

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

DANIELLE LOVE, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0549

Case Type: PA

DECISION NO. 39766

Appearances:

Corey Chirafisi, Attorney, Chirafisi Law Offices, 411 West Main Street, Suite 201, Madison, Wisconsin, appearing on behalf Danielle Love.

David Makovec, 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 Corrections.

FINAL DECISION AND ORDER

On August 8, 2022, Danielle Love 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).

A telephone hearing was held on November 3, 2022, by Commission Examiner Peter Davis. The parties filed written argument on November 17, 2022. On November 25, 2022, Examiner Davis issued a Proposed Decision and Order finding DOC did not have just cause to discharge Love but did have just cause to suspend her for five days. On November 30, 2022, DOC filed Objections to the Proposed Decision and Order. On December 2, 2022, Love filed a Brief in Support of the Proposed Decision and Order. At the request of the Commission, both Love and DOC filed supplemental argument on December 12, 2022. The Commission consulted with the Examiner as to the demeanor of the witnesses.

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, Danielle Love, herein Love, was employed by the State of Wisconsin Department of Corrections (DOC) as a Correctional Sergeant at Prairie du Chien Correctional Institution. She had permanent status in class.

2. Love did not have physical contact with inmate JA.

3. Love did not have email communications with inmate CR, provide him with a monetary benefit or show him photos or videos.

4. Love did allow inmate JA to view her computer screen on one occasion and to spend too much time chatting near her workstation.

5. Love did engage in the showing of lewd photographs of herself and another officer to inmate JA.

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 Danielle Love.

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

ORDER

The discharge of Danielle Love by the State of Wisconsin Department of Corrections is affirmed

Issued at the City of Madison, Wisconsin, this 10th day of January, 2023.

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.”

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

Love’s discharge was based on DOC’s determination that: (1) she engaged in sexual activity with an inmate and showed him sexual photos and videos on her phone; (2) she fraternized with a different inmate via secret email exchanges and inappropriate monetary activity; and (3) she allowed an inmate to view her computer screen and generally did not maintain appropriate boundary's with said inmate. The Commission concludes that DOC did not meet its burden of proof as to determination (1) in part and (2) but did so as to determinations (1) in part and (3).

As to the alleged sexual activity between Love and the inmate, DOC’s determination is based almost exclusively on the testimony of the inmate who initially denied that such activity occurred. The record establishes that if said activity took place, at least some of it would have been captured on prison cameras and there is no such footage. Therefore, DOC has not met its burden of proof in regard to establishing that an intimate relationship or activity took place as alleged.

DOC has met the burden of establishing that Love shared or otherwise inappropriately shared intimate photos of herself and possibly another correctional officer with the inmate. While Love argues that the inmate’s general lack of truthfulness makes him unreliable and urges the Commission to place no value on his testimony, the record has established sufficient detail provided by the inmate as to the content and specificity of the photos to allow for no other reasonable explanation as to how the inmate would have access to this information other than being shown it directly by Love. Even if Love had been careless in her conversations with her romantically-linked fellow officer within ear-shot of the inmate, it still is unfathomable that such a conversation would include the amount of detail as was ultimately attested to by the inmate.

As to alleged improper personal relationship with another male inmate based on secret email exchanges and a financial transaction, DOC failed to establish that the mysterious email address was Love’s – despite a significant commitment of resources. While some of the emails contained personal information as to Love’s life, the record reflects that that information was known by others – including the woman who Love had most recently divorced and may have had a motive to create workplace trouble for Love. Like Love, that woman lived within the geographic proximity within which a detective was able to determine was the location of the email address/cell phone. That same woman had access to the credit card that was the source of financial transactions

relied in part by DOC as the basis for its determination of an improper relationship. Further, it was Love who alerted DOC to the transaction-an act that is inconsistent with her having engaged in improper conduct.

As to allowing an inmate to view her computer screen and generally not maintaining appropriate boundaries with an inmate, Love concedes this misconduct. The record establishes that the inmate in question had a prison job that required interaction with Love and others and further that the inmate enjoyed chatting with Love and others for extended periods of time. Love should have but did not establish appropriate boundaries for her interaction with this inmate. DOC correctly argues that it has a strong interest in having employees avoid the type of interactions with inmates that could create security risks.

Given the Commission's finding as to DOC having established the showing of graphic and lewd images of herself and another correctional officer to an inmate and generally not maintaining appropriate boundaries with an inmate, the discharge of Love is affirmed.

Issued at the City of Madison, Wisconsin, this 10th day of January, 2023.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman