

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

AMANDA WATERMAN, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0148

Case Type: PA

DECISION NO. 36740

Appearances:

Amanda Waterman, W10095 State Hwy 82, Elroy, Wisconsin, appearing on her own behalf.

Andrea L. Olmanson, Attorney, Department of Corrections, 3099 E. Washington Avenue, Post Office Box 7925, Madison, Wisconsin, appearing on behalf of the State of Wisconsin Department of Corrections.

DECISION AND ORDER

On May 16, 2016, Amanda Waterman filed an appeal with the Wisconsin Employment Relations Commission, pursuant to § 230.44(1)(c), Stats., asserting that she had been suspended from her employment for five days without just cause by the State of Wisconsin Department of Corrections. The Commission assigned the appeal to Examiner Karl R. Hanson who conducted a hearing on August 22, 2016, in New Lisbon, Wisconsin.¹ The parties filed written arguments, the last of which was received on September 12, 2016.

On November 2, 2016, Examiner Hanson issued a proposed decision rejecting the suspension. The State filed objections and the matter became ripe for Commission consideration on November 28, 2016.

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

FINDINGS OF FACT

1. Amanda Waterman is employed by the State of Wisconsin Department of Corrections and had permanent status in class at the time she was disciplined.

¹ This matter was consolidated for purposes of hearing with two other appeals brought by Waterman against the Department of Corrections.

2. On January 5, 2016, while off duty, Waterman told a coworker that Correctional Officer Chris Towne should watch what he says “because if he slips up and says something inappropriate, I’ll be there.”

3. Waterman was disciplined with a five-day suspension on February 12, 2016, for her January 5, 2016 conduct.

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. The State of Wisconsin Department of Corrections did not have just cause within the meaning of § 230.34(1)(a), Stats., to suspend Amanda Waterman for five days.

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

ORDER

The discipline received by Amanda Waterman is rejected. The State of Wisconsin Department of Corrections shall make her whole for lost wages and benefits.

Dated at Madison, Wisconsin, this 15th day of December 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.

Amanda Waterman had permanent status in class at the time of her five-day suspension without pay and her appeal alleges that the discipline was not based on just cause.

The State has the burden of proof to establish that Waterman was guilty of the alleged misconduct and whether the misconduct constitutes just cause for the discipline imposed. *Reinke v. Personnel Bd.*, 53 Wis.2d 123 (1971); *Safransky v. Personnel Bd.*, 62 Wis.2d 464 (1974).

On January 5, 2016, Waterman stopped at Correctional Officer Chris Olson's house after work. They live in the same area and Waterman believed that Olson was a friend with whom she could discuss work matters. Earlier that day Waterman received a three-day suspension for making an inappropriate comment to Correctional Officer Chris Towne in October 2015.

Waterman was not aware of who reported her to DOC management for making the inappropriate comment in October 2015 or who was interviewed in the course of DOC's investigation. She sought information related to her discipline through an open records request, but had not received it.

During her conversation with Olson, Waterman said words to the effect of "Towne better watch himself because if he slips up and say's something inappropriate, I'll be there." After Waterman left his house, Olson called Towne and recounted his conversation with Waterman.

This was subsequently reported to DOC. DOC determined that Waterman's comments were retaliatory in nature and directed toward staff witnesses related to the three-day suspension. The witnesses involved in the prior matter were Olson and Towne.

Waterman credibly testified that she did not know who reported her comments that led to the three-day suspension. As DOC denied her access to documents related to its investigation, Waterman did not then know that Olson was a witness in the prior investigation. DOC's assertion that Waterman's "I'll be there" comment was directed against Olson or "staff witnesses" generally is unfounded.

Olson testified that Waterman's January 5 comment was about Towne. He testified that Waterman said if Towne slipped up and made inappropriate comments, she would be there. Olson testified that he was not threatened by Waterman's January 5 comment nor did he think it was threatening.

From the context of her January 5 statement, Waterman implied that she would report Towne if he made inappropriate comments. The broader context is important too. Waterman had just been disciplined; she believed excessively.² She stopped at a friend's house, after work, to vent her frustrations. Olson testified that Waterman was and had been crying. She did not know that her January 5 conversation with Olson would find its way back to Towne.

Some degree of allowance for human emotion must be made. Here, it is apparent that Waterman sought, outside of work, to share her frustrations with a coworker that she considered a friend. She did not commit misconduct. DOC did not have just cause to discipline Waterman.

Dated at Madison, Wisconsin, this 15th day of December 2016.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott, Chairman

Rodney G. Pasch, Commissioner

James J. Daley, Commissioner

² The hearing examiner agreed and issued a proposed decision finding that DOC had just cause to discipline Waterman with a one-day suspension for her prior conduct.