

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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VERLA BARNES, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0163

Case Type: PA

DECISION NO. 36785

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**Appearances:**

Mike Stahl, AFSCME District Council 32, 8033 Excelsior Drive, Madison, Wisconsin, appearing on behalf of Verla Barnes.

Michael Gentry and William Ramsey, Wisconsin Department of Administration, 101 East Wilson Street, 10th Floor, P.O. Box 7864, Madison, Wisconsin, appearing on behalf of the State of Wisconsin Department of Corrections.

**DECISION AND ORDER**

On June 30, 2016, Verla Barnes filed a timely appeal with the Wisconsin Employment Relations Commission, pursuant to § 230.44(1)(c), Stats., asserting she had been discharged without just cause by the State of Wisconsin Department of Corrections. The Commission assigned Danielle L. Carne to serve as Hearing Examiner. Hearing in this matter was held on October 6, 2016, and October 18, 2016, at the Commission's offices in Madison, Wisconsin. Subsequently, the parties each submitted initial and reply written arguments. The last briefs were received on December 20, 2016.

On February 23, 2017, Examiner Carne issued a Proposed Decision and Order determining that Barnes was discharged for just cause. No objections to the proposed decision were filed and the matter became ripe for Commission consideration on March 28, 2017.

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

**FINDINGS OF FACT**

1. The Department of Corrections is an agency of the State of Wisconsin that operates prisons and correctional facilities. DOC is segregated into operational divisions, one of which is the Division of Community Corrections (DCC).

2. Until the date of her discharge, Verla Barnes had worked in DCC for approximately 18 years as a probation and parole agent, had no prior disciplines on her work record, and had permanent status in class.

3. In January, 2016, Barnes falsified an Incident Report and an Employee Workplace Injury or Illness Report.

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 had just cause within the meaning of § 230.34(1)(a), Stats., to discharge Verla Barnes from her employment.

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

### **ORDER**

The discharge of Verla Barnes is affirmed.

Signed at the City of Madison, Wisconsin, this 17th day of April 2017.

### **WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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James R. Scott, Chairman

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Rodney G. Pasch, Commissioner

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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.

Verla Barnes had permanent status in class at the time of her discharge, and her appeal alleges that the discharge was not based on just cause.

On January 15, 2016, Barnes' job duties took her to the Dane County Public Safety Building on Doty Street in Madison and, then, around the corner on foot to the entrance of the Dane County Courthouse on Hamilton Street. Upon returning to her office from these visits, Barnes completed and submitted to her supervisor an Incident Report, in which she described the following event:

On 01-15-16 at approximately 10:30 am, I was walking on the handicapped accessible walkway at the courthouse, carrying my work bag and my crutches, when a white female, her boyfriend (or Husband) and a child were walking towards me. As they got closer to me, she lost her balance and fell into me, causing me to drop my bag and crutch. I was able to grab hold of the rail to keep myself from falling completely to the ground. As she fell into me, I detected a strong odor of alcohol coming from her; she immediately tried to hit me in the face. I blocked the hit with my left hand. The male immediately started calling me a fat ass nigger. I grabbed my crutch in self-defense, because if she would have continued to try to strike at me, I was going to use it for protection. A male approached me once I was standing and asked me if I was alright. Of course, at that time, I was upset that I was even put in this situation.

As I continued to proceed to the DAs Office, I started to feel some pain on my right mid-back side. I continued to review the file. While sitting there, I began to experience sharp pains in my right mid-back. Once I finished reviewing the file, I requested assistance from one of the workers and asked if they would please assist me in carrying the huge file back to the reception area. I then called Kay Valdes to see if she could come and pick me up and take me back to my car, due to the pain I was experiencing in my back and

foot. Once I arrived to my vehicle, which was parked on Carroll Street, I observed a parking ticket. I had my temporary disabled plates displayed, however, there was a sign posted stating the spot was reserved for MPD vehicles. I did not see the sign when I initially parked because a vehicle was parked in front of the sign. Further, I did not see a need to look or be concerned due to my sticker. This entire ordeal could have been avoided if my previous duties restrictions had not removed [*sic*], which provided me with security and not walking a long distance. Now I am forced to be in a more unsafe situation due to things such as the weather as it was wet and misting outside. I am also now seeing individuals at the jail, which I feel is no different than me meeting with offenders in a stable and secure environment such as my office. Prior restrictions included no home visits, transports, or custodies.

I do not find this situation to be safe or accommodating in any way. I find it to be careless, inhumane and negligent.

Barnes' reports indicated that the event she described happened on the sidewalk as she was walking from the Dane County Public Safety Building to the Dane County Courthouse. That section of sidewalk is covered with surveillance cameras that are part of the courthouse security system. After Barnes filed her incident and injury reports, her supervisors gained access to the camera footage of the sidewalk area. They testified that they wanted to help her identify her assailants, but it also is apparent that they became suspicious fairly quickly about what she had reported. Then, when they reviewed the footage, they could see absolutely nothing that matched what Barnes had recounted. Not only could they not see the events, but they could not identify any persons that matched the individuals Barnes had described: no woman, no man accompanying her, no child with them, and no good samaritan who approaches after the incident to ask if she was all right. Because of this sheer absence of evidence, Barnes' credibility became (and has remained) an issue.

The video footage from the day in question comes from four cameras. Because of how the cameras were angled, there are two gaps in the footage where sections of sidewalk cannot be seen. Timestamps on the video establish that the first gap, which is inconsequential for purposes of this case, lasts for 23 seconds. The second gap, near the beginning of the handicapped accessible walkway leading to the courthouse entrance, lasts for 13 seconds. Barnes alleges that this is the space and time in which the event she described in her incident and injury reports occurred.

To be sure, the record establishes that the blind-spot in the camera footage is large enough to hold three adults and a child. It is even possible that those individuals could have walked through a blind corridor of space, from where Barnes says she encountered them on the sidewalk, to the street, and out of the camera's field. One's willingness to accept this narrow possibility is squelched, however, by the fact that Barnes' overall story is not believable and by the fact that her testimony at hearing is riddled with inconsistencies.

First, there is its practical improbability. It is not believable that Barnes could have undergone the sidewalk event, as she described it, in a mere thirteen seconds. Barnes contends

she was struck, fell against a rail, dropped her cane and bag, defended herself, picked her items up again, regained her composure while conversing with a good samaritan, and continued on her way. Given how slowly Barnes appears to have been walking with her cane, thirteen seconds seems only to have been enough time for her to cover the distance of the blind-spot moving at an uninterrupted pace. Indeed, this is what she appears to have done, showing absolutely no change in gait or demeanor when she reappears on camera.

Moreover, based on her own accounts, Barnes' behavior following the alleged incident is strangely incongruous. What Barnes alleged in the incident and injury reports is no less than a physical and verbal assault. She claimed a woman had tried to hit her in the face, that she contemplated potentially having to defend herself with her crutch from further strikes, that she thought her back had been injured, that she cried while inside the courthouse, and that the incident left her so upset she was unable to walk back to her car and had to have a coworker drive to pick her up. On the other hand, Barnes' testimony also established that, during this exact same period of time, she was "joking around" and "laughing" with three separate people she encountered in the courthouse. She also testified that when she returned to her own office and immediately tried to report the incident to her supervisor, only to learn he was not in the office, she casually "just laughed and was like, 'whatever'". When Barnes' regional chief learned about the incident and encouraged her to file a police report, Barnes declined to do so, even though on that very same day she filed a police report regarding an unrelated claim of identity theft.

Barnes' efforts at hearing to explain other inconsistencies in her story create layers of untruth. The following is one example. On February 18, 2016, during Barnes' first investigatory interview, DOC's investigators presented Barnes with a photo of the general area where she alleged the incident occurred, asking her to place an X in the exact location. At this point, video footage from the day in question had not been mentioned in the investigation. As it turns out, the spot where Barnes placed the X was covered by a surveillance camera and, as discussed, nothing she described appears on video.

At hearing, insisting that the event occurred in a location different from where the X was originally placed, Barnes took the position that she was pressured at the February 18 interview to mark the photo as she did. She claims she insisted during the interview that she was confused, that the black and white printed photo was too dark to make out, and that she was too emotional to think clearly. For this reason, she testified, she made up her mind to go to the courthouse on that very same day and take her own photos of the place where the event occurred. This contention is important, for two reasons. First, Barnes would like to show that she was uncomfortable from the very beginning with where she had placed the X. Second, she would like to show that she was concerned about the placement of the X before, not after, she was told during the second, March 14 investigatory interview that the incident had not shown up on the video footage where she suggested it would.

Barnes produced three photographs on the first day of hearing, testifying in detail how she had left the February 18 meeting, told her coworker who accompanied her to the meeting that she was worried about the placement of the X and was going to take the pictures that night, and that she needed to pick up her mom before taking the pictures because Barnes' own smartphone had been damaged sometime prior to that day when she was babysitting her nephew and the phone got dropped in the bathtub. In response to that testimony, however, questions were

raised on cross-examination as to why, in a photo taken in February, Barnes was outside in a short-sleeved shirt and a man can be seen in the background walking a dog in shorts.

On the second day of hearing, Barnes again provided testimony. In that testimony, she said she realized after the first day of hearing that the photos she had provided as evidence were not taken on February 18, but rather sometime later. In support of this assertion, Barnes explained that she in fact had taken the original photos with her own phone on February 18, *then* on the Saturday after February 18 her phone got dropped in the bathtub (or the toilet, she adds) when she was babysitting the nephew, *then* Barnes went with her mom sometime later to take a second set of photos, presumably when shorts and short sleeves would have been more seasonable. It is this type of multi-directional testimony that creates the hearing record equivalent of M.C. Escher's staircases and, more importantly, completely undermines Barnes' credibility.

Barnes argues that her discharge should be reversed due to a flawed investigation. She takes the position that when her supervisors first looked at the video footage and concluded she had falsified the reports, they had not yet realized that there were gaps in the footage. This misunderstanding, however, is not significant. The absence of the event and people described by Barnes was enough reason to start an investigation, even if they did not yet have all of the available information.

Barnes also argues that she had no motive to jeopardize an 18-year career by falsifying incident and injury reports. Ironically, however, her motivation seems to be written into those reports. In June of 2015, Barnes broke her foot. After some time on medical leave, she had returned to work on light duty. In December of 2015, Barnes' supervisors had been reviewing her work restrictions, which had evolved to include in-person meetings between Barnes and offenders in her office. Barnes' supervisor concluded that these meetings created safety concerns and could not continue. Barnes was therefore forced to resume the type of outing she was on when the alleged sidewalk incident took place. The sidewalks were slippery that day, Barnes was walking with a crutch, and the fact that her duties had changed is the focus of the last several sentences of Barnes' report:

This entire ordeal could have been avoided if my previous duties restrictions had not removed, which provided me with security and not walking a long distance. Now I am forced to be in a more unsafe situation due to things such as the weather as it was wet and misting outside. I am also now seeing individuals at the jail, which I feel is no different than me meeting with offenders in a stable and secure environment such as my office. Prior restrictions included no home visits, transports, or custodies.

I do not find this situation to be safe or accommodating in any way. I find it to be careless, inhumane and negligent.

Barnes testified at hearing that the "situation" to which she referred in the last sentence was not the alleged incident, but rather to the general fact that she had been forced to leave her office. She was clear at hearing that she was upset about the change. This case begs for the conclusion that she viewed an incident report as an opportunity to express her frustration regarding the elimination of her light duty restrictions. Whatever led her to consider an incident

report in the first place is unknown, but the evidence supports a finding that it was not the event she described in the report.

Barnes had a long tenure as a probation and parole agent and a good work history. She received positive performance evaluations, and she was well-respected. These important factors sometimes mitigate the level of discipline. That is not an option here, though, because Barnes' conduct goes to the very heart of her job duties. The record shows that credibility is paramount to the work of a probation and parole agent. Such individuals have tremendous authority, to place offenders in jail and to conduct warrantless searches, for example. They also are called on to provide information to court, in the form of presentence investigations, revocation summaries, sentencing recommendations, and testimony under oath. Sometimes, an agent's word is put up against an offender's, and an agent's personnel file can be subpoenaed for use in a court case. Given the nexus between these job expectations and Barnes' conduct, DOC had cause to conclude that Barnes could no longer effectively perform her duties.

In these cases, the State has the burden to establish that an employee was guilty of misconduct and that the misconduct constituted just cause for the imposed discipline. *Reinke v. Personnel Board*, 53 Wis. 2d 123 (1971); *Safransky v. Personnel Board*, 62 Wis. 2d 464 (1974). The courts have equated this burden to a reasonable certainty by the greater weight or clear preponderance of the evidence. *Reinke v. Personnel Board, Id.*; *Hogoboom v. Wis. Pers. Com.*, Dane County Circuit Court, 81-CV 5669, 4/23/84; *Jackson v. State Personnel Board*, Dane County Circuit Court, No. 164-086, 2/26/79.

Barnes has argued that the burden is improperly being placed on her in this matter to prove the occurrence of the sidewalk incident described in her report. On the contrary, the burden is unquestionably on DOC. That burden, however, does not shield Barnes' story from the scrutiny it has undergone in the course of this proceeding. Further, the precise characterization of DOC's burden is important. Barnes argues that just cause for her discharge simply cannot be established because of the gap in the surveillance camera footage. The absence of direct evidence alone, however, does not defeat DOC's ability to meet its burden. The burden does not require DOC to prove beyond a shadow of a doubt that Barnes falsified the reports. Rather, DOC can satisfy its burden with the greater weight and clear preponderance of the evidence, and it has done so.

Signed at the City of Madison, Wisconsin, this 17th day of April 2017.

## **WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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James R. Scott, Chairman

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Rodney G. Pasch, Commissioner

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James J. Daley, Commissioner