

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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VICKI OBERG, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0602

Case Type: PA

DECISION NO. 40247

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Appearances:

Vicki Oberg, 107 N. Stuyvesant Street, Merrill, Wisconsin, appearing on her own behalf.

Eric Muellenbach, Attorney, Department of Corrections, 3900 E. Washington Avenue, Madison, Wisconsin, appearing on behalf of the State of Wisconsin Department of Corrections.

**DECISION AND ORDER**

On October 5, 2023, Vicki Oberg filed an appeal with the Wisconsin Employment Relations Commission asserting that the State of Wisconsin Department of Corrections (DOC) had acted illegally or abused its discretion when it failed to hire her for a Treatment Specialist 2 position at the Lincoln Hills/Copper Lake School.

A telephone hearing was held on November 28, 2023, by Commission Examiner Peter G. Davis. The record was closed on December 4, 2023, following email exchanges between the parties regarding possible submission of post hearing evidence.

On February 2, 2023, Examiner Davis issued a Proposed Decision and Order affirming the DOC decision not to hire Oberg, concluding the DOC did not act illegally or abuse its discretion by failing to hire Vicki Oberg. No objections were filed by the parties by the deadline given of February 19, 2023.

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

**FINDINGS OF FACT**

1. Vicki Oberg (Oberg) was employed by the State of Wisconsin Department of Revenue.

2. Oberg applied for and was interviewed for the positions of Treatment Specialist 1 and Treatment Specialist 2 with the State of Wisconsin Department of Corrections at the Lincoln Hills/Copper Lake School.

3. On September 29, 2023, Oberg was offered and accepted a Treatment Specialist 2 position.

4. On October 2, 2023, Oberg signed a document resigning from her Department of Revenue position effective close of business October 6, 2023.

5. On October 4, 2023, Oberg received a telephone call and confirming email from the Department of Corrections rescinding the job offer.

6. The September 29, 2023, offer was made in error and was rescinded once the Department of Corrections realized that all mandatory pre-offer steps had not been completed.

7. The Department of Revenue subsequently offered Oberg the opportunity to rescind her resignation, but Oberg did not accept the offer.

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)(d).

2. The State of Wisconsin Department of Corrections did not act illegally or abuse its discretion by failing to hire Vicki Oberg.

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

### **ORDER**

The State of Wisconsin Department of Corrections' decision not to hire Vicki Oberg is affirmed.

Issued at Madison, Wisconsin, this 22<sup>nd</sup> day of February 2024.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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James J. Daley, Chairman

**MEMORANDUM ACCOMPANYING DECISION AND ORDER**

Section 230.44(1)(d), Stats., provides that “[a] personnel action after certification which is related to the hiring process in the classified service and which is alleged to be illegal or an abuse of discretion may be appealed to the commission.” An illegal act is one that is contrary to Wisconsin civil service statutes or administrative rules. An abuse of direction is when an agency exercises discretion “to an end or purpose not justified by and clearly against reason and evidence.”

The appellant bears the burden of proof. *See Moeller-Bunker v. DWD*, Dec. No. 36786 (WERC, 5/17). Here, Oberg bears the burden of proving that her non-selection was either illegal (contrary to Wisconsin civil service statutes or administrative rulings) or an abuse of direction (not justified by and clearly against reason and evidence).

The record establishes that DOC revoked its offer of employment to Oberg when it discovered that the following mandatory actions had not been taken.

Section 230.15 (7), Stats., dictates that “An appointing authority may not make an offer of employment to any individual who currently holds a position unless the appointing authority has reviewed the personnel file of the individual.” Oberg’s personnel file had not been reviewed prior to the offer.

Wisconsin HR Handbook Chapters 104 and 244 and DOC Policy Number 200.30.507 require that reference checks be completed prior to any offer of employment being extended. Reference checks had not been completed prior to the offer being extended to Oberg.

In light of the foregoing requirements, the Commission concludes that DOC did not act illegally or abuse its discretion by revoking the offer.

Oberg not unreasonably asks why DOC could not have gone back and completed the erroneously omitted steps referred to above and then renewed the offer of employment. A DOC witness testified that it quickly became apparent that Oberg might appeal the offer revocation and the judgment was made to halt any further action. The Commission does not find that judgment to be an abuse of discretion.

Given the forgoing, the appeal is dismissed.

Issued at the City of Madison, Wisconsin, this 22<sup>nd</sup> day of February 2024.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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James J. Daley, Chairman