

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

HEATHER DROPP -JOHNSTONE, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF HEALTH SERVICES, Respondent.

Case ID: 2.0043

Case Type: PA

DECISION NO. 37311

Appearances:

Heather Dropp Johnstone, 8840 N. Rexleigh Drive, Bayside, Wisconsin, appearing on her own behalf.

Lara Herman, Attorney, Office of Legal Counsel, Department of Health Services, 1 West Wilson Street, P.O. Box 7850, Madison, Wisconsin, appearing on behalf of the State of Wisconsin Department of Health Services.

DECISION AND ORDER

On September 5, 2017, Heather Dropp-Johnstone filed an appeal with the Wisconsin Employment Relations Commission, pursuant to § 230.44(1)(d), Stats., following the State of Wisconsin Department of Health Services' decision not to hire her for an Income Maintenance Specialist position. The Commission assigned the appeal to Examiner Raleigh Jones who conducted a hearing on December 13, 2017, in Madison, Wisconsin. Briefs were subsequently filed on January 12, 2018, whereupon the record was closed.

On February 13, 2018, Examiner Jones issued a Proposed Decision and Order concluding the State did not act illegally or abuse its discretion when it did not hire Dropp-Johnstone. Dropp-Johnstone filed objections on March 15, 2018, and the State filed a response on March 23, 2018.

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

FINDINGS OF FACT

1. The Department of Health Services (DHS) is an agency of the State of Wisconsin. Milwaukee Enrollment Services, known as Miles, is a bureau within the Division of Medicaid Services at DHS.

2. MiLES manages all aspects of income maintenance programs within Milwaukee County. An individual can call or walk into any MiLES call center or office and receive assistance with Food Share, Medicaid, Badger Care, and other economic assistance programs for eligible Milwaukee County residents.

3. Heather Dropp-Johnstone formerly worked for MiLES as an Income Maintenance Specialist. She left that position in 2014.

4. In 2017, DHS posted an announcement for the Income Maintenance Specialist position at MiLES.

5. Dropp-Johnstone applied for the position and completed the various steps of the hiring process.

6. MiLES Associate Director Michael Poma recommended that Dropp-Johnstone not be hired as an Income Maintenance Specialist due to concerns that he had as to her job performance when she was previously employed at MiLES. Based on that recommendation, MiLES Director Tonya Evans did not hire Dropp-Johnstone.

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 post certification hiring decisions by the State of Wisconsin pursuant to § 230.44(1)(d), Stats.

2. Heather Dropp-Johnstone has the burden to establish that the State of Wisconsin Department of Health Services acted illegally or abused its discretion when it did not hire her for an Income Maintenance Specialist position.

3. Heather Dropp-Johnstone has failed to sustain her burden of proof.

4. The State of Wisconsin Department of Health Services did not act illegally or abuse its discretion when it did not to hire Heather Dropp-Johnstone for an Income Maintenance Specialist position.

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

ORDER

This appeal is dismissed.

Signed at the City of Madison, Wisconsin, this 4th day of April, 2018.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman

MEMORANDUM ACCOMPANYING DECISION AND ORDER

This matter arises from the State of Wisconsin Department of Health Services' decision not to hire Heather Dropp-Johnstone as an Income Maintenance Specialist (hereinafter IMS). Dropp-Johnstone's appeal of that decision invokes the Commission's jurisdiction under § 230.44(1)(d), Stats., which provides in relevant part:

A personnel action after certification which is related to the hiring process in the classified service and which is alleged to be illegal or an abuse of discretion may be appealed to the commission.

An illegal act is one that is contrary to Wisconsin civil service statutes or administrative rules. An abuse of discretion is when an agency exercises discretion "to an end or purpose not justified by and clearly against reason and evidence." Dropp-Johnstone has the burden of proof. *Moeller-Bunker v. DWD*, Dec. No. 36786 (WERC, 5/17)

It is clear that Dropp-Johnstone was not hired by Miles Director Evans because of input she received from Miles Associate Director Poma. Dropp-Johnstone contends Poma's recommendation that she not be hired was based on a personal bias against her rather than any job-related concerns. In this regard, she testified that no valid job-related concerns were ever discussed with her by Poma and points to the absence of any written evidence that such concerns were raised during her prior employment at Miles. However, Poma credibly testified that he did raise job-related concerns with Dropp-Johnstone and that these concerns formed the basis for his recommendation that Dropp-Johnstone not be hired. Dropp-Johnstone's former supervisor Joseph Hooper also credibly testified that job-related concerns did exist and were discussed with Dropp-Johnstone by Poma. In light of this credible testimony, the Commission concludes that job-related concerns formed the basis for Poma's recommendation and that Dropp-Johnstone did not prove otherwise. While some written confirmation of the job-performance conversation between Poma and Dropp-Johnstone would have provided further support for the State's position in this matter, such conversations are not always documented in the workplace and the credible testimony of Poma and Hooper is sufficient to prove that the conversation did occur. Poma's testimony also establishes that job-performance concerns formed the basis for his "don't hire" recommendation to Evans.

Given the foregoing, the decision not to hire Dropp-Johnstone for an IMS position was neither illegal nor an abuse of discretion and the appeal has been dismissed.

Signed at the City of Madison, Wisconsin, this 4th day of April, 2018.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman