

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

ELIZABETH WOOLEVER, Appellant,

vs.

UNIVERSITY OF WISCONSIN-SYSTEM, Respondent.

Case ID: 3.0036

Case Type: PA

DECISION NO. 38923

Appearances:

Elizabeth Woolever, 321 N. Pleasant Avenue, Jefferson, Wisconsin, appearing on her own behalf.

Kristin Johnson, System Legal Counsel, 1850 Van Hise Hall, 1220 Linden Drive, Madison, Wisconsin, appearing on behalf of the University of Wisconsin-System.

DECISION AND ORDER

On March 27, 2020, Elizabeth Woolever filed an appeal with the Wisconsin Employment Relations Commission asserting she had been discharged without just cause by the University of Wisconsin-System from her position at the University of Wisconsin-Whitewater. The appeal was assigned to Examiner Peter Davis.

Due to discovery disputes and witness availability issues, the parties waived the 120-day limit for Commission action set forth in Wis. Stat. § 230.445. Telephone hearings were held on August 28, November 17, and December 11, 2020. The parties thereafter filed written argument—the last of which was received March 19, 2021.

On April 5, 2021, Examiner Davis issued a Proposed Decision and Order affirming the discharge. On April 12, 2021, Woolever filed objections to the Proposed Decision. On April 16, 2021, the University filed a reply to the objections.

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

FINDINGS OF FACT

1. Elizabeth Woolever (herein Woolever) was employed by the University of Wisconsin-System (herein UW) as a Risk Management Specialist at the University of Wisconsin-Whitewater

at the time of her discharge effective February 28, 2020. She has permanent status in class as of June 30, 2015.

2. On December 6, 2019, Woolever went into an unprovoked rage in a co-worker's office which included screaming within a foot of the co-worker's face and hitting the co-worker with a thrown envelope containing several keys.

3. Once the rage ended, Woolever did not leave work as requested by her supervisor but subsequently voluntarily left the office accompanied by law enforcement personnel who were called to the scene.

4. The rage left the co-worker understandably fearful for her safety and she took precautions in response. The rage disrupted the workplace.

5. During subsequent investigation of the December 6 incident, UW discovered that Woolever had called a different co-worker a "fucking cunt" during a conversation with a UW student worker Woolever supervised.

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 University of Wisconsin-System had just cause within the meaning of Wis. Stat. § 230.34(1)(a) to discharge Elizabeth Woolever.

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

ORDER

The discharge of Elizabeth Woolever is affirmed.

Issued at Madison, Wisconsin, this 26th day of April, 2021.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman

MEMORANDUM ACCOMPANYING DECISION AND ORDER

Wisconsin Stat. § 36.115(6) provides in pertinent part:

All system employees holding positions in the classified . . . service of the civil service system under ch. 230 on June 30, 2015, who have achieved permanent status in class on that date, shall retain, while serving in the positions in the system, those protections afforded employees in the classified service under ss. 230.34(1)(a) and 230.44(1)(c) relating to demotion, suspension, discharge, layoff, or reduction in base pay.

Wisconsin Stat. § 230.34(1)(a) states in pertinent part:

An employee with permanent status in class ... may be removed, suspended without pay, discharged, reduced in base pay or demoted only for just cause.

Wisconsin Stat. § 230.44(1)(c) 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.

Woolever had permanent status in class as of June 30, 2015 as an employee of the University of Wisconsin System and her appeal alleges that the discharge was not based on just cause.

UW has the burden of proof to establish that Woolever 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).

The evidence presented establishes that Woolever had a stressful personal life which she often shared with co-workers during the workday. That “sharing” led to co-worker complaints to supervisors about the distraction those conversations caused in terms of getting work done. Supervisors asked Woolever to end those conversations and suggested that Woolever use Employee Assistance Program resources as to the stress caused by her personal life. At the time of the discharge incident, Woolever had not significantly reduced the amount of “sharing” but UW had taken no disciplinary action.

The evidence also establishes that Woolever and others had a contentious relationship with employee W who (unbeknownst to Woolever) learned on December 6, 2019 that her employment with UW would be ending due in part to her inability to interact successfully with other employees.

On December 6, 2019, Woolever was upset that employee W had requested that she get some keys made. Woolever did not think it was part of her job to get the keys made and complained

to her supervisor. Her supervisor directed her to get the keys made and Woolever did so. Shortly thereafter, Woolever entered a co-worker's office and initiated a conversation focused on how or whether she could improve her relationship with W. Without any provocation, Woolever then flew into a rage which included screaming within a foot of the co-worker's face and hitting the co-worker with a thrown envelope containing several keys. Once the rage ended, Woolever did not leave work as requested by her supervisor but subsequently voluntarily left the office accompanied by law enforcement personnel who were called to the scene. The rage left the co-worker understandably fearful for her safety and she took precautions in response. The rage also disrupted the workplace.

During its investigation following the December 6 incident, UW discovered that Woolever had told a student employee how much she disliked co-worker W and referred to W as a "fucking cunt."

The Commission concludes that UW has met its burden of establishing that Woolever engaged in misconduct as to the December 6, 2019 incident and by advising a student employee of her distaste for co-worker W and using a profane phrase when doing so.¹

As to whether Woolever's misconduct constituted just cause for her discharge, Woolever asserts UW failed to meet its burden. She argues discharge was too severe a penalty because she is a long-term employee with a clean disciplinary record who has been treated more severely than other UW employees who engaged in similar or more severe misconduct. The Commission does not find her arguments to be a persuasive basis for rejecting the discharge.²

Looking first at Woolever's claim of disparate treatment, the Commission's analysis of such claims focuses on how the employer has treated similarly situated employees who have engaged in the same misconduct. *Morris v. DOC*, Dec. No. 35682-A (WERC 7/15); *Pflum v. DOC*, Dec. No. 35067-B (WERC, 7/15). The employee asserting disparate treatment bears the burden of proof as to this assertion. *Hulce v. DOC*, Dec. No. 37445 (WERC, 6/18).

Woolever focuses her disparate treatment claim on three other UW-Whitewater employees: Judah, Soliz, and Marino.

¹ To some extent, UW relies on Woolever's failure to comply with the directive to quit spending time talking to co-workers about her personal life. The evidence supports a conclusion that Woolever did not heed this directive. However, the evidence also supports a conclusion that UW knew or should have known Woolever continued to distract co-workers but took no action. Therefore, this misconduct is not being considered as part of the Commission's analysis.

² Woolever also claims the discharge should be overturned because she did not have sufficient notice of job expectations and the consequences of violating same. This claim is rejected because it is self-evident that a workplace rage, criticizing a co-worker to a student, and use of substantial profanity when doing so all not acceptable workplace conduct that could lead to discipline. Woolever further asserts that she is being targeted because of what she views as whistleblowing activity at UW. There is no persuasive evidence to support this assertion. Woolever criticizes the quality of the investigation into her conduct. There was no relevant flaw in the investigation.

As to Judah, there is evidence that he swore at student workers he was supervising, and the only UW response was to note the need for improvement in his employee evaluation. Most obviously, Woolever was discharged for far more than her use of profanity when describing a co-worker and thus the lack of discipline for Judah does not warrant rejecting or modifying Woolever's discharge.

As to Soliz, he damaged an air conditioning unit by cutting the power cord and was not disciplined. While such conduct clearly provided a basis for discipline, the Commission's analysis of a disparate treatment claim focuses on whether the employer imposed different discipline for the same conduct. Because Soliz's conduct differs from that of Woolever, the UW decision not to discipline Soliz does not undermine the UW decision to discharge Woolever.

Lastly, Marino intentionally damaged a co-worker's car and was not formally disciplined. While such conduct clearly provided a basis for discipline, Marino's misconduct is sufficiently different from that of Woolever's so that a disparate treatment analysis is not applicable. While Marino may well have been acting out of rage, as was Woolever, the misconduct that the rage produced is substantially different.

Given the foregoing, Woolever's claim of disparate treatment is rejected.

Ultimately, the Commission concludes that there was just cause for discharge. While Woolever did have eleven years of service and a clean disciplinary record, her conduct on December 6, 2019 was extreme, disruptive of the workplace and caused at least one co-worker to thereafter to be legitimately concerned about her safety. That December 6 misconduct when combined with the subsequent discovery of her use of extreme profanity when describing a co-worker provided just cause for discharge.

Issued at Madison, Wisconsin, this 26th day of April, 2021.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman