

BEFORE THE IMPARTIAL HEARING OFFICER

In the Matter of the Grievance of

L.W.

Under the Grievance Procedure of

CITY OF RACINE

Case ID: 53.0024

Case Type: IHO

DECISION NO. 38802

Appearances:

Attorney Maxwell Livingston, 16601 W Greenfield Avenue, New Berlin, Wisconsin on behalf of L.W.

Attorney Marisa Roubik, 730 Washington Avenue, Racine, Wisconsin appearing on behalf of the City of Racine.

DECISION OF THE IMPARTIAL HEARING OFFICER

I am employed by the Wisconsin Employment Relations Commission and was jointly requested by the parties to serve as the impartial hearing officer (IHO) as to L.W.'s discharge by the City of Racine. My jurisdiction and authority in this matter is established by grievance procedure in City of Racine Handbook, which states in pertinent part:

b. In all cases, the grievant shall have the burden of proof to support the grievance. The impartial hearing officer will determine whether the city acted in an arbitrary and capricious manner. This process does not involve a hearing equivalent to a hearing before a court of law. The rules of evidence will not be followed.

c. Depending on the issue involved, the impartial hearing officer will determine whether a hearing is necessary, or whether the case may be decided based on a submission of written documents. If the impartial hearing officer determines that a hearing is necessary, the parties shall attempt to agree in advance upon the issue involved and stipulate to facts to be used at the hearing. The independent hearing officer shall meet with the parties at the earliest possible date which can be set to review the evidence and hear testimony relating to the grievance. All such Article VII, Discipline and Grievance Procedure Page 126 hearings shall be held at Racine City Hall. The impartial hearing officer shall prepare a written decision.

Over the objection of L.W., I concluded that a hearing was not “necessary.” The parties filed evidence and argument until December 7, 2020.

L.W. had been employed by the City since February, 2019. In January, 2020, she was suspended for one day for failing to timely report her work status. She did not file a grievance.

In late March, 2020, she unsuccessfully asked to be allowed to work from home citing COVID concerns and the absence of what she believed was necessary PPE. At the same time, she was seeking to regain shared custody of a child.

On April 1, L.W.’s supervisor advised her that she would be suspended for one day for failing to report for work on March 31 as directed to do so. L.W. also did not report for work on April 1 but did submit a FFCRA Request Form to the City, wherein she requested 80 hours of Emergency Paid Sick Leave. On this FFCRA Request Form, L.W. specified that she needed to take this “Leave to take care of my son to start immediately. Until the shut in is over and Daycare can be provided for my son.” L.W. did not report for work on April 2 or 3.

When processing L.W.’s request, the City discovered that L.W. did not have physical custody of the child and that the earliest any such custody might occur was April 6. The City discharged L.W. effective April 7, 2020 for requesting leave using false information.

L.W. contends that the stated reason for her request was not false because she needed time to safely prepare her home for the potential arrival of her child. However, she could have but did not state that in her request-perhaps because she likely rightly concluded that such a rationale would not qualify her for a leave under the new law. Thus, even assuming that L.W. would credibly testify as to this rationale for her request, the false nature of what she actually stated in her written request would remain and certainly constitute misconduct on her part.

L.W. also asserts that the discharge was not based on the content of her leave request but rather was retaliation for the concerns she had raised as to COVID issues and what she perceived as mistreatment by her supervisor. Particularly where, as here, she has the burden of proof and misconduct has been found to have occurred, this assertion is rejected.

Given the serious nature of L.W.’s misconduct and her short tenure with the City, it is clear that the City did not act in an arbitrary or capricious manner when it decided that discharge was the appropriate discipline.

Issued at Madison, Wisconsin, this 29th day of January, 2021.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Peter G. Davis, Impartial Hearing Officer