

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

SASHA STRAKA, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF TRANSPORTATION, Respondent.

Case ID: 446.0035

Case Type: PA

DECISION NO. 39463

Appearances:

Sasha Straka, 1605 E. Wells Street, #107, Prairie du Chien, Wisconsin, appearing on her own behalf.

William Ramsey, 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 Transportation.

DECISION AND ORDER

On April 14, 2022, Sasha Straka filed an appeal with the Wisconsin Employment Relations Commission asserting she had been suspended for five days without just cause by the State of Wisconsin Department of Transportation (DOT).

The parties waived a hearing and agreed to proceed based on exhibits. The exhibits submitted by DOT were received without objection on July 25, 2022. Straka did not submit any exhibits. On July 26, 2022, Examiner Davis issued a Proposed Decision and Order affirming the five-day suspension by DOT. The parties did not file objections by the deadline given of August 1, 2022.

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

FINDINGS OF FACT

1. Sasha Straka, herein Straka, is employed by the State of Wisconsin Department of Transportation (DOT) within the Division of Motor Vehicles as a Customer Service Representative Senior. She had permanent status in class at the time of her suspension.

2. During the week of January 23, 2022, Straka failed to follow a supervisory directive and violated State policy when she refused to participate in mandatory COVID-19 testing protocols.

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 Transportation did have just cause within the meaning of Wis. Stat. § 230.34(1)(a) to suspend Sasha Straka for five days.

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

ORDER

The five-day suspension of Sasha Straka by the State of Wisconsin Department of Transportation is affirmed.

Issued at Madison, Wisconsin, this 2nd day of August, 2022.

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.

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

The State has the burden of proof to establish that Straka 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 during the week of January 23, 2022, Straka failed to follow a supervisory directive and violated State policy when she refused to participate in mandatory COVID-19 testing protocols.

Straka contends that the testing requirement did not take into account the research she asserts exists that would prove the health risks generated by testing. Straka did not produce any of the research in question. Even if she had, the State was entitled to choose the information upon which it would rely when concluding that testing would be required. In this instance, the State relied on information from the Center for Disease Control and Prevention and the Wisconsin Department of Health Services as to the transmission of COVID.

Straka asserts there is nothing in her job description that requires her to test. She is incorrect. Her job description includes a requirement that she follow rules and regulations as to safety.

Straka argues that she should not have been required to test if the customers she was serving were not required to do so. Assuming for the sake of argument that the State had the right to impose a testing requirement on customers, the State's choice not to do so did not prohibit it from concluding that certain of its employees would be obligated to test to enhance employee and customer safety.

Straka asserts that the State improperly failed to grant her religious accommodation request from the testing requirement. DOT provided Straka with the following response to that request.

This letter is in response to your religious accommodation request submitted by email on October 20, 2021. Thank you for the follow up information on October 20, 2021 that was requested so the department could evaluate your specific accommodation request and any alternatives you identified. This response is specific to what you requested in that email and the follow up document as indicated below:

- “Be exempt from any mask, covid, vaccination status, testing and any other requirements that management decides to make up on their next whim that go against my faith, can impair my health and destroy my God given immune system, violate my rights and defile my body.”
- “I expect to have my right to a religious accommodation upheld and be allowed to return to my job duties.”
- “Be allowed to continue the alternative schedule on phones that I have been successfully working for over a year without a mask, without being tested and without having killed anyone by breathing, being alive and maintaining some of my rights and not jeopardizing my religious beliefs.”

On March 18, 2020, the Department of Administration issued the Temporary Emergency Leave and Work Policy (DPM-0519-CC/POL). This policy strongly encouraged agencies to allow eligible employees to temporarily telecommute due to the COVID-19 pandemic. Many WisDOT employees were allowed to telecommute up to their full work schedules due to the emergency through July 4, 2021. Your position and duties did not allow you to telecommute.

On May 25, 2021, employees were notified that the department would be following the provisions in HR408 (Telecommuting Policy), as well as the WisDOT Telecommuting Guidance when the emergency telecommuting provisions ended on July 4, 2021. This guidance allows eligible employees to telecommute for up to 60 percent of their work schedule during a pay period. The guidance indicated that when employees are not telecommuting, they will be required to report to their assigned headquarters or field site. Additionally, the guidance indicated that employees may be required to be present beyond the telecommuting agreement at their assigned worksite/office to attend meetings or training, collaborate with others, etc., at the direction of their supervisor.

On August 23, 2021, it was announced by Department of Administration Secretary Joel Brennan that all executive branch workers must submit their vaccination status in the STAR/PeopleSoft HR system no later than September 9, 2021.

On September 14, 2021, it was announced by Department of Administration Secretary Joel Brennan that beginning October 18, 2021, weekly COVID-19 testing will be required for executive branch employees, who have access to the STAR HR

System and who have not self-reported their vaccine status or have not been fully vaccinated against COVID-19. There is no policy in place that requires mandatory COVID19 vaccines for employees.

Therefore, the workplace policy and directive is that all employees who have an expectation to be physically present in the office, worksite or assigned headquarters and/or have in-person contact with the public must follow weekly COVID-19 testing if they have not self-reported their vaccine status or have not been fully vaccinated against COVID-19. There are some exceptions allowed including employees that have tested positive for COVID-19 in the past 90 days, employees who have been approved for a valid medical or religious accommodation or employees who have an approved agreement in place to work 100% of the time at home and have no expectation, under any circumstances, to be physically present in a state facility or have contact with other state employees or members of the public while performing their duties.

Your request for a religious accommodation as described above has been reviewed. The review included the information in your request dated October 20, 2021, the responses to the follow up questions submitted to Human Resources, information from your supervisor on your position's work duties and the above workplace policies. Out of good faith, 100% telecommuting was also considered as an alternative.

Your position as a DMV Customer Service Rep Advanced is a position that requires in-person interaction with the public. You are currently working under temporary duties that relieve you of working in-person with the public. However, you are still working in a state office location/worksite to accomplish the temporary phone duties you are assigned. Since you are the only person working in that location during your work schedule of Mondays, Wednesdays and Fridays, you have been relieved of wearing a mask temporarily.

In your position, you are not eligible for continuous (100%) or permanent telecommuting. Since there is a need to be physically present in the service center for your permanent duties and your temporary duties, you must comply with the workplace directives and policies in place. This includes being subject to weekly COVID-19 testing.

Accordingly, the department is denying your religious accommodation request in part. As you continue under your temporary duties in the office alone, you will not have to wear a mask. When your temporary duties end and you resume your normal work activities, you will be required to follow all workplace policies, including wearing a mask.

Your request to not be subject to COVID-19 vaccination is denied as that is not a current workplace policy or requirement. Your request to not be subject to weekly

COVID-19 testing is denied, as you are required to be present in a state office building and you have not attested to your vaccination status in the STAR system. As you are required to be present in the office, being present in the office unvaccinated and being exempted from weekly testing presents an unacceptable risk to our employees and the people we serve.

Straka has not provided any legal support for her claim that the State was obligated to grant her request. Therefore, the Commission concludes that the State's basis for denying that request was reasonable .

Given the foregoing, the Commission is satisfied that Straka engaged in misconduct when she refused to test. Straka had previously received a Letter of Expectation and a one-day suspension, a three-day suspension and several five-day suspensions due to her refusal to test. Given that disciplinary record, the Commission is further satisfied that her insubordinate conduct provided just cause for an additional five-day suspension.

Issued at Madison, Wisconsin, this 2nd day of August, 2022.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman