

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

TERRY SCHUETT, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0513

Case Type: PA

DECISION NO. 34959

Appearances:

Sean Daley, N600 Rusk Road, Watertown, Wisconsin, appearing on behalf of Appellant, Terry Schuett.

David Makovec, Attorney, Department of Administration, 101 E. Wilson Street, 10th Floor, P.O. Box 7864, Madison, Wisconsin appearing on behalf of the State of Wisconsin Department of Corrections.

ORDER DENYING MOTION FOR SUMMARY JUDGMENT AND MOTION IN LIMINE

On June 27, 2022, Terry Schuett filed an appeal with the Wisconsin Employment Relations Commission asserting he had been suspended for one day without just cause by the State of Wisconsin Department of Corrections. That same day he filed a Motion for Summary Judgment and a Motion in Limine. DOC filed argument in opposition to said Motions on July 8, 2022.

Having considered the matter, the Commission has concluded that the Motions should be denied.

NOW, THEREFORE, it is:

ORDERED

The motion for summary judgment and the motion in limine are denied.

Issued at the City of Madison, Wisconsin, this 2nd day of August, 2022.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman

**MEMORANDUM ACCOMPANYING ORDER DENYING
MOTION FOR SUMMARY JUDGMENT AND MOTION IN LIMINE**

Appellant Schuett received a one-day suspension based on his arrest for Operating While Intoxicated-1st Offense. DOC asserts the arrest and circumstances surrounding same are related to Schuett's job responsibilities as a Correctional Sergeant. Schuett contends they are not and argues he is entitled to summary judgment because DOC cannot meet the "job-relatedness" standard.

As to the motion for summary judgment:

"The Commission may summarily decide a case when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law."

See Galligan v. DOC and DMRS, Dec. No. 32987 (WERC, 2/2010) quoting *Czynzak-Lyne v. OSER*, Dec. No. 32633 (WERC, 12/2008).

Here, the State contends that the circumstances surrounding the arrest are material facts. The Commission agrees. Further, the State is entitled to the opportunity to attempt to factually establish the necessary nexus between the off duty conduct and the employee's job responsibilities. Therefore, the motion for summary and the related motion in limine are denied.

Issued at the City of Madison, Wisconsin, this 2nd day of August, 2022.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman