

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

DAWN HAWKINSON, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0567

Case Type: PA

DECISION NO. 39899

Appearances:

Victor Arellano, Attorney, Arellano & Phebus, S.C., 1468 N. Highpoint Road, Suite 102, Middleton, Wisconsin, appearing on behalf of Dawn Hawkinson.

David 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 December 21, 2022, Dawn Hawkinson 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 hearing was held on February 2, 2023, in Madison, Wisconsin, by Commission Examiner Katherine Scott. The parties made oral arguments at the end of the hearing. On March 24, 2023, Examiner Scott issued a Proposed Decision and Order affirming the discharge by DOC. Hawkinson filed objections to the Proposed Decision on March 29, 2023. DOC filed a response to the objections on April 4, 2023.

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

FINDINGS OF FACT

1. Dawn Hawkinson (Hawkinson) was employed by the State of Wisconsin Department of Corrections (DOC) as a sergeant at John Burke Correctional Institution (JBCI). She had permanent status in class when she was discharged.

2. On August 30, 2022, Sergeant Heather Bunker (Bunker) was walking near checkpoint Hawkinson was stationed. Hawkinson and Bunker began to talk. Hawkinson swiped her hand down Bunker's front and started talking about Bunker's breasts.

3. The next day, Bunker reported the incident to her supervisor.

4. Following an investigation, DOC discharged Hawkinson for sexually harassing Bunker while on duty.

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 had just cause within the meaning of Wis. Stat. § 230.34(1)(a), to discharge Dawn Hawkinson.

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

ORDER

The discharge of Dawn Hawkinson by the State of Wisconsin Department of Corrections is affirmed.

Issued at Madison, Wisconsin, this 13th day of April, 2023.

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.

Dawn Hawkinson 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 Hawkinson was guilty of the alleged misconduct and that the misconduct constituted just cause for the discipline imposed. *Reinke v. Personnel Bd.*, 53 Wis.2d 123 (1971); *Safransky v. Personnel Bd.*, 62 Wis.2d 464 (1974).

Hawkinson was employed as a sergeant at John Burke Correctional Institution (JBCI). On August 30, 2022, Hawkinson was stationed at the gatehouse. Sergeant Bunker walked by, and Hawkinson started a conversation with her and asked to see Bunker's recent neck surgery.

Bunker states that when she pulled aside her hair to show Hawkinson the scar from her surgery, Hawkinson said "I'm sorry, I'm staring at your chest." Hawkinson then "swiped" Bunker's chest – moved her hand down the front of Bunker's uniform, from the top of her chest to her stomach – while telling Bunker "You have no boobs." Hawkinson then backed up and said "Sorry, I shouldn't have done that." Bunker states she told Hawkinson she (Bunker) had lost a lot of weight. Hawkinson said that her mother's significant other was a plastic surgeon. Bunker replied that plastic surgery was expensive and that she was fine with how she looked. Bunker states Hawkinson then asked her if she (Bunker) had to change her bra when going to other correctional institutions. Bunker decided to leave. She went home and spoke about the incident with her husband, then reported it the next morning to her supervisor, Captain Haynes. She had no further interactions with Hawkinson.

Hawkinson states that when Bunker moved her hair to show the scar, Hawkinson stepped closer to look, pointed at the scar, then jumped back and apologized for getting too close. Hawkinson claims that Bunker was the one to bring up the new entrance policy and underwire bras. She states that Bunker then said she (Bunker) didn't have to wear bras anymore after weight loss two years prior and began talking about getting breast implants. Hawkinson then said that if Bunker was interested in implants, her stepdad worked for a plastic surgeon and could help. Hawkinson insists that she never touched Bunker's breasts.

However, security footage of the incident from a nearby security camera confirms Bunker's account of the incident. The security footage shows Hawkinson moving her hand down Bunker's front, then leaping back and holding her hands behind her head as though she had acted inappropriately. Hawkinson does not appear to merely be pointing at Bunker's neck, as she claims. Hawkinson argued that in the footage, her shadow never reaches Bunker's body, which supposedly demonstrates that she never touched Bunker. Hawkinson also argued that her finger is pointing down, so therefore a swiping motion is not possible. However, neither of these things can be seen in the footage.

Hawkinson argues that Bunker's credibility is undermined by the fact that Bunker waited until the next day to report the incident. However, as the Commission has previously noted: "It is not uncommon for victims of sexual harassment not to report an incident immediately due to embarrassment, denial, a desire to move on, or other various reasons." *Knockel v. DOC*, Dec. No. 39438 (WERC, 7/22).

Hawkinson argues that her behavior was not harassment, because she and Bunker were good friends. She states they've worked together for twelve years and discussed personal issues, including Bunker's marriage and her mother's health. (Bunker states that she is not friends with Hawkinson, and that they are just friendly coworkers.) However, even if we assume Hawkinson and Bunker were in fact close friends, the Commission has previously held that inappropriate touching is not within the bounds of a friendly relationship. DOC's Executive Directive #5 defines sexual harassment as "unwanted physical contact of a sexual nature or deliberate physical conduct of a sexual nature." The Commission previously held in *Allen v. DOC*: "certain areas of the anatomy ... are presumptive zones of sexual privacy. Intentional and unwelcomed touching in those areas would fall ipso facto within the directive's prohibition of 'physical contact of a sexual nature.'" See *Allen v. DOC*, Dec. No. 32557 (WERC, 5/09). Further, in *Knockel v. DOC*, the Commission held that grabbing a coworker's buttocks in the workplace was not appropriate despite a pre-existing friendship. Here, even if Hawkinson and Bunker were friends, that would not excuse Hawkinson remarking upon or touching Bunker's breasts, a presumptive zone of sexual privacy.

Hawkinson also argues that this accusation is a form of retaliation. She alleges that Bunker made this accusation to assist Captain Haynes in persecuting Hawkinson, in exchange for giving Bunker a better job at JBCI. (Bunker's new position has the same job title and pay as before, but Hawkinson claims the new position is "like a promotion" because she has weekends off and doesn't have to deal with security.) Hawkinson alleges that Haynes retaliated against her after she attempted to report one of Haynes's friends for sexually harassing her. She claims that Haynes dismissed her complaint and then initiated several investigations against Hawkinson in retaliation, for which she was disciplined. She also claims Haynes changed overtime rules to retaliate against her. However, Hawkinson failed to present any evidence or testimony that this theory was true, aside from her self-serving testimony.

Hawkinson violated the DOC Work Rule #14 and DOC Serious Misconduct #1 by sexually harassing a person while on duty. There was just cause for the discharge, and the discharge is therefore affirmed.

Issued at Madison, Wisconsin, this 13th day of April, 2023.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman