

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

PATRICIA MUENZENBERGER, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0272

Case Type: PA

DECISION NO. 37798

Appearances:

Thomas Kieffer, Hale, Skemp, Hanson, Skemp & Sleik, 505 King Street, Suite 300, La Crosse, Wisconsin, appearing on behalf of Patricia Muenzenberger.

Anfin Jaw, 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 October 26, 2018, Patricia Muenzenberger filed an appeal with the Wisconsin Employment Relations Commission asserting she had been demoted without just cause by the State of Wisconsin Department of Corrections. The appeal was assigned to Examiner Raleigh Jones. A hearing was held on December 14, 2018, in Black River Falls, Wisconsin. The parties made oral arguments at the hearing's conclusion.

On January 17, 2019, Examiner Raleigh Jones issued a Proposed Decision and Order affirming the demotion of Patricia Muenzenberger by the State of Wisconsin Department of Corrections. On January 21, 2019, Muenzenberger filed objections to the proposed decision. The State did not respond and the matter became ripe for Commission consideration on January 29, 2019.

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

FINDINGS OF FACT

1. Patricia Muenzenberger is employed by the Department of Corrections (DOC) at the Jackson Correctional Institution (JCI) and has permanent status in class. When this matter

arose, she was a Program Assistant-Advanced-Confidential. Prior to being in that position, she was an Office Operations Associate.

2. On August 3, 2018, Muenzenberger received via email the interview questions with benchmarks for a State job she planned to interview for. The interview questions with benchmarks were sent to Muenzenberger by a friend who worked at the State agency where Muenzenberger planned to interview. After Muenzenberger received those interview questions with benchmarks, she printed the attachment and later emailed it to her personal email account.

3. DOC considered Muenzenberger's actions to be a work rule violation and subsequently demoted Muenzenberger back to her former position of Office Operations Associate and reduced her pay accordingly.

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 demote Patricia Muenzenberger back to her former position of Office Operations Associate and reduce her pay accordingly.

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

ORDER

The demotion of Patricia Muenzenberger by the State of Wisconsin Department of Corrections is affirmed.

Dated at the City of Madison, Wisconsin, this 13th day of February, 2019.

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.

The Commission's first task in this case is to decide what to call the adverse personnel action imposed on Muenzenberger. She calls it a demotion, while DOC characterizes it as an involuntary transfer. While both terms can fairly be used to describe what happened to Muenzenberger, the Commission has decided to characterize what happened to Muenzenberger as a demotion. Here, Muenzenberger had permanent status in class at the time this action was imposed on her, and she alleges that this action was not based on just cause.

The State has the burden of proof to establish that Muenzenberger was guilty of the alleged misconduct and whether the misconduct constitutes just cause for the demotion imposed. *Reinke v. Personnel Bd.*, 53 Wis.2d 123 (1971); *Safransky v. Personnel Bd.*, 62 Wis.2d 464 (1974).

Muenzenberger currently works for DOC. In the summer of 2018, she was a candidate for a position with a different State agency, specifically for the position of Secretary-Confidential at the Wisconsin Challenge Academy in Fort McCoy which is run by the Department of Military Affairs (DMA). Prior to interviewing for that position, Muenzenberger contacted an old friend who worked at DMA, Kelley Becker, and asked her for general information about the upcoming interview. On August 3, 2018, Becker sent Muenzenberger an email that said she guessed about eight people were being interviewed for the position. Muenzenberger then responded to Becker with an email that said in pertinent part:

When they interviewed you, did they ask you situational questions, like what would you do if ...? Or were they more geared toward relating your experience to the position? Were there any of the standard, What's your weakness/strengths, how do you handle a difficult co-worker/customer, why should we hire you, etc.?

Sorry for all the questions. I know I will do fine, but it's always helpful to have an idea of what to expect. I've sat on many interview panels at JCI, so I know what to expect here, but it's been a long time since I've interviewed anywhere else. I plan to really look at

the position description this weekend and correlate past/current job tasks & skills to the position. I pretty much have done everything on the PD except the HR stuff, but I'm sure I could handle it. 'O

One of the skills on the PD is knowledge of the Cooperation Agreement. Do you know what that is?

And ... one final question: the PD says Conduct Sponsor activities for up to 4 cadets per class cycle ... can you tell me what that's about?

Exhibit R-8.

Becker then responded to Muenzenberger's email with an email that simply said:

Look at what I found ... 'O
Don't tell.

Exhibit R-9. The subject line of her email was captioned, "Fwd: Budget Report." There was an attachment to the email which had the following description: "Sec Int Questions w crit June 18.docx." The attachment was a four-page document which was captioned, "Secretary Confidential-Wisconsin Challenge Academy." The document contained the ten questions that were going to be asked at the upcoming Secretary-Confidential interview at the Wisconsin Challenge Academy, along with benchmarks which identified what responses were considered "more than acceptable," "acceptable," and "less than acceptable." Those benchmarks essentially contained the answers to the questions that were going to be posed to the interviewees. After receiving the email and attachment just referenced, Muenzenberger sent Becker the following email:

OMG. You are awesome!!

'O
Thank You!

Exhibit R-12. Muenzenberger then printed the attachment and later sent it to her personal email account. After she printed it, Muenzenberger did not retrieve it from the printer right away. Later, the human resources director at JCI happened to be walking through the printer room when she picked up a document at the printer to see if it was something she had printed. It turned out to be the interview questions and benchmarks already noted. The human resources director subsequently determined from the print job log that Muenzenberger had printed the document. Later, the human resources director showed Muenzenberger the document she had found at the printer and asked if it was hers. Muenzenberger replied in the affirmative. When the human resources director asked Muenzenberger where she got the interview questions, Muenzenberger replied that she got them from a friend. The human resources director then told Muenzenberger she was not supposed to

have them unless she was on the interview panel. After her meeting with the human resources director, Muenzenberger sent Becker the following email:

Subject: crap

I screwed up and the HR director found the budget report on the printer.

I have an investigation meeting Monday.

I am so, so sorry. I will call you after work tonight.

Exhibit R-13.

DOC disciplined Muenzenberger for her actions noted above. It is Muenzenberger's view that she did nothing wrong and committed no misconduct in this matter. The Commission finds otherwise.

The Commission has decided to begin its discussion by accepting Muenzenberger's assertion that she did not ask Becker to find or send her the actual interview questions and benchmarks that were going to be used at the upcoming interview for the Secretary-Confidential position at the Wisconsin Challenge Academy. However, even if Muenzenberger did not actually solicit the interview questions and answers from Becker for the upcoming interview, she could tell from the caption of Becker's email to her on the morning of August 3, 2018, what Becker had sent her. That is because the name of the attached document was "Sec Int Questions w crit June 18.docx." While sometimes a person has to open up an attachment to see what it contains, here there was no mystery about what the document contained. Because of the detailed naming of the attachment, Muenzenberger knew exactly what she had received from Becker without even opening it. When she did open it, it was exactly what the attachment name said it was, the interview questions and benchmarks for the Secretary-Confidential position at the Wisconsin Challenge Academy at Fort McCoy. Muenzenberger's word choice in her email response back to Becker (i.e. "OMG. You are awesome!! 'O Thank You!") (Exhibit R-12.)) makes it crystal clear that Muenzenberger was aware of the significance of the document.

Becker knew she was playing with fire, so to speak, when she sent the interview questions with benchmarks to Muenzenberger. First, there is what Becker said in her email message:

Look at what I found ... 'O
Don't tell.

Exhibit R-9. Second, there is what Becker chose to put in the subject line of her email. It was this: "Fwd: Budget Report". That line was a subterfuge, of course, because no budget report was being forwarded or transmitted – just the interview questions and benchmarks. While it was initially Becker who used the phrase "budget report" as a cover for the interview questions and benchmarks, Muenzenberger later used that phrase herself. That happened when she wrote to Becker that the

“HR director found the budget report on the printer.” The HR director did not find a “budget report” of course; rather, she found the interview questions and benchmarks for the upcoming Secretary-Confidential position interview at the Wisconsin Challenge Academy. By her own admission, Muenzenberger “screwed up” when she left the interview questions and benchmarks on the printer.

Additionally, even if Muenzenberger did not actually solicit the interview questions and answers from Becker for the upcoming interview, once Muenzenberger received them, that was problematic for Muenzenberger because she knew she was not supposed to be in possession of same. While it was acceptable for certain people connected with giving the Secretary-Confidential interview to be in possession of the aforementioned interview questions and answers, that was not the case for Muenzenberger because she was an interviewee who just had the interview questions and answers fall into her lap.

When an employee comes into possession of something they know they are not to possess, they are to turn it back to the employer. Instead, after Muenzenberger got the interview questions and answers from Becker, she printed them out and later sent them to her personal email account. Not surprisingly, DOC faults Muenzenberger for doing that. According to DOC, Muenzenberger should have deleted the email and reported that she had received it to either her supervisor or human resources. The Commission is hard pressed to disagree, because keeping the document – as Muenzenberger did – gave her an unfair advantage over the other interviewees. The Commission therefore has no trouble concluding that Muenzenberger engaged in misconduct when, after receiving the interview questions and benchmarks via email from Becker, she printed them off and later sent them to her personal email account.

Muenzenberger offers the following defenses to excuse and / or mitigate her conduct. First, Muenzenberger calls attention to the fact that the interview questions which she received from Becker were not for a job with DOC but were for a job with a different State agency. She sees that as significant. The Commission does not. From the Commission’s perspective, that is a distinction without a difference. Second, both Muenzenberger and Becker testified that they thought the interview questions which they obtained were old or sample questions. However, the record establishes that the interview questions which Becker sent to Muenzenberger were not old or sample questions but were the actual questions DOC planned to ask at the upcoming interview. As such, it does not matter that Muenzenberger and Becker thought that the interview questions were old or sample questions.

Having found Muenzenberger’s defenses unpersuasive, the Commission finds that Muenzenberger can be held accountable for her misconduct.

What normally happens when DOC decides that an employee has engaged in misconduct is that it suspends or discharges the employee. Here, though, DOC decided on a different course of action. Specifically, it decided to demote Muenzenberger back to her former position and to reduce her pay accordingly. The question before the Commission is whether that demotion was excessive. The Commission finds it was not. The record shows that Muenzenberger’s then existing position (i.e. Program Assistant-Advanced-Confidential) included these work duties: covering the

warden's office, having access to HR-related information at times, sitting on interview panels, and being the primary person at the institution for granting permission to the computer folder access. All those job duties involve confidentiality and a high level of trust. It is especially noteworthy that Muenzenberger had sat on seven interview panels in the last two years, so she was well aware of the interview process and the confidential nature of interview questions and benchmarks. DOC avers that because of how Muenzenberger comported herself in this matter, it no longer trusts her to handle and maintain confidential information. The Commission is hard pressed to disagree with that conclusion because Muenzenberger's misconduct and breach of confidentiality had a direct nexus to her then existing job responsibilities. Under these unique circumstances, DOC's decision to demote Muenzenberger back to her former position where she would no longer have access to confidential information passes muster with the Commission.

Dated at the City of Madison, Wisconsin, this 13th day of February, 2019.7798

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman