

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

LISA SCHWARTZ, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0753

Case Type: PA

DECISION NO. 40930

Appearances:

Ben Hitchcock Cross, Attorney, Cross Law Firm, 845 North 11th Street, Milwaukee, Wisconsin, appearing on behalf of Lisa Schwartz.

David Makovec, 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 May 1, 2025, Lisa Schwartz 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). The matter was assigned to Commission Examiner Katherine Scott Lisiecki.

A Zoom hearing was held on July 1 and July 14, 2025, by Examiner Lisiecki. The parties submitted written closing arguments on July 21, 2025. On July 11, 2025, pursuant to Wis. Stat. § 227.46(3)(a), Examiner Lisiecki was given final authority to issue the Commission's decision.

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

FINDINGS OF FACT

1. Lisa Schwartz (Schwartz) was employed by the State of Wisconsin Department of Corrections (DOC) at the Racine Correctional Institution (RCI) as a correctional sergeant. At the time of her discharge, she had permanent status in class.

2. On January 13, 2025, during orientation, Schwartz wrote her name on three new hires' Bonus Referral Program forms. She had not met the new hires before orientation and had not referred them for their positions.

3. Following an investigation, the DOC discharged Schwartz for falsifying records.

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 Lisa Schwartz.

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

ORDER

The discharge of Lisa Schwartz by the State of Wisconsin Department of Corrections is affirmed.

Issued at Madison, Wisconsin this 21st day of August 2025.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Katherine Scott Lisiecki, Hearing Examiner

MEMORANDUM ACCOMPANYING DECISION AND ORDER

Section 230.34(1)(a), Stats., states in pertinent part:

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.

Schwartz 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 Schwartz was guilty of the alleged misconduct and that 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).

Schwartz was employed as a correctional sergeant at Racine Correctional Institution (RCI). Prior to being hired as a correctional sergeant, Schwartz served for 31 years as a Probation and Parole Agent with the Division of Community Corrections. She then accepted a transfer to a correctional sergeant position with the Division of Adult Institutions. On January 13, 2025, Schwartz attended orientation along with other new hires.

The DOC has a Bonus Referral Program. Employees who refer friends or family to apply for open positions are given up to \$1,500 when the new hire completes their probationary period.

Schwartz had not met any of the new hires before orientation and had not referred any of them for the positions they were hired for. However, she wrote her name on three of the new hires' Bonus Referral Program forms. Schwartz asked Sergeant Robert Niemuth, the field training officer running the orientation, questions about that form. Niemuth told Schwartz he was not familiar with the form and that she and the new hires should ask Human Resources for more information. She claims that Niemuth also said "The worst thing they [Human Resources] can say is no." Niemuth, however, testified he said "The worst thing they can say is no" in response to a new hire who asked Niemuth whether he could be referred by his wife.

Upon reviewing the Bonus Referral Program forms, Human Resources employee Jessica Billings noticed that Schwartz was listed on three different forms. Schwartz's name was written in the same handwriting on each of the three forms. Billings and the other Human Resources employees asked the new hires whether they knew Schwartz before orientation, and the new hires admitted that they did not. The DOC began an investigation, and Schwartz admitted in her

investigatory interview that she did not know the employees and had not referred them. Following an investigation, the DOC discharged Schwartz and the three new hires.

Schwartz argues that her discharge violated Wis. Stat. § 230.25. However, this argument is based on a misunderstanding of the statute: Wis. Stat. § 230.25 is about civil service certification during the hiring process, not the disciplinary process.

Schwartz argues that the hearing examiner cannot make a finding of just cause because DOC Secretary Jared Hoy, who made the decision to discharge Schwartz, did not testify at the hearing. However, RCI Warden Robert Miller testified that he recommended that the DOC discharge Schwartz, and Hoy concurred with Miller's recommendation. Further, Hoy's testimony is not necessary for the hearing examiner to make a finding of just cause. Not only do the facts clearly show that Schwartz committed misconduct, but just cause can be found based on Schwartz's admission of her misconduct.

Schwartz argues that she had no intention of defrauding the DOC. The "Employee Referral Bonus Agreement" form that Schwartz wrote her name on – three times – states that the referring employee will receive: "\$500 paid to the referring employee the first pay period after the new hire completes 30 days of service. \$1,000 paid to the referring employee the first pay period after the new hire obtains permanent status within the same agency." Schwartz argues that she did not read the form but, even if that were true, the conversation that Niemuth had with the new hires about the referral program would have made Schwartz aware that she would be eligible for a bonus if she signed the forms. Schwartz understood or ought to have understood that signing these forms meant that she would receive money from the DOC for making referrals that she did not make. Schwartz could have gained \$4,500 if her fraud had gone undetected. Therefore, her contention that she did not intend to defraud the DOC is without merit.

Schwartz argues that Niemuth told her that the worst Human Resources could do was reject the form. However, Niemuth credibly testified that he told Schwartz that he was not familiar with the form and that she and the new hires should ask Human Resources for more information. Niemuth credibly testified that he said "The worst thing they can say is no" in response to a new hire who asked whether he could be referred by his wife. If Schwartz had questions about the form, she should have reached out to Human Resources. Schwartz claims that Human Resources wasn't available to ask questions, but if she had unanswered questions, she should not have signed the forms.

Schwartz falsified records when she filled in her name on three new hires' Bonus Referral Program forms, stating that she had referred them, when she had not met the new hires before orientation and had not referred them for their positions. Although Schwartz has no previous discipline, the seriousness of her misconduct – falsifying records to defraud the DOC of thousands of dollars – warranted this skip in progression to discharge. Therefore, there was just cause for the discharge, and the discharge is therefore affirmed.

Issued at Madison, Wisconsin this 21st day of August 2025.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Katherine Scott Lisiecki, Hearing Examiner