

BY THE COURT:

DATE SIGNED: January 30, 2020

Electronically signed by Juan B. Colas
Circuit Court Judge

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH 10

DANE COUNTY

GARY EDDY,

Petitioner,

v.

Case No.: 19-CV-2114

WISCONSIN EMPLOYMENT
RELATIONS COMMISSION
and WISCONSIN
DEPARTMENT OF NATURAL
RESOURCES,

RE: [WERC Dec. No. 37961]

Respondents.

DECISION AND ORDER

INTRODUCTION

Petitioner Gary Eddy ("Eddy") seeks review of a Wisconsin Employment Relations Commission ("WERC") decision. WERC overturned the Department of Natural Resources ("DNR") termination of Eddy, instead saying a demotion was the appropriate action. Eddy

argues that demotion is too severe and unwarranted. For the reasons stated below, WERC's decision is affirmed.

PROCEDURAL BACKGROUND

Eddy had worked as a DNR administrative warden since 2000. In the summer of 2018, Eddy requested a voluntary demotion to a conservation warden. The DNR began investigating various charges against Eddy at the end of November 2018. (R. 283). The DNR interviewed Eddy regarding charges against him on December 7, 2018. (R. 283, 518-44). The DNR concluded that Eddy had been untruthful with DNR officials both before and during the investigation. (R. 373-75).

The charges against Eddy included the following: (1) untruthfully telling IT staff member Corey Robinson that Chief Warden Todd Schaller had approved Eddy's request for a second email account; (2) in the investigatory meeting, untruthfully saying Schaller had approved the second email account; (3) being untruthful multiple times to a manager, April Dombrowski ("Dombrowski"), regarding his work on the Trail Signing Handbook; (4) untruthfully stating that the Southcentral Regional Warden accepted responsibility for not inviting Eddy to an October 11, 2018 meeting; (5) being untruthful about speaking negatively about Dombrowski to other DNR employees contrary to a directive; and (6) being untruthful about the nature and amount of work done from home, contrary to supervisory direction Eddy received previously. (R. 374).

The DNR provided Eddy with a termination notice on January 24, 2019. Eddy filed a grievance with the Department of Administration ("DOA") on February 27, 2019. The DOA found the DNR had just cause to terminate Eddy on March 7, 2019.

Eddy appealed the DOA's decision to WERC. On March 22, 2019, WERC held a hearing on whether there was just cause for Eddy's termination. The WERC examiner issued a

proposed decision and order on June 28, 2019. The proposed order affirmed the DNR's discharge of Eddy. *Id.* On July 19th, 2019, WERC issued a decision and order that found the DNR did not have just cause to discharge Eddy and that demotion was the appropriate remedy.

STANDARD OF REVIEW

Judicial review of an administrative decision is limited to the record. Wis. Stat. § 227.57(1). If there is substantial evidence to support the agency's decision, it must be affirmed. *State ex. rel. Whiting v. Kolb*, 158 Wis. 2d 226, 233, 461 N.W.2d 816 (Ct. App. 1990); Wis. Stat. § 227.57.

The court shall accord no deference to an agency's interpretation of law. Wis. Stat. § 227.57(11). The court independently reviews an agency's interpretation of a statute while giving "'due weight' to the experience, technical competence, and specialized knowledge of the administrative agency." *Tetra Tech EC, Inc. v. Wisc. Dept. of Revenue*, 2018 WI 75, ¶108, 382 Wis. 2d 496, 914 N.W.2d 21.

DISCUSSION

There are two issues. First, whether WERC's interpretations of law were correct. Second, whether there was substantial evidence in the record to support WERC's final decision that demotion was appropriate.

Statutory interpretation begins with the language of the statute. *State ex rel. Kalal v. Circuit Court for Dane Cty.*, 2004 WI 58, ¶ 45, 271 Wis. 2d 633, 681 N.W.2d 110. If the meaning of the statute is plain, the inquiry ends. *Id.* Language is given its common, ordinary, and accepted meaning. *Id.* Context and structure are important to meaning. *Id.* ¶ 46. The court interprets the statutory language in the context is used, in relation to surrounding or closely-

related statutes, and to avoid absurd or unreasonable results. *Id.* If the statutory language is unambiguous, there is no need to consult extrinsic sources such as legislative history. *Id.*

A state employee with permanent status can only be discharged or demoted for “just cause.” Wis. Stat. § 230.34(1)(a). The statute defines two kinds of just cause. The first kind of just cause is the discharge or demotion of an employee for “inadequate, unsuitable, or inferior” work performance after imposition of “progressive discipline that complies with the administrator’s standards under Wis. Stat. § 230.04(13m).” *Id.* The second kind of just cause is the commission of nine specified types of misconduct which do not require progressive discipline. *Id.* Both parties agree that Eddy’s actions do not fall within this list; if there is just cause for Eddy’s demotion it must be of the first type.

Section 230.04(13m) requires the Administrator of the Division of Personnel Management in the Department of Administration to establish standards for progressive discipline. These are the “administrator’s standards” referred to in 230.34(1)(a). The standards must allow accelerated progressive discipline if the deficiency of the employee’s conduct or performance “is severe.” Wis. Stat. §230.04(13m).

The standards are in the record at R. 381-386. They include a progression schedule in Sec. 410.060 ranging from a one-day suspension without pay for a first violation to termination for a fourth violation. R.384. The standards provide that “the Department may accelerate the level of discipline.” *Id.* They also provide that in imposing discipline the agency must consider aggravating or mitigating circumstances, the progression schedule and specific agency policies and procedures. *Id.*

Taken together Wis. Stat. §§230.04(13m) and 230.34(1)(a) clearly allow demotion as an accelerated progressive discipline in response to misconduct or deficient work performance.

WERC concluded that termination as an accelerated response was disproportionately severe compared to Eddy's misconduct but that demotion was appropriate. WERC Decision p. 3. Because the law allows WERC's order of demotion, the next question is whether WERC's factual findings were supported by substantial evidence.

Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion after considering all the record evidence and the available inferences made from the evidence. *See Milwaukee Symphony Orchestra, Inc. v. Wis. Dept. of Revenue*, 2010 WI 33, ¶ 31, 324 Wis. 2d 68, 781 N.W.2d 674. The standard is below great weight or "clear" preponderance of the evidence. *Shoreline Park Preservation, Inc. v. Wis. Dept. of Admin.*, 195 Wis. 2d 750, 537 N.W.2d 388 (Ct. App. 1995).

WERC found that "Eddy made misstatements to DNR officials about various work-related matters." WERC Decision, p. 2. There is evidence that a reasonable person could accept as credible and adequate to support that conclusion. There is substantial evidence that Eddy misrepresented that he had approval to maintain two e-mail accounts, that he misrepresented his work on a project and that during an investigation he falsely denied having denigrated a manager, April Dombrowski.

IT Coordinator Corey Robinson testified that Eddy had asked him to set up a second e-mail account for him and that at some point he said he had permission from "the chief." R. 75, 84. During the investigation into the allegations of misconduct Eddy also told Andrea Augle, an employment relations specialist with the DNR, that Chief Warden Todd Schaller had given permission for the second e-mail. R. 142. Schaller testified that he had not given Eddy permission to get a second e-mail address and in fact was unaware of it until after it was set up. R. 59, 71. Eddy argues that Schaller didn't remember whether he had given permission or not.

Pet. Br. at 9. But Schaller didn't say he didn't remember *whether* he had given permission, he said he did not recall ever giving permission. R. 70. The examiner and WERC were entitled to find Schaller's denial of having given permission more credible than Eddy's claim of having received permission.

There was evidence that during a conversation with Robinson at a bar he was critical of Dombrowski. R. 78. He said that she was micromanaging him, "dumping" more work on him, that she had cried during meetings and that she was having trouble managing her program. R. 77-78, 212-213. Augle testified that during her investigation she asked Eddy if he had followed a directive not to speak negatively of Dombrowski and Eddy said he probably had not, but he did not disclose his conversation with Robinson. R. 147.

There was also substantial evidence that Eddy was untruthful in the reasons he gave Dombrowski for failure to timely complete a trail signage handbook. R. 97-102, 537. In sum, WERC's factual findings are supported by substantial evidence.

Eddy also challenges WERC's approval of demotion, arguing that it is too severe a response in the progressive discipline system. WERC was not persuaded that case law would require prosecutors to disclose Eddy's misstatements were he to be a witness in future prosecutions. WERC did conclude that Eddy's misconduct "has the potential to damage his credibility as a witness in a judicial proceeding" and that "Eddy's statements damaged his potential credibility as a law enforcement witness but do not otherwise implicate his ability to successfully perform duties as a DNR employee without law enforcement responsibilities." Decision and Order, p. 3. There was substantial evidence in the record that DNR holds its law enforcement personnel to a high standard of truthfulness in part in order to avoid any risk that prosecutions might be undermined. R.33, R.62, R.154-155.

CONCLUSION

Demotion was a disciplinary response permitted by law. There was substantial evidence in the record to support WERC's findings and WERC's order to demote Eddy was a reasonable one. Therefore, the decision of WERC is **AFFIRMED**.