

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

VICKI OBERG, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0619

Case Type: PA

DECISION NO. 40401

Appearances:

Richard Peterson, 2055 South River Road, Rhinelander, Wisconsin appearing on behalf of Appellant and Vicki Oberg, 107 N. Stuyvesant Street, Merrill, Wisconsin, appearing on her own behalf.

Eric Muellenbach, Attorney, Department of Corrections, 3099 E. Washington Avenue, Madison, Wisconsin, appearing on behalf of the State of Wisconsin Department of Corrections.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

On January 12, 2024, Vicki Oberg filed an appeal with the Wisconsin Employment Relations Commission asserting that the State of Wisconsin Department of Corrections (DOC) had acted illegally and/or abused its discretion by failing to offer her a Treatment Specialist 2 position at the Lincoln Hills/Copper Lake School. The appeal was assigned to Commission Examiner Peter G. Davis.

A zoom hearing was held March 12, 2024, by Examiner Davis and the parties thereafter filed written argument by May 31, 2024.

On July 23, 2024, Examiner Davis issued Proposed Findings of Fact, Conclusions of Law and Order concluding that DOC had not acted illegally or abused its discretion.

On August 2, 2024, Oberg filed objections to the Proposed decision. The parties thereafter filed argument at the Commission's request-the last of which was received October 8, 2024.

Having considered the matter, 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 The September 29, 2023, offer was made in error and was rescinded once the Department of Corrections realized that all mandatory pre-offer steps had not been completed.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.
8. The Department of Corrections subsequently completed the previously omitted mandatory review of Oberg's personnel file and reference letters. Based on that review, the Department concluded that it would not hire Oberg.
9. By letter dated December 6, 2023, the Department of Corrections advised Oberg that she would not be hired for the Treatment Specialist 2 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 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 the City of Madison, Wisconsin, this 10th day of October 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, 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 discretion (not justified by and clearly against reason and evidence).

There is no persuasive evidence that the DOC decision was illegal.¹ Thus, the focus of the Commission’s analysis is on whether DOC abused its discretion when deciding not to hire Oberg.

Hiring authority Trevino decided not to hire Oberg because he did not believe she was a “good fit” for the position and had doubts about her ability to successfully handle the job responsibilities of a Treatment Specialist 2. As to the “good fit” component, Trevino cited doubts he and others had about whether Oberg could successfully embrace the current treatment philosophy at Lincoln Hills/Copper Lake – a philosophy that differs dramatically from that in place during most of Oberg’s previous employment at the facility as a Youth Counselor. Those doubts were informed in part by conversations Oberg had with Deputy Warden Heier during which she expressed negative opinions about the change in philosophy.² Thus, the Commission concludes that Trevino’s doubts were not “clearly against reason and evidence.”

As to Oberg’s ability to handle the Treatment Specialist 2 job responsibilities, the Commission concurs with Oberg’s view that Trevino’s doubts are very thinly supported by his selective citation to scattered criticisms found in Oberg’s written evaluations. Those evaluations are by and large quite positive. However, in the end, the Commission has no basis to second guess Trevino’s judgment that Oberg might not be able to successfully handle the complexity of the Treatment Specialist 2 responsibilities. Therefore, the Commission again concludes that Trevino’s doubts were not “clearly against reason and evidence.”

¹ In her objections, Oberg contends for the first time that Wis. Stat. § 230.43(1) was violated as part of the hiring process. There is no persuasive evidence in the record to support that contention.

² In her post hearing brief, Oberg denies that she made those remarks. However, Heier’s testimony was not challenged or rebutted at hearing and the Commission has no reason to question Heier’s credibility.

In closing, the Commission acknowledges that there is ample evidence in the record that Oberg could successfully perform the duties of the Treatment Specialist 2. The interview panel recommended that she be hired. At hearing, she provided witnesses who supported her qualifications. But the Commission's role is not one of deciding whether it would have hired Oberg. The Commission's role is not to second guess the hiring authority. Rather, the Commission's role is to determine if the hiring authority's decision was "clearly against reason and evidence." In this instance, Oberg has not met her burden of establishing that Trevino acted "clearly against reason and evidence." Thus, the decision not to hire her is affirmed.³

Issued at the City of Madison, Wisconsin, this 10th day of October 2024.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman

³ In her objections and subsequent argument, Oberg again attacks the hiring process and procedures used by DOC. She continues to be incorrect when she argues that DOC was obligated to hire her based on the hiring panel's recommendation. To the contrary, the record satisfies the Commission that the applicable provisions of the Human Relations Handbook were followed.