

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

LATIFAH BALOGUN-OGBARA, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0633

Case Type: PA

DECISION NO. 40377

Appearances:

Cindy Irwin, 475 Courtland Ave., Oshkosh, Wisconsin, appearing on behalf of Latifah Balogun-Ogbara.

Eric Muellenbach, Attorney, Department of Corrections, Office of Legal Counsel, 3099 E. Washington Ave., Madison, Wisconsin, appearing on behalf of the State of Wisconsin Department of Corrections.

DECISION AND ORDER

On April 4, 2024, Latifah Balogun-Ogbara filed an appeal with the Wisconsin Employment Relations Commission regarding the decision by the State of Wisconsin Department of Corrections (DOC) not to hire her for a correctional officer position.

A Zoom hearing was held on May 21, 2024, by Commission Examiner Katherine Scott Lisiecki. The parties made oral arguments at the close of the hearing. On June 4, 2024, Examiner Lisiecki issued a Proposed Decision and Order affirming the DOC decision not to hire Balogun-Ogbara for a DOC correctional officer position. The parties did not file objections by the given deadline of June 10, 2024.

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

FINDINGS OF FACT

1. Latifah Balogun-Ogbara (Balogun-Ogbara) applied for a position with the State of Wisconsin Department of Corrections (DOC) as a correctional officer.

2. An initial questionnaire asked applicants a series of questions to establish whether they were eligible for employment. In answer to the question of whether she had ever been convicted of domestic violence, Balogun-Ogbara selected “Yes.”

3. Due to Balogun-Ogbara stating that she had been convicted of domestic violence, she received an automated message that she was not eligible for the correctional officer position.

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 Latifah Balogun-Ogbara.

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 Latifah Balogun-Ogbara is affirmed.

Issued at Madison, Wisconsin, this 5th day of July, 2024.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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 has the burden of proof. *See Moeller-Bunker v. DWD*, Dec. No. 36786 (WERC, 5/17).

The DOC requires correctional officer applicants to complete an initial screening questionnaire to establish whether they are eligible for the position. It consists of twelve questions, including whether employees have ever been convicted of a felony, whether they have ever been convicted of domestic violence, and whether they can legally possess and use a firearm. If the applicant answers that they have a conviction or cannot use a firearm, they are sent an automated message from the system stating that they were not selected due to basic ineligibility.

On March 14, 2024, Latifah Balogun-Ogbara applied for a position as a correctional officer and completed the questionnaire. In response to the question of whether she had been convicted of domestic violence, she answered “Yes.” Balogun-Ogbara also stated that she was eligible to possess and use a firearm. She received a message that she was not selected due to basic ineligibility.

Balogun-Ogbara asserts that she has never been convicted of domestic violence. However, rather than simply admitting she made an error in her application, she alleges that the DOC changed the answers on her questionnaire. Balogun-Ogbara further argues that the DOC should have checked why her answers contradicted each other, since if she had been convicted of domestic violence, she would be unable to use a firearm.

Balogun-Ogbara 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).

Balogun-Ogbara offered no evidence to support her contention that the DOC changed her answers to the questionnaire. Human Resources Supervisor Troy Smith credibly testified that DOC employees are unable to change applicants’ answers.

Further, the DOC is not responsible for reconciling the inconsistencies in applicants’ questionnaire answers. Balogun-Ogbara was responsible for ensuring that her application was complete and accurate.

The DOC’s decision not to hire Balogun-Ogbara was neither illegal nor an abuse of discretion. Given the foregoing, the Commission affirms the DOC’s decision not to hire Balogun-Ogbara as a correctional officer.

Issued at Madison, Wisconsin, this 5th day of July 2024.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman