STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

SHARI FASSBENDER, Appellant,

vs.

Secretary, DEPARTMENT OF CORRECTIONS (STATE OF WISCONSIN), Respondent.

Case 34
No. 64196
PA(adv)-55

Decision No. 31270-A

Appearances:

Shari Fassbender appearing *pro se*, assisted at the hearing by **Scott Vilski.**

Ms. Gloria Thomas, Attorney at Law, Wisconsin Department of Corrections, P.O. Box 7925, Madison, Wisconsin 53707-7925, appearing on behalf of the State.

INTERIM DECISION AND ORDER

On November 18, 2004, Shari Fassbender filed an appeal with the Wisconsin Employment Relations Commission, alleging that the Department of Corrections had imposed discipline on her without just cause, in violation of Sec. 230.44(1)(c), Wis. Stats. Daniel Nielsen, an examiner on the Commission's staff, was designated to conduct a hearing and to prepare a proposed decision for the Commission's consideration.

A pre-hearing conference call was conducted on February 24, 2005, in the course of which the parties stipulated to the issues to be decided:

1. Whether there was just cause for the letter of reprimand in lieu of a three day suspension, notice of which was served on the Appellant on November 8, 2004?

2. Whether there was just cause for the five day suspension, notice of which was served on the Appellant on November 8, 2004?

A hearing was set for April 12 and 13, 2005 in Oshkosh, Wisconsin, but was postponed at the request of the Appellant. The hearing was rescheduled, and was conducted on May 19, 2005, at the Oshkosh State Correctional Institution.

At the conclusion of the hearing, an electronic record was produced and was provided to the parties. The parties submitted post-hearing arguments, and the Appellant submitted a responsive argument. On August 6, 2005, the State confirmed that it would not be responding to the Appellant, whereupon the record was closed. The hearing examiner issued a proposed decision on November 30, 2005. No objections were filed by the requisite due date of December 30, 2005, although the Department asked that the Commission revise the Order in the Proposed Decision from a One Day Suspension to a Written Reprimand in Lieu of a One Day Suspension. The Commission has acceded to the Department's request and the Order and Memorandum have been modified accordingly.

Having considered the testimony, exhibits, other evidence, arguments of the parties and the record as a whole, and being fully advised in the premises, the Commission makes the following

FINDINGS OF FACT

1. The Appellant, Shari Fassbender, is employed as a Unit Supervisor at the Oshkosh State Correctional Institution (OSCI). At the times relevant to this appeal, Judy Smith was the Warden of OSCI, Debra Loker was the Institution Human Resource Director, and Major James Schwochert was the Security Director.

2. As a Unit Supervisor, the Appellant is in operational charge of an inmate housing unit. She reports to the Deputy Warden, and is assisted by a Captain, who is in charge of security for the unit. The Unit Supervisor and the Captain are considered to be equal ranks.

3. On November 5, 2004, the Appellant was served with official notice of a written reprimand in lieu of a three day suspension without pay. The stated basis for the reprimand was violation of DOC Work Rules #2 and 28:

> Rule 2: Failure to follow policy or procedure, including but not limited to DOC Fraternization Policy and Arrest and Conviction Policy.
>
> Rule 28: Unauthorized or improper use of state or private property, services or authorizations, including but not limited to vehicles, telephone, electronic communications, mail service, credit cards, computers, software, keys, passes, security codes and identification while in the course of one's employment; or to knowingly permit, encourage or direct others to do so.

The accompanying statement of charges summarized the State's reasoning as:

> This action is being taken based on the following incident: You were assigned a state vehicle to attend the Wisconsin Correctional Association Conference being held on Monday and Tuesday, September 27th and 28th in Oconomowoc, Wisconsin. On Saturday, September 25, 2004, you called the institution at

> approximately 11:15 a.m. and spoke with an Officer in the lobby requesting that the keys for the Jeep be placed in the lobby. You stated that you would be at the institution around 12:30 p.m. to pick up the keys and vehicle. When questioned why you picked the vehicle on Saturday, you stated that you and your husband drove to Madison and stayed overnight at the Woodfield Suites. Your husband is not an employee of the State of Wisconsin and was not authorized to ride in a State owned vehicle. You left the vehicle in the parking lot of the Woodfield Suites until the afternoon of Sunday, September 26, 2004. You left Madison to travel to Oconomowoc for the WCA conference. You did not get permission from anyone requesting to take this state vehicle for personal use. You commented that you were very careful and made sure there was no alcohol in the vehicle.
>
> In addition to the written reprimand in lieu of suspension, you will need to reimburse the state for the personal mileage accumulated while driving the state vehicle. The cost of the personal miles is $10.56. This check should be made out to the Department of Corrections.

The underlying facts as recited in the letter of reprimand accurately describe what occurred. The total business mileage recorded by Fassbender was 264 business miles. The direct route from Oshkosh to the conference center in Oconomowoc would have totaled 164 miles.

4. Also on November 5, 2004, the Appellant was served with official notice of a five day suspension without pay. The stated basis for the suspension was violation of DOC Work Rules #13 and 14:

> Rule 13: Intimidating, interfering with, harassing (including sexual or racial harassment), demeaning or abusive language in dealing with others.
>
> Rule 14: Horseplay, practical jokes, or other disruptive or unsafe behavior.

The accompanying statement of charges summarized the State's reasoning as:

> This action is being taken based on the following incident: On September 23, 2004, you called two inmates into your office along with two other staff members. During the course of this discussion with the two inmates you slapped both in the shoulder area to demonstrate their activity on the recreation field.
>
> An investigatory meeting was held on October 5, 2004. Cathy Jess, Jim Schwochert, Robert Humphreys, your representative, and you were present. You denied having put your hands on or touched either inmate. You clarified

> that two staff members were with you when you met with the inmates. A predisciplinary hearing was held on October 20, 2004. Cathy Jess, Jim Schwochert, Angie Wood, your representative, and you were present. You stated that you did not remember slapping or touching the inmates on the arm or shoulder. However, witnesses to the event in your office describe your action as slapping or touching the inmates on the arm or shoulder. I have considered the information you gave during these meetings.
>
> While appropriate to discuss observations with the Inmates, the observed behavior could have been discussed or demonstrated on your self or staff. Touching and slapping the Inmates was not appropriate, and as a Supervisor, was also poor role modeling for the staff who observed your actions.
>
> Your actions are very serious work rule violations, as a Corrections Unit Supervisor at Oshkosh Institution; your duties and responsibilities include maintaining the rules, and policies and procedures of the Department of Corrections and Oshkosh Correctional Institution. Your failure to properly carry out your responsibilities in security compromised the safety and security of the institution.

5. Among the inmates at OSCI are M**A** and C*W*. M**A** is older than C*W*, and has a history of using younger men as sexual partners. On September 23, 2004, the Appellant observed M**A** and C*W* on the recreation yard. The men were touching one another on the shoulder, which she had previously noted was sexual horseplay employed by M**A** to groom his victims. She approached the two men, and asked what they were doing. She noted that M**A** had an erection, and she directed the two men to return to their housing units.

6. The Appellant returned to her office, but saw that the two inmates were still on the recreation field. She got on the radio and ordered them brought to her office. She also called in Dr. Michael Sonnleitner and Social Worker Brian Dunn. Her intention was to conduct a multi-disciplinary intervention, to put an end to the sexual grooming behavior.

7. The inmates denied they were engaged in any type of courtship or flirtatious behavior. The Appellant approached M**A** and demonstrated at least one back handed slap to the side of his shoulder. She repeated the action with C*W* and asked the two men if that was what they had been doing. She then asked M**A** if that was the type of thing he had done to groom his victims in the past. He conceded that it was, but denied that he was grooming C*W*. The Appellant's slaps to the shoulder area were not forceful, and neither man was harmed during the interview.

8. Neither Sonnleitner nor Dunn filed any unusual incident report about the events in the Appellant's office.

Following the meeting, the Appellant filed conduct reports on inmates M**A** and C*W* for their behavior. The disciplinary actions were inadvertently placed in a confidential file in the Security Director's office, and were not processed in the normal two day period allowed for disposition of such reports.

9. On September 26, Inmate M**A** filed a complaint, asserting that the Appellant struck him and inmate C*W* in an effort to intimidate them and coerce statements from them. As a result of this complaint, an investigation was begun by Security Chief Major James Schwochert.

10. On October 5, the Appellant was interviewed by Major Schwochert. She denied having struck or touched either of the inmates.

11. Major Schwochert also interviewed Dunn, Sonnleitner, C*W* and M**A**. In their interviews:

a. Dunn told Schwochert that he recalled the Appellant touching M**A** on the shoulder, but did not believe she had made contact with C*W*. He stressed that she did not hit either inmate.

b. Sonnleitner told Schwochert that the Appellant had given each of the inmates one or two back handed slaps to the shoulder, and that the inmates were clearly not hurt, but did seem taken by surprise.

c. Inmate C*W* said the Appellant slapped him on the shoulder, in the same manner as someone might to acknowledge a good play in a sporting contest. She did so while questioning whether that type of contact wasn't sexual conduct. He said he was not hurt in any way, but that the Appellant did not have to slap him or M**A** in order to make her point.

d. Inmate M**A** told Schwochert that the Appellant pushed him, and that he believed she was trying to goad him into adopting a defensive posture and getting disciplined.

12. Major Schwochert interviewed the Appellant again on October 20th in a pre-disciplinary meeting. She initially denied slapping or making contact with either inmate, but she requested clarification of those terms. She also inquired about the status of the conduct reports she had filed on the two inmates. The meeting was briefly adjourned, and the conduct reports were located in the Major's confidential files. The hearing was reconvened. Schwochert told her the reports had been mislaid, and that he would review them to determine whether they could be pursued, having become untimely. She asked that the description of the incident management was using as the basis for discipline be reworded, to more carefully describe the physical contact she was alleged to have had with the inmates.

13. No action was taken on the conduct reports the Appellant had filed on the inmates.

14. Discipline was imposed on November 5, 2004, as more fully described in Findings of Fact 3 and 4. Prior to this discipline, the Appellant had never received formal discipline in 16 years with the Department.

15. The Appellant filed this Appeal on November 18, 2004, protesting the disciplinary actions.

16. In April of 2005, shortly before he retired, Sergeant Steve Elert was given a written reprimand for horseplay for tossing cold water on an inmate who was showering, and throwing the inmate's clothes on the floor. The inmate took it as a joke, and shot shower water back at Elert. Sergeant Elert had previously been counseled in May of 2004 for horseplay, for using a squirt bottle to discourage some inmates from lingering around the sergeant's desk in the unit. At the same time, he was cautioned against his habit of patting inmates on the back to indicate that they had done a good job.

Based on the above and forgoing Findings of Fact, the Commission makes the following

CONCLUSIONS OF LAW

1. This matter is properly before the Commission pursuant to Sec. 230.44(1)(c), Stats.

2. The burden of proof is on the Respondent to demonstrate that there was just cause for discipline and for the degree of discipline imposed. The Respondent has established that the Appellant, Shari Fassbender, violated established rules and procedures of the State of Wisconsin and the Department of Corrections by using a state owned vehicle for personal use without prior authorization and allowing a non-State employee passenger in the vehicle.

3. The Respondent has established that the Appellant, Shari Fassbender, violated established rules and procedures of the State of Wisconsin and the Department of Corrections by making inappropriate physical contact with two inmates in the course of demonstrating behaviors she had observed the two engaged in on the recreation field.

3. Violation of established rules and procedures constitutes just cause for discipline.

4. The nominal penalty of three days suspension for misuse of a State owned vehicle is disproportionate to the actual conduct of the Appellant, does not properly factor in her prior work record, and is excessive under all of the circumstances.

5. The actual penalty imposed for misuse of a State owned vehicle, a written reprimand, is proportionate to the actual conduct of the Appellant.

6. The penalty of five days suspension for making inappropriate physical contact with two inmates is inconsistent with progressive discipline, disproportionate to the actual conduct of the Appellant, inconsistent with penalties in similar cases, and is excessive under all of the circumstances.

7. A penalty of one day's suspension is proportionate to the actual conduct of the Appellant.

Based on the above and forgoing Findings of Fact and Conclusions of Law, the Commission makes and enters the following

ORDER

It is ORDERED that:

1. The Written Reprimand In Lieu of Three Days Suspension issued to the Appellant is hereby modified to a Written Reprimand;

2. The Five Day Suspension issued to the Appellant is hereby modified to a Written Reprimand in Lieu of a One Day Suspension.

3. The Respondent is directed to take action to comply with this Order, by modifying its disciplinary and personnel records and making the Appellant whole for the five days of wages lost by reason of the excessive suspension.

4. This matter is remanded to the Respondent for action in accordance with this decision. The Commission will retain jurisdiction for the purpose of resolving issues relating to remedy and so that the Appellant may seek fees/costs pursuant to Sec. 227.485, Stats.

Given under our hands and seal at the City of Madison, Wisconsin, this 23rd day of February, 2006.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/
Judith Neumann, Chair

Paul Gordon /s/
Paul Gordon, Commissioner

Susan J. M. Bauman /s/
Susan J. M. Bauman, Commissioner

Department of Corrections (Fassbender)

MEMORANDUM ACCOMPANYING INTERIM DECISION AND ORDER

The Appellant is a Unit Supervisor for the Department of Corrections at the Oshkosh State Correctional Institution. Hers is a supervisory position, and she is in charge of two inmate housing units. In November of 2004, she was assessed a written reprimand in lieu of a three day suspension for misusing a state owned vehicle, and a five day suspension for inappropriately touching two inmates in the course of an interview in her office. There is little factual dispute about whether the two incidents took place.[1] They did, and they took place largely as described in the State's write-up of charges at the time of the discipline. The question is whether they constitute just cause for discipline.

Just cause is the standard the State must meet to justify its actions. It requires proof to a reasonable certainty by the greater weight of the evidence that (1) the employee engaged in the conduct alleged; (2) the conduct as charged constitutes cause for discipline; and (3) that discipline imposed was not excessive under all of the circumstances. This latter point is determined by examining all of the surrounding circumstances, including at a minimum, the seriousness of the conduct, including the degree to which it did or would tend to impair the employer's operation and the prior record of the employee.[2] Excessive discipline would also be indicated by the imposition of lesser penalties in similar cases involving other employees.

1. MISUSE OF A STATE OWNED VEHICLE

In the case of the vehicle usage, the Appellant was scheduled to go to an approved conference in Oconomowoc. The conference was scheduled for a Monday and Tuesday. She reserved a state vehicle to make the trip. However, instead of checking out the vehicle on Monday morning, she took it on Saturday, and used it to drive her husband to Madison, where the two stayed at a hotel until the next afternoon. She drove herself from Madison to Oconomowoc on Sunday afternoon, and registered for the conference. When she returned the vehicle, she recorded 264 business miles. The direct route between the OSCI and the conference location is approximately 164 miles for a round trip.

The regulations on use of state owned pool vehicles do not permit personal use, and do not permit non-State employee passengers. The Appellant did not seek permission to divert to Madison, and did not seek permission to have her husband in the car with her.

The Appellant does not dispute her personal use of the vehicle, nor the presence of her husband as a passenger. She argues rather that there have been other cases of State employees misusing a state vehicle in this way, and that those cases have resulted in no penalty to the

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[1] The Appellant claimed not to recall touching either inmate, but concedes in her brief that the testimony of the other witnesses to the events establishes that it happened.

[2] See DEPARTMENT OF CORRECTIONS (DEL FRATE), DECISION NO. 30795 (WERC, 2/04).

employee. These arguments are misplaced. In the course of the hearing, she elicited testimony from Warden Smith that she had had family members as passengers in her personally assigned vehicle. However, Smith also explained that the rules for personally assigned vehicles are different than those for pool cars, and that family members were permitted to ride in personally assigned vehicles. The Appellant also pointed to the case of an Assistant Regional Chief in the Division of Community Corrections who had taken a State owned vehicle home with him on weekends, and was not disciplined. However, the Regional Chief who supervised that employee testified that the vehicle was taken home because the employee had trips surrounding the weekend. While he was assessed for personal miles on the vehicle for the excess mileage, and counseled regarding his usage, it was determined that there was no misuse of the vehicle. Neither of these cases is similar in nature to the Appellant's case, and in both there is a reasonable and credible explanation for the lack of discipline.

The Appellant further argues that a written reprimand is excessive, given the nature of the violation and her 16 year discipline-free record with the Department. This is a point on which reasonable people may differ. The burden of justifying the penalty falls on the State, but the initial discretion to decide penalties also rests with the State, and is entitled to some deference. There are no other cases of discipline for this offense at the institution to provide guidance as to what is and is not considered an acceptable penalty. The conduct was intentional. Contrary to the Appellant's suggestion that she thought the business mileage was the same, she must have known that a triangular trip from Oshkosh to Madison to Oconomowoc and back to Oshkosh would result in more miles on the car than a straight route from Oshkosh to Oconomowoc and back. She certainly knew that having her husband as a passenger was not appropriate. Given the widespread publicity in recent years about the use of the State fleet, including well publicized vows by elected officials to reduce the size of the fleet and crackdown on personal use of State owned vehicles, it is difficult to understand why she thought her decision to make personal use of a pool car on a weekend for a trip to Madison would go unnoticed, and would not yield a disciplinary response.

While the State engages in a certain amount of hyperbole in its brief when it argues that the Appellant's conduct seriously interfered with the operations of the OSCI, her use of the vehicle was clearly contrary to the rules, and she knew or should have known that the institution would not and could not simply ignore the matter. The discipline imposed was a written reprimand in lieu of a three day suspension. For the purpose of analysis on review, we treat this as a three day suspension.[3] Given the Appellant's clean record to this point, the nature of the violation, and the lack of any clear disciplinary standard to support it, the nominal penalty of a three day suspension would have been plainly excessive relative to the conduct proved. On the other hand, the actual penalty imposed, a written reprimand, is easily justifiable in light of the heightened sensitivity to vehicle usage in the recent past.

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[3] "While the discipline imposed resulted in neither any interruption in appellant's performance of his duties nor any interruption of his salary, it constituted not only a blemish on his disciplinary record that could negatively affect his career in general, but also a blemish that, in the case of further disciplinary action, predictably will result in an increased disciplinary penalty over what he would receive if respondent were not treating the suspension (sic) as equivalent to a one-day suspension. Thus the discipline in this case had a significantly more severe disciplinary impact on appellant's employment status than would have been the case with a mere reprimand." DOC (RODGERS) 98-0094-PC (PERSONNEL COMMISSION, 1/27/99), (Ruling on Motion to Dismiss), at page 7.

2. INAPPROPRIATE PHYSICAL CONTACT WITH INMATES

The Appellant was assessed a five day suspension for touching two inmates, while demonstrating what she had witnessed the two doing on the recreational field. The touching consisted of simulating a backhanded slap to the side of the inmates' shoulders. While the Appellant was evasive and parsed words about whether she had "struck" or "slapped" or "touched" the inmates, in the end she does not dispute having made some physical contact with them as described by the other witnesses. There is no allegation that she intended to inflict harm on either inmate, or that the touching was for purposes other than demonstrating their behaviors, in an effort to have them admit to having engaged in a form of sexual foreplay on the recreational field, and to deter that conduct in the future.

Physical contact between inmates and prison employees is, of necessity, tightly regulated. Other than for self-defense, employees are not allowed to physically interact with prisoners. Even innocent contact with inmates can be misconstrued. Inmates can view it as a form of punishment, intimidation or abuse.[4] Just as serious is the possibility of creating confusion and uncertainty as to whether there is some appropriate zone for contact between the inmate population and the staff, leading inmates to believe they can appropriately touch members of staff in jest or in expressing themselves when, in fact, there is no such permissible zone. Thus horseplay, even where both parties understand it as such, is not allowed. Physically encouraging inmates, such as a slap on the back as a means of congratulating or praising someone, is not allowed. The rules against physical contact serve an important purpose in safeguarding both groups in the prison, and the State is entitled to strictly enforce them.

We are satisfied that the contact between the Appellant and the two inmates was purely demonstrative, and had no improper purpose. By all accounts, except the patently self-serving complaint by M**A**, there was virtually no force involved in the Appellant's backhanded slap to their shoulders. It was not accompanied by any threat, was delivered in an office with other prison staff on hand, and was understandable in the context of the meeting. To say that it was understandable is not to say that it was proper. Sonnleitner observed that the inmates seemed taken aback by the contact, and that is echoed in the comments of inmate C*W* who said the Appellant was not doing anything improper, yet expressed the opinion that staff should not touch prisoners if prisoners could not touch staff. That illustrates the problem, discussed above, of even innocent contact eroding the firm rules that keep both groups safe from one another. In that sense, it violates the rules that require respectful treatment of others, and bar employees from engaging in unsafe conduct. It shows a lack of respect for the inmates, and encourages them to believe that some measure of physical interaction might be allowable. While the State overstates the facts when it argues that the Appellant tried to intimidate the inmates, we conclude that the State did have just cause to impose some measure of discipline on the Appellant for this incident.

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[4] We attach no particular significance to Inmate M**A**'s complaint against the Appellant, as it appears to seriously overstate the degree and nature of the contact, other than to note that such complaints are one foreseeable negative result of any physical interaction between prisoners and staff.

Turning to the measure of discipline imposed, as with the vehicle violation, we conclude that the penalty imposed represents an overreaction to what actually occurred, given the Appellant's personal history and the treatment of other employees who engaged in similar conduct. Unlike the cases cited by the State in its written argument, there was no effort here to inflict harm on the inmates, or to engage in corporal punishment. As noted by the Supreme Court in REINKE V. PERSONNEL BOARD, 53 WIS.2D 123, 191 N.W.2D 883 (1971) degree of force is an element in establishing just cause in cases of alleged improper physical contact. Just cause is a standard in examining both the imposition of discipline and the degree of discipline imposed.

To the extent that the State seeks to support its election of a five day suspension as the use of progressive discipline, our conclusion that the nominal three day suspension imposed for the vehicle incident cannot stand undercuts that rationale. The State argues in the alternative that it is not bound to use progressive discipline for supervisory employees. That is true as far as it goes. No employer is absolutely bound to use progressive discipline. There is always an option to match the severity of the discipline, up to and including discharge, to the seriousness of the violation. That flexibility is not a grant of *carte blanche* authority to the employer, and the State still bears the burden of explaining why a given penalty is reasonably necessary to address both the specifics of the act and the history of the employee involved, and to justify it relative to the penalties imposed in other cases.

The only other case at OSCI involving these rules that is presented in any detail in this record is that of Sergeant Steve Elert. Sergeant Elert was disciplined in May of 2004 for horseplay for squirting inmates with a water bottle when they lingered near his desk, and for his habit of slapping inmates on the back as a means of encouraging or congratulating them. He received a job counseling for this. In April of 2005, Elert was issued a written reprimand for horseplay for tossing a cup of cold water on an inmate who was showering, and for tossing the inmate's clothes on the floor. The inmate responded by shooting shower water at Elert. This was a continuation of verbal banter the men had been engaging in earlier. The State distinguishes Elert's case on the grounds that he was a sergeant, and not a supervisor, and because his conduct was horseplay, rather than unsafe behavior. The State argues that the inmates involved clearly understood Elert's conduct to be a form of joking, while the Appellant's conduct was viewed as a method of intimidation.

We do not view the Elert case as clearly distinguishable. An argument can be made that his conduct was more serious than the Appellant's conduct. The Appellant's touching, while inappropriate, was in furtherance of her professional duties, directly related to prison business and took place in front of two other staff members in a controlled setting. The potential for confusing the boundaries between inmate and staff is arguably less than it is in more freewheeling type of horseplay Elert was engaged in, and prospect of sudden escalation is also less. The fact that the Appellant is a supervisor while Elert is a bargaining unit sergeant is a legitimate distinction, but so too is the fact that Elert had prior discipline for the same conduct, while the Appellant had a clean record.

The balance between the Employer's right to enforce its rule and to use discretion in setting disciplinary penalties, and the guarantee to employees that discipline will only be imposed for just cause, is not formulaic. The rule here is an important one, and its strict enforcement is necessary for the safety of every person working in or incarcerated in the prison. The Appellant violated the rule, and notwithstanding her lack of improper motive, is subject to discipline. The election of a five day suspension is inconsistent with progressive discipline, out of proportion to the Appellant's actual conduct, and inconsistent with the penalties used in other cases of this type. It is clearly excessive. Given the fundamental importance of the rule, and the Appellant's heightened responsibility as a supervisor, we conclude that something more than the written reprimand imposed on Sergeant Elert would be consistent with just cause. Accordingly, we have retained the penalty of suspension, but have reduced it from five days to one and, in light of MUELLER E. AL. V. REICH, 54 F3D 438 (7TH CIR. 1995), that penalty must take the form of a written reprimand in lieu of a one-day suspension.[5]

Dated at Madison, Wisconsin, this 23rd day of February, 2006.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/
Judith Neumann, Chair

Paul Gordon /s/
Paul Gordon, Commissioner

Susan J. M. Bauman /s/
Susan J. M. Bauman, Commissioner

[5] In arriving at the proper disposition of this matter, we have considered the arguments made by the Appellant that the Respondent's decision to impose discipline was a pretext for retaliating against her for seeking another job, contacting a warden at another facility about an inmate transfer, and various other actions. We find no merit in these contentions. In each of the disciplinary actions taken, the Respondent conducted a fair and thorough investigation before acting. It accurately concluded that the Appellant violated the rules. There was cause for discipline, irrespective of any other motives. As we have made our own judgment on the appropriate penalty, giving due weight to the State's discretion, the Appellant's record, and the nature of the conduct proved, we find it unnecessary to analyze the warden's possible reasons for imposing the initial sanctions.