

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

M.L., Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0537

Case Type: PA

DECISION NO. 39483

Appearances:

M.L., 8481 5th Avenue, Trailer 19A, Oak Creek, Wisconsin, appearing on her own behalf.

David Makovec, Attorney, Wisconsin 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 June 20, 2022, M.L., a former Correctional Officer at the Milwaukee Secure Detention Facility, filed an appeal with the Wisconsin Employment Relations Commission asserting that she had been discharged without just cause by the State of Wisconsin Department of Corrections (DOC).

A telephone hearing was held on August 23, 2020, by Commission Examiner Peter G. Davis. The parties made oral closing arguments at the conclusion of the hearing and DOC filed supplemental written argument on August 24, 2022. On August 26, 2022, Examiner Davis issued a Proposed Decision and Order rejecting the discharge by DOC. DOC filed objections to the Proposed Decision on August 31, 2022; M.L. filed a reply to the objections the same day.

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

FINDINGS OF FACT

1. M.L. was employed by the State of Wisconsin Department of Corrections (DOC) as a Correctional Officer at Milwaukee Secure Detention Facility (MSDF). She had worked for DOC for four years and had permanent status in class at the time of the discharge.

2. While off-duty, M.L. falsely reported to law enforcement that items had been stolen from her residence.

3. DOC discharged M.L. for the conduct summarized in Finding of Fact 2.

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 did have just cause within the meaning of Wis. Stat. § 230.34(1)(a) to discharge M.L.

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

ORDER

The discharge of M.L. by the State of Wisconsin Department of Corrections is affirmed.

Issued at Madison, Wisconsin, this 23rd day of September, 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.

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

M.L. admits that she engaged in the misconduct summarized in Finding of Fact 2 but contends that this misconduct did not give DOC just cause to discharge her. She is embarrassed and remorseful and asserts she is deserving of a second chance to continue what she had hoped would be career as a Correctional Officer. In this regard, she contends that other DOC employees have engaged in the same or worse misconduct and are still employed. M.L. also argues that her inability to access medication needed to manage a medical condition contributed to the poor decision-making in question,

The Commission agrees with DOC's contention that the false report to law enforcement undermines the trust it needs to have in M.L.'s honesty. Among other matters, DOC pointed to the need to rely on truthfulness of any Correctional Officer's account of interactions with inmates and when responding to inmate contentions of Officer misconduct. Therefore, the Commission concludes that M.L. did engage in the type of off-duty misconduct that provides just cause for discipline.

As to M.L.'s argument that DOC has disciplined her more harshly than some other DOC employees, the Commission does not find that argument to be persuasive.

M.L. points to employee M who was demoted in 2007 from a MSDF position for sexual harassment and for dishonesty during the DOC investigation into his conduct. The dishonesty-related misconduct by employee M can be viewed as comparable to that of M.L. However, the change in applicable disciplinary standards that occurred during the intervening 15 years means the lesser discipline received by employee M does not provide a persuasive basis for lessening the discipline M.L. received.

M.L. cites Lieutenant F at the Racine Correctional Facility who served 90 days in jail for an alcohol related offense and then received a warning in 2015 from DOC that any additional alcohol related offense would result in discharge. While M.L. views this conduct as more severe than hers, the Commission has held that only comparisons of discipline received for the same type of misconduct are relevant to a claim of disparate treatment. *See Morris v DOC*, Dec. No. 35682-A (WERC, 7/15). Here, the misconducts are not the same, so the DOC treatment of Lieutenant F is not relevant to the level of discipline received by M.L.

M.L. also points to employee C who pled no contest to the charge of Resisting or Obstructing an Officer in 2007, received a suspended sentence to seven months in jail, and was nonetheless subsequently hired by DOC. This is the same misdemeanor citation received by M.L. who was only fined. While DOC is certainly free to hire anyone it wishes, the DOC interest in employee honesty would seem to be applicable to both an individual being hired as well as an employee being disciplined. Nonetheless, because a hiring decision is fundamentally different than a discipline decision, the hiring of employee C is not relevant to a challenge of the level of discipline meted out to M.L.

Lastly, the Commission turns to M.L.'s claim that a medical condition played a role in her actions. In this regard, M.L. submitted an exhibit from a medical provider confirming that she has a medical condition and that, at the time of her false police report, she was experiencing a "flare" of symptoms because the prescribed medication was not in use due to no longer being fully covered by insurance. The provider advised that a covered alternative had been found and that the Bi-Polar Disorder is now being successfully managed.

The Commission acknowledges there is no way to definitively know if M.L.'s medical condition played a role in her poor decision-making. However, the potential motive of financial need coupled with the plan, design, and execution of the activity in question are enough to persuade the Commission that this was not a product of missing medication, but more likely an action with full criminal intent. As DOC has argued, a separate criminal proceeding occurred where guilt was determined with a higher legal standard being met. As such we are not persuaded by M.L.'s argument.

The discharge of M.L. is affirmed.

Issued at Madison, Wisconsin, this 23rd day of September, 2022.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman