

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 6, 2002

Cornelia G. Clark
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 02-0141
STATE OF WISCONSIN**

Cir. Ct. No. 01-CV-157

**IN COURT OF APPEALS
DISTRICT II**

ROBERT J. AUCHINLECK,

PETITIONER-APPELLANT,

V.

TOWN OF LAGRANGE,

RESPONDENT-RESPONDENT.

APPEAL from a judgment of the circuit court for Walworth County:
ROBERT J. KENNEDY, Judge. *Affirmed.*

Before Brown, Anderson and Snyder, JJ.

¶1 PER CURIAM. Robert J. Auchinleck appeals from the judgment which affirmed the decision of a hearing examiner finding him guilty of three charges of misconduct. He argues on appeal that the hearing examiner did not proceed under a correct theory of law and that there was not substantial evidence to support the charges. We affirm.

¶2 As the circuit court noted, these parties have had a large number of disputes in the courts in recent years. The Town of LaGrange has attempted to remove Auchinleck as Chief of Police and Auchinleck has fought their efforts. In this case, the Town issued twenty-five disciplinary charges against Auchinleck. The hearing examiner eventually found Auchinleck guilty of three charges and dismissed all the remaining charges. Specifically, the hearing examiner found that Auchinleck had been dishonest in answering questions concerning the swearing in of two officers and the number of candidates he interviewed for a vacancy in the department. Auchinleck then brought an appeal and a petition for writ of certiorari to the circuit court to review the hearing examiner's findings. The circuit court affirmed and Auchinleck appealed to this court.

¶3 In this type of appeal, our standard of review is limited. Auchinleck both appealed and filed a petition for a writ of certiorari in the circuit court. Under these circumstances, "the circuit court has already reviewed issues pertaining to the reasonableness of the Commission's actions and the sufficiency of evidence to support the Commission's actions. Therefore, our review is limited to whether the Commission kept within its jurisdiction and whether it proceeded on a correct theory of the law." *Herek v. Police & Fire Comm'n Village of Menomonee Falls*, 226 Wis. 2d 504, 510, 595 N.W.2d 113 (Ct. App. 1999).

¶4 Auchinleck argues that there was not "substantial evidence" to support the charges against him. He asserts that he gave incorrect answers because the questions he was asked were ambiguous and he misunderstood the questions, and that his answers were merely mistakes. He also argues that he qualified his answer to the question about the number of people he had interviewed with the words "I think," and that makes his answer not false. He

further asserts that other Town employees were not held to the same standards he was.

¶5 Auchinleck misunderstands our standard of review. We do not review whether there was substantial evidence to uphold the hearing examiner's findings. The circuit court has already done that. We address only whether the examiner kept within his jurisdiction and whether he applied a correct theory of law. Since Auchinleck does not challenge the jurisdiction of the hearing examiner, the only issue left for us to review is whether the hearing examiner proceeded under a correct theory of law. The hearing examiner found Auchinleck guilty of misrepresentation. The question for this court then becomes whether dishonesty in the workplace can be grounds for discipline.

¶6 Under the statutory requirements, the Town must have had “just cause” to discipline Auchinleck. WIS. STAT. § 62.13(5)(em) (1999-2000).¹ We agree with the Town that it is not necessary for the Town to have an explicit rule prohibiting dishonesty in the workplace—such a requirement is understood. Auchinleck argues that he “could not be reasonably expected to have had knowledge of the probable consequences of the alleged conduct.” Sec. 62.13(5)(em)1. He bases his argument, however, on his contention that his statements were not dishonest but mere mistakes or misunderstandings. The circuit court, however, has already determined that there was evidence to support the hearing examiner's determination that these statements were dishonest. We cannot, and will not, disturb that finding. Given that the statements were found to

¹ All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

have been dishonest, we conclude that Auchinleck can reasonably be expected to have known that dishonesty in the workplace will lead to disciplinary actions.

¶7 Auchinleck also argues that the rule was applied unfairly to him, in violation of WIS. STAT. § 62.13(5)(em)6, because other Town employees who have made similar mistakes were not similarly punished. Again, however, Auchinleck's argument is based on his contention that his statements were mere mistakes and not dishonest. Again, given that the statements were found to be dishonest, Auchinleck has not shown that the rule was unfairly applied to him. We conclude, as did the hearing examiner, that the statutory standards were properly applied.

¶8 Auchinleck also argues that the length of his suspension was inappropriate to the misconduct charged. Auchinleck, however, was invited to present evidence at a hearing on this issue, but waived that right. Consequently, he waived his right to raise this issue on appeal. For the reasons stated, we affirm the judgment of the circuit court.

By the Court.—Judgment affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

