

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

HEATHER KRUEGER, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0640

Case Type: PA

DECISION NO. 40374

Appearances:

Anthony Gunderson, 907 West Street, Beaver Dam, Wisconsin, appearing on behalf of Heather Krueger.

Nicole Porter, 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 DENYING MOTION TO COMPEL

On April 25, 2024, Heather Krueger filed an appeal with the Wisconsin Employment Relations Commission asserting that she had been suspended for three days without just cause by the State of Wisconsin Department of Corrections (DOC). The matter was initially assigned to Hearing Examiner Peter Davis and was reassigned to Hearing Examiner Katherine Scott Lisiecki.

On May 15, 2024, Krueger filed a motion to compel discovery, asserting that the DOC had failed to provide all of the documents Krueger had requested. The DOC filed a response to the motion on May 17, 2024, and Krueger filed a reply on May 17, 2024.

Having reviewed the matter, I conclude that the motion to compel should be denied.

NOW, THEREFORE, it is:

ORDERED

The motion to compel discovery is denied.

Issued at the City of Madison, Wisconsin, this 23rd day of May 2024.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Katherine Scott Lisiecki

MEMORANDUM ACCOMPANYING DECISION AND ORDER
DENYING MOTION TO COMPEL

Krueger alleges that the DOC disciplined her for reporting that another employee was engaged in misconduct, and that the employee was later discharged for that same behavior. She also alleges that her due process rights were violated because the employee circulated a letter encouraging witnesses in Krueger's investigation to collude, thereby compromising her investigation.

On April 26, May 1, and May 3, 2024, Krueger requested all emails between Kelsey Alao and three other employees between August 30 and October 21, 2023; any emails to or from Alao with the word "Krueger" in the subject or body of the email from August 15, 2023, until Alao's termination; and any investigation packets for Alao.

On May 15, 2024, the DOC provided Krueger with the requested emails, which were partly redacted to shield confidential or sensitive information about employees and inmates uninvolved in this case. Krueger does not seem to contest these redactions.

However, the DOC objected to providing Alao's investigation packets on the grounds that Alao is not "similarly situated" to Krueger. Although Krueger and Alao were employed at the same institution, they were not "similarly situated" because they were disciplined for different work rule violations or acts of misconduct. *See Morris v. DOC*, Dec. No. 35682-A (WERC, 7/15). The DOC argues that access to discipline records for other employees is relevant only for the purposes of a disparate treatment claim.

The Commission's test for relevancy is very broad, relating to the subject matter of the appeal, rather than the precise issue for the hearing. *See Biddick v. DHSS*, Case No. 82-127-PC (Pers. Comm. 10/14/82). If interrogatories – for example, those directing the respondent to identify all documents and all communications relating to a reassignment – are too broad, they may be amended to be more specific. *Id.*

Here, Krueger's initial request was overly broad. Krueger is not making a disparate treatment claim, and if she were, Alao is not similarly situated to Krueger because they were disciplined for different work rule violations or acts of misconduct. Further, the information in Alao's investigation packets cannot establish whether Krueger reported Alao's alleged misconduct correctly, nor can they help establish whether Alao interfered with the investigation into Krueger. It is immaterial, for the purposes of this appeal, whether Alao committed the misconduct that Krueger alleges she committed.

In this matter, I am satisfied that the DOC provided all relevant files. Therefore, the motion to compel discovery is denied.

Issued at the City of Madison, Wisconsin, this 23rd day of May 2024.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Katherine Scott Lisiecki