

FILED

09-04-2025

Clerk of Circuit Court

Chippewa County, WI

2024CV000376

BY THE COURT:

DATE SIGNED: September 4, 2025

Electronically signed by Judge Steven H. Gibbs
Circuit Court Judge

STATE OF WISCONSIN

CIRCUIT COURT

CHIPPEWA COUNTY

Michelle McGuire,
Petitioner,

vs.

DECISION AND ORDER

**State of Wisconsin Employment
Relations Commission,**

Respondent,

Case No.: 2024 CV 376

WERC Decision 40684-A

This matter came on before the court on Petitioner's Petition for Judicial Review of the Findings of Fact, Conclusions of Law, and Order issued by Respondent, State of Wisconsin Employment Relations Commission, pursuant to Wis. Stat. §§ 227.53 and 227.57.

The Plaintiff is represented by Attorney Colin Good, Esq.

The Defendant is represented by Attorney Steven Kilpatrick, Esq.

Procedural Background

DHS terminated Petitioner on June 4, 2024. Petitioner timely grieved her termination, which was confirmed. Petitioner filed an appeal with WERC on July 10, 2024. A virtual hearing before Hearing Examiner Anfin Jaw Wise was held on September 26 and October 1, 2024. On October 24, 2024, Hearing Examiner Wise issued a Proposed Decision and Order finding that DHS had just cause to terminate Petitioner's employment. Petitioner filed her written objections the Hearing Examiner Wise's Proposed Order on October 29, 2024, and Respondent responded to Petitioner's objections on November 4,

2024. On November 6, 2024, WERC Commissioner James J. Daley issued the Final Order which was nearly identical to Hearing Examiner Wise's Proposed Order. Petitioner timely filed a Petition for Judicial Review of WERC's Final Order.

Facts

Petitioner worked as a Psychological Associate for DHS at the NWC Excel Unit in Chippewa Falls, Wisconsin from September 19, 2005, until her termination in May 2024. For nearly 20 years, Petitioner was a productive, well-respected employee. Performance reviews provided by DHS showed that her overall performance reviews were positive prior to the events giving rise to her termination. That changed after she began to voice her concerns about her work environment.

Petitioner worked as a Psychological Associate at DHS's Northern Wisconsin Center. Northern Wisconsin Center is a short-term assessment and treatment facility for individuals who have an intellectual disability, as well as mental illness and aggressive or challenging behaviors. The programming is designed to assist clients in developing the skills necessary to live in a community setting with as much independence as possible.

As a Psychological Associate, Petitioner's primary responsibility was the design and implementation of individual and group behavioral treatment programs (or BTPs), using the entire spectrum of available behavioral management and clinical techniques. Petitioner was also responsible for the clinical treatment of individuals with dual diagnoses, including conducting functional analysis and providing direction for implementation of individualized and specialized treatment programs. A Psychological Associate also participates in the pre-admission screening process, develops and teaches staff development courses, serves on facility committees, and provides direction

to the Psychological Services Technician. Psychological services are provided in an independent, professional manner with professional consultation and quality control provided by the Director of the facility. Psychological Associates must have the ability to work effectively as a member of an interdisciplinary team, the ability to effectively communicate verbally and in writing, and the ability to function effectively with limited supervision.

Petitioner had annual performance reviews to evaluate her job performance, also known as Performance Expectations and Planning reviews (PEP). A PEP identifies the competency and performance expectations necessary to achieve satisfactory job performance and records results. Beginning in 2010, Petitioner struggled with interpersonal communication with coworkers and taking responsibility. From 2010 through 2023, Petitioner's PEPs reflected concerns about her interpersonal relationships, client interactions, interactions with coworkers, communication, teamwork and accountability, treatment of others, and maintenance of professional conduct.

Petitioner's performance deficiencies continued, and grew, as reflected in her February 16, 2024, PEP, where she received an overall unsatisfactory performance rating from her supervisor, Craig Koehler. The review indicated a rating of unsatisfactory performance in five of the seven Wisconsin Core Competencies: Accountability, Communication, Customer Service, Decision-Making/Judgment, and Leadership Skills. The review also indicated a rating of "Progress Necessary" for the remaining two Wisconsin Core Competencies: Interpersonal Skills and Equity and Inclusion. The PEP's summary indicated that Petitioner had "not accepted responsibility for duties assigned to her and has instead blamed others or shifted responsibility for her work assignments to

others.” It noted that she had also “been resistant to direction from supervisors” and her “written and verbal communications continue[d] to be condescending.” She did not treat other members of the team as equals if she perceived them to be less educated than her, which created division. Further, the summary stated that Petitioner “failed to respond and assist team members” when clients were “exhibiting maladaptive behaviors.” Her insensitive remarks to direct care staff “demonstrated a lack of empathy, respect, and understanding.” McGuire also “failed to provide leadership” even though she was in a “high-level position.”

As a result of that overall unsatisfactory annual evaluation, that same day, February 16, 2024, Petitioner was placed on a three-month Performance Improvement Plan (PIP) to assist her in bringing her performance up to a satisfactory level. The PIP focused on the core competencies of accountability, communication, customer service, decision-making/judgment, respectful interactions with staff and supervisors, leadership, and client interactions. Goals in each area were identified. The PIP made status reports every few weeks and included meetings between McGuire and supervisors.

DHS completed PIP worksheets about every two weeks. During the first reporting period, February 16–March 8, 2024, Petitioner had unsatisfactory performance in the areas of accountability and communication, and progress necessary in customer service.

During the second reporting period, March 8–29, 2024, and the third reporting period, March 29–April 12, 2024, Petitioner showed she was making the necessary changes and successfully performing her job. Her supervisors were hopeful that the PIP process was working.

However, during the fourth reporting period, April 12–26, 2024, accountability, communication issues with staff and management, and interpersonal relationship problems resurfaced. Additionally, during this reporting period, the results of a Respectful Workplace Complaint that Petitioner had filed against the director, found that Petitioner was responsible for creating a hostile work environment. As a result, she was rated “does not meet expectations” in the area of equity and inclusion. Her overall rating for the period was “less than satisfactory.”

During the next reporting period, April 26–May 10, 2024, Petitioner’s performance was rated unsatisfactory in the areas of accountability, equity and inclusion, and leadership skills. She was also rated as progress necessary for communication, customer service, interpersonal skills, and decision-making/judgment. Her failure to take accountability for her actions and the way she treated others was again the reoccurring theme. She continued her discourteous treatment of her supervisor, was disrespectful to coworkers, and failed to be mindful of her condescending tone. Her overall rating for the period was “less than satisfactory.”

Petitioner was unable to sustain her improved behavior. Petitioner’s supervisor, Craig Koehler, completed a manager evaluation for the period February 16 through May 30, 2024. He stated that she “failed to demonstrate that she can consistently meet DHS standards in the Core Competency areas of Accountability, Communication, Customer Service, Interpersonal Relationships, Decision Making, Equity and Inclusion, and Leadership Skills/General Leadership.” These are “Core Values for all DHS employees.” Koehler explained that McGuire’s “performance in these areas decline[d] as the PIP process went along.” She showed “an inability to treat others respectfully, work as part of

a team and to take responsibility for her own actions.” Petitioner also did not take the PIP process seriously, but rather mocked it. She did not recognize that the biweekly PIP meetings were not “meant as a forum for arguing.” She did not understand, or was unwilling to understand, that “they were established to provide her with feedback and opportunity to improve in performance areas she has been struggling with.”

Despite a considerable investment in resources, ongoing feedback, and guidance from management, Petitioner consistently failed to meet the performance standards outlined in her PIP.

DHS placed Petitioner on administrative leave on May 30, 2024, pending final review of her work performance. In a separate letter, DHS informed Petitioner that discharge was being recommended. That letter attached her PIP results and also notified Petitioner that a meeting would take place the next day, giving her an opportunity to contest the recommendation and results. On June 4, 2024, DHS discharged Petitioner for a continued failure to attain minimally acceptable standards in her job as a Psychological Associate.

Petitioner asserts that after she raised concerns of safety issues and mismanagement at the Northern Wisconsin Center (NWC) to responsible officials in the State of Wisconsin Department of Health Services (DHS), DHS targeted her for termination. Although she had worked at NWC for nearly 20 years without significant issues, DHS placed Petitioner on a Performance Improvement Plan shortly after she submitted a formal complaint about the leadership of the NWC’s then-director, Jay Dressler. DHS’s unwarranted scrutiny into Petitioner’s job performance intensified after

she sent a letter to NWC leadership requesting that it cease issuing spurious and untruthful performance reviews.

Petitioner asserts that despite the fact that DHS refused to explain to Petitioner what she needed to do to successfully complete her PIP, she maintained a high level of achievement throughout the duration of the Plan, as evidenced by her supervisor's reviews of her performance. However, having already made its decision to terminate her following the completion of the Plan, DHS arbitrarily excluded positive performance reviews and papered her file with negative ones *post hoc* to support its conclusion that Ms. McGuire should be fired.

Standard of Review

Under chapter 227, the petitioner "bears the burden of demonstrating that the agency decision should be modified or set aside." ***Bethards v. DWD, Equal Rts. Div., 2017 WI App 37, ¶ 16, 376 Wis. 2d 347, 899 N.W.2d 364; Wis. Stat. § 227.57(2).*** The Commission does not have to justify its decision. ***Harnischfeger Corp. v. LIRC, 196 Wis. 2d 650, 661, 539 N.W.2d 98 (1995).*** Just cause discharge is a question of substantial evidence. ***Safransky v. State Pers. Bd., 62 Wis. 2d 464, 472, 215 N.W.2d 379 (1974).*** The Commission's findings of fact must be affirmed if they are supported by substantial evidence in the record. ***Madison Tchrs., Inc. v. WERC, 218 Wis. 2d 75, 85, 580 N.W.2d 375 (1998); Robles v. Thomas Hribar Truck & Equip., Inc., 2020 WI App 74, ¶ 8, 394 Wis. 2d 761, 951 N.W.2d 853; Wis. Stat. § 227.57(6).*** Substantial evidence is the burden the agency must meet to support its factual findings. ***Hilton ex rel. Pages Homeowners' Ass'n v. DNR, 2006 WI 84, ¶ 16, 293 Wis. 2d 1, 717 N.W.2d 166.*** "Substantial evidence is less of a burden than preponderance of the evidence in that any reasonable view of

the evidence is sufficient." ***Bernhardt v. LIRC, 207 Wis. 2d 292, 298, 558 N.W.2d 874 (Ct. App. 1996***). Substantial evidence means that, after considering all evidence of record, reasonable minds could arrive at the conclusion of the agency. ***Madison Tchrs., 218 Wis. 2d at 85***.

Also, the court is not the fact finder. The weight and credibility of the evidence are matters for the agency, not for the reviewing court, to evaluate. ***Wis. Stat. § 227.57(6); West Bend Co. v. LIRC, 149 Wis. 2d 110, 118, 438 N.W.2d 823 (1989)***. When two conflicting views of the evidence may be sustained by substantial evidence, it is for the agency to determine which view of the evidence it wishes to accept. ***Robertson Transport. Co. v. PSC, 39 Wis. 2d 653, 658, 159 N.W.2d 636 (1968)***. Courts must search the record to locate the substantial evidence which supports the agency's findings of fact, "not to search for evidence against them." ***Robles, 394 Wis. 2d 761, ¶8***.

Put simply, a court may not "second guess" the proper exercise of the agency's fact-finding function even though, if viewing the case ab initio, it could come to another result. ***Briggs & Stratton Corp. v. DILHR, 43 Wis. 2d 398, 409, 168 N.W.2d 817 (1969)***.

This Court reviews an agency's legal conclusions de novo. ***Wisconsin Bell, Inc. v. LIRC, 2018 WI 76, ¶29, 382 Wis. 2d 624, 914 N.W.2d 1; Wis. Stat. § 227.57(5)***.

Arguments

Petitioner makes the following arguments:

1. Respondent made no findings of fact that DHS suffered any impairment as a result of Petitioner's alleged conduct, let alone one that sufficiently undermined her duties as an employee.
2. The PIP was conducted arbitrarily and cannot be used as evidence that Petitioner's termination was for cause.

3. The facts upon which Respondent relied upon in its Final Order lacked substantial evidence in the record.

The Respondent makes the following arguments:

1. A state employee may be discharged for poor performance of her job duties.
2. Substantial evidence supports the Commission's factual finding the DHS discharged Petitioner for poor work performance.
3. Petitioner's remaining arguments fail.

Review of Administrative Decision

The Wisconsin Employment Relations Commission ("ERC") rendered a decision dated November 6, 2024. The Commission held that the State of Wisconsin Department of Health Services had just cause within the meaning of § 230.34(1)(a), Stats., to discharge Michelle McGuire.

In its decision, the ERC stated that the State has the burden of proof to establish that McGuire committed acts which constitute just cause for her termination. In determining whether certain conduct constitutes just cause, the test set forth by the Wisconsin Supreme Court in ***Safransky v. Personnel Bd., 62 Wis.2d 464 (1974)***, provides whether some deficiency has been demonstrated which can reasonably be said to have a tendency to impair the performance of the duties of the position or the efficiency of the group with which the employee works. ***See also Del. Frate v. Department of Corrections, Dec. No. 30795 (WERC, 2/04)***. Additionally, in ***Safransky***, the Court held that "the degree to which [the conduct] did or could reasonably be said to have a tendency to impair the employer's operation" is one of the factors to consider. Actual impairment is not a requirement. ***Id.***

ERC ruled that a discharge for poor performance was not excessive where the record shows that the employer had "devoted considerable resources to its attempt to

improve Appellant's performance to a satisfactory level and that, despite this, Appellant's performance did not improve to this level. **See, Rufener v. DNR, 93-0074-PC-ER, ETC., 8/4/95.** In **William Ruff v. State Personnel Commission, Cir. Ct. of Dane County, Case No. 81-CV-4455 (7/23/82), Aff'd Wis. Ct. App., Case No. 82-1572 (Dist IV, 11/8/83)**, the court held that it is only right that a person in public service be expected to perform the tasks of their position and if they cannot or will not perform, the public service suffers and it is reasonable to discharge that person.

The ERC reviewed McGuire's annual performance reviews conducted to evaluate her job performance, also known as Performance Expectations and Planning (PEP). The ERC reviewed the performance deficiencies and concerns about McGuire's interpersonal communication and accountability for her behavior date as far back as 2010, which only continued to decline, along with other issues, in her most recent annual review dated February 16, 2024. The review indicated a rating of "Unsatisfactory Performance" in five out of the seven Wisconsin Core Competencies: Accountability, Communication, Customer Service, Decision-Making/Judgment, and Leadership Skills. The review also indicated a rating of "Progress Necessary" for the remaining two Wisconsin Core Competencies: Interpersonal Skills and Equity and Inclusion. For her Individual Goals, the review indicated a rating of "Unsatisfactory Performance" in 1:1 Client Interactions, and a rating of "Progress Necessary" for Behavior Treatment Programs/Train BTPs and Leadership During Crisis Interventions.

The ERC also reviewed the accountability, communication, customer service, decision-making/judgment and leadership skill deficiencies in reviewing McGuire's "Unsatisfactory Performance" rating.

The ERC followed the Personal Improvement Plan which focused McGuire on improving her accountability, communication, customer service, decision-making/judgment, respectful interactions with staff and supervisors, leadership, and client interactions. Goals in each area in need of improvement were identified. Status of the PIP were documented every few weeks.

The ERC noted the unsatisfactory performance ratings in these areas and noted that the results of a Respectful Workplace Complaint (RWC) found that McGuire was responsible for creating a hostile work environment. She was therefore rated as unsatisfactory in the area of equity and inclusion.

The ERC found that the record established that McGuire had consistently failed to meet performance standards. Because of her unsatisfactory performance on her PEP dated February 16, 2024, the Department placed McGuire on a formal PIP to address her performance deficiencies. During the PIP, McGuire received extensive feedback and guidance from her supervisor, Craig Koehler. Unfortunately, her work performance did not consistently improve to satisfactory standards. Consequently, the Department terminated McGuire for her failure to attain minimally acceptable standards in her job as a Psychological Associate on June 4, 2024.

Judicial Review

Wis. Stat. § 227.57 governs the scope of review in this proceeding. The Statute, in relevant part, reads:

227.57 Scope of review.

(1) The review shall be conducted by the court without a jury and shall be confined to the record, except that in cases of alleged irregularities in procedure before the agency, testimony thereon may be taken in the court and, if leave is granted to take such

testimony, depositions and written interrogatories may be taken prior to the date set for hearing as provided in ch. [804](#) if proper cause is shown therefor.

(2) Unless the court finds a ground for setting aside, modifying, remanding or ordering agency action or ancillary relief under a specified provision of this section, it shall affirm the agency's action.

(3) The court shall separately treat disputed issues of agency procedure, interpretations of law, determinations of fact or policy within the agency's exercise of delegated discretion.

(4) The court shall remand the case to the agency for further action if it finds that either the fairness of the proceedings or the correctness of the action has been impaired by a material error in procedure or a failure to follow prescribed procedure.

(5) The court shall set aside or modify the agency action if it finds that the agency has erroneously interpreted a provision of law and a correct interpretation compels a particular action, or it shall remand the case to the agency for further action under a correct interpretation of the provision of law.

(6) If the agency's action depends on any fact found by the agency in a contested case proceeding, the court shall not substitute its judgment for that of the agency as to the weight of the evidence on any disputed finding of fact. The court shall, however, set aside agency action or remand the case to the agency if it finds that the agency's action depends on any finding of fact that is not supported by substantial evidence in the record.

(7) If the agency's action depends on facts determined without a hearing, the court shall set aside, modify or order agency action if the facts compel a particular action as a matter of law, or it may remand the case to the agency for further examination and action within the agency's responsibility.

(8) The court shall reverse or remand the case to the agency if it finds that the agency's exercise of discretion is outside the range of discretion delegated to the agency by law; is inconsistent with an agency rule, an officially stated agency policy or a prior agency practice, if deviation therefrom is not explained to the satisfaction of the court by the agency; or is otherwise in violation of a constitutional or statutory provision; but the court shall not substitute its judgment for that of the agency on an issue of discretion.

(9) The court's decision shall provide whatever relief is appropriate irrespective of the original form of the petition. If the court sets aside agency action or remands the case to the agency for further proceedings, it may make such interlocutory order as it finds necessary to preserve the interests of any party and the public pending further proceedings or agency action.

(10) Subject to sub. [\(11\)](#), upon such review due weight shall be accorded the experience, technical competence, and specialized knowledge of the agency involved, as well as discretionary authority conferred upon it.

(11) Upon review of an agency action or decision, the court shall accord no deference to the agency's interpretation of law.

(12) The right of the appellant to challenge the constitutionality of any act or of its application to the appellant shall not be foreclosed or impaired by the fact that the appellant has applied for or holds a license, permit, or privilege under such act.

{Emphasis added}

Under chapter 227, the petitioner “bears the burden of demonstrating that the agency decision should be modified or set aside.” ***Bethards v. DWD, Equal Rts. Div., 2017 WI App 37, ¶ 16, 376 Wis. 2d 347, 899 N.W.2d 364; Wis. Stat. § 227.57(2).*** “Substantial evidence is less of a burden than preponderance of the evidence in that any reasonable view of the evidence is sufficient.” ***Bernhardt v. LIRC, 207 Wis. 2d 292, 298, 558 N.W.2d 874 (Ct. App. 1996).*** Substantial evidence means that, after considering all evidence of record, reasonable minds could arrive at the conclusion of the agency. ***Madison Tchrs., 218 Wis. 2d at 85.***

In reviewing the record in this matter, the ERC took all the evidence presented into consideration. They reviewed the deficiencies of McGuire and the steps that her employer took to correct those deficiencies. The ERC held that the record established that McGuire had consistently failed to meet performance standards. Because of her unsatisfactory performance on her PEP dated February 16, 2024, the Department placed McGuire on a formal PIP to address her performance deficiencies. During the PIP, McGuire received extensive feedback and guidance from her supervisor, Craig Koehler. Unfortunately, her work performance did not consistently improve to satisfactory standards. Consequently, the Department terminated McGuire for her failure to attain minimally acceptable standards in her job as a Psychological Associate on June 4, 2024.

Accordingly, the ERC concluded there was just cause to discharge McGuire for poor work performance or her failure to attain minimally acceptable standards in her job as a Psychological Associate.

This court finds that the ERC made its decision and that it was supported by substantial evidence in the record. The court finds that ERC’s decision was not

inconsistent with an agency rule, an officially stated agency policy or a prior agency practice, and it did not deviate therefrom and was explained to the satisfaction of the court.

As a result, this court affirms the ruling of the ERC in its November 6, 2024 decision.

Order

Based upon the above analysis, the court makes the following order:

IT IS HEREBY ORDERED:

1. The November 6, 2024 finding by the Employment Relations Commission is hereby AFFIRMED.