

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

ROSEMARY ESTERHOLM, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0250

Case Type: PA

DECISION NO. 37484

Appearances:

Kyle J. Hoff, Representative, 1109 Charlene Avenue, Tomahawk, Wisconsin, appearing on behalf of Rosemary Esterholm.

Cara J. Larson, Legal Counsel, 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 May 23, 2018, Rosemary Esterholm 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 August 1, 2018, in Wausau, Wisconsin, and the parties made oral argument at the hearing's conclusion. A transcript of the hearing was received August 24, 2018.

On August 28, 2018, Examiner Peter G. Davis issued a Proposed Decision and Order rejecting and modifying the State of Wisconsin Department of Corrections' discharge of Rosemary Esterholm. No objections were filed and the matter became ripe for Commission consideration on September 5, 2018.

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

FINDINGS OF FACT

1. Rosemary Esterholm was employed as a Supervising Youth Counselor 1 by the State of Wisconsin Department of Corrections (DOC) at the Lincoln Hills/Copper Lake School and had permanent status in class at the time of her discharge.

2. Esterholm was discharged effective March 12, 2018, for allegedly violating the following DOC work rule on November 9, 2015.

#1-Falsification of records, knowingly giving false information or knowingly permitting, encouraging or directing others to do so. Failing to provide truthful, accurate and complete information when required.

Serious misconduct -Falsifying records of the agency.

3. On November 9, 2015, Esterholm mistakenly initialed a document to inaccurately reflect that she was present at a work site at a time when she was not.

4. On November 9, 2015, Esterholm did not engage in serious misconduct.

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 did not have just cause, within the meaning of § 230.34(1)(a), Stats., to discharge Rosemary Esterholm.

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

ORDER

The discharge of Rosemary Esterholm by the State of Wisconsin Department of Corrections is rejected and modified to a one-day suspension without pay. Esterholm shall immediately be reinstated and made whole in all respects.

Signed at the City of Madison, Wisconsin, this 12th day September 2018.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman

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.

Rosemary Esterholm 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 Esterholm 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).

On November 9, 2015, a youth housed in the Wells Living Unit at Lincoln Hills/Copper Lake School attempted to commit suicide. Esterholm was working a 6:30 a.m. to 2:30 p.m. shift elsewhere in the School at the time. Esterholm reported to the chaotic scene shortly after 8:30 a.m. to assist with the care of other youth in the vicinity. Esterholm continued to work in that capacity until 10:30 p.m. that day.

At Lincoln Hills/Copper Lake School, DOC required employees assigned to perform visual monitoring checks on youth in the Wells Living Unit to initial a Counselor's Log to verify that the checks had occurred at required intervals. Sometime between her arrival at the attempted suicide scene shortly after 8:30 a.m. and her departure from work at 10:30 p.m., Esterholm initialed the previously blank Wells Living Unit Counselor's Log for the times of 7:30 a.m., 7:45 a.m., 8:00 a.m., 8:15 a.m., 8:30 a.m., 8:45 a.m. and 9:00 a.m.

The suicide attempt prompted a lawsuit in which various DOC employees (not including Esterholm) were named defendants. During an October 25, 2017 deposition related to that lawsuit, Esterholm agreed that she had initialed the Counselor's Log four times when she was not present in the Wells Living Unit. Prompted by the deposition, DOC initiated an investigation in January, 2018, into Esterholm's initialing of the Counselor's Log. Esterholm asserted that she had mistakenly initialed the entries, but DOC concluded that she had done so intentionally. DOC typically suspended Lincoln Hills/Copper Lake School employees for one day if it concluded they falsely verified having done their assigned monitoring checks. Despite this standard disciplinary response, despite the fact that Esterholm was not assigned to perform the monitoring in question, despite Esterholm's plausible assertion that the chaos of the day had caused her to make a mistake, and despite Esterholm's clean disciplinary record and recent promotion, DOC discharged

Esterholm. At approximately the same time Esterholm was discharged, the lawsuit was settled for millions of dollars.

The evidence presented at hearing persuades the Commission that Esterholm did not intentionally inaccurately initial the Counselor's Log. Her only plausible motive for doing so intentionally would be to cover for the other employees who were actually assigned to but apparently failed to perform the monitoring checks. Esterholm adamantly and credibly denied trying to cover for other employees. There is no evidence of any type of personal relationship between those employees and Esterholm that would cast doubt on her denial. Therefore, DOC did not have just cause to discharge Esterholm and shall immediately reinstate her and make her whole.

Given all of foregoing, it is apparent that by wrongly discharging Esterholm, DOC succumbed to the pressures of a lawsuit and sacrificed the career of a valuable employee in the process. Nonetheless, accurate completion of the Counselor's Log is important and Esterholm's mistaken failure to do so warrants a one-day suspension without pay.

Signed at the City of Madison, Wisconsin, this 12th day September 2018.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman