

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

JOSEPH KRAUS, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0911

Case Type: PA

DECISION NO. 41518

Appearances:

Joseph Kraus, 2616 New Pinery Road, Portage, Wisconsin, appearing on his own behalf.

Eric Muellenbach, Attorney, Department of Corrections, Office of Legal Counsel, 3099 E. Washington Ave., Madison, Wisconsin, appearing on behalf of the State of Wisconsin Department of Corrections.

DECISION AND ORDER

On April 6, 2026, Joseph Kraus filed an appeal with the Wisconsin Employment Relations Commission regarding the decision by the State of Wisconsin Department of Corrections not to hire him for a correctional officer position. A Zoom hearing was held by Examiner Katherine Scott Lisiecki on June 8, 2026.

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

FINDINGS OF FACT

1. Joseph Kraus (Kraus) applied for a position with the State of Wisconsin Department of Corrections (DOC) as a correctional officer.
2. Joseph Kraus was formerly employed with the DOC as a correctional sergeant until his termination on May 7, 2024.
3. During his time as a sergeant, Kraus was disciplined for misconduct on two occasions, one of which was a serious act of misconduct which led to his termination.
4. On April 3, 2026, Wardens Richard Giroux and Chris Buesgen reviewed Kraus's personnel file and did not support rehiring Kraus.

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 matter pursuant to Wis. Stat. § 230.44(1)(d).

2. The State of Wisconsin Department of Corrections did not act illegally or abuse its discretion by failing to hire Joseph Kraus.

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 Joseph Kraus is dismissed.

Issued at Madison, Wisconsin, this 23rd day of July 2026.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Electronically signed by Peter G. Davis

Peter G. Davis, Chairman

MEMORANDUM ACCOMPANYING DECISION AND ORDER

Section 230.44(1)(d), Stats., provides that “[a] personnel action after certification which is related to the hiring process in the classified service and which is alleged to be illegal or an abuse of discretion may be appealed to the commission.” An illegal act is one that is contrary to Wisconsin civil service statutes or administrative rules. An abuse of discretion is when an agency exercises discretion “to an end or purpose not justified by and clearly against reason and evidence.” The appellant has the burden of proving that his or her non-selection was either illegal (contrary to Wisconsin civil service statutes or administrative rulings) or an abuse of discretion (not justified by and clearly against reason and evidence). *See Moeller-Bunker v. DWD*, Dec. No. 36786 (WERC, 5/17).

In *Zeiler v. Department of Corrections*, Dec. No. 31107-A (WERC, 12/04), the Commission stated that *Neldaughter v. DHFS*, Case No. 96-0054-PC (Pers. Comm. 2/14/97) 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*, Case No. 79-0208-PC (Pers. Comm. 6/3/81). 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)

When a former DOC employee applies for a DOC position, there are extra steps in the hiring process. Per DOC policy, the rehire of former DOC employees for a correctional officer position must be approved by the wardens assisting the hiring process. This is commonly called Warden Review. Wardens are provided information regarding the applicant’s interview, references, and personnel file, including performance concerns and disciplinary history, and decide whether they support rehire.

Joseph Kraus was formerly employed with the DOC as a correctional sergeant. His employment was terminated on May 7th, 2024, for a serious act of misconduct. Kraus had also committed another act of misconduct six months before his termination

The DOC was within its discretion to not rehire Kraus given that he was previously terminated for a serious act of misconduct. Being terminated for a serious act of misconduct, especially one that caused a staff member to be assaulted by an inmate, is sufficient grounds for not rehiring Kraus. Further, Kraus’s two acts of misconduct taken together demonstrate a pattern of negligence that could put staff and inmates’ safety and security at risk if he were rehired. The DOC’s decision not to rehire Kraus was a prioritization of safety, not an abuse of discretion.

Kraus argues that the DOC abused its discretion because it did not give him a chance to submit all his references. Kraus testified that the DOC notified him that he was not selected for the

position one day before the deadline to submit his references. Kraus planned on submitting as a reference Lucas Robertson, the supervisor who completed the performance evaluation. The Commission assumes that Kraus intended Robertson to state how Kraus has improved since then. However, Warden Buesgen testified that it was mainly the two prior disciplines that informed their decision not to support Kraus's rehire. So regardless of whatever good things Robertson would have said about Kraus, it would not have changed the Wardens' decision.

Even if Warden Giroux and Warden Buesgen had supported Kraus's rehire, that does not mean he would have been rehired. Due to his termination for a serious act of misconduct, Kraus left in poor standing. The DOC's HR Policy No. 200.30.507 Section XI provides that the rehire of former employees who left in poor standing requires further review by the Division Administrator or Assistant Administrator, consultation with the BHR Director, and approval from the Office of the Secretary. Even if Kraus survived Warden Review, there is no guarantee that he would have survived the additional steps. And given the severity of his misconduct, it is unlikely that the Division Administrator, BHR Director, and Office of the Secretary would have all approved of his rehire.

In light of Kraus' disciplinary history, the DOC's decision not to hire him was neither illegal nor an abuse of discretion. Therefore, his appeal is dismissed.

Issued at Madison, Wisconsin, this 23rd day of July 2026.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Electronically signed by Peter G. Davis

Peter G. Davis, Chairman