

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

MORGAN VACHA, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0362

Case Type: PA

DECISION NO. 38472

Appearances:

Michael T. Ellestad, Representative, 5414 Starker Avenue, Madison, Wisconsin, appearing on behalf of Morgan Vacha.

Anfin Jaw, 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 May 5, 2020, Morgan Vacha filed an appeal with the Wisconsin Employment Relations Commission asserting he had been discharged without just cause by the State of Wisconsin Department of Corrections. The appeal was assigned to Examiner Peter Davis. A telephone hearing was held on July 27, 2020. The parties made oral argument at the conclusion of the hearing.

On August 18, 2020, Examiner Davis issued a Proposed Decision and Order affirming the discharge. No objections were filed, and the matter became ripe for Commission consideration on August 24, 2020.

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

FINDINGS OF FACT

1. The Department of Corrections (DOC) is a state agency that among other matters is responsible for administering the State's probation and parole system.

2. Morgan Vacha (herein Vacha) was employed by the State of Wisconsin Department of Corrections as a Probation and Parole Agent and had permanent status in class at the time of his April 10, 2020 discharge.

3. Vacha was unable to timely complete his duties as a Probation and Parole Agent and falsified records and lied to his supervisor in an attempt to cover up his failures.

4. Among other matters, Vacha's failure to timely complete his duties caused delay in the incarceration of an offender and in the release of another offender.

5. DOC discharged Vacha for his misconduct referenced in Findings of Fact 3 and 4.

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 Morgan Vacha.

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

ORDER

The discharge of Morgan Vacha by the State of Wisconsin Department of Corrections is affirmed.

Issued at Madison, Wisconsin, this 1st day of September 2020.

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.

Morgan Vacha had permanent status in class at the time of his discharge and his appeal alleges that the discharge was not based on just cause.

The State has the burden of proof to establish that Vacha was guilty of the alleged misconduct and whether the misconduct constitutes just cause for the discipline imposed. *Reinke v. Personnel Bd.*, 53 Wis.2d 123 (1971); *Safransky v. Personnel Bd.*, 62 Wis.2d 464 (1974).

Vacha admits he engaged in the misconduct upon which his discharge was premised. However, he asserts that discharge is too harsh a disciplinary penalty for an employee with 12 years of State service and a clean disciplinary record. More specifically, he contends that he should have received additional training and been placed on a performance improvement plan. He further argues that personal family circumstances that were ongoing during the times at issue should be viewed as mitigating circumstances.

Vacha was in over his head as a Probation and Parole Agent after he took a promotion from a position as a Correctional Officer that he successfully held for many years. He had massive failures to remain timely with his work and took to falsifying records and lying to his supervisor in an attempt to cover up those failures. Once he began falsifying records and lying to his supervisor, he lost the trust needed to successfully perform as a Probation and Parole Agent and no amount of training was going to allow him to regain that trust. While he had difficult family circumstances to confront during the times in question, those circumstances do not excuse the falsification and lying in question and do not provide a persuasive basis for concluding that discharge was too harsh a penalty.

Based on the foregoing, the Commission concludes that DOC had just cause to discharge Morgan Vacha.

Issued at Madison, Wisconsin, this 1st day of September 2020.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman