Carne.

best to avoid the examiner's efforts to conduct another conference.³ In any event, the examiner gave DeLorme one more order to comply and he did submit more detailed responses albeit at the last minute. DOC has renewed its motion to dismiss for failure to respond and failure to prosecute before the Commission. It asserts that the responses to the discovery are inadequate.

Neither side in this dispute has covered itself with glory. The conduct of the respective representatives of Raisanen has been intentionally disrespectful of the process. The discovery requests of DOC are grossly overbroad and appear to be designed to harass Raisanen.

This dispute involves a relatively narrow issue. DOC apparently believes that Raisanen exaggerated his medical problems in hopes of obtaining significant benefits and having failed in that effort now wants his old job back. From Raisanen's perspective, he believes that his medical condition has improved to the point where he should be able to return to a correctional officer position.

While logic might suggest that an independent medical examination could resolve the issue, the parties have chosen to fight it out before the Commission. We require however that the fight be fair. Submitting interrogatories which, with subparts, amount to over 50 inquiries to someone you have employed for many years is particularly pointless. Going back 30 years into someone's legal, medical, and occupational history seeking answers to largely irrelevant inquiries is onerous. Had Raisanen been represented by an attorney that individual would have likely filed a request for a protective order striking most of the discovery.

Ultimately, Raisanen's agent did supply responses. While DOC does not like the answers, they are responsive which leaves us with nothing to compel. *Cf. Steward v. Capital Newspapers*, 2010 WL 1508289 (W.D. Wis.) ("The purpose of a motion to compel is not to challenge the truthfulness of the response but rather to compel a party to answer the interrogatory.") How DOC utilizes the answers at the hearing is up to them but, although spartan, Raisanen has responded.

DOC also asserts that it has persistently sought a medical release from Raisanen. A review of the correspondence indicates that DOC did seek medical releases from Raisanen not for the purposes of their discovery but rather as a condition of providing Raisanen with his medical records in DOC's possession.⁴ We note that under § 103.13(5), Stats., Raisanen or his representative have a right to inspect and copy Raisanen's medical records in the possession of DOC without a required release. Additionally, any application for worker's compensation by law waives any right to confidentiality in such medical records per § 102.13(2), Stats. The medical release issue is essentially a non-issue. Any medical records in DOC's possession

³ The evasive behavior is detailed in the examiner's decision of August 12, 2016.

⁴ See May 5, 2016 letter from Rychlowski to Bauch which provides *inter alia* "you will be provided medical information regarding duty disability, fitness for duty and workmen's compensation once I receive the release form for those materials."

which bear on Raisanen's medical fitness to perform the duties of a correctional officer should be provided to him forthwith. Likewise, any medical reports or documents available to Raisanen should be provided to DOC immediately. Any medical documents which have not been disclosed will not be admissible at the hearing on the merits in this matter. Therefore, we issue the following:

ORDER

The Department of Corrections' motion to dismiss for failure to prosecute and failure to respond to discovery is denied. The parties are directed to exchange the medical documents addressed in this matter within ten days of this order.

The matter shall be scheduled for hearing for a date not more than thirty days from the date of this order.

Signed at the City of Madison, Wisconsin, this 17th day of October 2016.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott, Chairman

Rodney G. Pasch, Commissioner

James J. Daley, Commissioner