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DISTRICT II

April 2, 2025

To:

Hon. Todd J. Hepler
Circuit Court Judge
Electronic Notice

Steven C. Kilpatrick
Electronic Notice

Julie Kayartz
Clerk of Circuit Court
Columbia County Courthouse
Electronic Notice

Dawn Hawkinson
Electronic Notice

You are hereby notified that the Court has entered the following opinion and order:

2024AP531

Dawn Hawkinson v. Wisconsin Employment Relations
Commission (L.C. #2023CV124)

Before Gundrum, P.J., Neubauer and Grogan, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Dawn Hawkinson, pro se, appeals from a circuit court order affirming a Wisconsin Employment Relations Commission (WERC) decision that upheld an examiner's order concerning Hawkinson's termination from employment. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2023-24).¹ Because substantial evidence supports WERC's finding that Hawkinson was terminated for sexually harassing a co-worker, we summarily affirm.

¹ All references to the Wisconsin Statutes are to the 2023-24 version unless otherwise noted.

The following findings of fact are taken from WERC's order and memorandum opinion. Hawkinson was employed by the Wisconsin Department of Corrections (DOC) as a sergeant at John Burke Correctional Institution (JBCI) with permanent status in class. In 2022, Sergeant Heather Bunker was walking near the checkpoint at JBCI at which Hawkinson was stationed. Hawkinson and Bunker began to talk. Bunker pulled aside her hair to show Hawkinson a scar from Bunker's recent surgery. Hawkinson said, "I'm sorry, I'm staring at your chest." Hawkinson then swiped her hand down the front of Bunker's uniform and started talking about Bunker's breasts. Hawkinson told Bunker, "You have no boobs." Hawkinson then said, "Sorry, I shouldn't have done that." Following a brief subsequent exchange between Hawkinson and Bunker about plastic surgery, Bunker decided to leave.

Bunker went home after work that day and told her husband about the incident with Hawkinson. The next day, Bunker reported the incident to her supervisor. DOC placed Hawkinson on paid administrative leave pending an investigation of the alleged misconduct. After the investigation into Hawkinson's conduct was completed, DOC discharged Hawkinson for violating its workplace rule prohibiting sexual harassment.

Hawkinson filed a grievance contesting her discharge, which DOC denied. Hawkinson then filed a personnel appeal with WERC. After holding a hearing at which the parties presented testimony, documentary evidence, and a short video depicting the alleged harassment, a WERC hearing examiner issued a proposed decision in favor of DOC and against Hawkinson. Hawkinson then filed objections to the proposed decision and DOC responded.

On April 13, 2023, WERC issued its final order and decision. It issued the findings of fact referenced above. It also concluded that DOC had just cause within the meaning of Wis.

STAT. § 230.34(1)(a) to discharge Hawkinson. WERC further issued a written memorandum that explained these facts and conclusions. For instance, WERC noted that video footage confirmed Bunker’s account of the incident—“Hawkinson moving her hand down Bunker’s front, then leaping back and holding her hands behind her head as though she had acted inappropriately.” WERC also rejected Hawkinson’s argument that her behavior was not harassment because she and Bunker were friends. After noting that Bunker denied a friendship with Hawkinson, WERC explained that, even if they were friends, Hawkinson’s behavior was still unwelcomed physical contact of a sexual nature, which constitutes sexual harassment.

Hawkinson filed a petition for rehearing, which WERC denied. Hawkinson then filed a timely petition for certiorari review with the circuit court. After oral argument and briefing, the court issued a written decision affirming WERC. As relevant to this appeal, the court ruled that there was substantial evidence in the record to support WERC’s factual findings. The court also rejected Hawkinson’s argument that the DOC did not have just cause to terminate her employment. Hawkinson appeals.

Hawkinson’s primary argument on appeal is that her discharge was not supported by substantial evidence.² In an appeal of a circuit court order reviewing an agency decision, we review the decision of the agency, not that of the circuit court. *See Wisconsin Prof’l Police Ass’n v. WERC*, 2013 WI App 145, ¶10, 352 Wis. 2d 218, 841 N.W.2d 839.

² In her reply brief, Hawkinson asserts that in addition to her argument regarding the lack of substantial evidence, she also argues the examiner’s “decision was biased and based on poor procedure during hearing; and commissioners’ upholding her proposed decision is based on [the examiner’s] blatant withholding” of video of the incident. Our discussion of the substantial evidence standard in this opinion encompasses all arguments sufficiently raised and developed by Hawkinson, which effectively all boil down to criticisms of WERC’s factual and credibility findings.

When reviewing findings of fact made by the agency, we apply the “substantial evidence” standard. *Hilton ex rel. Pages Homeowners’ Ass’n v. DNR*, 2006 WI 84, ¶16, 293 Wis.2d 1, 717 N.W.2d 166 (citation omitted). Substantial evidence means whether, after considering all the evidence in the record, reasonable minds could arrive at the same conclusion. *Crystal Lake Cheese Factory v. LIRC*, 2003 WI 106, ¶27, 264 Wis. 2d 200, 664 N.W.2d 651. Put another way, any reasonable view of the evidence is sufficient to affirm. “An employer’s motivation is a factual determination.” *Currie v. DILHR*, 210 Wis. 2d 380, 386, 565 N.W.2d 253 (Ct. App. 1997).

In considering arguments regarding conclusions of law, we will accord “due weight” to the experience, technical competence, and specialized knowledge of WERC. *Tetra Tech EC, Inc. v. DOR*, 2018 WI 75, ¶3, 382 Wis. 2d 496, 914 N.W.2d 21. We independently interpret the law and no longer defer to an agency’s conclusions of law. *Id.*; WIS. STAT. § 227.57(11) (“Upon review of an agency action or decision, the court shall accord no deference to the agency’s interpretation of law.”) The burden on appeal is on the appellant; WERC does not have to justify its decision. *Harnischfeger Corp. v. LIRC*, 196 Wis. 2d 650, 661, 539 N.W.2d 98 (1995).

Hawkinson asserts that there is no substantial evidence in the record to support WERC’s findings of fact, including the finding that she touched Bunker’s chest without consent. Hawkinson denies that she touched Bunker’s chest and claims that the video footage proves that there was no touch involved in the questionable interaction. She also argues that she could not have touched Bunker because the video security footage does not show Bunker moving away, which Hawkinson claims every human would do in the face of unwelcome conduct. We reject Hawkinson’s arguments as unsupported by the record before us.

Hawkinson relies upon a different version of events and inferences than those found by WERC to support her argument that her termination occurred “on the basis of sex and gender pursuant to WIS. STAT. [§§] 230.83 and 230.90.” Hawkinson fails to appreciate our deferential standard of review, as set forth above. We will not disregard WERC’s findings simply because there is evidence that runs contrary to its findings. We simply look to see if there is substantial, credible evidence that supports WERC’s finding. We conclude that the record presents such evidence.

WERC found that the security footage shows “Hawkinson moving her hand down Bunker’s front, then leaping back and holding her hands behind her head as though she had acted inappropriately.” In other words, WERC believed that the video security footage of the incident confirms Bunker’s version of the incident. Even assuming that Hawkinson is correct that the video security footage is inconclusive, Bunker’s testimony is still sufficient under the substantial evidence standard because the video does not contradict it. In light of the facts before it, it was also reasonable for WERC to credit Bunker’s testimony regarding Hawkinson’s misconduct, including the inappropriate remarks and touching. We do not second-guess credibility determinations made by an agency when conducting our review of its decisions. *See West Bend Co. v. LIRC*, 149 Wis. 2d 110, 118, 438 N.W.2d 823 (1989) (holding court cannot substitute its judgment for that of the agency “in respect to the credibility of a witness”); WIS. STAT. § 227.57(6). The existence of an alternate potential explanation does not mean WERC’s findings lacks substantial evidence. We conclude that credible and substantial evidence supported WERC’s findings here. Therefore,

IT IS ORDERED that the order of the circuit court is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Samuel A. Christensen
Clerk of Court of Appeals