

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

ANDREA BUSHMAN, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0618

Case Type: PA

DECISION NO. 40356

Appearances:

Nicholas Fairweather, Hawks Quindel, P.O. Box 2155, Madison, Wisconsin, appearing on behalf of Andrea Bushman.

David Makovec, Attorney, 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 January 10, 2024, Andrea Bushman 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 by Commission Examiner Peter G. Davis on March 4, 2024, and the parties thereafter filed written argument by March 11, 2024.

On April 3, 2024, Examiner Davis issued a Proposed Decision and Order rejecting the discharge of Andrea Bushman by the DOC and modified it to reinstatement without backpay. The DOC filed objections to the Proposed Decision on April 8, 2024. Andrea Bushman filed a response to the objections on April 15, 2024.

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

FINDINGS OF FACT

1. Andrea Bushman, herein Bushman, was employed as Correctional Officer by the State of Wisconsin Department of Corrections at the Prairie Du Chien Correctional Institution. At the time of her discharge, she had permanent status in class.

2. Bushman engaged in serious misconduct when she identified herself as a Correctional Officer to law enforcement while present when her son-in-law was being arrested.

3. Bushman engaged in serious misconduct when she identified herself as a Correctional Officer to jail staff on more than one occasion while her son-in-law was incarcerated.

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 to discharge Andrea Bushman.

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

ORDER

The discharge of Andrea Bushman by the State of Wisconsin Department of Corrections is affirmed.

Issued at Madison, Wisconsin, this 25th day of April 2024.

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.

Andrea Bushman 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 Bushman 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).

Did Bushman Engage in Serious Misconduct?

Bushman was discharged for allegedly identifying herself as a Correctional Officer to seek preferential treatment for a son-in-law during his arrest and subsequent incarceration. Bushman denies that she did so.

In the arrest scenario, a law enforcement officer testified at hearing that Bushman introduced herself as a Correctional Officer when she arrived at the scene of the son-in-law's arrest. Bushman testified that she only advised law enforcement of her status as a Correctional Officer in the midst of a conversation and then solely for the purpose of sorting out how she should report this law enforcement contact pursuant to DOC work rules. While the law enforcement officer was likely annoyed by Bushman's attempts to serve as her son-in-law's de facto lawyer during the arrest, that annoyance is not a sufficient basis for discounting his testimony. He, unlike Bushman, has no vested interest in the outcome of this civil service proceeding. Therefore, while it is concluded that there was an exchange related to Bushman's reporting obligations, the Commission is satisfied that Bushman identified herself as a Correctional Officer upon her arrival.

The law enforcement officer testified that the only purpose he could discern for Bushman's introduction was to gain some benefit for her son-in-law as to the arrest that was in process upon her arrival. The Commission concludes that the officer's understanding was reasonable, and that Bushman's actions did violate the State employee Code of Ethics found at Wis. Admin. Code ER-MRS-24. Further, as reflected in Wis. Stat. § 230.34 (1)(a) 9., the Commission is satisfied that Bushman's action constitutes serious misconduct.

In the jail scenario, the combination of the law enforcement officer's testimony and the documented interviews with jail staff and Bushman herself persuades the Commission that Bushman routinely identified herself as a Correctional Officer when visiting her son-in-law in jail. In the context of that evidence, Bushman's testimony that she only did so once when commiserating with jail employees about being short staffed is not credible.

As was true for the arrest scenario, Bushman's purpose for her conduct can reasonably be understood as an attempt to gain some benefit for her son-in-law and thus violates the Code of Ethics and, in turn, constitutes serious misconduct.

Does Bushman's Serious Misconduct Provide Just Cause for Discharge?

In the Commission's Proposed Decision, the Examiner determined that Bushman exhibited less culpability for her behavior since it was for the benefit of a family member, not herself. In response to the Proposed Decision, DOC directs the Commission's attention to Wis. Admin. Code § ER-MRS 24.04(1)(a), which specifies that a violation of the Code of Ethics occurs when an employee's actions would benefit the employee or the employee's immediate family. Wisconsin Admin. Code § ER-MRS 24.03(5)(b) gives the following definition of immediate family: "An employee's relatives by marriage, consanguinity or adoption, and any other person who directly or indirectly receives more than one-half of their support from the employee, or from whom the employee directly or indirectly receives more than one-half of his or her support." A son-in-law is a relative by marriage and, thus, included specifically in the Code of Ethics that gives no distinction or separation between using one's position for direct benefit or the benefit of family. As such the fact that the action was done for the benefit of the son-in-law does not create a mitigating circumstance and falls within the prohibitions embodied above. Therefore, there is just cause for the discharge of Bushman and it is affirmed.

Issued at Madison, Wisconsin, this 25th day of April 2024.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman