

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

JAMES GOLLMAR, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF HEALTH SERVICES, Respondent.

Case ID: 2.0129

Case Type: PA

DECISION NO. 39797

Appearances:

Barbara Lewis, 1111 North Road, Mauston, Wisconsin, appearing on behalf of James Gollmar.

Nicole Porter, 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 Health Services.

DECISION AND ORDER

On November 16, 2022, James Gollmar filed an appeal with the Wisconsin Employment Relations Commission asserting he had been suspended for five days without just cause by the State of Wisconsin Department of Health Services (DHS).

A telephone hearing was held on January 11, 2023, by Commission Examiner Anfin Jaw. The Respondent made oral argument at the end of the hearing. The Appellant submitted closing argument on January 13, 2023. The Respondent filed a written reply on January 18, 2023.

On February 16, 2023, Examiner Jaw issued a Proposed Decision and Order, affirming the five-day suspension of Gollmar. The parties did not file objections to the Proposed Decision by the deadline given of February 21, 2023.

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

FINDINGS OF FACT

1. James Gollmar is employed by the State of Wisconsin Department of Health Services (DHS) as a Psychiatric Care Technician-Advanced at Sand Ridge Secure Treatment Center (SRSTC) and had permanent status in class at the time of his suspension.

2. SRSTC is a secure treatment center in Mauston, Wisconsin operated by DHS, a state agency of the State of Wisconsin. SRSTC houses Wisconsin's Sexually Violent Persons Program.

3. Between April 3, 2021, and August 6, 2021, during work hours, Gollmar utilized his state email to send 92 inappropriate and unprofessional personal emails to coworkers, related to the planning and organization of a non-work-related golf outing. These emails were laced with sexual innuendos and obscene language.

4. In May and July 2022, during DHS's investigation into the inappropriate emails referenced in Finding 3, Gollmar was evasive, untruthful, and obstructive.

5. DHS suspended Gollmar for five days for unauthorized use and misusing or abusing agency property, specifically his state email and state computer, as well as knowingly providing false information or failing to provide truthful information when required.

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 Health Services did have just cause within the meaning of Wis. Stat. § 230.34(1)(a) to suspend James Gollmar for five days.

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

ORDER

The five-day suspension of James Gollmar is affirmed.

Issued at Madison, Wisconsin, this 9th day of March, 2023.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman

MEMORANDUM ACCOMPANYING DECISION AND ORDER

Section 230.34(1)(a), Stats., states in pertinent part:

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.

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

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

It is undisputed that Gollmar used his state email and state computer to send 92 emails to approximately 37 coworkers in April through August 2021, for the planning and organization of a non-work-related golf outing. The emails were ridden with sexual innuendos, along with inappropriate and obscene language. The offensive content included, the name of the outing, “CHOMO Open,” reference to “glory holes,” and team names: “The Swingin’ Dicks,” “Fore Players,” “4 Guys, 1 Cup,” “Babes w/ Balls,” “Fore Skins,” “Noc’ers,” “Chicks w/ Sticks,” “2 Putt Sluts,” and “Guys w/ Saggin’ Ball Bags & a Girl,” as well as a can koozie prize featuring child molester and pedophile, Herbert the Pervert, from the television show Family Guy. Gollmar admitted that the content could have been viewed as offensive.

DHS conducted an investigation into the emails after management received a Respectful Workplace complaint from an employee in November 2021. Given the large number of staff involved in the email exchanges and chains, the investigation was referred to the Division of Personnel Management (DPM) at the Department of Administration. DPM began conducting investigatory interviews in May 2022. The delay was due to workload and other personnel turnover issues. Gollmar was interviewed in May and July 2022. During his investigatory interviews, Gollmar was evasive and untruthful in answering questions. Primarily, he claimed that he did not know what “CHOMO” meant (widely known prison slang for child molester), even though he sent an email to a coworker just days prior, in an attempt to cover up the actual meaning. It should be noted that the CHOMO Open in 2021 was the second annual CHOMO Open. Presumably, there were inappropriate emails being exchanged among staff on state email related to organizing the first annual golf outing in 2020.

While Gollmar continued to deny his understanding of the term “CHOMO” at the hearing, credible testimony from multiple witnesses persuades the Commission that Gollmar and others who participated in the golf outing were fully aware of the meaning of “CHOMO,” as well as the grossly inappropriate nature and sexually laced theme of the event. We find Gollmar’s testimony untruthful, self-serving, and not credible.

Gollmar offers the following defenses to excuse and/or mitigate his conduct.

First, Gollmar cites the delay in the investigation. There was about a six-month delay between when management was first made aware of the emails to when DPM conducted its first investigatory interview. Given the number of staff involved and DPM’s credible explanation regarding the delay, the Commission finds that the delay was not unreasonable under the circumstances.

Second, Gollmar argues that he and his fellow coworkers who were involved in the golf outing were being retaliated against by S.B, the individual who filed the initial complaint about the emails. S.B. was the subject of a separate Respectful Workplace complaint, and therefore allegedly had a desire to retaliate by filing her own complaint. However, the Department has an obligation to investigate any report or allegation of potential misconduct, especially those which fall under its respectful workplace policy, regardless of when or how it is reported. Ultimately, whatever provokes an investigation does not negate any misconduct that is discovered. Additionally, S.B. was not involved in the decision to discipline Gollmar, and is no longer employed with the Department. Under the circumstances, we find that S.B.’s alleged motivation in reporting the behavior does not change Gollmar’s misconduct, nor reduce his culpability.

Lastly, the Commission turns to Gollmar’s contention that he was disciplined more harshly than other DHS employees who were also disciplined for their involvement in the inappropriate emails. In this regard, Gollmar cites eight examples: R.J. and C.T. received one-day suspensions; S.M., L.P., J.S., and B.P. received three-day suspensions; B.H. initially received a three-day suspension, but was reduced to a one-day suspension; and M.K. received a Letter of Expectation.

To address the differences in the level of discipline imposed, Ann Moran, appointing authority and Director of SRSTC, credibly explained that the differences were based on the different levels of involvement in the emails.

First, R.J. and C.T. were non-supervisory staff that were found to be co-organizers of the event, though to a must lesser extent than Gollmar. Gollmar was the author of the majority of the email communications about the event. Thus, R.J. and C.T.’s misconduct is not comparable. The Department followed progressive discipline and issued a one-day suspension.

Second, supervisory staff that were included on the communications all received a three-day suspension for failing to correct the behavior of staff and failing to report the inappropriate communications to human resources, as is required by policy (S.M., L.P., J.S., B.P., and B.H.). Supervisory staff are held to a higher standard than non-supervisory staff, and therefore were issued the next step in the disciplinary progression schedule compared to R.J. and C.T.’s discipline.

Gollmar's involvement and organization of the golf outing went beyond that of the supervisors who did not author the inappropriate emails, but received and failed to address or report his communications. Therefore, the five supervisors' misconduct is not comparable to Gollmar's misconduct. B.H.'s three-day suspension was subsequently reduced by DHS management to a one-day suspension due to mitigating circumstances. Specifically, B.H. instructed Gollmar to stop sending the inappropriate communications. B.H. was found to have failed to report the inappropriate conduct and potential respectful workplace policy violation to human resources.

Finally, supervisor M.K., only received one email referring to the "CHO" Open, with no attachments, team names, or references to any inappropriate sexual innuendos. The Department explained that the threshold warranting discipline was based on the entire term, "CHOMO." Therefore, M.K. was issued a non-disciplinary Letter of Expectation. Again, M.K.'s conduct is not comparable to Gollmar's misconduct. Consequently, Gollmar has failed to prove that his misconduct was substantially comparable to that of the other disciplined DHS staff, or that there was disparate treatment in his discipline.

Having addressed Gollmar's defenses and found them unpersuasive, we find that Gollmar committed serious workplace misconduct with his unauthorized use and abuse of state email and state computers to send sexually inappropriate and exceptionally unprofessional personal emails to 37 coworkers, along with his untruthfulness and dishonesty during the investigation and, most importantly, at the hearing.

The Commission is troubled by the gross recklessness and moral dereliction of the staff involved in the golf outing to think that the type of obscene language used over state email was at all appropriate or professional, particularly considering the population served at SRSTC. The facility provides specialized treatment services for people committed under Wisconsin's Sexually Violent Persons Law or Wisconsin Statutes Chapter 980. Gollmar's serious misconduct makes light of sexual assault and patients under the Department's care and custody. It is counter to SRSTC's mission of treating and teaching patients with a history of sexual aggression toward the goal of providing a safe return to the community. We agree with the Department's contention that the type of language used in the emails could not only have an impact on the public's perception of SRSTC and its employees but could also have an impact on treatment goals of the center and its safety and security. The emails, had they fallen into the wrong hands, could harm the credibility and rapport of the staff involved, or even have the potential to be used in a nefarious way by the patients to manipulate staff with the threat of disclosure. The type of risk created by the language, terms, and imagery contained within the email communications would, no doubt, reasonably be said to have a tendency to impair the employer's operations if they became public or were to fall into the hands of the patients.

Given the foregoing, there was just cause for Gollmar's five-day suspension, and it is therefore affirmed.

Issued at Madison, Wisconsin, this 9th day of March, 2023.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman