

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

ROSS B. GOLDSMITH, Appellant,

vs.

DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0011
Case Type: PA

DECISION NO. 35726

Appearances:

Mr. Eric Drangstveit, Jackson Correctional Center, N6500 Haipek Road, Black River Falls, Wisconsin, appearing on behalf of Appellant Ross B. Goldsmith.

Mr. David A. Hart III, Department of Administration, Division of Personnel Management, 101 East Wilson Street, 4th Floor, P.O. Box 7855, Madison, Wisconsin, appearing on behalf of Respondent Department of Corrections.

DECISION AND ORDER

Ross B. Goldsmith filed a timely appeal with the Wisconsin Employment Relations Commission contesting his one-day suspension. Hearing on the matter was held on January 27, 2015, in Black River Falls, Wisconsin. The hearing examiner was Lauri A. Millot. The parties filed written briefs by March 9, 2015. On May 20, 2015, Examiner Millot issued a proposed decision overturning the suspension. No objections were filed by either party.

Based on the record evidence and arguments of the parties, the Commission makes and files the following Findings of Fact, Conclusions of Law and Order:

FINDINGS OF FACT

1. Appellant Ross B. Goldsmith is employed by the Department of Corrections as a Correctional Officer at the Jackson Correctional Institution and holds the rank of Sergeant. Goldsmith received a written disciplinary sanction for attendance issues in May 2014.

2. Respondent Department of Corrections is an agency of the State of Wisconsin and operates the Jackson Correctional Institution. At all times relevant herein, Lizzie Tegels was the Warden.

3. Goldsmith was issued a one-day suspension on October 25, 2013, for violating DOC Work Rule #4 – Negligence or failure to exercise good judgement.

4. On March 30, 2014, Goldsmith attended Brief Intervention Tools (BITS) training at which he verbally challenged the instructors, criticized the effectiveness of BITS, used profanity, did not participate in the role play exercise, and was generally disruptive.

5. In varying degrees, nine similarly-situated correctional officers who were in attendance at the March 30, 2014 BITS training were similarly uncooperative and critical of BITS as a viable technique. Officer Hale also used profanity.

6. The behavior of Goldsmith and Hale was the most egregious of the officers that engaged in disruptive behavior.

7. The rank of sergeant has a supervisory and leadership role within DOC and is viewed as a representative of management.

Based on the above and foregoing Findings of Fact, the Commission makes and issues the following:

CONCLUSIONS OF LAW

1. The Commission has jurisdiction to review this matter pursuant to § 230.44(1)(c), Stats.

2. DOC established just cause within the meaning of § 230.34(1)(a), Stats., to suspend Goldsmith for one day.

Based on the above and foregoing Findings of Fact and Conclusions of Law, the Commission makes and issues the following:

ORDER

The discipline in this matter is sustained and the one-day suspension against Goldsmith shall stand.

Signed at the City of Madison, Wisconsin, this 29th day of July 2015.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott, Chairman

Rodney G. Pasch, Commissioner

James J. Daley, Commissioner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

Goldsmith was disciplined for violating DOC Work Rule #4 when he “refused to participate in the [BITS] training and used inappropriate language with the instructors.” Warden Tegels explained that Goldsmith was disciplined because he “used inappropriate language with the instructors.”

Goldsmith attended BITS on March 20, 2014, in the Wazee Conference Room at JCI. Also in attendance were three sergeants and eight correctional officers. The training instructors were Lt. Jerome Malecki and Social Worker Monique Davis. The training was not mandatory; attendees were informed that the use of BITS was voluntary and that the training was “interactive.” During the training, ten of the twelve attendees voiced disgruntlement, challenged the credible use of BITS, and did not attempt to complete the final role play exercise. In addition to Goldsmith, at least one attendee used profanity during the training. The consensus of the group was that the training was neither valuable nor credible and that BITS was more a tool for social workers than for correctional staff.

The evidence establishes that Goldsmith was guilty of the misconduct for which he was disciplined. The question is whether the one-day suspension was excessive. Goldsmith argues he was unfairly singled out for his behavior and that, as such, the discipline imposed was excessive. We disagree.

Warden Tegels explained that “no other officer did what he did – used profanity to the extent that he did.” Goldsmith admitted to having said, “something like I don’t give a shit what an inmate thinks and this is fucking bullshit,” when asked during the investigation. Ex.18. The record provides that Hale was reported as saying he “didn’t give a shit” and further, that when asked during the investigation whether he had used inappropriate language, he responded, “I probably did if swearing is considered inappropriate.” Exs. 6, 19.

DOC elicited testimony that, of the group of detractors, Officer Hale and Sergeant Goldsmith were the most disruptive, establishing these two actors as being at a higher level of disruption than their counterparts. The distinction between Goldsmith and Hale in their word choices is irrelevant for purposes of our review. The rank of the individuals in question is.

Warden Tegels explained that the role of a sergeant at Jackson Correctional Institute is as a representative of management who, in the execution of their prescribed duties, have supervisory and leadership roles. While Goldsmith and Hale were determined by DOC to be the two leading aggravators of the group that was being disruptive, the distinction in rank suffices to allow a differential in discipline. Specifically, Goldsmith failed in his supervisory role (by not quelling the disruption) and in his leadership role (by conducting himself in a way that most certainly did not dissuade and likely encouraged the disruption from the other individuals who acted out).

The higher level of responsibility attached with Goldsmith's rank warrants the discipline imposed by DOC.

Signed at the City of Madison, Wisconsin, this 29th day of July 2015.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott, Chairman

Rodney G. Pasch, Commissioner

James J. Daley, Commissioner