

**BOARD OF CITY SERVICE COMMISSIONERS  
CITY OF MILWAUKEE**

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IN THE MATTER OF  
SOMMER CAGE  
V.  
CITY OF MILWAUKEE

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**FINDINGS AND DECISION**

This is the written determination of the Board of City Service Commissioners on the administrative appeal hearing in this case. A timely appeal was received from Sommer Cage (hereinafter the "Appellant") challenging her discharge from the position of Equipment Operator 2 in the Department of Public Works (hereinafter "DPW" or the "Department") on May 30, 2024.

An administrative appeal hearing was held in hybrid format (both in-person and by video conference) pursuant to Sec. 63.43, Wis. Stats. and City Service Commission Rule XIV, Section 2, on Wednesday, August 7, 2024 at 9:00 a.m. The witnesses were sworn and all testimony was taken by a Court Reporter.

**Appearances:**

City Service Commission:	Francis Bock, President Marilyn Miller, Vice President Janet Cleary, Commissioner Steve Smith, Commissioner Harper Donahue IV, Executive Secretary Elizabeth Moore, Administrative Support Specialist
Commission Represented By:	Patrick McClain, Assistant City Attorney
Appellant Represented By:	Herself
Department Represented By:	Makeisha Porter, Operations H.R. Administrator, DPW
Witnesses:	Natalie Smith, Sanitation District Manager, DPW Carl Chopp, Sanitation Area Manager, DPW Dan Thomas, Administrative Services Director, DPW Domingo Castro, Sanitation South Supervisor, DPW Sommer L. Cage, Appellant

## **ISSUE**

The issue is whether there was just cause for the action taken by the Department in accordance with Wis. Stat. § 63.43.

Based upon the evidence in the record, the Commission finds as follows:

## **FINDINGS OF FACT**

1. Appellant was first employed by the City as an Operations Driver/Worker with the Department of Public Works on December 17, 2018.
2. On July 27, 2023, Appellant received a 15-day suspension for violation of City Service Rule XIV, Section 12, Paragraph I, K, and Q, and DPW Standard Work Rule 1.21 Misconduct and Insubordination. (Exhibit A-1).
3. The Department and Appellant signed a “Last Chance Agreement” in which Appellant agreed that “any violation by her of any rules or policies of the City, including those of [DPW]...shall permit the City to immediately discharge Ms. Cage from her employment with the City, minor infractions of attendance, punctuality and safety policy (as determined solely by DPW) being excluded.” (Exhibit A-1).
4. DPW instituted a new scan in/out policy for employees sometime in October, 2023.
5. The DPW Standard Work Rules were revised and reissued in January, 2024. (Exhibit J-1).
6. DPW Standard Work Rule 1.1 states: “If an employee is required to card swipe/punch in and card swipe/punch out, they must complete this prior or at the start of their shift and card/punch out at the end of their day.” (Exhibit J-1).
7. Although the Operations Division maintains its own work rules and standard operating procedures, no copy of these rules and procedures was offered into evidence.
8. In addition to scanning in/out, DPW requires Operations Drivers to independently report their work hours by completing timesheets.

9. DPW Operations Drivers are also required to issue a “10/8” radio report when they arrive at their work vehicle at the beginning of each workday and a “10/7” radio report when they return their work vehicle to the station at the end of the workday.
10. Prior to April 15, 2024, Appellant was assigned to the Central Operations location.
11. There was conflicting evidence as to whether the scan in/out policy was being strictly enforced at the Central Operations location.
12. On March 11, 2024, Appellant reportedly received a “memo G” for failing to comply with the DPW’s new scan in/out policy, however no copy of that memo was offered into evidence.
13. On April 4, 2024, Appellant attended a “DPW Standard Work Rules” presentation, which included a 77-slide PowerPoint presentation. (Exhibit D-4).
14. Slide 8 of that presentation was entitled “Scan In/Out”, and stated: “Scanning in and out at beginning and end of shift is required.”
15. Appellant transferred to the South Side Operations section on April 15, 2024 as part of a normal work rotation.
16. Scan reports show that Appellant failed to scan in (but did scan out) during her first work week (April 15, 16, 18, and 19, 2024) at the South Side Operations section. (Exhibit D-2).
17. Pursuant to Department policy, the Operations Division waits until an employee has missed four scans within a 30-day period before a warning is issued or discipline is imposed.
18. Consistent with this policy, DPW sent Appellant a text message at 5:56 a.m. on April 23, 2024, which read: “Good morning, This is a reminder that you must scan in and out on a daily basis, you failed to scan in 4x last week.Thank you.” (Exhibit A-4).
19. Appellant responded by text message at 8:47 a.m. on the same day, stating: “Good morning, my apologies I forget my badge in the car in the morning.” (Exhibit A-4).
20. Scan reports show that Appellant failed to scan in (but did scan out) on April 30, May 1, and May 2, and failed to scan both in and out on May 3. (Exhibit D-2).

21. At some point after May 3, 2024, Appellant was warned by the Department that her failure to comply with the scan in/out policy could lead to her discharge.
22. Appellant testified that, prior to receiving this information, she was unaware that failing to scan in/out was a serious infraction, since she separately recorded her work hours by completing timesheets and reporting in and out of work using "10/7" and "10/8" radio reports.
23. There is no evidence that Appellant has failed to scan in/out after May 3, 2024.
24. On May 7, 2024, DPW sent Appellant a text message that read: "Good morning, You are scanning in at the wrong terminal, please come see me if you need any information on which scanner to use. Thank you." (Exhibit A-4).
25. There is no evidence that Appellant missed any work on the days she failed to scan in/out.
26. There is no evidence that Appellant failed to accurately complete her timesheets on the days she failed to scan in/out.
27. There is no evidence that Appellant failed to timely issue the required "10/8" or "10/7" radio reports at the beginning and end of the workdays on which she failed to scan in/out.
28. On May 10, 2024, the Department sent Appellant a text message that read: "Good morning Sommer, Just wanted to let you know that for the last 3 days you have scanned correctly. Thank you and keep up the good work. Have a good weekend!" (Exhibit A-4).
29. On May 17, 2024, DPW distributed a department-wide text message, which read:

ATTENTION

EFFECTIVE IMMEDIATELY

ALL EMPLOYEES MUST SCAN IN AND OUT AT THEIR DESIGNATED STARTING  
LOCATIONS

...  
START TIMES AND END TIMES ARE BEING MONITORED

ANY QUESTIONS PLEASE FEEL FREE TO REACH OUT TO ONE OF THE  
SUPERVISORS OR MANAGEMENT

(EXHIBITS A-2 - A-3).

30. Appellant's supervisor, Domingo Castro, reported that Appellant has been completing her work in a timely manner and has had a good work ethic during her time at South Side Operations.
31. On May 29, 2024, Appellant was served with a pre-discharge notice alleging violations of "DPW Standard Work Rules 1.21 & City Service Rule XIV, Section 12, Paragraph Q: 1.21: Rules of Conduct - Misconduct, Insubordination Q: Has refused or failed to comply with departmental work rules, policies or procedures" based on her failure to comply with DPW's "scan in/out procedure."
32. Appellant was discharged from City Service on May 30, 2024.
33. A timely appeal was filed by the Appellant on May 30, 2024.

#### **CONCLUSIONS OF LAW**

1. The Appellant was an employee holding a classified position in DPW, the appointing officer within the meaning of Sec. 63.43, Wis. Stats., and City Service Commission Rules I and XIV.
2. The Department demonstrated by a preponderance of the evidence that Appellant failed to comply with City Service Rule XIV, Section 12, Paragraph Q when she repeatedly failed to comply with DPW's "scan in/out procedure."
3. Based on the evidence in the record, the Department demonstrated by a preponderance of the evidence that there was just cause to discipline the Appellant.
4. Based on the evidence in the record, the Department failed to demonstrate by a preponderance of the evidence that there was just cause to discharge the Appellant.
5. Based on the evidence in the record, the Department demonstrated by a preponderance of the evidence that there was just cause to suspend the Appellant.

**ORDER**

By unanimous vote of the Board, the discharge of Appellant on May 30, 2024 is rescinded. Appellant is suspended from the date of the discharge through the end of Pay Period 17, which ends on August 17, 2024.

Dated and signed at Milwaukee, Wisconsin, this 10th day of September, 2024.

FRANCIS BOCK, PRESIDENT