

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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M.K., Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0408

Case Type: PA

DECISION NO. 38819

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**Appearances:**

M.K., 1838 US Highway 14, Janesville, Wisconsin, appearing on his own behalf.

William Levins, Attorney, 3099 East Washington Avenue, Madison, Wisconsin, appearing on behalf of the State of Wisconsin Department of Corrections.

**DECISION AND ORDER**

On November 5, 2020, the Wisconsin Employment Relations Commission received an appeal from M.K. asserting the State of Wisconsin Department of Corrections (DOC) had improperly failed to offer him a position as Correctional Officer. On December 7, 2020, DOC filed a motion asserting among other matters that M.K. was not hired because a background check revealed four prior criminal convictions. M.K. had until February 15, 2021 to file a response to the motion and did not do so.

Having considered the matter, the Commission concludes the appeal should be dismissed.

NOW, THEREFORE, it is:

**ORDERED**

The appeal is dismissed.

Issued at the City of Madison, Wisconsin, this 16<sup>th</sup> day of March, 2021.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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James J. Daley, Chairman

**MEMORANDUM ACCOMPANYING DECISION AND ORDER**

Wisconsin Stat. § 230.44(1)(d) provides:

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.

Here, DOC asserts that M.K. was not hired for the position of Correctional Officer because a background check following his interview revealed four criminal convictions in Illinois. M.K. does not dispute the existence of the convictions but contends he has turned over a new leaf.

A hiring decision would be illegal if it violated the Wis. Stat. § 111.321 prohibition against discrimination because of a conviction record. However, as reflected in Wis. Stat. § 111.335(3)(a)1., it is not illegal to refuse to employ an individual “if the circumstances” of the conviction “substantially relate to the circumstances of the particular job . . . .” Here, M.K. has three convictions for theft and one conviction for possession of drug use materials. DOC has persuasively argued that these four criminal convictions are substantially related to the responsibilities of a Correctional Officer. Therefore, it was not illegal to refuse to hire M.K. based on the four past convictions. Nor can it be persuasively argued that it would be an abuse of discretion not to hire an applicant with four criminal convictions. While DOC could have decided to give M.K. an opportunity to prove that he has turned over a new leaf, there is certainly a rational basis for its decision not to do so given the duties of a Correctional Officer.

Given the foregoing, the appeal is dismissed.

Issued at the City of Madison, Wisconsin, this 16<sup>th</sup> day of March, 2021.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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James J. Daley, Chairman