

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

MARIA GOMEZ SENA, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0670

Case Type: PA

DECISION NO. 40711-A

Appearances:

Cindy Irwin, 475 Courtland Avenue, Oshkosh, Wisconsin, appearing on behalf of Maria Gomez Sena.

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

On September 11, 2024, Maria Gomez Sena filed an appeal with the Wisconsin Employment Relations Commission asserting she had been discharged without just cause by the State of Wisconsin Department of Corrections (DOC). The appeal was assigned to Commission Examiner Anfin J. Wise

A hearing was held on December 3, 2024, by Examiner Wise. The parties made oral argument at the conclusion of the hearing. The record was held open for the DOC to submit comparable disciplinary matters. On December 9, 2024, the DOC filed an additional exhibit.

On December 13, 2024, Examiner Wise issued a Proposed Decision, affirming the discharge of Maria Gomez Sena by the DOC. Gomez Sena filed objections to the Proposed Decision on December 18, 2024. The DOC filed a response to the objections on December 23, 2024.

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

FINDINGS OF FACT

1. Maria Gomez Sena (Gomez Sena) was employed by the State of Wisconsin Department of Corrections (DOC), as a Correctional Officer at Waupun Correctional Institution (WCI) and had permanent status in class when she was discharged.

2. The DOC is a state agency responsible for the operation of various corrections facilities including WCI, a maximum-security facility located in Waupun, Wisconsin.

3. On February 19, 2024, Gomez Sena was grossly negligent in her duties as a Correctional Officer when she failed to complete 11 out of 16 rounds on the Restrictive Housing Unit, Upper A-Range.

4. Gomez Sena falsified agency records when she signed the rounds log, indicating she had completed all 16 rounds.

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)(c).

2. The State of Wisconsin Department of Corrections had just cause within the meaning of Wis. Stat. § 230.34(1)(a) to discharge Maria Gomez Sena.

Based on the above and foregoing Findings of Fact and Conclusions of Law, the Commission makes and issues the following:

ORDER

The discharge of Maria Gomez Sena by the State of Wisconsin Department of Corrections is affirmed.

Issued at Madison, Wisconsin, this 9th day of January 2025.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman

MEMORANDUM ACCOMPANYING DECISION AND ORDER

Section 230.34(1)(a), Stats., provides in pertinent part the following as to certain employees of the State of Wisconsin:

An employee with permanent status in class ... may be removed, suspended without pay, discharged, reduced in base pay or demoted only for just cause.

Section 230.44(1)(c), Stats., provides that a State employee with permanent status in class:

may appeal a demotion, layoff, suspension, discharge or reduction in base pay to the commission ... if the appeal alleges that the decision was not based on just cause.

Maria Gomez Sena had permanent status in class at the time of her discharge and her appeal alleges that the discharge was not based on just cause.

The State has the burden of proof to establish that Gomez Sena was guilty of the alleged misconduct and whether the misconduct constitutes just cause for the discipline imposed. *Reinke v. Personnel Bd.*, 53 Wis.2d 123 (1971); *Safransky v. Personnel Bd.*, 62 Wis.2d 464 (1974).

In February 2024, inmate D.M. died at Waupun Correctional Institution (WCI). As a standard practice after an inmate death, the Department completed a review of the circumstances surrounding D.M.'s death, including identifying any deficiencies in staff performance.

Gomez Sena was a Correctional Officer at WCI. On February 19, 2024, Gomez Sena was assigned as the 2nd shift Segregation 3 officer in the Restrictive Housing Unit (RHU). This post assignment is responsible for completing range responsibilities for the Upper A range, including completing security rounds every half hour. During her shift from 2:00PM to 10:00PM, Gomez Sena failed to complete 11 out of 16 security rounds. However, she signed the Upper A range rounds log, indicating that she had completed all 16 rounds.

During the investigation, Gomez Sena admitted that she understood the purpose of a round is to make sure that inmates are ok and breathing. She further admitted that looking into every cell on the range is required to adequately complete a round. At the hearing, Gomez Sena did not dispute the fact that 11 of 16 rounds were not completed properly. She also did not dispute that she signed the rounds log indicating that she had completed all of the rounds.

The DOC concluded that a "skip" to termination was warranted due to the serious nature of Gomez Sena's misconduct, specifically that she falsified records of the agency, indicating that she had completed more rounds than were actually conducted, and that she was grossly negligent in her duties by failing to properly complete security rounds as assigned. The DOC further contended that Gomez Sena failed to have her body worn camera activated from 3:15PM to 3:17PM while on range, in violation of agency policy.

Based on Gomez Sena's admissions, as well as the video evidence, the Commission finds that Gomez Sena's failure to properly conduct her security rounds, but signing off as if she completed all rounds, constituted serious misconduct, falsification of records, and gross negligence. The falsification of agency records, as well as the gross negligence in her duties, created a substantial risk to the safety and security of the institution, staff, and the inmates in her care. Accordingly, we find that DOC had just cause to discipline Gomez Sena for her serious misconduct.

Turning to Gomez Sena's defenses.

First, Gomez Sena argued during hearing that she did not conduct all of her rounds because she was completing other duties such as meal and medication passes and recreation relief for inmates. While she may have had other duties to complete, missed rounds should be documented as to the reason for the missed round, as well as notification to a supervisor. Gomez Sena did neither. Therefore, we reject this argument.

Second, Gomez Sena points to the high vacancy rate for security staff and contends that it is nearly impossible for staff to perform all other assigned duties as well as complete security rounds. In fact, shortly after this incident, the DOC specifically created positions with the sole responsibility of completing security rounds. While the Department conceded that these new positions were created after February 2024, Warden Brad Mlodzik credibly testified that RHU has always been prioritized for staffing purposes. Additionally, staff have an avenue to report why they missed a round. Gomez Sena did not do that. Furthermore, she falsified the rounds log as if she completed her rounds. This elevated her misconduct to serious misconduct.

Finally, Gomez Sena claims that it was common practice to sign off on the rounds log, even if a round was not completed. Gomez Sena presented testimony from former coworkers who alleged that they were trained to do that. We find this testimony not credible. The individuals who testified on behalf of Gomez Sena were all discharged from the DOC for various acts of misconduct.

Turning now to the level of discipline imposed here. When an employee commits serious misconduct, as Gomez Sena did, it logically follows that her discipline can likewise be serious. DOC routinely discharges employees who engage in serious misconduct. As a matter of fact, regarding the circumstances surrounding D.M.'s death, the DOC discharged every employee who falsified the rounds log after failing to adequately complete their security rounds. Consequently, the Commission finds that Gomez Sena's discharge was not excessive under the circumstances.

It is concluded that there was just cause for Gomez Sena's discharge, and it is therefore affirmed.

Issued at the City of Madison, Wisconsin, this 9th day of January 2025.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman