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State of Wisconsin
Department of Workforce Development

EQUAL RIGHTS DIVISION
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DWD
JUN 19 2007
Secretary's Office

DATED AND MAILED JUN 18 2007

Suzanne M. Weber

[REDACTED]
Complainant

INITIAL DETERMINATION -
PROBABLE CAUSE

vs.

ERD Case No. CR 200700993

State of Wisconsin – Department of Workforce Development
c/o Office of Legal Counsel
PO Box 7946
Madison, WI 53707-7946
Respondent

I. THE DIVISION DECIDED:

There is probable cause to believe that the State of Wisconsin - Department of Workforce Development violated the Wisconsin Whistleblower Law, Wis. Stat. §§ 230.80-230.89, by:

- A. taking retaliatory action against the Complainant because the Complaint lawfully disclosed, or the Respondent believed the Complainant had lawfully disclosed, information under Wis. Stat. § 230.81.

II. THIS MEANS:

The Equal Rights Division found reason to believe there is sufficient information to hold an administrative hearing. An Administrative Law Judge will hold the hearing and will decide whether the Respondent violated the Wisconsin Fair Employment Law.

III. THE NEXT STEP IS:

The Equal Rights Division Hearing Section will now schedule a hearing on the merits of the case. A notice of hearing stating the date, time, and place of hearing will be sent to the parties in the near future. This notice will also include an information sheet regarding things that need to be done for the hearing, as well as a copy of the statutes and administrative code. At the hearing, the parties will be given the opportunity to present evidence to support their cases. Neither the Initial Determination, nor the evidence presented to the Equal Rights Division during the investigation of this case, will automatically become part of the record at hearing. The Administrative Law Judge will only consider evidence presented at the hearing. The parties may wish to consult with an attorney for legal advice.

Contact the Administrative Law Judge by letter if you wish to pursue settlement of this case prior to hearing.

IV. DATE OF FILING OR INITIAL WRITTEN CONTACT:

- A. The Complainant first contacted the Division in writing on March 12, 2007, alleging a violation of the Whistleblower Law. The Division requested clarification, and accepted the Complainant's second complaint on March 15, 2007.

V. THE DIVISION DECIDED THERE WAS PROBABLE CAUSE BASED ON THE FOLLOWING INFORMATION:

- A. The Respondent ("DWD") is an agency of the State of Wisconsin with authority over various workforce programs.
- B. Suzanne M. Weber ("Weber") works for DWD in its Division of Workforce Solutions ("DWS"). She has worked for DWD since 2000, and was the "WETAP" Manager from March of 2003 until January of 2007. WETAP is the acronym for the Wisconsin Employment Transportation Assistance Program, jointly administered between DWD and the Wisconsin Department of Transportation (WisDOT). Through this program, federal funds are made available to permanent employees to assist them with commuting to work and other related issues.
- C. Weber alleges that she disclosed information about misappropriation of funds in writing to her supervisor, Gary Denis ("Denis"), and that in retaliation, Denis reassigned her job duties, and gave her new and excessive assignments.
- D. In an e-mail message dated June 20, 2006, Weber wrote to Denis that she was having difficulty working with WisDOT. In particular, Weber had difficulty getting Andrea Loeffelholz, WisDOT's employee, to respond regarding WETAP issues.
- E. On July 20, 2006, a situation arose with WETAP funding and Dane County that raised questions for Weber about whether the WisDOT was misappropriating funds; that is, she believed that Loeffelholz was inappropriately approving payment of funds to Dane County without DWD's involvement as provided for in the contracts. She forwarded an e-mail to Denis where she questioned the required DWD signature.
- F. In a July 26, 2006 e-mail, Weber continues to question whether federal Job Access and Reverse Commute Program, or "JARC" funds were being handled correctly.
- G. DWD contends that Weber did not raise concerns about misappropriation, as that term is used in the statute.
- H. DWD agrees that in January of 2007, Denis decided to change Weber's job duties. Instead of managing WETAP, she would be managing a program called ART, which is designed to assist employer in attracting, retaining, and training employees. She was not demoted, and her pay remained the same.

VI. INVESTIGATOR'S EXPLANATION:

A. The statute provides at Wis. Stat. § 230.80(5) that:

"Information" means information gained by the employee which the employee reasonably believes demonstrates:

- (a) A violation of any state or federal law, rule or regulation.
- (b) Mismanagement or abuse of authority in state or local government, a substantial waste of public funds or a danger to public health and safety.

In e-mails, Weber clearly pointed out what she felt was a violation of federal requirements regarding payment of funds under the WETAP program. This arguably constitutes a protected report. At hearing, the Complainant will have the burden to show that her reports fit the statutory definition.

- B. The Complainant considers the change in job duties to be retaliatory. The statute provides that "retaliatory action" as "a disciplinary action..." Wis. Stat. § 230.80(8). "Disciplinary action," is further defined to mean "any action taken with respect to an employee which has the effect, in whole or in part, of a penalty." This includes "removal of any duty assigned..." Wis. Stat. § 230.80(2). For purposes of this investigation, the actions are "disciplinary." The Complainant will have the burden of proving at hearing that the Respondent's actions were disciplinary in nature.
- C. It is probable that the Respondent's actions were, at least in part, based upon the Complainant's complaints about her work situation, some of which were protected reports. It may be that the supervisor simply did not want the continued inter-agency arguments that the Complainant's presence in that position seemed to foster, but it is also possible that her whistle-blowing was the reason. This should be decided by an Administrative Law Judge at hearing.

Jim Chiolino
Equal Rights Supervisor

cc: Complainant
Respondent
Howard Bernstein, Attorney for the Respondent

Jim Doyle
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Department of Workforce Development

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CERTIFICATION TO HEARING

THIS CASE IS HEREBY CERTIFIED FOR A HEARING.

A hearing will be scheduled before an Administrative Law Judge in the Hearing and Mediation Section. A Notice of Hearing will be mailed to you at least 30 days prior to the scheduled hearing date. Postponement of the hearing will be granted only for good cause. A hearing will not be postponed for the convenience of the parties or by agreement of the parties.

The hearing will be conducted by an Administrative Law Judge. The Administrative Law Judge is not your attorney and will not arrange for the appearance of witnesses. The Equal Rights Division does not provide attorneys to represent parties. If you expect to be represented at the hearing by an attorney, and have not yet retained one, you should do so immediately. Request that the attorney file a Notice of Retainer with the Hearing and Mediation Section at the address above. This will ensure that the attorney will receive notice of the hearing and all other communications from the Division.

At the hearing, you should be ready to offer testimony and evidence to support your case. You or your attorney should arrange to have any witnesses present you feel will help to prove your claim. If a necessary witness is reluctant to appear, you may subpoena that witness. You must pay the cost of serving subpoenas and any witness fees or mileage charges. You should make arrangements for witnesses and subpoenas as soon as you receive the notice of hearing.

If you have any questions, please contact the Hearing and Mediation Section at the address above.