

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

KAREN L. KLOTH, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0208

Case Type: PA

DECISION NO. 36976

Appearances:

Mark Cebulski, Staff Representative, AFSCME Council 32, 1234 Parkland Drive #1, Chippewa Falls, Wisconsin, and Sean Daley, Staff Representative, AFSCME Council 32, P.O. Box 19, Ashippun, Wisconsin, appearing on behalf of Karen Kloth.

Cara Larson, Attorney, Department of Administration, Division of Legal Services, 201 East Wilson, 10th Floor, P.O. Box 7864, Madison, Wisconsin, appearing on behalf of the State of Wisconsin Department of Corrections.

DECISION AND ORDER

On May 22 2017, Karen L. Kloth filed an appeal with the Wisconsin Employment Relations Commission asserting she had been discharged without just cause by the State of Wisconsin Department of Corrections. The appeal was assigned to Examiner Peter G. Davis. A hearing was held on July 13 and 20, 2017, in Neillsville, Wisconsin. A stenographic transcript of the hearing was prepared, post-hearing written argument was filed, and the record was complete on August 4, 2017.

On August 9, 2017, Examiner Davis issued a Proposed Decision and Order affirming the discharge. No objections were filed and the matter became ripe for our consideration on August 15, 2017.

Having considered the matter, the Commission makes and issues the following:

FINDINGS OF FACT

1. Karen L. Kloth was employed as a Correctional Sergeant by the State of Wisconsin Department of Corrections (DOC) and had permanent status in class at the time of her discharge.

2. When working at the Stanley Correctional Institution, Kloth enforced rules on inmates in a manner that created safety risks for fellow employees and inmates.

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 appeal 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 Karen L. Kloth.

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

ORDER

The discharge of Karen L. Kloth by the State of Wisconsin Department of Corrections is affirmed.

Signed at the City of Madison, Wisconsin, this 12th day of September, 2017.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott, Chairman

James J. Daley, Commissioner

MEMORANDUM ACCOMPANYNG 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.

Karen L. Kloth had permanent status in class at the time of her discharge and her appeal alleges that the discharge was not based on just cause.

The State has the burden of proof to establish that Kloth 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).

Kloth enforced prison rules in a manner that created a safety risk for fellow employees and inmates. Her fellow employees, both male and female, were able to enforce the same rules without creating a safety risk. DOC management advised Kloth of the “climate issue” she was creating and attempted to help her change when and how she enforced rules. Kloth was not able to change.

The safety of employees and inmates at a prison is of paramount concern. Where, as here, an employee behaves in a manner that jeopardizes the safety of employees and inmates, DOC has just cause to discharge the employee – particularly where, as here, efforts were made to assist the employee.

The discharge of Karen L. Kloth is affirmed.

When reaching this conclusion, we acknowledge but reject Kloth’s argument that she is the victim of a “good ol boys and compliant women’s” effort to drive her out of her job. Instead, we are satisfied that the male and female coworkers who expressed concern about her conduct were motivated by an understandable interest in their own safety. While Kloth correctly points out that no employees were injured while she was working, this good fortune does not translate into a just cause requirement that DOC must tolerate the risk she creates until an injury does occur.

To the extent Kloth contends that her strict enforcement of all rules is a better approach than the more discretionary practices approved by management of the prison (and practiced by a substantial majority of her coworkers), she fails to understand that it is the employer that establishes how a job is to be performed – not the employee.

Lastly, we note but reject Kloth’s contention that she could not modify her behavior because the DOC never told her how to change the manner or “tone” used when enforcing rules. The record reflects that DOC took surprisingly extensive efforts to assist Kloth but in the end she either chose not to change or was incapable of doing so. Either way, Kloth created a safety risk that warranted her discharge.

Signed at the City of Madison, Wisconsin, this 12th day of September, 2017.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott, Chairman

James J. Daley, Commissioner