

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

ALVINA GOMEZ, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0550

Case Type: PA

DECISION NO. 39760

Appearances:

Colin B. Good, Attorney, Hawks Quindel S.C., P.O. Box 2155, Madison, Wisconsin, appearing on behalf of Alvina Gomez.

David G. Makovec, 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 Corrections.

DECISION AND ORDER

On August 9, 2022, Alvina Gomez 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 October 11, 2022, by Commission Examiner Anfin Jaw. The Respondent submitted written argument on October 28, 2022. Gomez submitted written argument and a request for fees and costs on October 28, 2022. The parties filed written replies on November 1, 2022.

On November 11, 2022, Examiner Jaw issued a Proposed Decision and Order modifying the discharge by DOC to reinstatement without back pay and demotion to the position of Correctional Officer. DOC filed objections to the Proposed Decision on November 10, 2022; Appellant filed a response to the objections on November 18, 2022.

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

FINDINGS OF FACT

1. Alvina Gomez was employed by the State of Wisconsin Department of Corrections, Division of Adult Institutions, as a Correctional Sergeant at Fox Lake Correctional Institution (FLCI) and had permanent status in class when she was discharged.

2. On February 19, 2022, Gomez falsely reported that she had fallen on her left knee and suffered a workplace injury.

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 to review this appeal pursuant to Wis. Stat. § 230.44(1)(c).

2. Gomez engaged in misconduct by falsely reporting a workplace injury.

3. The State of Wisconsin Department of Corrections did have just cause within the meaning of Wis. Stat. § 230.34 (1)(a), to discharge Gomez.

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

ORDER

The discharge of Alvina Gomez by the State of Wisconsin Department of Corrections is affirmed.

Issued at the City of Madison, Wisconsin, this 1st day of December, 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.

Alvina Gomez 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 Gomez 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).

Gomez claimed in written reports, during her investigative interview, and a workers compensation claim that her left knee, hip, and lower back were injured when she slipped by zone 3 on a patch of ice while doing a fence check during the early morning hours of February 19, 2022. FLCI's outdoor security camera system is divided into zones, and Gomez consistently reported that her fall occurred in zone 3 between Towers 5 and 6. A review of institution video surveillance showed Gomez conducting the institution fence check in zone 3 between Tower 5 and Tower 6, but at no time during her walk to or from the fence does Gomez appear to fall. DOC's investigation concluded that Gomez did not fall or slip on ice on February 19, and therefore that Gomez was guilty of falsifying the written reports that claimed otherwise.

Gomez asserts that the fall did occur and that the differing written description from the video surveillance can be attributed to faulty memory and the limited camera angle footage that DOC reviewed. She contends that the video evidence presented by DOC is insufficient to conclude that a fall did not occur. She also questions how she can be discharged without considering her distinguished service to the DOC since 2005, lack of any prior discipline, as well as positive performance reviews, promotions, merit pay increases, and commendations for going above and beyond the job requirements.

Gomez was discharged for describing a workplace injury that DOC concluded never occurred. Thus, the focus of the Commission's analysis is on the basic question of whether the fall occurred. If it did not, then Gomez engaged in an act of misconduct that is appropriately considered worthy of discipline.

Evidence that the fall or injury occurred is provided solely by Gomez's testimony. Evidence that no fall or injury occurred is provided by the video surveillance footage, and credible

testimony from Captain Justin Landaal that he reviewed the video footage from zone 3, where Gomez indicated the fall occurred, as well as video footage of all other zones near the fence check areas – zones 1, 2 and 5. Captain Landaal admitted he did not review zone 4, and explained that based on Gomez’s own description of the area, and her identification on an aerial map of the institution, the fall could not have been in zone 4.

Furthermore, the evidence established that Gomez was “pissed” that she had to do fence checks that morning, she wanted to go home, but was not allowed to, and the weather was “horrible...freezing cold and super windy.” Additionally, in October 2021, Gomez had suffered a knee injury and had just returned from being on restrictive light duty (where she did not have to work overtime and/or was not required to do fence checks).

Given the circumstances, the Commission is satisfied that DOC has met its burden of establishing that there was no fall or injury, and therefore that Gomez falsely reported otherwise.

Based on the above, the Commission finds DOC had just cause to discipline Gomez for her misconduct. The Commission further finds that discharge was the appropriate level of discipline and upholds such. While Gomez had substantial seniority and a positive work history, the severity of the misconduct outweighs those factors. Gomez did not simply omit a truth, or give a misrepresentation without consequence. Gomez fabricated a story for personal gain. Gomez’s actions were those consistent with fraud and underscores the seriousness of her actions.

Therefore, the discharge of Alvina Gomez is affirmed.

Issued at the City of Madison, Wisconsin, this 1st day of December, 2022.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman