

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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KATHLEEN BENZSCHAWEL, Appellant

vs.

DEPARTMENT OF HEALTH SERVICES, Respondents.

Case 95  
No. 73201  
PA(adv)-416

DECISION NO. 35038-A

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**Appearances:**

Carolyn Kaiser, Field Representative, Wisconsin State Employees Union, 2964 – 35th Avenue, Elk Mound, Wisconsin, appearing on behalf of Appellant Kathleen Benzschawel.

Jim Underhill, Chief Labor Relations Specialist, Office of State Employment Relations, 101 East Wilson Street, P.O. Box 7855, Madison, Wisconsin, appearing on behalf of Respondent Department of Health Services.

**DECISION AND ORDER**

Kathleen Benzschawel filed a timely appeal with the Wisconsin Employment Relations Commission disputing the imposition of a five-day disciplinary layoff for purported violations of Department of Health Services' work rules. A hearing was held on November 16, 2014, before Examiner Lauri A. Millot. The parties submitted written argument. The examiner issued a proposed decision on March 24, 2015. Neither side filed objections. After reviewing the proposed decision and record herein, the Commission issues the following:

**FINDINGS OF FACTS**

1. Appellant Kathleen Benzschawel is employed as a resident care technician at the Northern Wisconsin Center ("NWC").
2. Respondent Department of Health Services ("DHS") is an agency of the State of Wisconsin and operates the NWC, which is a facility providing supervision and direct care to persons with mental and/or behavioral disabilities.

3. On February 25, 2014, Benzschawel was disciplined for allegedly bullying and harassing coworkers and for causing mental distress to a patient. Benzschawel received a five-day disciplinary suspension.

4. Benzschawel did not engage in bullying and harassment of coworkers.

5. Benzschawel did not cause mental anguish to a patient.

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. The DHS did not have just cause for the discipline imposed upon Benzschawel.

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 rejected and the Department of Health Services is directed to remove the discipline from Benzschawel's record and make her whole for all lost wages and benefits.

Signed at the City of Madison, Wisconsin, this 17th day of June 2015.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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James R. Scott, Chairman

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Rodney G. Pasch, Commissioner

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James J. Daley, Commissioner

**MEMORANDUM ACCOMPANYING DECISION AND ORDER**

Benzschawel is a long-term employee with 37 years of service with the State, 23 of which were spent at the NWC. Benzschawel's employment record does not include any previous discipline and her recent performance reviews are all exceptional. In 2013, Benzschawel received a \$2,500 discretionary merit award from the Secretary of the DHS.

During the period from September through December 2013, a relatively new hire at the NWC, Paul Anderson, worked with Benzschawel on three occasions. Anderson reported to his supervisor that he felt Benzschawel was "bullying him." Anderson's principal complaint was that Benzschawel had told him that the more senior people had their methods of performing the job and that if he did not go along people might be "slow to respond to alarms" or people "might not trade work with you." Additionally, Benzschawel allegedly said that "we have a way of getting rid of staff we don't want." R.109. Anderson was interviewed by the Human Resources Director and his unit director. Anderson indicated he did not believe Benzschawel was harassing him. *Id.* The other information contained in Anderson's statement was either hearsay or opinion statements. Anderson did not believe that the "failure to respond to alarms" was true. *Id.*

Anderson had worked as a police officer for 18 years prior to taking the position at the NWC. Presumably, he would not require the assistance of an older female coworker to handle an unruly patient.

In the course of interviewing, Anderson disclosed that he had heard others recounting an incident in which Benzschawel had allegedly recruited coworkers to post for vacation days in an effort to block coworker Carrie Grunewald from taking vacation during "Country Fest." Grunewald apparently worked during this local area festival. This supposed act of "bullying" amounted to much ado about nothing and even Grunewald did not think much of the purported threat. R.110.

Management pressed on with the investigation and ultimately administered a five-day disciplinary suspension largely based on rumor and innuendo. The NWC director decided to skip the normal progression of discipline in favor of "sending a message." The record does not disclose what the message was or its intended recipient. In any event, the purpose of discipline short of discharge is to correct employee misbehavior.

The hearsay investigation interviews (which themselves are replete with hearsay) formed the basis for the DHS' "evidence." The testimony of the various witnesses offered by the DHS at hearing undercut the statements which themselves had no evidentiary value. There is simply no evidentiary basis for concluding that Benzschawel bullied or harassed any coworker.<sup>1</sup>

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<sup>1</sup> The examiner reached the same result but found that there was no harassment "based on protected status." That finding suggests that the DHS was limited to disciplining for harassment based upon conduct unlawful under Title VII and/or the Wisconsin Fair Employment Act. That is incorrect. The work rules provide that abusive, disorderly or disruptive behavior is forbidden regardless of whether it violates state or federal law.

The examiner did conclude that there was at least some basis for discipline in the form of a written warning. We are unable to determine why the examiner reached that conclusion as there does not appear to be any finding or discussion, or for that matter evidence in the record, to support the result. We therefore independently conclude that Benzschawel engaged in no conduct worthy of discipline.

Signed at the City of Madison, Wisconsin, this 17th day of June 2015.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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James R. Scott, Chairman

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Rodney G. Pasch, Commissioner

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James J. Daley, Commissioner