

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

LISA HOWARD, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0580

Case Type: PA

DECISION NO. 39940

Appearances:

Robert Mihelich, Attorney, 2665 S. Moorland Rd, Suite 200, New Berlin, Wisconsin, appearing on behalf of Lisa Howard.

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.

DECISION AND ORDER

On April 28, 2023, Lisa Howard 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 matter was assigned to Hearing Examiner Katherine Scott.

A telephone hearing was held on July 12, 2023, by Examiner Scott. The parties submitted written arguments on July 31, 2023. On August 4, 2023, Examiner Scott issued a Proposed Decision and Order, affirming the discharge of Lisa Howard by the DOC. The parties did not submit objections to the Proposed Decision by the deadline given of August 9, 2023.

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

FINDINGS OF FACT

1. Lisa Howard (Howard) was employed by the State of Wisconsin Department of Corrections (DOC), Division of Adult Institutions as a Correctional Officer at Racine Correctional Institution (RCI). She had permanent status in class when she was suspended.

2. Howard accepted several phone calls from two different inmates and sent money to one of them.
3. Howard knew these inmates were incarcerated but had not completed a DOC-2270 Fraternization Exception Request or received approval to communicate with or give money to either of these inmates.
4. Following an investigation, the DOC discharged Howard for fraternization and failure to comply with agency policies.

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 had just cause within the meaning of Wis. Stat. § 230.34(1)(a), to discharge Lisa Howard.

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

ORDER

The discharge of Lisa Howard by the State of Wisconsin Department of Corrections is affirmed.

Issued at Madison, Wisconsin, this 22nd day of August 2023.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman

MEMORANDUM ACCOMPANYING DECISION AND ORDER

Section 230.34(1)(a), Stats., provides in pertinent part the following as to certain employees of the State of Wisconsin:

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.

Lisa Howard 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 Howard was guilty of the alleged misconduct and that the misconduct constituted just cause for the discipline imposed. *Reinke v. Personnel Bd.*, 53 Wis.2d 123 (1971); *Safransky v. Personnel Bd.*, 62 Wis.2d 464 (1974).

Howard was employed as a Correctional Officer at Racine Correctional Institution (RCI). It is uncontested that over a period of six months in 2022, Howard accepted at least twelve phone calls from J.T., an inmate at Dodge Correctional Institution, and her brother R.J., an inmate at Kettle Moraine Correctional Institution. Howard discussed personal issues with these inmates during these calls, many of which lasted up to fifteen minutes. Howard also gave a family member \$100 to give to R.J. *See* Respondent's Exhibit 8, pg. 6.

The DOC has a strict policy prohibiting employees from fraternizing with inmates. Executive Directive 16 prohibits employees from engaging in a wide variety of personal relationships or interactions with inmates. It also requires employees to report any relationships or interactions using a Fraternization Exception Request, Form DOC-2270. As RCI Warden Jason Wells testified, this policy requires DOC employees to document non-business-related interactions with inmates to ensure that institutions remain safe and to prevent conflicts of interest.

It is uncontested that Howard knew these men were incarcerated. She never completed a DOC-2270 Fraternization Exception Request for J.T. She completed a DOC-2270 Fraternization Exception Request for R.J. in 2003, for a previous incarceration. It is uncontested that Howard never filed an updated exception request in the intervening decades.

Howard argues that because she was not in a close personal or romantic relationship with either of the two inmates, she did not violate the DOC's fraternization policy. To support this, she

cites Executive Directive 16, Fraternalization Policy, (VI)(A)(1): “The policy prohibits personal contacts that are usually one-to-one such as dating, knowingly forming close friendships” However, the remainder of the paragraph also prohibits “corresponding or communicating ... [via] phone.” Therefore, we do not need to delve into the nature of Howard’s relationships to determine that these calls violated the DOC’s fraternization policy.

Howard next argues that she did not initiate the phone calls with the inmates. However, she admitted that these calls went on for up to 20 minutes. *See* Respondent’s Exhibit 8, pg. 14. Howard should have ended any calls from inmates with whom she should not be communicating without a fraternization exception. Instead, she continued the conversations at length and continued to accept the calls. This was not a one-time mistake, but a pattern of unsanctioned, personal communications with inmates – at least twelve in total. Therefore, it does not matter that Howard did not initiate these phone calls.

Howard argues that she filed a DOC-2270 Fraternalization Exception Request for R.J., and reasonably believed that she did not need to file a new one for a new incarceration. However, RCI Warden Wells credibly testified that DOC employees are given extensive training, both online and in person, on the DOC’s fraternization policy. Howard should have known, or at least known to ask, whether she needed to file a new form for her brother nearly twenty years after his first incarceration.

Howard argues that both inmates were incarcerated at a different facility, not at Racine Correctional Institution (RCI), where she was employed. This is immaterial. Howard is an employee of the DOC, and these two inmates are in the custody of the DOC. The fraternization policy therefore applies, and Howard is prohibited from engaging in unapproved phone communications with inmates.

Howard argues that her misconduct was only discovered as a result of the investigation into Jacqueline Heidt’s misconduct. However, it is extremely common for an investigation into one employee’s misconduct to lead to an investigation into another employee’s misconduct. This does nothing to change the fact that Howard repeatedly violated the DOC’s fraternization policy.

Lastly, Howard argues that she is being “scapegoated” in “the wake of the Heidt scandal.” However, Howard presented no evidence or testimony to support the contention that she is being either scapegoated or retaliated against. Therefore, we can dismiss this argument.

Howard repeatedly violated the DOC’s fraternization policy by communicating with inmates and sending one money without submitting the appropriate paperwork or receiving permission. This pattern of behavior constitutes a serious act of misconduct and justifies a skip in

progressive discipline. The DOC has a strong interest in preventing employees from engaging in relationships that have the potential to compromise the safety and security of DOC employees and institutions, and the Commission has previously upheld skips in progression to discharge for violations of the fraternization policy. See *Stoney v. DOC*, Dec. No. 39286 (WERC, 12/21). Therefore, there was just cause for Howard's discharge, and her discharge is therefore affirmed.

Issued at Madison, Wisconsin, this 22nd day of August 2023.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman