

FILED
02-09-2024
Circuit Court
Columbia County, WI
2023CV000124

BY THE COURT:

DATE SIGNED: February 9, 2024

Electronically signed by Hon. Todd J. Hepler
Circuit Court Judge

STATE OF WISCONSIN

CIRCUIT COURT

COLUMBIA COUNTY

DAWN HAWKINSON,

Plaintiff,

vs.

Case No.: 2023CV124

WISCONSIN EMPLOYMENT
RELATIONS COMMISSION,

WERC Decision 39899-B

Defendant.

DECISION

Petitioner Dawn Hawkinson asks the Court to review and reverse a decision by the Department of Corrections which terminated her employment after an investigation determined that Ms. Hawkinson touched the chest of a female co-worker, Heather Brunker, without her consent, while on duty.

The discharge of employment was upheld by the Wisconsin Employment Relations Commission (“WERC”). Ms. Hawkinson argues that WERC skipped discipline steps and that substantial evidence does not support the findings that Ms. Hawkinson committed the alleged offenses.

WERC found that Ms. Hawkinson ran her finger down the chest of Ms. Brunker after acknowledging having been staring at her chest saying, “You have no boobs.” Hawkinson then pulled back and said, “Sorry, I shouldn’t have done that.”

This interaction was captured by overhead video. Ms. Hawkinson denies touching Ms. Brunker and her counsel argued that the video corroborates her testimony. However, the Court’s independent viewing of the video does not support Ms. Hawkinson’s version of events, which was also rejected by the hearing examiner based on the testimony of witnesses and evidence received.

The video clearly shows Ms. Hawkinson taking a step toward Ms. Brunker and extending her arm toward Ms. Brunker’s chest. Ms. Hawkinson then took a step back and clasped her hands together at her chest and then briefly covers her face with her hands.

This Court has reviewed the factual determinations and, as noted in the respondent's brief:

Courts “will set aside or remand a matter to the agency based on factual deficiency only if ‘the agency’s action depends on any finding of fact that is not supported by substantial evidence in the record.’” Wisconsin Bell, Inc. v. LIRC, 2018 WI 76, ¶ 30, 382 Wis. 2d 624, 641–42, 914 N.W.2d 1, 9, as amended on denial of reconsideration sub nom. Wisconsin Bell, Inc. v. LIRC, 2018 WI 100, ¶ 30, 384 Wis. 2d 771, 920 N.W.2d 928 (quoting Wis. Stat. § 227.57(6)).

Based on the testimony adduced during the hearing and the video corroborating that testimony, the Court hereby concludes there is substantial evidence to support the WERC’s factual findings and therefore must affirm the same.

Ms. Hawkinson next contends that the DOC’s actions were arbitrary and inconsistent and lacked just cause for terminating her because it had not imposed progressive disciplinary action and that it had imposed much less serious punishment on other employees who had committed more serious offenses.

The respondent agrees that just cause for discharge must be established but that progressive discipline is not required for harassing a person while on duty pursuant to Wis. Stat. Sec. 230.34(1)(a)1.

That is the case at hand. The Court has accepted the factual findings that Ms. Hawkinson touched Ms. Bruncker’s chest without consent. There is no dispute that the interaction occurred while both were on duty. The Department of Corrections was not required to impose progressive discipline based on the nature of this offense.

The Court accepts the caselaw analysis proffered by the Respondent. The cases cited by the Petitioner which predate Wis. Stat. Sec. 230.34(1)(a) are neither controlling nor persuasive. The Court finds that the Commission did exercise discretion and that this offense constitutes just cause for termination without the imposition of progressive discipline.

For all of the aforementioned reasons, the Court hereby AFFIRMS the April 13, 2022 order of the Wisconsin Employment Relations Commission concluding that the DOC had just cause to discharge Ms. Hawkinson pursuant to Wis. Stat. Sec. 230.34(1)(a).

THIS IS A FINAL ORDER FOR PURPOSE OF APPEAL