

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

JAKE DULLER, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0586

Case Type: PA

DECISION NO. 39959

Appearances:

Jake Duller, 650 Spring Street #7201, Sun Prairie, Wisconsin, appearing on his 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 May 18, 2023, Jake Duller filed an appeal with the Wisconsin Employment Relations Commission regarding the decision by the State of Wisconsin Department of Corrections (DOC) not to hire him for the position of Correctional Officer or Correctional Sergeant. The appeal was assigned to Commission Examiner Peter G. Davis.

A telephone hearing was held on August 17, 2023, by Examiner Davis. The parties thereafter made additional submissions and argument and the record was closed on September 1, 2023. On September 19, 2023, Examiner Davis issued a Proposed Decision and Order concluding that the DOC did not act illegally or abuse its discretion by failing to hire Jake Duller. On September 19, 2023, Duller filed objections to the Proposed Decision. On October 2, 2023, DOC filed a response to the objections to which Duller filed an additional reply.

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

FINDINGS OF FACT

1. Jake Duller (Duller) applied for a position with the State of Wisconsin Department of Corrections (DOC) as a Correctional Officer or Correctional Sergeant.

2. Duller had previously been employed by DOC as a Correctional Officer and Correctional Sergeant for 13 months. During that employment, he received three Letters of Expectation (LOE's).

3. DOC decided not to hire Duller based on his prior employment record with DOC set forth in Finding of Fact 2.

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 Jake Duller.

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 Jake Duller is affirmed.

Issued at Madison, Wisconsin, this 16th day of October 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 discretion 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, Duller alleges that the DOC abused its discretion when it failed to hire him. More specifically, Duller argues that the two Wardens who made the hiring decision should have done more than review a paper record-including interviewing him personally, contacting his prior DOC supervisor and investigating the circumstances behind the three LOE’s. Duller correctly argues that he did not have a right to grieve the LOE’s and thus he contends reliance on LOE’s alone is an abuse of discretion.¹

Given the foregoing, the issue can be viewed as whether it is an abuse of discretion when DOC based a hiring decision on prior alleged misconduct that cannot be contested by the applicant. The Commission concludes it is not an abuse of discretion. DOC can reasonably conclude that it will rely on prior paper evidence of employee misconduct when making a hiring decision-even where the applicant could not contest the allegations. DOC is entitled to conclude its supervisors make reasoned decisions when documenting employee misconduct and act in good faith when doing so. Thus, the paper record process used by DOC in this instance was not an abuse of discretion.

Given the foregoing, the Commission affirms the DOC’s decision not to hire Duller.

Issued at Madison, Wisconsin, this 16th day of October 2023.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman

¹ At hearing, Duller admitted engaging in the misconduct alleged in one of the LOE’s (watching movies while on duty) and did not contest the facts behind the other two attendance based LOE’s. However, the Wardens did not know that when making their decision.