

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

DEBORAH HESS, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case 274
No. 73226
PA(adv)-424

DECISION NO. 35059-A

Appearances:

Paul J. Mertz, Redgranite Correctional Institution, 1006 County Road EE, Redgranite, Wisconsin, appearing on behalf of Appellant Deborah Hess.

Paegge Heckel, Labor Relations Specialist - Chief, Department of Administration, Division of Personnel Management, 101 E. Wilson Street, 4th Floor, P.O. Box 7855, Madison, Wisconsin, appearing on behalf of Respondent Department of Corrections.

DECISION AND ORDER

Deborah Hess filed an appeal with the Wisconsin Employment Relations Commission on July 7, 2014, contesting her three-day suspension. The State of Wisconsin Department of Corrections was served with the appeal. A hearing was held on February 19, 2015, by Hearing Examiner Lauri A. Millot. The parties thereafter filed written argument by April 19, 2014.

On September 3, 2015, Examiner Millot issued a Proposed Decision and Order concluding the suspension was for just cause. Hess filed objections to the proposed decision and supplemental argument was filed by the parties until October 22, 2015.

Based on a review of the evidence and argument, the Commission makes and issues the following:

FINDINGS OF FACT

1. Respondent State of Wisconsin Department of Corrections (“DOC”) is an agency of the State of Wisconsin which in addition to other tasks operates the adult prison system including the Redgranite Correctional Institution (“RGCI”) in Redgranite, Wisconsin. RGCI is a medium level security facility providing treatment to 1,000 inmates. At all times relevant herein, the Warden at RGCI was Michael Dittman and the Human Resources Director was Karla Souzek.

2. Appellant Deborah Hess is employed by DOC at RGCI and holds the rank of sergeant.

3. Hess sustained an off-the-job head injury on January 12, 2014. She timely telephoned RGCI in advance of her January 13, 2014 shift informing them that she would not be reporting for work, that she would be seeing a physician, and that she would use accumulated sick leave for her absence.

4. Hess saw her physician on January 13, 2014, who recommended she not report to work for three days.

5. Hess telephoned RGCI giving notice of her intent to not report for work on January 14 and January 15, 2014, and of her intent to use accumulated sick leave.

6. When Hess returned to work, she submitted a timesheet requesting sick leave for January 13 through 15, 2014. Hess’ sick leave balance was insufficient to cover the three days, but she was approved for 13 hours, 51 minutes, of sick leave and 10 hours, 9 minutes, leave without pay without prior authorization.

7. Hess requested and was denied the use of accumulated vacation leave for January 14 and 15, 2014.

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

CONCLUSIONS OF LAW

1. The Wisconsin Employment Relations Commission has jurisdiction over this matter pursuant to § 230.44(1)(c), Stats.

2. The State of Wisconsin Department of Corrections did not have just cause within the meaning of § 230.34(1)(a), Stats., to suspend Deborah Hess for three days.

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

ORDER

The three-day suspension is rejected and the State shall make Hess whole and expunge the suspension from her personnel record.

Dated at Madison, Wisconsin, this 3rd day of December 2015.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott, Chairman

Rodney G. Pasch, Commissioner

James J. Daley, Commissioner

MEMORANDUM ACCOMPANYING DECISION AND ORDER

Section 230.34(1)(a), Stats., provides in pertinent part the following as to certain employees of the State of Wisconsin:

An employee with permanent status in class ... may be removed, suspended without pay, discharged, reduced in base pay or demoted only for just cause.

Section 230.44(1)(c), Stats., provides that a State employee with permanent status in class:

... may appeal a demotion, layoff, suspension, discharge or reduction in base pay to the commission ... if the appeal alleges that the decision was not based on just cause.

Deborah Hess had permanent status in class at the time of her suspension and her appeal alleges that it lacked just cause.

The State has the burden of proof to establish that the employee was guilty of the misconduct. The Commission's role is to make findings of fact which it concludes are "proven to a reasonable certainty, by the greater weight of credible evidence."

Here, the State has not met its burden of proof as to Hess' suspension.

DOC disciplined Hess for violating Policy 200.30.002 which is DOC's leave selection process and DOC Work Rule #31, excessive absenteeism. DOC described Hess' offense as "on January 14, and 15, 2014 you called in sick, did not have enough sick leave to cover the entire absence and went more than 10 hours leave without pay without approval."

Section VIII addresses leave utilization and substitution and provides in relevant part:

Effective January 1, 2012 when an employee calls in sick, he/she will identify his/her intended leave type to cover the absence. An employee who calls in sick and wishes to use vacation or another type of annual leave may do so "insofar as the needs of the service permit" (Wisconsin Administrative Code ER 18.02(6)(b)). This means granting of the use of annual leave in lieu of sick leave is based on the needs of the work unit and based on operational availability.

If operational availability does not permit granting of other leave, such as vacation, etc., the employee is required to use sick leave

and is further required to use sick leave when reporting the absence on his/her time sheet (paper or electronic). The employee is not authorized to convert to another leave unless otherwise required or directed by Human Resources.

Hess telephoned RGCI and informed Captain Andrew Wesner that she would be off for three days, January 13 through 15, 2014, and that she would be taking sick leave. After payroll was submitted for the time period including January 13 through 15, 2014, Human Resources Director Karla Souzek learned that Hess had insufficient sick leave available for the three dates and initiated an investigation. After the investigation started, Hess realized that her sick leave balance did not have enough accumulated leave to cover her absences at which time she consulted with Souzek and asked to use accumulated vacation leave. Souzek denied the request. Souzek testified that Hess was being disciplined “because she used leave when she did not have any available” and Warden Dittman explained that it would violate the policy for Hess to use vacation for a shift that she initially requested to be covered by sick leave.

DOC’s policy allows for the substitution of vacation leave to cover absences due to illness if “the needs of the work unit” and “operational availability” so allow. The record does not establish that the “needs of the work unit” or “operational availability” would have been negatively affected by granting Hess’ request to use vacation leave for the portion of her absence that she learned could not be covered by her available sick leave. Therefore, we conclude that Hess did not engage in any misconduct and we have rejected the suspension she received.

Dated at Madison, Wisconsin, this 3rd day of December 2015.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott, Chairman

Rodney G. Pasch, Commissioner

James J. Daley, Commissioner