

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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THOMAS POLLARD, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0685

Case Type: PA

DECISION NO. 40889

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Appearances:

Thomas Pollard, N9402 Winnebago Park Road, Fond du Lac, Wisconsin, appearing on his own behalf.

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

**DECISION AND ORDER**

On October 7, 2024, Thomas Pollard filed an appeal with the Wisconsin Employment Relations Commission asserting that the State of Wisconsin Department of Corrections (DOC) had acted illegally and/or arbitrarily when it failed to hire him for the positions of Division of Adult Institutions Security Chief, Oshkosh Warden and Redgranite Warden.

A zoom hearing was conducted on March 11, 2025, by Commission Examiner Peter G. Davis. During the hearing, Pollard withdrew the portions of his appeal as to the Oshkosh and Redgranite positions. The parties made oral arguments at the end of the hearing.

On June 5, 2025, Examiner Davis issued a Proposed Decision and Order finding that DOC did not act illegally or abuse its discretion when it did not hire Pollard as the Division of Adult Institutions Security Chief, and dismissed the appeal.

On July 7, 2025, Pollard filed objections to the Proposed Decision. On July 9, 2025, the DOC filed a response to the objections. On July 11, 2015, Examiner Davis was granted final authority to issue the Commission's Decision, pursuant to Wis. Stat. § 227.46(3)(a).

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

### **FINDINGS OF FACT**

1. DOC Secretary Jarrod Hoy did not hire Thomas Pollard as the DOC Division of Adult Institutions Security Chief because Hoy was concerned that misconduct may have occurred during a search at the Racine Correctional Institution (RCI) when Pollard was the RCI Acting Security Director.

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 to review this appeal pursuant to Wis. Stat. § 230.44 (1)(d).

2. Any failure by the State of Wisconsin Department of Corrections to follow applicable hiring practices or procedures had no impact on the decision not to hire Thomas Pollard.

3. The State of Wisconsin Department of Corrections did not act arbitrarily or unlawfully when it decided to hold Thomas Pollard accountable for any negative outcomes emerging from a Racine Correctional Institution search by not hiring him for the Division of Adult Institutions Security Chief position.

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

### **ORDER**

The appeal filed by Thomas Pollard is dismissed.

Issued at Madison, Wisconsin, this 24<sup>th</sup> day of July 2025.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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Peter G. Davis, Hearing Examiner

**MEMORANDUM ACCOMPANYING DECISION AND ORDER**

This case is before the Commission under authority provided in Sec. 230.44(1)(d), Stats., on the basis of Thomas Pollard's allegation that DOC's decision not to select him as the Division of Adult Institutions Security Chief violated the law and/or was an abuse of discretion.

Section 230.44(1)(d), Stats., provides in relevant part:

Illegal action or abuse of discretion. A personnel action after certification which is related to the hiring process in the classified civil service and which is alleged to be illegal or an abuse of discretion may be appealed to the Commission.

In *Zeiler v. DOC*, Dec. No. 31107-A (WERC, 12/04), the Commission stated that *Neldaughter v. DHFS*, 96-0054-PC, 2/97 summarizes the Commission's interpretation of "abuse of discretion" as follows:

An "abuse of discretion" is "a discretion exercised to an end or purpose not justified by, and clearly against reason and evidence." *LUNDEEN V. DOA*, 79-0208-PC, 6/81. As long as the exercise of discretion is not "clearly against reason and evidence," the commission may not reverse an appointing authority's hiring decision merely because it disagrees with that decision in the sense that it would have made a different decision if it had substituted its judgment for that of the appointing authority. (Citations omitted.)

Pollard's attack on DOC focuses on an alleged abuse of discretion.

Pollard, the then Security Director at the Kettle Moraine Correctional Institution, applied for and was slated to be hired as the DOC Division of Adult Institutions Security Chief. All that remained was for DOC Secretary Hoy to sign off as the hiring authority. Prior to his potential sign off, Hoy received a phone call from the Dodge County Sheriff who advised Hoy of concerns the Sheriff had received regarding a search that had been carried out at the Racine Correctional Institution (RCI) while Pollard was the acting Security Director. The Sheriff identified a specific RCI employee who had conveyed those concerns and Hoy subsequently met with that employee. Based on the overall responsibility that Pollard had for the RCI search and the concerns raised by the Sheriff and the employee, Hoy decided not to hire Pollard as Security Chief.<sup>1</sup>

Pollard contends that he did nothing wrong as to the search and that there was no urgency to fill the position. He points to the fact-finding process Hoy initiated that subsequently recommended that no disciplinary action be taken against any employee as to the RCI search. Pollard asserts Hoy should have spoken to him about the RCI issue and waited until a fact-finding process that Hoy initiated was completed before taking action.

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<sup>1</sup>The large scale RCI search occurred on a very hot day and it was subsequently determined that inadequate sun protection and toilet facilities had negative impacts on several RCI inmates.

The Commission agrees that Hoy could have waited for more information to emerge as to Pollard's responsibility for the negative outcomes during the RCI search. But the legal issue is whether Hoy's decision not to wait and to decide not to hire Pollard was "clearly against reason and evidence." In effect, the issue is whether it was "clearly against reason and evidence" for Hoy to decide to hold Pollard accountable based solely on his overall search responsibilities. The Commission concludes it was not "clearly against reason and evidence" for Hoy to do so. It is not uncommon or unreasonable for those filling a high-level position to decide to hold a person "at the top of food chain" accountable for the failings of others-even if there may be no operational urgency to do so. While such actions may not be objectively fair, they serve a legitimate policy purpose of maintaining confidence in the operation of a State agency. Thus, Hoy did not abuse his discretion when he held Pollard accountable by deciding not to hire him.<sup>2</sup>

Issued at Madison, Wisconsin, this 24<sup>th</sup> day of July 2025.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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Peter G. Davis, Hearing Examiner

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<sup>2</sup>Pollard also attacks various parts of the hiring process-such as the training interviewers may be obligated to complete but did not do so. Suffice it to say that any failure of DOC to comply with any hiring policies or practices did not harm Pollard as he emerged as the person who would have been hired but for the RCI matter.