

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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CARLY KNOCKEL, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0516

Case Type: PA

DECISION NO. 39438

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Appearances:

Jakob E. Feltham, Attorney, Hawks Quindel S.C., P.O. Box 2155 Madison, Wisconsin, appearing on behalf of Carly Knockel.

Nicole Rute, Attorney, 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 March 17, 2022, Carly Knockel (Knockel) filed an appeal with the Wisconsin Employment Relations Commission asserting she had been discharged without just cause by the State of Wisconsin Department of Corrections (DOC).

A telephone hearing was held on June 1, 2022, by Commission Examiner Anfin Jaw. The parties submitted written argument on June 8, 2022. Knockel filed a written response on June 9, 2022. On June 17, 2022, Examiner Jaw issued a Proposed Decision and Order affirming the discharge by DOC. Knockel filed objections to the Proposed Decision on June 30, 2022 and requested reimbursement for attorney's fees. DOC filed a reply on July 5, 2022.

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

**FINDINGS OF FACT**

1. Carly Knockel was employed by the State of Wisconsin Department of Corrections, Division of Adult Institutions, as a Correctional Sergeant at the Wisconsin Secure Program Facility (WSPF) and had permanent status in class when she was discharged.

2. The Department of Corrections (DOC) is a state agency responsible for the operation of various corrections facilities including WSPF, a maximum-security facility located in Boscobel, Wisconsin.

3. On July 2, 2021, Knockel entered the laundry room at WSPF, surrounded by inmates or persons in our care (PIOC), immediately came up behind a correctional officer, and made physical contact with her hand and body on the officer's buttocks and back area without his permission. This contact was unsolicited.

4. DOC discharged Knockel for sexual harassment.

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 Carly Knockel.

3. Carly Knockel is not the prevailing party within the meaning of Wis. Stat. § 227.485(3).

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

### **ORDER**

The discharge of Carly Knockel by the State of Wisconsin Department of Corrections is affirmed and her request for attorney's fees is denied.

Issued at the City of Madison, Wisconsin, this 14<sup>th</sup> day of July, 2022.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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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.

Carly Knockel had permanent status in class at the time of her discharge and her appeal alleges that the discharge was not based on just cause.

The State has the burden of proof to establish that Knockel 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).

It is undisputed that on July 2, 2021, while in the laundry room at WSPF, surrounded by PIOC's, Knockel came up behind Correctional Officer R.A. and made unsolicited physical contact with Officer R.A.'s buttocks area. What is in dispute is how the parties have described the physical contact. Officer R.A. testified that Knockel's hand touched his "posterior or bottom area" or "buttocks and inner thigh area" without his permission. It was embarrassing because it was in front of PIOC's, whom he supervises in the laundry room. Knockel characterized the touching as a "quick pat on the butt" and explained her behavior as "just being silly." She realized later that it was a "stupid" thing to do, and admitted it was not her best judgment. She also admitted that her conduct was inappropriate but did not express any remorse.

The conflicting characterization of the physical contact can be reconciled by the video evidence. While the encounter is brief, the video clearly shows Knockel coming up behind Officer R.A. in the laundry room, surrounded by PIOC's, touching R.A.'s buttocks and back area with her stomach area and hand in a forward thrust motion. Visibly, there is enough force from Knockel's body to move R.A.'s body forward. The allegation that there was possibly physical contact between Knockel's hand and R.A.'s genital area cannot be confirmed or rejected by the video evidence.

On January 28, 2022, DOC discharged Knockel for her conduct toward R.A. on July 2, 2021. The discharge letter Knockel received states in relevant part:

This letter is formal notice of the termination of your employment as a Correctional Sergeant with the Division of Adult Institutions, effective today, January 28, 2022

for violation of the following DOC Work Rule [sic] that applies to all Department employees:

- Work Rule #2 – Failure to comply with written agency policies and procedures.
- Work Rule #14 – Intimidating, interfering with, harassing, demeaning, treating discourteously, or bullying; ... in dealing with others.
- Work Rule #16 – Engaging in unauthorized activities while on duty, including but not limited to...playing games, horseplay or disorderly conduct or other disruptive or unsafe behavior.
- Serious Act of Misconduct #1 – While on Duty, harassing a person.

This action is being taken based on the following incident: On July 2, 2021, you came up behind a staff member, who was in the laundry room and loosely surrounded by persons in our care, making physical contact with your hand on the staff member's buttocks/private area without their permission before leaving the room. This contact was unsolicited, and was identified as both awkward and inappropriate. Executive Directive #5 identifies unwelcomed or unwanted physical contact as a form of sexual harassment.

You have no prior disciplines. However, in accordance with Executive Directive #2, "The Department may impose a more severe level of discipline, up to and including discharge, for serious acts of misconduct. Employees who are found to have engaged in serious misconduct may be terminated as an initial level of discipline depending on the seriousness of the behavior." Harassing a person while on duty is considered a serious act of misconduct. One of the Core Values of the Department's Mission states, "We expect competence and professionalism in our communications, demeanor, and appearance. We respond effectively and appropriately in our interactions and communications. We treat all people with dignity and respect." As a Correctional Sergeant, you are expected to serve as a representative for the Department of Corrections, and serve as an example of what it means to carry on the Department's mission, vision, and core values. The Department does not tolerate or condone your behavior, and has zero tolerance for this type of behavior. Due to the egregiousness of your behavior, you have left me no choice than to terminate your employment.

It should be noted that DOC's Executive Directive #5 defines sexual harassment as unwanted physical contact of a sexual nature or deliberate physical conduct of a sexual nature. Knockel argues that she did not intend to harass R.A., and that the physical contact was not of a sexual nature. DOC appropriately argues that the physical contact was of a sexual nature. The Commission previously held in *Allen v. DOC*, Dec. No 32557 (WERC, 5/09), "[a]s we see it, certain areas of the anatomy, including the buttocks, are presumptive zones of sexual privacy. Intentional and unwelcomed touching in those areas would fall *ipso facto* within the directive's prohibition of 'physical contact of a sexual nature.'"

The Commission has no hesitation finding that Sergeant Knockel's unwanted physical contact with Officer R.A.'s buttocks was sexual harassment, and therefore Knockel committed serious misconduct.

Knockel now begs the Commission to consider mitigating circumstances, including (1) she was overworked, which affected her judgment, (2) she considered R.A. a friend and her conduct was silly playful banter between friends, and (3) Officer R.A. did not report the conduct until two months later, when he was under investigation for a potential work rule violation. According to Knockel, her discipline should be rejected, and she should be reinstated.

The Commission acknowledges that, at the time of the incident, Knockel was working a long stretch of 16-hour days. She may have been exhausted, which may explain a lack of good judgment. However, her fatigue and poor judgment do not excuse her conduct. As to her assertion that the "quick pat on the butt" was within the bounds of a friendly relationship with R.A., and that it was playful banter, the Commission categorically rejects this argument and reasoning. This is a workplace, not a football locker room. Knockel was a sergeant, and R.A. was a subordinate. There is a clear power differential. Intentionally touching a subordinate's buttocks area with your abdominal area and hand with a forward thrust motion is clearly sexual harassment and cannot be tolerated in a workplace environment. Her conduct is further aggravated by the fact that it was in front of a handful of PIOCs. Knockel's behavior towards R.A. is literally the opposite of treating him with dignity and respect.

Finally, Knockel argues that there was a delay in reporting and that R.A. only reported the incident in retaliation for his potential work rule violation or insubordination. The Commission also rejects this argument in its entirety. It does not matter that there was a delay in reporting. It is not uncommon for victims of sexual harassment not to report an incident immediately due to embarrassment, denial, a desire to move on, or other various reasons. It is also inconsequential that R.A. reported the incident while under investigation for his own behavior towards Knockel. None of these reasons negate Knockel's conduct on July 2, 2021.

Given the foregoing, the Commission concludes that Knockel engaged in serious misconduct. Furthermore, there was just cause for Knockel's discharge and it is therefore affirmed.

Issued at the City of Madison, Wisconsin, this 14<sup>th</sup> day of July, 2022.

## **WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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James J. Daley, Chairman