

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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GARY EDDY, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF NATURAL RESOURCES.

Case ID: 306.0007

Case Type: PA

DECISION NO. 37961

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**Appearances:**

Alan C. Olson, Attorney, Alan C. Olson & Associates, S.C., 2880 South Moorland Road, New Berlin, Wisconsin, appearing on behalf of Gary Eddy.

Cara Larson, Attorney, 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 Natural Resources.

**DECISION AND ORDER**

On March 21, 2019, Gary Eddy filed an appeal with the Wisconsin Employment Relations Commission asserting he had been discharged without just cause by the State of Wisconsin Department of Natural Resources. A hearing before Examiner Raleigh Jones was held on May 22, 2019, in Madison, Wisconsin. The parties made oral argument at the conclusion of the hearing. A transcript of the hearing was received on June 3, 2019.

On June 28, 2019, Examiner Jones issued a Proposed Decision and Order affirming the discharge. No objections were filed and the matter became ripe for Commission consideration on July 5, 2019.

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

**FINDINGS OF FACT**

1. At the time of his January 24, 2019 discharge, Gary Eddy had permanent status in class and was employed as a Conservation Warden by the State of Wisconsin Department of Natural Resources (DNR). He was a full-time employee with DNR for 19 years.

2. Eddy made misstatements to DNR officials about various work-related matters prior to and during an investigatory interview.

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 Natural Resources did not have just cause, within the meaning of § 230.34(1)(a), Stats., to discharge Gary Eddy, but did have just cause to demote him.

3. Gary Eddy is a prevailing party within the meaning of § 227.485(3), Stats., but the State of Wisconsin Department of Natural Resources was substantially justified in taking its position.

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

### **ORDER**

1. The discharge of Gary Eddy by the State of Wisconsin Department of Natural Resources is modified to a demotion, and Eddy shall be reinstated with back pay to the demoted position at the demoted pay rate.

2. Gary Eddy's motion for fees and costs is denied.<sup>1</sup>

Signed at the City of Madison, Wisconsin, this 19th day July, 2019.

### **WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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James J. Daley, Chairman

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<sup>1</sup> The State has met its burden to establish its position had: (1) a reasonable basis in truth for the facts alleged; (2) a reasonable basis in law for the theory propounded; and (3) a reasonable connection between the facts alleged and the legal theory advanced.

**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.

Gary Eddy had permanent status in class at the time of his discharge and his appeal alleges that the discharge was not based on just cause.

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

Eddy was employed by the Department of Natural Resources (DNR) as a warden. During his tenure, he was accused of making a series of misstatements regarding various administrative aspects of his employment. The most “egregious” of these statements involved him incorrectly stating he had permission to have a second email account created. DNR proceeded to discharge Eddy, placing reliance on *Brady v. Maryland*, 373 U.S. 83 (1963), stating that due to Eddy’s misstatements he no longer was able to facilitate his duties as a warden, which included being able to credibly testify in a court of law under oath. DNR concluded that, due to *Brady*, Eddy’s misstatements would need to be disclosed to the defense in any matter before a court and would lead to the impeachment of Eddy’s credibility in this regard.

While not persuaded that Eddy’s misstatements fall within a strict reading of *Brady*, the Commission is nonetheless satisfied that Eddy’s conduct has the potential to damage his credibility as a witness in a judicial proceeding. However, the Commission is troubled by the extent of discipline imposed in this instance. In rendering a decision to impose discipline in a manner which skips levels of progressive discipline, the severity of the underlying conduct should support the severity of the discipline imposed (§ 230.04(13m), Stats.) In this matter, Eddy’s statements damaged his potential credibility as a law enforcement witness but do not otherwise implicate his ability to successfully perform duties as a DNR employee without law enforcement responsibilities.

As a result, having reviewed the record, consulted with the Examiner regarding the candor of the witnesses, and consultation with the parties in order to gain additional argument, the Commission finds that while Eddy can no longer serve as a warden within DNR, his discharge is

rejected. Eddy shall be reinstated with backpay to employment with DNR with a demotion to a position he is qualified for that does not involve the requirement to testify in court proceedings as an expectation of the position to which he shall be reinstated.

Signed at the City of Madison, Wisconsin, this 19th day July, 2019.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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James J. Daley, Chairman