

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

JAMIE GLEISNER, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0427

Case Type: PA

DECISION NO. 38929

Appearances:

Jamie Gleisner, 1018 South Emmertsen Road, Racine, Wisconsin appearing on his own behalf.

William H. Ramsey, Deputy Chief Legal Counsel, Department of Administration, 101 E. 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 January 4, 2021, Jamie Gleisner 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 (DOC). The appeal was assigned to Examiner Peter Davis.

A telephone hearing was held on March 31, 2021. The parties thereafter filed written argument, the last of which was received April 14, 2021.

On April 16, 2021, Examiner Davis issued a Proposed Decision and Order affirming the discharge by DOC. On April 20, 2021, Jamie Gleisner filed objections to the Proposed Decision and Order. The DOC did not file a reply by the deadline given of April 26, 2021.

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

FINDINGS OF FACT

1. Jamie Gleisner, herein Gleisner, was employed by the State of Wisconsin Department of Corrections (DOC) as a Social Worker at the Racine Correctional Institution. He had permanent status in class at the time of discharge.

2. Gleisner improperly used DOC technology to locate an individual under DOC supervision and then improperly contacted that individual.

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 Jamie Gleisner.

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

ORDER

The discharge of Jamie Gleisner is affirmed.

Issued at Madison, Wisconsin, this 4th day of May, 2021.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman

MEMORANDUM ACCOMPANYING DECISION AND ORDER

Section 230.34(1)(a), Stats., 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.

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.

Gleisner 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 Gleisner 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).

Gleisner admits using DOC technology to locate a former inmate at Racine Correctional who was still under DOC supervision. He admits contacting that individual without DOC approval. Both actions are prohibited by DOC policy. Gleisner contends that he had the best of motives for his actions. Whatever his motivation might have been, the DOC policy against fraternization prohibits all such unilateral contacts because of the many potentials for harm that can occur.¹ Thus, it is clear that Gleisner engaged in misconduct both as to violation of the fraternization policy and improper use of DOC technology.

¹ Here, it was the former inmate who alerted DOC to the improper contact. There is ample evidence in the record that the contact caused the former inmate great concern. But even if the contact had been welcomed, DOC's strong policy interests against fraternization would remain. *See Pflum v. DOC*, Dec. No. 35067-B (WERC, 7/15)

Turning to the question of whether there was just cause for Gleisner's discharge, the record reflects that he was a long-term employee with a clean disciplinary record. Nonetheless, the Commission is satisfied that there was just cause for the discharge. Improper use of DOC technology and violation of the prohibition against fraternization represent serious actions of misconduct that call into question Gleisner's integrity and professionalism. It was within DOC's right under a just cause standard to conclude that it need not risk future violations. Therefore, the discharge has been affirmed.²

Issued at Madison, Wisconsin, this 4th day of May, 2021.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman

² During the hearing, Gleisner raised a contention that his behavior was caused by a lapse in treatment for a medical condition that was beyond his control. It is noteworthy that this contention was not raised by him during the DOC investigation or in his letter to the Racine Warden seeking to avoid discharge. Nonetheless, Gleisner asserts that his condition triggers the application of Wis. Stat. § 230.37, which provides in pertinent part:

(2) When an employee becomes physically or mentally incapable of or unfit for the efficient and effective performance of the duties of his or her position by reason of infirmities due to age, disabilities, or otherwise, the appointing authority shall either transfer the employee to a position which requires less arduous duties, if necessary demote the employee, place the employee on a part-time service basis and at a part-time rate of pay or as a last resort, dismiss the employee from the service. The appointing authority may require the employee to submit to a medical or physical examination to determine fitness to continue in service.

As is apparent from the language of the statute, it is not applicable to instances in which the employee has engaged in misconduct. Therefore, this contention is rejected.