

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

KARRIE SCHMITTINGER, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0464

Case Type: PA

DECISION NO. 39429

Appearances:

Karrie Schmittinger, 1330 W. Squaw Lake Road, Lac du Flambeau, Wisconsin, appearing on her own behalf.

Nicole M. Rute, Attorney, Wisconsin 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 June 7, 2021, Karrie Schmittinger 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 (DOC).

The parties waived compliance with the 120-day time period established by Wis. Stat. § 230.445 (3)(c). A telephone hearing was held on August 27 and September 10, 2021, by Commission Examiner Peter G. Davis. The parties submitted written argument, the last of which was received January 22, 2022.

On May 27, 2022, Examiner Davis issued a Proposed Decision and Order affirming the discharge by DOC. Appellant filed objections to the Proposed Decision on June 1, 2022 and Respondent filed a reply on June 6, 2022.

Being fully advised on the premises and having considered the matter, the Commission makes and issues the following:

FINDINGS OF FACT

1. At the time of her discharge, Karrie Schmittinger, herein Schmittinger, was employed by the State of Wisconsin Department of Corrections (DOC) as a Probation and Parole Agent-Senior in the Division of Community Corrections, Unit 603, located in Lac du Flambeau, Wisconsin. She had permanent status in class.
2. Schmittinger falsified records and was grossly negligent in her duties as to clients SC, EB, and CC.

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 over this appeal pursuant to Wis. Stat. § 230.44 (1)(c).
2. The State of Wisconsin Department of Corrections did have just cause within the meaning of Wis. Stat. § 230.34 (1)(a) to discharge Karrie Schmittinger.

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

ORDER

The discharge of Karrie Schmittinger by the State of Wisconsin Department of Corrections is affirmed.

Issued at Madison, Wisconsin, this 23rd day of June, 2022.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman

MEMORANDUM ACCOMPANYING DECISION AND ORDER

Wisconsin Stat. § 230.34(1)(a) states in pertinent part that “An employee with permanent status in class . . . may be removed, suspended without pay, discharged, reduced in base pay or demoted only for just cause.”

Wisconsin Stat. § 230.44(1)(c) 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.”

Schmittinger 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 Schmittinger 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).

The discharge letter Schmittinger received states in relevant part:

This letter is formal notice of the termination of your employment as a Probation and Parole Agent-Senior with the Division of Community Corrections, effective today, April 16, 2021, for violation of the following DOC Work Rule [sic] that applies to all Department employees:

WR #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 1: Falsifying records of the agency.

WR #2: Failure to comply with written policies or procedures.

WR #3: Disobedience, insubordination, inattentiveness, negligence, failure or refusal to carry out written or verbal assignments, directions, or instructions. DOC Serious Misconduct 5: Gross negligence or conduct by an employee which causes a substantial risk to the safety and security of our facilities, staff, the community or inmates, offenders or juvenile offenders in our care.

This discipline is based on the following facts: In August of 2020, an audit was initiated due to discrepancies in your documentation regarding client SC. This audit revealed the supervision file was incomplete, including a lack of intake documents necessary to complete certain supervision tasks, a lack of notes of dated contacts, and entries in COMPAS were not matching up with the dates of the COMPAS rules of supervision, case plan, and the assessment. The Core Assessment has a total of 132 questions, 106 of the questions are completed per ECRM as part of an

interactive discussion/questioning with individual. Supervisory staff reported that the assessment interview with a client is approximately a 45 minute discussion at least.

In COMPAS, a Core Assessment was noted as completed for client SC on 4/3/2020. However, there are no notes on 4/3/2020 in COMPAS to indicate a face to face or phone contact with client SC, your Outlook calendar did not reflect any scheduled appointment for client SC on 4/3/2020, and there was no information about the assessment being completed with client SC on your work from home log submitted to your supervisor. Additionally, COMPAS notes show that the next scheduled reporting date was supposed to be 4/8/2020, which noted that client SC failed to report.

Furthermore, on 10/16/2020, you completed two more intakes. Incorrect documentation and inconsistencies were again discovered in your case notations, documentation, and responses allegedly given by clients EB and CC. You stated the discrepancies between the Core Assessment in COMPAS and the handwritten Core Assessment was due to typographical errors. However, each had more than five (5) errors on them. Client EB stated she did not complete the Core Assessment, intake paperwork, or Case Plan with an Agent. Phone records show that you had a 3 minute phone call with EB on 9/9/2020, on which date you entered notes for a face to face supervision contact by phone. On 9/10/20 you entered notes in COMPAS that you completed a Core Assessment and Driver Worksheet on 9/9/2020. On 10/7/20, a case plan was created for EB, yet phone records show a call occurred with EB for only 7 minutes.

Client CC stated he completed the Core Assessment, not with an Agent, but on his own when he went into the office. Client CC stated he couldn't recall having a phone conversation with you, having an office visit over the phone, or discussing his case plan or any related elements with you. Phone records show that just a 3 minute call occurred with client CC on 9/9/2020, yet COMPAS case notes reflect a face to face supervision contact by phone was completed. On 9/10/20 you entered notes in COMPAS that you completed a Core Assessment and Driver on 9/9/2020. Phone records indicate no activity with client CC on 10/7/2020, yet COMPAS notes for this date indicate that you had a face to face meeting with client CC that resulted in supervision updates such as case planning. You were not able to provide any evidence that these meetings took place, therefore, we've concluded that you have been negligent in your supervision and have falsified your COMPAS notes.

In accordance with Executive Directive #2, "The Department may impose a more severe level of discipline, up to and including discharge, for serious acts of misconduct. Employees who are found to have engaged in serious misconduct may be terminated as an initial level of discipline depending on the seriousness of the behavior." Falsifying client COMPAS records, indicating you had seen clients when evidence supports you had not seen them, and your gross negligence in failing

to follow the Electronic Case Reference Manual (ECRM) standards and procedures regarding the Intake-Assessment Process, Discharge, Supervision Tools, Rules of Community Supervision, and Unified Case Plan for proper supervision of your clients as a Probation and Parole Agent constitutes acts of serious misconduct. Therefore, you have left me no choice than to terminate your employment. It should be noted there was a delay in issuing this discipline due to your leave of absence from November 24, 2020 to current.

Schmittinger denies any misconduct or negligence in her duties, and attributes any inconsistencies in documentation to various reasons, including a high caseload, unintentional human error, and the disruption in operations due to the COVID-19 pandemic and working remotely. She also contends that the evidence provided by clients SC, EB and CC should be disregarded because individuals on probation are notoriously unreliable and have an incentive to be untruthful regarding the conduct of probation agents who are restricting their liberty.

While the record is lengthy and complex, the issue of misconduct can be boiled down to whether Schmittinger failed to meet her core responsibilities as to the supervision of clients SC, EB and CC and then sought to cover up those failures with false information as to the dates and content of client contacts. After a review of all of the evidence presented, the Commission concludes that Schmittinger was guilty of that failure and cover up as detailed in the discharge letter she received.

When reaching that conclusion, the Commission has considered the evidence that the Lac du Flambeau office was plagued by poor supervision, high turnover, and multiple employee requests for DOC to investigate such matters. Assuming all of that to be true, those considerations are irrelevant as to whether a 20-year employee such a Schmittinger failed to meet her core responsibilities. Schmittinger knew her responsibilities to clients and failed to meet them.

The Commission has also considered Schmittinger's contention that DOC understood that in the chaos of the pandemic and remote work, errors would inevitably be made. However, the errors made by Schmittinger were extensive and then compounded by efforts to cover up those errors. Given Schmittinger's high case load, difficult personal circumstances and the complexities of working remotely, some errors might well have been unavoidable. But if she concluded that she was simply unable to complete her job responsibilities due to those factors, she was obligated to explicitly say so and then DOC could evaluate how best to proceed. Instead, she silently failed to meet her core responsibilities to three clients and then sought to cover up those failures.

Schmittinger asserts that DOC is guilty of disparate treatment because another employee admittedly failed to follow one of the same protocols in question and DOC failed to even investigate that employee. If that employee had committed the same level of failure and then sought to cover up all those failures, Schmittinger's claim of disparate treatment would be valid. However, that is not the case and thus the Commission rejects this assertion.

Having concluded that Schmittinger engaged in misconduct, the just cause inquiry shifts to the level of discipline imposed. While Schmittinger is a long-time employee, at the time of her

discharge she had been the relatively recent recipient of a one-day and a three-day suspension. Thus, for any additional type of misconduct, the standard DOC disciplinary progression would have led to the imposition of a five-day suspension. Here, DOC correctly concluded that Schmittinger had engaged in the type of misconduct that Wis. Stat. § 230.34 (1)(a)5. authorizes DOC to potentially move directly to discharge as an appropriate just cause level of discipline. Further, as reflected in the discharge letter, Executive Directive #2 authorizes a skip in the standard discipline for the type of misconduct the Commission finds occurred. Therefore, the Commission concludes there was just cause for discharge and DOC's action has been affirmed.

Issued at Madison, Wisconsin, this 23rd day of June, 2022.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman