

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

KATIE BLAHA, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0711

Case Type: PA

DECISION NO. 40860-A

Appearances:

Emma Knatterud-Johnson, Attorney, Hawks Quindel, 409 E. Main St., Madison, Wisconsin, appearing on behalf of Katie Blaha.

Nicole Porter, Attorney, Department of Administration, 101 East 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 FEES AND COSTS

On January 2, 2025, Katie Blaha filed an appeal with the Wisconsin Employment Relations Commission asserting that she had been discharged without just cause by the State of Wisconsin Department of Corrections (DOC). On April 29, 2025, the WERC issued its decision, which concluded that the DOC did not have just cause to discharge Blaha and ordered her reinstated to her former position and made whole with interest. On May 5, 2025 Blaha filed a petition for attorneys' fees and costs totaling \$15,075.00. On May 9, 2025, she filed an amended petition requesting \$16,235.00 in attorneys' fees and costs. On June 2, 2025, DOC filed objections to the petition.

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

FINDINGS OF FACT

1. Katie Blaha (Blaha) was employed by the State of Wisconsin Department of Corrections (DOC) as a correctional officer at New Lisbon Correctional Institution (NLCI).
2. DOC discharged Blaha for allegedly violating the DOC fraternization policy.

3. On April 29, 2025, the WERC overturned the discharge stating that the DOC did not have just cause to discharge Blaha and ordering her reinstated to her former position and made whole.
4. On May 5, 2025, Blaha filed a petition for attorneys' fees and costs totaling \$15,075.00. She filed an amended petition on May 9, 2025, requesting \$16,235.00 in attorneys' fees and costs.
5. On June 2, 2025, DOC filed objections to the request for fees and costs.

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

CONCLUSIONS OF LAW

1. Katie Blaha is a prevailing party within the meaning of Wis. Stats. §227.485(3).
2. The position of the State of Wisconsin Department of Corrections before the Wisconsin Employment Relations Commission as to the discharge of Katie Blaha was substantially justified within the meaning of § 227.485(2)(f), Stats.

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

ORDER

Katie Blaha's petition for fees and costs is denied.

Issued at Madison, Wisconsin, this 2nd day of July 2025.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman

MEMORANDUM ACCOMPANYING DECISION AND ORDER
ON FEES AND COSTS

The Commission concludes that although Blaha is a “prevailing party” within the meaning of Wis. Stat. § 227.485 (3), the DOC was “substantially justified” within the meaning Wis. Stat. § 227.485 (2)(f) regarding the position it took before the Commission as to just cause for Blaha’s discharge. Therefore, her request for costs and fees is denied.

The State has the burden to establish that its position was “substantially justified,” and to meet this burden the State must show (1) a reasonable basis in truth for the facts alleged; (2) a reasonable basis in law for the theory propounded; and (3) a reasonable connection between the facts alleged and the legal theory advanced. *Board of Regents v. Personnel Commission*, 254 Wis.2d 148, 175 (2002). Losing a case does not raise the presumption that the agency was not substantially justified nor does advancing a novel but credible extension or interpretation of the law. *Sheely v. DHSS*, 150 Wis.2d 320, 338 (1989).

In *Behnke v. DHSS*, 146 Wis.2d 178 (1988), the Court of Appeals adopted an “arguable merit” test for determining whether a governmental action had a reasonable basis in law and fact. It defined a position which has “arguable merit” as “one which lends itself to legitimate legal debate and difference of opinion viewed from the standpoint of reasonable advocacy.” In *Sheely*, the Supreme Court commented on the “arguable merit” test as follows:

Although we disagree with the court of appeals’ assessment of a reasonable basis in law and fact as being equivalent to “arguable merit,” we do note that its definition of “arguable merit” is substantially similar to our comment here that a “novel but credible extension or interpretation of the law” is not grounds for finding a position lacks substantial justification.

Id. at 340.

Blaha argues that the DOC's position was not substantially justified because Blaha did not have unapproved contact with M.G. and did not violate DOC's reporting standards by failing to report incidental unplanned contacts with M.G. while on administrative leave.

DOC did have a reasonable basis in truth for the facts alleged regarding Blaha’s two contacts with M.G. In her investigative interview, Blaha did not mention that the Warden had given her permission to speak with M.G., and she did not point out that she had not had an opportunity to report those contacts before her interview. The Commission ultimately found Blaha’s account credible and determined that she had not had a chance to report those contacts as required by the fraternization policy, but these are issues which, per *Behnke*, lend themselves to legitimate legal debate and difference of opinion viewed from the standpoint of reasonable advocacy.

As to the “reasonable basis in law for the theory propounded” portion of the DOC’s burden, the Commission is satisfied that DOC’s just cause for a skip in progression or a serious misconduct

theory was reasonable. If Blaha's contacts with M.G. had been more than incidental, her conduct would have risen to the level of serious misconduct. The DOC attempted to issue discipline consistent with discipline previously imposed for instances of fraternization. DOC's legal theory and basis for discipline were sound. The Commission's decision to reject the discharge ultimately turned more on the credibility of Blaha's testimony than any lack of a factual or legal basis argued by DOC. Thus, there was a reasonable connection between the facts alleged and the legal theory advanced.

Given all of the foregoing, Katie Blaha's petition for fees and costs is denied.

Issued at Madison, Wisconsin, this 2nd day of July 2025.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman