

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

CASSANDRA KAMMER, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF HEALTH SERVICES, Respondent.

Case ID: 2.0150

Case Type: PA

DECISION NO. 40390-A

Appearances:

Cindy Irwin, 475 Courtland Avenue, Oshkosh, Wisconsin appearing on behalf of Cassandra Kammer.

Lara Herman, Attorney, Department of Health Services, 1 W. Wilson Street, Room 651, P.O. Box 7850, Madison, Wisconsin, appearing on behalf of the Department of Health Services.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

On April 24, 2024, Cassandra Kammer filed an appeal with the Wisconsin Employment Relations Commission asserting that the State of Wisconsin Department of Health Services (DHS) had acted illegally and/or abused its discretion by failing to offer her a Correctional Officer position at the Wisconsin Resource Center. The appeal was assigned to Commission Examiner Peter G. Davis.

A zoom hearing was held July 10, 2024, by Examiner Davis, and the parties thereafter filed written argument by July 23, 2024. On August 6, 2024, Examiner Davis issued a Proposed Findings Of Fact, Conclusions of Law and Order, affirming the DHS decision not to hire Cassandra Kammer. The parties did not file objections by the given deadline of August 21, 2024.

Having considered the matter, the Commission makes and issues the following:

FINDINGS OF FACT

1. Cassandra Kammer, herein Kammer, was interviewed for the position of Correctional Officer at the Wisconsin Resource Center, a facility operated by the Department of Health Services.

2. Kammer did not proceed further in the hiring process because she did not satisfactorily answer one of the interview questions.

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 Health Services did not act illegally or abuse its discretion by failing to hire Cassandra Kammer.

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 Health Services decision not to hire Cassandra Kammer is affirmed.

Issued at the City of Madison, Wisconsin, this 26th day of September 2024.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSIONS OF LAW 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 discretion 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, Kammer bears the burden of proving that her non-selection by the Department of Health Services (DHS) was either illegal (contrary to Wisconsin civil service statutes or administrative rulings) or an abuse of discretion (not justified by and clearly against reason and evidence).

There is no evidence that the DHS decision was illegal. Thus, the focus of the Commission’s analysis is on whether DHS abused its discretion when deciding not to hire Kammer.

The evidence reflects that Kammer did not proceed further in the hiring process because she did not answer a question related to working with diverse individuals in a satisfactory manner. More specifically, Kammer did not provide required examples as to how she had worked with individuals different from herself and what she had learned from those experiences.

Kammer contends that because she told the interviewers she had previously worked at the Oshkosh Correctional Institution, it should have been apparent to them that she had experience working with diverse individuals. However, as one of the interviewers testified, the State civil service system’s interview process requires that the interviewers rely only on what is said during the interview-not what a resume might reveal or what an applicant’s statements might allow the interviewers to infer. Kammer did not provide the specific examples required by the question. Therefore, the Commission is satisfied that DHS did not abuse its discretion when deciding not to allow Kammer to proceed further in the hiring process. Thus, the DHS decision is affirmed.

Issued at the City of Madison, Wisconsin, this 26th day of September 2024.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman