

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH 4

COUNTY OF DANE

FILED

OCT 31 2017 *Re*

DANE COUNTY CIRCUIT COURT

EDWARD F. WALL, JR.,

Petitioner,

vs.

Case No. 17 CV 0060

WISCONSIN EMPLOYMENT
RELATIONS COMMISSION,

RE: [WERC Dec. No. 36758]

Respondent.

**DECISION AND ORDER REGARDING
PETITION FOR JUDICIAL REVIEW**

Before the Court is Petitioner Edward F. Wall, Jr.'s ("Wall's") Petition for Judicial Review of a decision by the Wisconsin Employment Relations Commission ("WERC"). The WERC determined that the Wisconsin Department of Justice ("DOJ") had just cause, under Wis. Stat. § 230.34, to terminate Wall. Based on a careful review of the record, and after consideration of the respective arguments of counsel, the Court affirms the decision of the WERC.

FINDINGS OF FACT

Based on the record and evidence provided by the parties, the Court makes the following findings of fact:

The DOJ hired Wall as a classified employee in 1999. Wall attained permanent status, and he worked continuously for the DOJ until October of 2012. WERC Hearing, September 13-14, 2016 Transcript ("Tr.") 278:22-283:3; 218:22-219:11; Appellant Exhibit ("App. Ex.") 1, Part 18 to Tr. On October 8, 2012, then Attorney General J.B.

Van Hollen granted Wall a leave of absence to serve as Secretary of the Wisconsin Department of Corrections (“DOC”), a position to which he was appointed by Governor Scott Walker. Tr. 218:22-219:11, 223:10-224:4; App. Ex. 1, Part 1 to Tr. At the time of his appointment, Wall was the administrator of the DOJ’s Division of Criminal Investigation (“DCI”), a position guaranteed civil service protections. Tr. 222:7-225:9; App. Ex. 5, Part 1 to Tr., p. 4.

Wall formally notified the Governor of his resignation from the DOC by letter dated February 5, 2016. Tr. 226:2-16; App. Ex. 3. By letter dated February 10, 2016, Wall advised Attorney General Brad Schimel that he intended to seek restoration to his previously held civil service position with the DOJ as the administrator of the DCI. Tr. 238:6-19; App. Ex. 5, Part 1 to Tr., p. 2-3. Wall additionally participated in a conference call with Deputy Attorney General Andrew Cook (“Cook”), DOJ Senior Counsel Paul Connell (“Connell”), and several other DOJ attorneys regarding his return to the DOJ. Tr. 234:20-237:18. During that call, Cook informed Wall that the DOJ intended to place Wall on paid administrative leave upon his return because of an ongoing investigation of the DOC’s juvenile facilities, the Lincoln Hills School for Boys and the Copper Lake School for Girls. Tr. 237:9-18.

The DOJ reinstated Wall on February 15, 2016 but immediately placed him on paid administrative leave. Tr. 50:17-51:22, 247:5-248:2; App. Ex. 8 to Tr.; App. Ex. 9 to Tr. On March 1, 2016, the DOJ notified Wall that, effective March 20, 2016, he would be reassigned to a different position at the DOJ— Program and Policy Manager (Deputy Division Administrator) of the Division of Law Enforcement Services (“DLES”). Tr.

25:12-26:16, 248:8-249:5; App. Ex. 10 to Tr. Wall's administrative leave would remain in effect after his reassignment. Tr. 26:2-16; Respondent Exhibit ("Resp. Ex.") 13 to Tr.

After Wall gave notice of his resignation from the DOC, he contacted Rich Zipperer ("Zipperer"), the Governor's chief of staff, several times to discuss his personnel issues at the DOJ. Tr. 252:20-256:5. When Wall asked Zipperer to intervene with the DOJ on his behalf, Zipperer replied that he viewed the matter as an "HR issue" between Wall and the DOJ. Tr. 254:3-24. Wall informed Zipperer that he intended to appeal his reassignment and asked to send Zipperer his draft civil service appeal. Tr. 256:6-11. Zipperer said he did not want a copy of the document lying around the office. Tr. 256:12-25.

On or about March 5, 2016, Wall left Zipperer a voicemail message asking for Zipperer's personal email address so that Wall could send the draft appeal to that address. Resp. Ex. 23 to Tr. (Supplemental Record Part 1); Tr. 165:13-167:6, 256:21-25. Zipperer called Wall back, declined to provide his personal email address, and told Wall that he "didn't believe it would be appropriate for [Wall] to send something of that nature to [Zipperer's] personal email address and in fact said there was really no purpose in the Governor's office receiving that document," because it pertained to Wall's employment dispute with the DOJ. Tr. 167:10-17, 256:21-25.

On or about March 8, 2016, Wall found Zipperer's home address online and sent a copy of his draft appeal to Zipperer's home. Tr. 258:17-260:7; Resp. Ex. 14 to Tr. Along with the copy of his appeal, Wall included a note stating:

I know that you didn't want me sending this electronically or to the office because of the records issue, so I elected instead to send it to your home in writing and would ask that you feel free to shred it once you have looked it over. Nobody will know that I sent it and this is strictly between you and

me. I understand the concern the administration has over creating records Rich, but I can't let that harm me or my family worse than we've already been harmed.

Resp. Ex. 14 to Tr. On March 11, 2016, Zipperer responded by letter, informing Wall that the documents would not be destroyed and disputing Wall's phrasing regarding records, stating:

After reading your letter, I want to make it clear that the letter is not an accurate representation of our conversations regarding the manner in which we handle records in our administration. In this situation you requested my personal email address, which I declined to provide, because the record you proposed to send to me related to official business. In addition, there was no need to send our office a draft pleading relating to an employment issue between you and the Wisconsin Department of Justice. As a former member of our administration, you understand that we are expected to fully and dutifully follow all public records laws and procedures. I have a duty to retain your correspondence as an official record and it will be treated as such.

Tr. 169:5-22; App. Ex. 15 to Tr. Zipperer responded promptly to Wall's correspondence because "the opening paragraph making a suggestion that it might be appropriate to destroy that document was concerning. I wanted to make it clear that I had no intention of destroying that document." Tr. 169:23-170:16.

After receiving Wall's letter, Zipperer turned the documents Wall had mailed him over to the chief legal counsel in the Governor's Office. Tr. 168:1-24. Zipperer did so because he believed the documents were public records. *Id.* Zipperer and the chief legal counsel from the Governor's Office also met with Cook and showed him the letter Wall sent to Zipperer. Tr. 27:4-28:3; Resp. Ex. 14 to Tr. Cook read the letter and was surprised by "the portion in the letter that suggested that...Mr. Zipperer shred the documents after he got done reading it...It was highly unusual, to say the least, that someone would make that recommendation to the chief of staff to the Governor." Tr. 28:10-17.

Cook forwarded Wall's letter to the Attorney General, Connell, and other DOJ officials. Tr. 29:1-30:1. Cook subsequently directed Connell to "perform a thorough investigation into this letter." Tr. 32:2-6. Connell's investigation confirmed that Wall in fact wrote the letter and sent it to Zipperer. Tr. 32:19-33:17, 101:12-102:16; Resp. Ex. 20 to Tr. Connell also advised Wall that he would be receiving a predisciplinary letter. Tr. 102:17-19; Resp. Ex. 20 to Tr.

Cook informed Wall of his termination from the DOJ in a letter dated April 15, 2016. Tr. 35:5-12; Resp. Ex. 21 to Tr. The DOJ terminated Wall for attempting and/or encouraging efforts to evade Wisconsin's public records law through the letter he sent to Zipperer and the actions Wall took in sending it. Tr. 35:13-21; Resp. Ex. 21 to Tr. The termination letter stated that Wall's letter to Zipperer violated several DOJ work rules, including insubordination; failure to comply with department policies, rules and regulations; making false or malicious statements concerning other employees, supervisors or the department; and failing to exercise good judgment or being discourteous in dealing with fellow employees, supervisors or the public or other behaviors unbecoming of a state employee. Tr. 36:2-39:10; Resp. Ex. 21 to Tr.

At the WERC hearing, Cook testified that the DOJ's decision to terminate Wall was based on the following rationale:

The Attorney General and I again after his stance on public records, the importance of public records, given the magnitude of the situation here where Mr. Wall's suggesting or recommending that a high ranking official shred a public record, given the other statements that were provided in the letter, particularly calling into question Mr. Connell, Mr. Matthews and potentially the Attorney General himself, given the nature of the letter, everything in the letter, we felt that this clearly rose to a level of termination.

Tr. 34:10-20. The DOJ did not consider a lesser level of discipline, nor did anyone at the DOJ review Wall's personnel file before deciding to terminate him. Tr. 33:20-39:15. Wall's personnel file shows that he put in many years of distinguished service with the DOJ. App. Exh. 1, Parts 1-18, to Tr.

On July 1, 2016, Wall filed an appeal with the WERC pursuant to Wis. Stat. § 230.44(1)(c)2, claiming the DOJ discharged him without just cause. WERC Decision, p. 1. The WERC held a hearing on September 13 and 14, 2016, after which the parties submitted post-hearing briefs. WERC Decision, p. 1. On December 15, 2016, the WERC issued an order dismissing Wall's appeal and finding that the DOJ had just cause to terminate Wall. WERC Decision. Wall now seeks judicial review of the WERC's decision, pursuant to Wis. Stat. ch. 227.

ANALYSIS

Wall's appeal raises two main issues: 1) whether there is substantial evidence in the record to support the WERC's finding that Wall attempted to evade the public records law, and 2) whether the WERC properly interpreted Wis. Stat. ch. 227 when it determined that the DOJ had just cause for termination of Wall's employment.

Judicial review under Wis. Stat. ch. 227 is limited to determining whether the agency committed a procedural error, erroneously interpreted a provision of law, or lacked substantial evidence in the record for its decision. Wis. Stat. §§ 227.57(3)-(6). The burden of proof in a case such as this is on the party seeking to overturn the agency decision, not on the agency to justify its action. *Loeb v. Board of Regents of Univ. of Wis.*, 29 Wis. 2d 159, 164, 138 N.W.2d 227 (1965); *Currie v. State Dep't of Indus., Labor & Human Relations, Equal Rights Div.*, 210 Wis. 2d 380, 387, 565 N.W.2d 253 (Ct. App.

1997). If the petitioner fails to prove a legal or procedural error or that the agency's decision is not supported by substantial evidence in the record, the reviewing court must affirm the agency's decision. Wis. Stat. § 227.57(2).

I. Substantial evidence in the record supports the WERC's finding that Wall attempted to evade the public records law.

a. Standard of Review

Pursuant to Wis. Stat. § 227.57(6), the Commission's findings of fact can only be set aside on review if they are "not supported by substantial evidence in the record." The Court may not substitute its own judgment for that of the agency as to the credibility or weight of the evidence on any disputed finding of fact. Wis. Stat. § 227.57(6); *Bell v. Dep't of Children & Families*, 2015 WI App 47, ¶ 16, 363 Wis. 2d 527, 867 N.W.2d 430. It is for the agency, and not this court, to determine the credibility of evidence or witnesses and to weigh the evidence. *Samens v. Labor & Indus. Review Comm'n*, 117 Wis. 2d 646, 660, 345 N.W.2d 432 (1984). The Court's role is to search the record for credible and substantial evidence which supports the agency's determination rather than to weigh opposing evidence. *Vande Zande v. Dep't of Indus., Labor & Human Relations*, 70 Wis. 2d 1086, 1097, 236 N.W.2d 255 (1975).

Only a finding of fact that is not supported by substantial evidence in the record may be set aside. *Coulee Catholic Sch. v. LIRC*, 2009 WI 88, ¶ 31, 320 Wis. 2d 275, 768 N.W.2d 868; *City of Superior v. ILHR*, 84 Wis. 2d 663, 666, 267 N.W.2d 637 (1978). Substantial evidence is defined as such relevant evidence in the record, including all inferences therefrom, which a reasonable mind *might* accept as adequate to support a conclusion. *Hoell v. Labor & Indus. Review Comm'n*, 186 Wis. 2d 603, 614, 522 N.W.2d 234 (Ct. App. 1994); *Holtz & Krause, Inc. v. State Dep't of Nat. Res.*, 85 Wis. 2d 198,

204, 270 N.W.2d 409 (1978). An agency may properly draw one inference from the evidence despite the existence of other possible inferences. The drawing of such inferences is an act of fact-finding and the inference is conclusive on the court. *Farmers Mill of Athens, Inc. v. Dep't of Indus., Labor & Human Relations*, 97 Wis. 2d 576, 579-80, 294 N.W.2d 39 (Ct. App. 1980). If, applying the substantial evidence test, the court concludes that "reasonable minds could have reached the same conclusion that was reached by the [C]ommission," the Commission's decision must be affirmed. *Samens v. Labor & Indus. Review Comm'n*, 117 Wis. 2d 646, 660, 345 N.W.2d 432 (1984).

The substantial evidence standard does not permit a court to overturn an agency's reasonable finding even if it may be against the great weight and clear preponderance of the evidence. *Crystal Lake Cheese Factory v. LIRC*, 2003 WI 106, ¶ 27, 264 Wis. 2d 200, 664 N.W.2d 651; *Gateway City Transfer Co. v. Public Service Comm.*, 253 Wis. 397, 405-07, 34 N.W.2d 238 (1948). There is no requirement "that the evidence be subject to no other reasonable, equally plausible interpretations." *Hamilton v. Dep't of Indus., Labor & Human Relations*, 94 Wis. 2d 611, 617, 288 N.W.2d 857 (1980). "There may be cases where two conflicting views may each be sustained by substantial evidence. In such a case, it is for the agency to determine which view of the evidence it wishes to accept." *Bucyrus-Erie Co. v. Dep't of Indus., Labor & Human Relations*, 90 Wis. 2d 408, 418, 280 N.W.2d 142 (1979). If the factual findings of the administrative body are reasonably based on substantial evidence in the record, they must be upheld. Wis. Stat. § 227.57(2), (6).

b. Grounds for Affirming the WERC's Findings of Fact

The Court is satisfied there is substantial evidence to support the findings of the WERC. The WERC concluded that the letter Wall sent to Zipperer “both in content and manner of delivery was a clear attempt to avoid application of the open records provisions of state law.” WERC Decision, p. 5. The WERC’s decision cites the following language of Wall’s letter:

- I know that you didn’t want me sending this electronically or to the office because of the records issue.
- I would ask that you [Zipperer] feel free to shred it once you’ve looked it over.
- Nobody will know that I sent it and this is strictly between you and me.
- I understand the concern the administration has over creating records.

Based on these statements, the WERC drew an inference that Wall was inviting Zipperer to evade the law in order to keep the document out of the public domain. WERC Decision, p. 5.

The WERC found additional support for this inference in Wall’s actions, the “manner of delivery” of the letter. The WERC’s decision argues, “[i]f he believed that his ten page appeal was a non-disclosable ‘draft,’ why send it to Zipperer’s personal residence?” WERC Decision, p. 5. The WERC found that Wall sent the document to Zipperer’s personal residence without Zipperer’s knowledge or invitation. *Id.* Further, Wall sent the document to Zipperer’s home after Zipperer refused to give Wall his personal email address, told Wall that emailing such a document to his personal email would be inappropriate, and told Wall that there was no purpose in sending the document to the Governor’s office. *Id.* In light of Wall’s actions and Zipperer’s responses, the

WERC found that “Wall’s explanations do not ring true” and inferred that Wall must have believed that the document was a sensitive public record. *Id.*

The Court cannot substitute its judgment for that of the WERC with respect to the weight of the evidence and the credibility of witnesses. *Samens*, 117 Wis. 2d at 660. Wall argues that he testified that he had no intention of evading the public records law, claiming that he made an “innocent mistake.” However, “where two conflicting views may each be sustained by substantial evidence... it is for the agency to determine which view of the evidence it wishes to accept.” *Bucyrus-Erie Co.*, 90 Wis. 2d at 418. The WERC was not bound to believe Wall’s testimony, and the Court must now rely on the WERC’s judgment as to Wall’s credibility.

Wall also argues that the document in question was not technically a public record. The WERC’s decision acknowledged that, “[w]hile it is correct that the question of what is a public record can often be a puzzling legal issue, here Wall *understood* that the document indeed was a public record and that the only way to avoid the required disclosure was to unlawfully keep it ‘strictly between you and me’ as Wall proposed” (emphasis added). WERC Decision, p. 5. The WERC reviewed the evidence and testimony and determined that Wall’s actions raised inferences that he *believed* the document was a public record, that he *intended* to hide a public record from public view, and that he was encouraging Zipperer to do the same. Reasonable minds could have reached the same inferences. Therefore, the Court concludes that the findings of the WERC are supported by substantial evidence in the record.

II. The WERC properly interpreted Wis. Stat. ch. 227 when it determined that the DOJ's decision to terminate Wall was not excessive punishment for his actions.

a. Standard of Review

Under Wis. Stat. § 227.57, “the court shall set aside or modify the agency action if it finds that the agency has erroneously interpreted a provision of law and a correct interpretation compels a particular action, or it shall remand the case to the agency for further action.” The reviewing court is not bound by the agency’s conclusion of law. *West Bend Educ. Ass’n v. WERC*, 121 Wis. 2d 1, 11, 357 N.W.2d 534 (1984). However, the reviewing court should defer to an agency’s application of a statute to found facts if there exists a rational basis for the agency’s conclusion, even if the court does not entirely agree with the agency’s rationale. *NCR Corp. v. Dep’t of Revenue*, 128 Wis. 2d 442, 447–48, 384 N.W.2d 355 (Ct. App. 1986); *Luetzow Indus. v. Wisconsin Dep’t of Revenue*, 197 Wis. 2d 916, 922, 541 N.W.2d 810 (Ct. App. 1995). The agency’s decision will only be considered erroneous if it “directly contravenes the words of the statutes, is clearly contrary to legislative intent, or is without rational basis.” *Mineral Point Unified School District v. WERC*, 251 Wis. 2d 325, 340, 641 N.W.2d 701 (2002).

The Wisconsin Supreme Court has clarified both when to defer to an agency’s legal conclusion and how much deference the courts should give. See *UFE, Inc. v. LIRC*, 201 Wis. 2d 274, 284, 548 N.W.2d 57 (1996). An agency’s interpretation or application of a statute may be accorded great weight deference, due weight deference or *de novo* review. *Id.* Great weight deference is appropriate when the following requirements are met: (1) the legislature charged the agency with the duty of administering the statute; (2) the agency’s interpretation is one of long standing; (3) the agency employed its

expertise or specialized knowledge in forming the interpretation; and (4) the agency's interpretation will provide uniformity and consistency in the application of the statute. *Id.* Under the great weight standard, "a court will uphold an agency's reasonable interpretation that is not contrary to the clear meaning of the statute, even if the court feels that an alternative interpretation is more reasonable." *Id.* at 287.

Here, the parties do not dispute that the WERC's conclusions of law regarding just cause for termination under Wis. Stat. § 230.34 are entitled to great weight deference. The burden of proof to show that the agency's interpretation is unreasonable is on the party seeking to overturn the agency's decision. *Mineral Point Unified School District v. WERC*, 251 Wis. 2d 325, 341, 641 N.W.2d 701 (2002).

b. Summary of "Just Cause" Law, Wis. Stat. § 230.34

Having determined that the evidence is sufficient to support the WERC's finding that Wall sent the letter to Zipperer with the intent to evade or encourage evasion of the public records law, this court must decide whether the WERC appropriately found that such conduct constituted 'just cause' for dismissal under Wis. Stat. § 230.34.

A state employee with permanent civil service status may be discharged only for just cause. Wis. Stat. § 230.34(1)(a). The test for determining whether "just cause" for discipline exists requires a two-step analysis: first, whether the employer had just cause to impose at least some discipline due to misconduct that "sufficiently undermined the efficient performance of the duties of employment," and second, whether the discipline imposed was excessive based on the specific requirements of the governmental position. *Safransky v. State Pers. Bd.*, 62 Wis. 2d 464, 474-75, 215 N.W.2d 379 (1974).

The obligations and demands placed on different positions within state government may justify differences in discipline. *Id.* at 475. There must be a rational connection or nexus between the misconduct and the deleterious effects on job performance. *Id.* The requirement of a rational connection avoids arbitrary and capricious action by the appointing authority and protects the rights of the employee to due process of law. *Id.* In reviewing whether the particular discipline imposed was excessive, the agency must consider the weight or enormity of the employee's misconduct, including the degree to which it did or could reasonably be said to tend to impair the employer's operation. *Mitchell v. DNR*, State Pers. Comm. Dec. 83-0228-PC (1984) at 6, citing *Safransky*, 62 Wis. 2d 464. The agency may also consider the employee's prior disciplinary record and the discipline imposed by the respondent for misconduct in other cases. However, "frequently the different circumstances involved in other disciplinary matters make it difficult to make comparisons." *Larsen v. DOC*, State Pers. Comm. Decs. 90-0374-PC & 91-0063-PC-ER (1992) at 11 (citing *Showsh v. DATCP*, State Pers. Comm. Dec. 87-0201-PC (1988)).

Courts must consider "the degree to which [the employee's misconduct] did or could reasonably be said to have a tendency to impair the employer's operation." *Safransky*, 62 Wis. 2d at 474-75. Actual harm, to the employee's performance of his duties or to the efficiency of the workforce, caused by the employee's misconduct is not a prerequisite for dismissal. Discharge is a rational and appropriate disposition to prevent future harm. *Id.*; *Miller v. DOC*, State Pers. Comm. Dec. 99-0108-PC (2002) at 28.

Additionally, just cause for discharge exists for conduct unbecoming of a state employee that violates "important and fundamental standards of propriety," and that is so

flagrant or serious that retaining the employee will undermine public confidence in government. *State ex rel. Gudlin v. Civil Service Comm'n*, 27 Wis. 2d 77, 86-87, 133 N.W.2d 799 (1965); *see also Safransky*, 62 Wis. 2d at 474-75. “In such case the conduct can reasonably be deemed cause for suspension or discharge even though it has no direct bearing upon [the employee ’s] performance of his duties.” *State ex rel. Gudlin*, 27 Wis. 2d at 87.

c. Grounds for Affirming the WERC’s Interpretation

The Court is satisfied that the WERC’s application of the “just cause” standard is a reasonable interpretation that does not directly contravene the words of the statutes, is not clearly contrary to legislative intent, and is not without a rational basis. Having found that Wall sent the letter to Zipperer’s home in an “attempt to circumvent the state public records law” and to suggest that Zipperer do the same, the WERC next determined that the DOJ sustained its burden to establish by the greater weight of the evidence that it had just cause for termination. WERC Decision, p. 5-6.

The WERC found that a high level state administrator’s attempt to evade and encourage evasion of the state public records law constituted misconduct so flagrant and serious that it would “significantly undermine the DOJ had lesser discipline been imposed.” WERC Decision, p. 5. This alone is enough to establish just cause for termination, regardless of whether the misconduct had any bearing on Wall’s performance of his job duties. *See State ex rel. Gudlin v. Civil Service Comm’n*, 27 Wis. 2d 77, 86-87, 133 N.W.2d 799 (1965). In applying the two-step analysis for just cause presented in *Safransky*, the WERC additionally found that 1) Wall’s misconduct

sufficiently undermined the efficient performance of his job duties; and 2) the DOJ's discipline was not excessive. *Safransky*, 62 Wis. 2d at 474-75; WERC Decision, p. 5.

Under either analysis, *Gudlin* or *Safransky*, the WERC's decision provided sufficient reasoning and analysis to establish a rational basis for its determination. Wall's misconduct was of the type which could have a tendency to destroy public respect for government employees and confidence in the operation of government services. Erosion of the public trust may alone be reasonable grounds for termination. *See State ex rel. Gudlin*, 27 Wis. 2d at 86-87. According to testimony given at the WERC hearing, Wall was the subject of public scrutiny after his resignation from the DOC in the midst of the investigation of the DOC's juvenile facilities at the Lincoln Hills School for Boys and the Copper Lake School for Girls, an investigation involving allegations of destruction of public records. Tr. 14:4-18:14, 89:19-96:2, 162:16-163:12, 187:2-189:9, 198:8-200:10. The DOJ additionally testified about the Attorney General's strong, public commitment to open government. Tr. 10:18-12:13, 34:8-20. Wall's attempt to circumvent the public records law was misconduct of the type which could significantly diminish public respect for the DOJ and its operations.

Further, Wall's misconduct had a rational connection to his ability to perform his job duties. *See Safransky*, 62 Wis. 2d at 474-75. The WERC appropriately determined that Wall was a "high level administrator," WERC Decision, p. 5. As the program and policy manager for the DLES, Wall was a deputy division administrator. At the WERC hearing, Connell testified that the DLES is a large division, so Wall would be responsible for supervising and disciplining over 300 employees. Tr. 115:13-118:4. The DOJ HR Director Jayne Swingen explained that the program and policy manager position is a

“career executive position,” considered one of the highest positions in classified service, requiring a certain skill set and an administrative, managerial focus. Tr. 139:15-140:16. Cook testified that “the deputy administrator interacts with law enforcement agencies throughout the state,” and the job duties listed in the position description include the responsibility to “manage and coordinate the division’s response to all open records requests, serve as department custodian of records for the division.” Tr. 40:14-41:11; Resp. Ex. 3 to Tr. The WERC made a reasonable inference in concluding that Wall’s misconduct not only had the potential to erode public trust in government but also to erode Wall’s ability to perform the duties of his high level position – Wall’s misconduct could easily cause subordinate employees to lose trust in his ability to manage and perform his responsibilities effectively and faithfully.

Here, Wall has failed to meet his burden to prove that the WERC’s application of the just cause statute was unreasonable. The WERC considered the severity of Wall’s misconduct, the connection between his misconduct and the requirements of his position, the large degree to which his misconduct could reasonably be said to impair the DOJ’s operations, and Wall’s prior work record, and it found that termination was not excessive discipline. WERC Decision, p. 4-6. This finding has a rational basis drawn from the facts in the record and is not contrary to the clear meaning of the just cause statute. Therefore, the Court concludes that the WERC’s determination that the DOJ demonstrated just cause for termination must be affirmed.

ORDER


The Court, upon review of the record and review of the law, finds the record does support the WERC’s findings. It is not important or relevant as to whether the Court may

have decided this case differently. We conclude that, in view of the entire record, there is substantial evidence to sustain the WERC's finding that Wall attempted to evade and encourage evasion of the state public records law. The record also supports the WERC's finding that Wall's misconduct constituted just cause for termination. The WERC's decision is affirmed.

SO ORDERED. This is a final decision for the purposes of appeal.

Dated this 31 day of October, 2017.

BY THE COURT:

A handwritten signature in black ink, appearing to be 'E. Mitchell', written over a horizontal line.

Hon. Everett Mitchell
Circuit Court Judge, Branch 4