

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

ADAM HANKO, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF HEALTH SERVICES, Respondent.

Case ID: 2.0053

Case Type: PA

DECISION NO. 37771

Appearances:

Adam Hanko, N2199 Riley Road, Mauston, Wisconsin, appearing on his own behalf.

Lara M. Herman and Pamela R. McGillivray, Office of Legal Counsel, Department of Health Services, 1 West Wilson Street, Room 651, P.O. Box 7850, Madison, Wisconsin, appearing on behalf of the State of Wisconsin Department of Health Services.

DECISION AND ORDER

On April 20, 2018, Adam Hanko filed an appeal with the Wisconsin Employment Relations Commission asserting he should have been selected for a Correctional Sergeant position at the Sand Ridge Secure Treatment Center by the State of Wisconsin Department of Health Services. The appeal was assigned to Examiner Peter G. Davis. A hearing was held on June 25, 2018, in Mauston, Wisconsin. Post-hearing written argument was filed until August 30, 2018.

On October 31, 2018, Examiner Peter G. Davis issued a Proposed Decision and Order affirming the State of Wisconsin Department of Health Services' decision not to select Adam Hanko for the Correctional Sergeant position. Hanko filed objections on November 15, 2018, and the State responded on November 30, 2018, wherein the matter became ripe for Commission consideration.

Having reviewed the record, the Commission makes and issues the following:

FINDINGS OF FACT

1. Adam Hanko is employed as a Correctional Officer at the Sand Ridge Secure Treatment Center (Sand Ridge) by the State of Wisconsin Department of Health Services (DHS).

2. Hanko applied for but did not receive a Correctional Sergeant position at Sand Ridge because appointing authority Bellile concluded Hanko had engaged in workplace conduct that made him unsuitable for the position.

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

CONCLUSIONS OF LAW

The Wisconsin Employment Relations Commission has jurisdiction over this appeal pursuant to § 230.44 (1)(d), Stats.

2. Adam Hanko has the burden of proof to establish that the State of Wisconsin Department of Health Services acted illegally or abused its discretion when he was not selected for a Correctional Sergeant position.

3. The State of Wisconsin Department of Health Services did not act illegally or abuse its discretion by failing to select Adam Hanko for the Correctional Sergeant position.

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

ORDER

The appeal is dismissed.

Dated at Madison, Wisconsin, this 12th day of December, 2018.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman

MEMORANDUM ACCOMPANYING DECISION AND ORDER

Section 230.44(1)(d), Stats., provides:

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.” *Moeller-Bunker v. DWD*, Dec. No. 36786 (WERC, 5/17).

Hanko’s appeal asserts that DHS acted illegally and abused its discretion when he was not selected for a Correctional Sergeant position at Sand Ridge. Hanko has the burden of proof and the Commission is satisfied that the evidence he presented at hearing does not establish illegality or abuse of discretion.¹

Hanko is understandably frustrated by his non-selection because he performs well as a 15-year Correctional Officer, his name was forwarded to the hiring authority (Director Bellile) as a suitable candidate to fill one of three Correctional Sergeant vacancies, and it was not until the appeal hearing that he learned what the Commission concludes was the accurate reason for his non-selection – Bellile was aware of workplace conduct that he concluded made Hanko at least currently not suitable to fill a lead worker position. Hanko does not deny that at least one of the incidents relied upon by Bellile occurred – storming out of a difficult meeting shouting “This is fucking nuts.” As to the other two incidents, in one Bellile personally heard comments from Hanko that he concluded reflected a lack of maturity/bad attitude and in the other he reasonably relied on information relayed to him reflecting the same type of issue.

Hanko argues that even in the context of the conduct relied upon by Bellile, he is still a better candidate for the position than the person (Wehman) ultimately selected. However, as held in *Zeiler v. DOC*, Dec. No. 31107-A (WERC, 12/04), the Commission does not substitute its judgment for that of the hiring authority so long as the hiring authority’s exercise of discretion is not “clearly against reason and evidence.” Bellile’s decision was not “clearly against reason and evidence.”

Given the forgoing, the appeal is dismissed.

¹ Along with his post-hearing argument, Hanko submitted additional exhibits. The State objected to the receipt of those exhibits and that objection is sustained as there was no request at the hearing for the opportunity to submit additional exhibits or schedule another day of hearing for receipt of additional evidence.

Dated at Madison, Wisconsin, this 12th day of December, 2018.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman