

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

NICOLE LINDVALL, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0573

Case Type: PA

DECISION NO. 39909

Appearances:

Nicole Lindvall, 149 Guindon Blvd., Fond du Lac, Wisconsin, appearing on her own behalf.

Michelle Zaccard, Attorney, Department of Corrections, Office of Legal Counsel, 3099 E. Washington Ave., Madison, Wisconsin, appearing on behalf of the State of Wisconsin Department of Corrections.

DECISION AND ORDER

On February 22, 2023, Nicole Lindvall filed an appeal with the Wisconsin Employment Relations Commission regarding the decision by the State of Wisconsin Department of Corrections not to hire her for a Program Support Supervisor position.

A telephone hearing was held on April 3, 2023, by Commission Examiner Katherine Scott. The parties submitted written arguments on April 7, 2023. On April 19, 2023, Examiner Scott issued a Proposed Decision and Order affirming the decision by the State of Wisconsin Department of Corrections not to hire Lindvall. On April 21, 2023, Lindvall filed objections to the Proposed Decision. The Department did not file a response by the deadline given of April 26, 2023.

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

FINDINGS OF FACT

1. Nicole Lindvall (Lindvall) applied for a position with the State of Wisconsin Department of Corrections (DOC) as a Program Support Supervisor at Taycheedah Correctional Institution.

2. Lindvall was convicted of fraudulent credit card use for using her employer's credit card to purchase goods for her personal use.

3. In 2019, Lindvall was hired to work at Dodge Correctional Institution. She resigned less than one year later after receiving a poor performance review.

4. In 2022, Lindvall was hired to work at Kettle Moraine Correctional Institution but resigned after one day.

5. The resume Lindvall submitted as part of her application for the Program Support Supervisor position lists no previous experience working as a supervisor.

6. Due to Lindvall's poor work performance, erratic work history, and lack of supervisory experience, DOC Human Resources Executive Director Kari Beier decided not to hire Lindvall for the Program Support Supervisor position.

7. On February 22, 2023, the DOC notified Lindvall that she had not been hired for the Program Support Supervisor position.

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)(d).

2. The State of Wisconsin Department of Corrections did not act illegally or abuse its discretion by failing to hire Nicole Lindvall.

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

ORDER

The State of Wisconsin Department of Corrections' decision not to hire Nicole Lindvall is affirmed.

Issued at Madison, Wisconsin, this 28th day of April, 2023.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman

MEMORANDUM ACCOMPANYING DECISION AND ORDER

Section 230.44(1)(d), Stats., provides that “[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.” An illegal act is one that is contrary to Wisconsin civil service statutes or administrative rules. An abuse of direction is when an agency exercises discretion “to an end or purpose not justified by and clearly against reason and evidence.” Appellant has the burden of proof. *See Moeller-Bunker v. DWD*, Dec. No. 36786 (WERC, 5/17).

Here, Nicole Lindvall alleges that the DOC failed to hire her for a Program Support Supervisor position due to her criminal conviction for fraudulent credit card use, despite the fact that the job she applied for has no financial responsibilities or fiduciary duties.

Before scheduling a hearing in this matter, the Commission asked the DOC to provide Lindvall with the reason why she was not hired. Due to staffing issues at Taycheedah Correctional Institution, the DOC initially provided an inaccurate reason for Lindvall’s non-selection: namely, that it was due to her failure to pass a background check. The DOC also incorrectly reported the details of Lindvall’s criminal conviction (Lindvall did not work for or defraud Roundy’s; instead, she worked for Walnut Grove and defrauded Walnut Grove using the Roundy’s credit card they provided her).

Lindvall argues that she was not selected because of her conviction for fraudulent credit card use. She testified that she has been hired by the DOC twice since then, and that her previous conviction was not an issue before.

However, Kari Beier, Executive Director for Human Resources at the DOC, credibly testified that she denied Lindvall’s application because of Lindvall’s poor work performance, erratic work history, and lack of supervisory experience. Beier testified that Lindvall had previously worked for Dodge Correctional Institution in 2020 and had resigned after receiving an unsatisfactory evaluation while on probation. This is supported by Lindvall’s performance report from Dodge, which says she “continues to struggle to manage the lab independently... still requires assistance from other staff ... has had several tubes returned as insufficient ... still falls short of the expectation on independent drawing 5 months into her employment.” *See Respondent’s Exhibit 3*, pg. 5. Beier further testified that Lindvall was hired to work at Kettle Moraine Correctional Institution in 2022 but resigned after one day. Lindvall’s resume shows that, not including her one-day stint at Kettle Moraine, she has held three jobs in the last four years. Though she applied to be a Program Support Supervisor, Lindvall’s resume shows no previous experience as a supervisor.

Lindvall bears the burden of proving that her non-selection was either illegal (contrary to Wisconsin civil service statutes or administrative rulings) or an abuse of direction (not justified by and clearly against reason and evidence). Lindvall argues that the DOC had not hired her because of her criminal conviction. If true, this would potentially be a violation of Wis. Stat. § 111.321, which, with certain exceptions, prohibits employers and employment agencies engaging in any act of employment discrimination against an individual on the basis of their conviction record.

However, the DOC provided testimony showing that Lindvall's non-selection was due to her poor work performance, erratic work history, and lack of supervisory experience, not her criminal conviction. Lindvall was unable to meet performance standards during her employment at Dodge Correctional Institution. She resigned from Kettle Moraine Correctional Institution after one day and has changed jobs frequently since then. It is reasonable for the DOC to believe Lindvall would not be a good candidate for future employment with the DOC. Further, the position that Lindvall applied for was a supervisory one, and Lindvall had no supervisory experience on her resume. As Lindvall herself admitted, her conviction did not deter the DOC from hiring her twice before. The only thing that has changed is that she has now twice resigned from employment with the DOC, once for poor performance and once on short notice. The DOC's decision not to hire Lindvall based on her poor work performance, erratic work history, and lack of supervisory experience was neither illegal nor an abuse of discretion.

Given the foregoing, the Commission affirms the DOC's decision not to hire Lindvall as a Program Support Supervisor.

Issued at Madison, Wisconsin, this 28th day of April, 2023.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman