

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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NICOLE REICHENBERGER, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0199

Case Type: PA

DECISION NO. 36947

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**Appearances:**

Paul Mertz, Representative, P.O. Box 181, Redgranite, Wisconsin, appearing on behalf of Nicole Reichenberger.

Anfin Jaw, Attorney, Department of Administration, 101 E. 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 March 20, 2017, Nicole Reichenberger filed an appeal with the Wisconsin Employment Relations Commission asserting that the State of Wisconsin Department of Corrections' decision to medically separate her from employment violated § 230.37(2), Stats. The Commission assigned the appeal to Examiner Raleigh Jones who conducted a hearing on April 17 and 18, 2017, in Madison, Wisconsin. On April 24, 2017, the parties filed briefs whereupon the record was closed.

On May 16, 2017, Examiner Jones issued a proposed decision rejecting the medical separation. No objections were filed and the matter became ripe for Commission consideration on May 23, 2017.

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

**FINDINGS OF FACT**

1. Nicole Reichenberger was employed as a corrections officer by the Department of Corrections, an agency of the State of Wisconsin, at the Redgranite Correctional Institution from

2001 through February 2, 2017, when the State separated her from continued employment for “medical reasons.”

2. Beginning July 11, 2016, Reichenberger went on an unpaid medical leave.
3. In October 2016, Reichenberger submitted a fitness for duty certification and medical inquiry completed by her primary medical provider that said she could return to work without accommodations on January 10, 2017.
4. Reichenberger became pregnant while she was on unpaid medical leave.
5. On November 22, 2016, Reichenberger requested that her leave status be continued as both a medical leave and a maternity leave.
6. In December 2016, DOC notified Reichenberger that her leave status had been changed to unauthorized, effective November 26, 2016, because of her failure to submit a completed updated medical inquiry.
7. On January 3, 2017, DOC received a letter from Reichenberger’s specialty medical provider which stated that she “should be out of work until her delivery.” The letter identified her due date as June 12, 2017.
8. On February 2, 2017, DOC separated Reichenberger from her employment “for medical reasons.” The letter taking this action stated that “[t]his action of medical separation is based on the fact that you have been on medical leave since July 11, 2016, and per your most recent medical documentation you cannot return to work.”
9. Prior to the February 2, 2017, separation, DOC did not explore any alternatives to ending Reichenberger’s employment.

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 over this matter pursuant to §§ 230.34(1)(a), 230.44(c), and 230.45(a), Stats.
2. The State of Wisconsin Department of Corrections failed to meet the requirements of § 230.37(2), Stats., when it medically separated Nicole Reichenberger from service.
3. The State of Wisconsin Department of Corrections failed to establish just cause for the § 230.37(2), Stats., medical separation of Nicole Reichenberger.

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

**ORDER**

The medical separation of Nicole Reichenberger is rejected. The State of Wisconsin Department of Corrections shall reinstate Reichenberger and place her on unpaid leave until she returns to work following her pregnancy.

Signed at the City of Madison, Wisconsin, this 12th day of June, 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**

The medical separation of a state employee is governed by § 230.37(2), Stats. That statute requires that the state employer explore all possible alternatives to removing the employee from the workforce before doing so. *Kristine Anderson v. Dept. of Safety and Professional Services*, Dec. No. 34656-A (Scott with final authority, 03/2014). In *John Walsh v. Dept. of Corrections*, Dec. No. 35041-C (WERC, 03/2017), the Commission noted that:

[S]tate employers have a particularly heavy burden placed upon them to do everything possible to retain employees with medical or physical infirmities. The language in § 230.37(2), Stats., requires the state employer to explore all sorts of alternatives short of dismissal, which may be utilized only as a "last resort."

Here, there is no objective evidence that DOC explored any alternatives prior to separating Reichenberger. Therefore, DOC did not honor the requirements of § 230.37(2), Stats. To remedy this failure, we have ordered that Reichenberger be reinstated and placed on unpaid leave until she is able to return to work after the birth of her child.

Signed at the City of Madison, Wisconsin, this 12th day of June, 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