

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

ROXANE UNVERRICH, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF VETERANS AFFAIRS, Respondent.

Case ID: 39.0021

Case Type: PA

DECISION NO. 39479

Appearances:

Roxane Unverrich, 5018 Bayfield Drive, Waterford, Wisconsin, appearing on her own behalf.

David G. Makovec, 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 Veterans Affairs.

DECISION AND ORDER

On May 17, 2022, Roxane Unverrich filed an appeal with the Wisconsin Employment Relations Commission asserting she had been discharged without just cause by the State of Wisconsin Department of Veterans Affairs.

A telephone hearing was held on August 1, 2022, by Commission Examiner Anfin Jaw. The parties submitted written argument on August 10, 2022. Unverrich filed a written response on August 12, 2022. On August 25, 2022, Examiner Jaw issued a Proposed Decision and Order affirming the discharge. Unverrich filed objections to the Proposed Decision on August 31, 2022. WDVA did not file a reply.

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

FINDINGS OF FACT

1. Roxane Unverrich was employed by the State of Wisconsin Department of Veterans Affairs (WDVA), as a Veterans Claims Officer 2 at the Milwaukee Regional Office in Milwaukee, Wisconsin, and had permanent status in class when she was discharged.

2. From 2016 through 2021, Unverrich failed to accurately complete U.S. Department of Veterans Affairs (USDVA) Form 20-0344, Annual Certification of Veteran Status and Veteran-Relatives, or provide updated information on veteran relatives.

3. On June 21, July 16, and July 19, 2019, Unverrich utilized her USDVA credentials to access her husband's USDVA file within the Veterans Benefits Management System (VBMS), without authorization or a legitimate business need.

4. WDVA discharged Unverrich for the conduct referenced in Finding 2 and 3.

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 Veterans Affairs had just cause within the meaning of Wis. Stat. § 230.34(1)(a) to discharge Roxane Unverrich.

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

ORDER

The discharge of Roxane Unverrich by the State of Wisconsin Department of Veterans Affairs is affirmed.

Issued at Madison, Wisconsin, this 13th day of September, 2022.

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.

Roxane Unverrich 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 Unverrich 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).

As a Veterans Claims Officer for WDVA, Unverrich represented veterans and/or their dependents in presenting claims before the USDVA. The position provided advocacy, counseling, referral and follow-up service to those veterans and/or dependents needing assistance; and she made decisions on behalf of veterans and/or dependents as their Power of Attorney representative. Unverrich was accredited by the WDVA and the USDVA to provide representation to veterans in the prosecution of their claims.

In her capacity as a claims officer for WDVA, Unverrich was required on an annual basis to provide updated information on veteran relatives (even if deceased), including spouses, children, parents, and siblings or individuals who otherwise have a close relationship such that there is the potential that the relationship could affect, or give an appearance of affecting, the impartiality of the claims process, by submitting USDVA Form 20-0344, Annual Certification of Veteran Status and Veteran-Relatives, to the USDVA. The purpose of Form 20-0344 is to collect information on the veteran status of system users and their relatives so access to their records may be restricted or sensitized. It is WDVA and USDVA policy to sensitize or prohibit employee access to their veteran relatives' confidential records, in accordance with the Privacy Act and 38 USC § 5701. In May 2016, Unverrich submitted an inaccurate Form 20-0344 to the USDVA by failing to declare her husband, Randall Unverrich as a veteran relative. From 2016 through 2021, Unverrich did not submit an accurate Form 20-3044 or provide WDVA and USDVA updated information on all of her veteran relatives, including her husband, Randall Unverrich.

In October 2021, as a result of a FOIA request to USDVA by Randall Unverrich, USDVA discovered that Roxanne Unverrich had accessed her husband's USDVA file on multiple occasions

on June 21, July 16, and July 19, 2019, within the VBMS. Records indicated that Roxanne Unverrich had used her USDVA credentials to log into the VBMS database to view her husband's USDVA file without authorization or a business need. Ironically, had Unverrich filed an accurate Form 20-3044 to the USDVA, her husband's file would have been sensitized or restricted, preventing her access. USDVA reported Unverrich's unauthorized access to WDVA in November 2021.

WDVA conducted an investigation into the matter and concluded that Unverrich's conduct violated multiple work rules. On February 21, 2022, DVA discharged Unverrich. The discharge letter Unverrich received states in relevant part:

Per Wis. Stat. § 230.34(1)(a), you are dismissed from your appointment as a Veterans Claims Officer 2 with the Wisconsin Department of Veterans Affairs, effective 02/21/2022 for violation of the following Department of Veterans Affairs Work Rules that apply to all employees:

- Work Rule #1 – Falsification of records, knowingly giving false information or knowingly permitting, encouraging or directing others to do so. Failing to provide truthful, accurate and complete information when required.
- Work Rule #2 – Failure to comply with written agency policies and procedures.
- Work Rule #12 – Unauthorized access, disclosure, destruction or use of information or records that could be reasonably considered confidential, including communication of confidential information to former employees of the department, or communications with third parties in violation of the department's communication policy.

This action is being taken as the result of the following violation(s) of Work Rules:

- Failure to accurately complete Form 02-0344 [sic] or provide updated information on veteran relatives
- Failure to comply with WVDA policy CO-501
- Unauthorized access of husband Randall Unverrich's veteran records on 6/21/2019, 7/16/2019, and 7/19/2019

An investigatory meeting was held on 1/18/2022, with April Heim and Daniel Nettie[.] You attended with your representative, Randall Unverrich. During your investigatory meeting, management asked a series of questions related to several potential work rule violations. In your responses you stated that you did access the records on the dates in question but that you were working [with] US DVA IT and your husband to remove WDVA as power of attorney. You also indicated that the Form 0344 with incorrect information was a mistake as you had his social security number and date of birth listed.

A pre-disciplinary meeting was scheduled on 2/8/2022, with April Heim and Daniel Nettie. You attended with your representative, Gerri Schroder. At this meeting, management summarized the investigatory meeting and provided you with an opportunity to provide any mitigating information. The information provided at this meeting does not mitigate your behavior or support why disciplinary action should not be taken.

The Commission has no trouble deciding it was misconduct for Unverrich to have failed to provide accurate and updated information of her veteran relatives to the USDVA and WDVA, as well as accessing her husband's USDVA file without authorization or a legitimate business need. Ultimately, she was responsible for filing Form 20-0344 or the annual certification to verify the status of all her veteran relatives. Had she done so properly, USDVA would have taken steps to sensitize her veteran-relatives', including her husband's USDVA files.

Unverrich asserts that the Form 20-3044 submitted in May 2016, was a draft version, and that she later updated the information accurately. However, credible testimony and evidence presented by USDVA Information Security Officer Ronald Cox establish that the 2016 Form 20-3044 was the only version on file with the USDVA. There was no amendment or subsequent annual update from Unverrich through the end of 2021. Furthermore, it was undisputed that Unverrich accessed her husband's USDVA file on June 21, July 16, and July 19, 2019. And although she claimed that she was working with her husband and IT from the USDVA on the dates in question, there was no evidence to corroborate her claims, aside from her self-serving statements. Unverrich is therefore accountable for failing to provide accurate and complete information when required, and unauthorized access to her husband's confidential USDVA records.

Based on the above, the Commission finds WDVA had just cause to discipline Unverrich for her misconduct.

The focus now turns to the level of discipline imposed here. WDVA concluded that a discharge was warranted due to the severity of Unverrich's misconduct. WDVA Chief Legal Counsel Chad Koplien persuasively testified at the hearing why the Department terminated Unverrich over imposing a lesser suspension. The confidentiality of records is of the highest importance to WDVA. WDVA and USDVA work in conjunction with each other on USDVA veteran disability appeals. It is a working relationship that cannot be jeopardized. The VBMS database contains highly confidential information, including sensitive HIPPA protected health information. There is a duty and a responsibility to protect the confidentiality of veteran and veteran-relatives' records from any unauthorized access or access without a business need. Under the circumstances, the Department determined that Unverrich's misconduct was egregious, and therefore constituted serious misconduct and a terminable offense.

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

Issued at the City of Madison, Wisconsin, this 13th day of September, 2022.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman