

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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LUZ VAZQUEZ, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF HEALTH SERVICES, Respondent.

Case ID: 2.0116

Case Type: PA

DECISION NO. 39481

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Appearances:

Luz E. Vazquez, 1013 S 32<sup>nd</sup> Street, Milwaukee, Wisconsin, appearing on her own behalf.

Nicole M. Porter, Attorney, Department of Administration, 101 East Wilson Street, 10th Floor, P.O. Box 7864, Madison, Wisconsin, appearing on behalf of the State of Wisconsin Department of Health Services.

**DECISION AND ORDER**

On June 23, 2022, Luz Vazquez filed an appeal with the Wisconsin Employment Relations Commission, asserting she had been discharged without just cause by the State of Wisconsin Department of Health Services (DHS).

A telephone hearing was held on August 3, 2022, by Commission Examiner Peter Davis. The parties made oral argument at the end of the hearing. On September 8, 2022, Examiner Davis issued a Proposed Decision and Order affirming the discharge by DHS. The parties did not file objections to the Proposed Decision by the deadline given of September 13, 2022.

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

**FINDINGS OF FACT**

1. At the time of her discharge, Luz Vazquez, herein Vazquez, was employed by the State of Wisconsin Department of Health Services (DHS) as an Income Maintenance Specialist for Milwaukee Enrollment Services (MilES). She had permanent status in class.

2. Between January 6, 2022 and January 31, 2022, Vazquez did not work 18 of the required hours fulfilling her job responsibilities and falsely reported that she had worked those hours.

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 Health Services had just cause within the meaning of Wis. Stat. § 230.34 (1)(a) to discharge Luz Vazquez.

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

**ORDER**

The discharge of Luz Vazquez by the State of Wisconsin Department of Health Services is affirmed.

Issued at the City of Madison, Wisconsin, this 23<sup>rd</sup> day of September, 2022.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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James J. Daley, Chairman

**MEMORANDUM ACCOMPANYING DECISION AND ORDER**

Wisconsin Stat. § 230.34(1)(a) states in pertinent part that “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.”

The State has the burden of proof to establish that Vazquez was guilty of the alleged misconduct and whether the misconduct constitutes just cause for the decision imposed. *Reinke v. Personnel Bd.*, 53 Wis.2d 123 (1971); *Safransky v. Personnel Bd.*, 62 Wis.2d 464 (1974).

Vazquez was employed as an Income Maintenance Specialist by the Department of Health Services, Division of Medicaid Services, Milwaukee Enrollment Services (MiES). Income Maintenance Specialists use the CARES database to complete 60 - 90% of their work. MiES monitors Income Maintenance Specialists’ productivity using a report run out of the CARES database, called an HMAW report. The HMAW report shows the date and time of all employee activity. Supervisors use the HMAW report as a monitoring tool to audit how much time employees spend actively working in CARES. According to a March 2020 email to staff, Income Maintenance Specialists are expected to spend 7 hours and 30 minutes each day working in the CARES database. They have scheduled morning and afternoon breaks, in addition to a lunch break.

The discharge letter Vazquez received states that her position is being terminated for two issues. The first is that Vazquez was inactive for 18 hours during scheduled work time, and therefore failed to comply with DHS’s attendance policies regarding start time, break time, and notifying authorities about absences. The second is that Vazquez reported that she had worked eight hours on days which she did not work eight hours, thereby falsifying records and failing to comply with DHS’s timesheet reporting policy.

It is undisputed that the HMAW report shows that Vazquez was inactive for 22 hours between January 6, 2022 and January 31, 2022. During the investigation, Vazquez had a chance to demonstrate that she was working in other systems, or performing other work-related activities like answering emails, but she only presented evidence that showed she spent 2 hours working on other work-related activities. This was subtracted from her total inactivity. Additionally, Human Resources generalist Karen Zbiegien testified that she added 15 minutes of “grace periods” to the periods that Vazquez was able to prove she was working on work-related activities. After receiving this evidence and other testimony during the investigation, HR reduced Vazquez’s total inactivity to 18 hours.

Vazquez contends she was completing other work-related activities during the periods in which she was inactive in the CARES system. She testified that she was likely to have been taking calls or working in other systems, such as immigration or child support databases. However,

Zbiegien credibly testified in the hearing that the HMAW report is cross-referenced with call monitoring information to take into account time spent on calls with clients. The time Vazquez spent taking calls was excluded from her 22 hours of inactivity. Further, Miles Bureau Director Tonya Evans credibly testified that checking other systems should not take more than 5 to 10 minutes. The HMAW report shows periods of inactivity that are 20 to 82 minutes at a time.

Vazquez asserts that she was a good employee and met all her benchmarks. However, one of an Income Maintenance Specialist's primary responsibilities is being available to take calls and put that information into the CARES system. In a March 2020 email to Miles staff, Evans made it clear that Income Maintenance Specialists were expected to be logged into the CARES system for 7 hours and 30 minutes each day, to be available to take calls for 6 hours and 45 minutes each day, and to only take breaks at scheduled times. The evidence presented by DHS establishes that Vazquez failed to meet these performance expectations for her position.

Vazquez argues that she wasn't given enough training or support to be aware of or remedy her inactivity. However, there is evidence that Vazquez was aware of her inactivity and was provided opportunities to remedy it. Attendance expectations were communicated to Income Maintenance Specialists via email and in team meetings. Vazquez signed a form in 2020 acknowledging that she understood that "unauthorized absences are subject to ... progressive discipline, up to and including discharge." She also signed a form in 2015 acknowledging that she has received access or has been shown where to locate all DHS and Miles policies and procedures. Further, Vazquez received two letters of expectation (LOEs) in October 2018 and November 2021 regarding attendance-related matters. These letters made the employer's attendance expectations clear and offered information about the Employee Assistance Program.

Vazquez also contends that her absences were due to grief related to the anniversary of her brother's death. She provided a letter from her psychotherapist, who wrote that Vazquez's grief had made it difficult for her to focus. However, Vazquez should have communicated with her supervisors or taken time off if she was having trouble coping with her brother's death.

Vazquez reported working eight hours on her timesheets on each of the days the HMAW report shows she worked fewer than eight hours. She reported starting at 8 a.m. every day, taking a lunch break from 11:30 a.m. to noon, and ending at 4:30 p.m. She did not report taking 20 to 82-minute breaks, which far exceeded her two scheduled 15-minute breaks. The times she entered are not an honest reflection of the time she spent working, and therefore constitute a violation of DHS's Timesheet Reporting and Approval policy, which requires employees to "accurately record hours worked."

Having concluded that Vazquez engaged in misconduct, the just cause inquiry shifts to the level of discipline imposed. While Vazquez had not previously received formal discipline, failing to work the required hours and then falsely reporting that the hours had been worked is serious misconduct that provided just cause for the DHS decision to skip the standard disciplinary progression and discharge Vazquez. Therefore, the Commission affirms the discharge.

Issued at the City of Madison, Wisconsin, this 23<sup>rd</sup> day of September, 2022.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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James J. Daley, Chairman