STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

LISA MIEZEN, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0828
Case Type: PA

DECISION NO. 41279-A

Appearances:

Chris Donahoe, Attorney, Hawks Quindel, S.C., 5150 N. Port Washington Road, Suite 243, Milwaukee, Wisconsin, appearing on behalf of Lisa Miezen.

Andrea L. Olmanson, Legal Counsel, Department of Corrections, 3099 E. Washington Avenue Madison, Wisconsin, appearing on behalf of the State of Wisconsin Department of Corrections.

DECISION AND ORDER ON FEES AND COSTS

On January 8, 2026, the Wisconsin Employment Relations Commission issued a Decision and Order in this matter modifying the discharge of Lisa Miezen (Miezen) by the State of Wisconsin Department of Corrections (DOC) to a three-day suspension

On January 13, 2026, Miezen filed a request for fees and costs. DOC filed a brief in opposition to the request on January 30, 2026.

Having considered the matter, the Commission is persuaded that the request for fees and costs should be denied. Although Miezen is a prevailing party within the meaning of Wis. Stats. § 227.485(3), the position of the State of Wisconsin Department of Corrections in this matter is substantially justified within the meaning of Wis. Stat. § 227.485(2)(f).

NOW, THEREFORE, it is

ORDERED

The request for fees and costs is denied.

Issued at Madison, Wisconsin, this 10th day of April 2026.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Electronically signed by Peter G. Davis
Peter G. Davis, Chairman

MEMORANDUM ACCOMPANYING DECISION AND ORDER ON FEES AND COSTS

As the "prevailing party" Miezen is entitled to fees and costs unless the Department of Corrections can establish that its position was "substantially justified." To meet this burden, the Department 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.

In this matter, the Commission found that Miezen engaged in serious misconduct. Thus, it is clear that the Department had a reasonable basis in fact for concluding that discipline needed to be imposed. Indeed, but for the related misconduct by a supervisor, the Commission would have found that the Department had just cause to discharge Miezen. Therefore, it is clear that the Department has met its burden of establishing that it had (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. On that basis, the Commission denied the request for fees and costs.

Issued at Madison, Wisconsin, this 10th day of April 2026.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Electronically signed by Peter G. Davis
Peter G. Davis, Chairman