

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

KEVIN FRANCK, Appellant

vs.

DEPARTMENT OF CORRECTIONS, Respondents.

Case ID: 1.0013

Case Type: PA

DECISION NO. 35437-A

Appearances:

Kevin Franck and Kimberly Roberts, E1379 Dayton Road, Waupaca, Wisconsin, appearing on behalf of Appellant Kevin Franck.

William H. Ramsey, Department of Administration, 101 E. Wilson Street, 10th Floor, P.O. Box 7864, Madison, Wisconsin, appearing on behalf of Respondent Department of Corrections.

DECISION AND ORDER

Kevin Franck filed an appeal with the Wisconsin Employment Relations Commission contesting his termination. Hearing on the matter was held on February 18, 2015, in Redgranite, Wisconsin, before Hearing Examiner Lauri A. Millot. The hearing was transcribed. The parties filed written briefs, although the Appellant's brief was untimely. No objections were filed by either party and the matter became ripe for Commission review on July 23, 2015.

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

FINDINGS OF FACT

1. Appellant Kevin Franck was a 37 year employee of the Department of Corrections, assigned to Redgranite Correctional Institution.

2. Respondent Department of Corrections (hereinafter "DOC") is an agency of the State of Wisconsin responsible for the supervision of inmates in the Wisconsin correctional system. DOC operates the Redgranite Correctional Institution (hereinafter "RGCI"). At all times relevant herein, the Warden for RGCI was Michael Meisner and the Human Resources Director was Karla Souzek.

3. Franck received a written reprimand on October 23, 2012, for violation of DOC Work Rule #29 after he reported for work 75 minutes late.

4. Franck received a 3-day suspension on July 9, 2013, for violation of DOC Work Rules #1, #2 and #6 after he provided information to an inmate and failed to report a familial relationship with an inmate.

5. Franck received a 5-day suspension on September 8, 2013, for violation of DOC Work Rules #3 and #4 after he was inattentive with his head down at his work station and failed to respond when verbally addressed.

6. Franck received a 10-day suspension on October 22, 2013, for violation of DOC Work Rules #3 and #4 after he was inattentive with his head bent toward his chest, eyes closed and snoring at his work station.

7. Franck was scheduled to work his regularly scheduled first shift on December 22, 2013. Franck did not call in before his shift started or report for work.

8. Franck was discharged on April 26, 2014, for violation of DOC Work Rules #29 and #30 for failing to report for work pursuant to DOC's progressive discipline policy.

9. Franck was discharged consistent with Executive Directive #2, Employee Discipline.

10. Franck was treated in the same manner as similarly situated employees who committed a work rule violation within 12 months of the first day of having served a 10-day suspension.

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 Department of Corrections had just cause, within the meaning of § 230.34(1)(a), Stats., to terminate Kevin Franck.

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

ORDER

The discharge of Kevin Franck is affirmed.

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

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott, Chairman

Rodney G. Pasch, Commissioner

James J. Daley, Commissioner

MEMORANDUM ACCOMPANYING DECISION AND ORDER

DOC's Executive Directive 2, Employee Discipline, sets forth a progressive discipline schedule which imposes a specific disciplinary action for most work rule violations as follows: first violation – written warning; second violation – 1-day suspension without pay; third violation – 3-day suspension; fourth violation – 5-day suspension; fifth violation – 10-day suspension; and sixth violation - discharge. Franck had been progressively disciplined through his 10-day suspension issued on October 22, 2013.

Franck was scheduled to work first shift, starting at 6:00 a.m., on December 22, 2013, and he failed to call in or report for work. Franck testified that he was ill.¹ DOC provides paid sick leave time to employees when they are ill so long as the employee complies with DOC's call in procedure and has accumulated leave. Had Franck telephoned management more than 90 minutes before his scheduled shift, in this case by 4:30 a.m., and informed DOC he was ill, unable to report for work, and approved for sick leave use, then the discipline would not have been issued.

When questioned on March 27, 2014, Franck indicated that he thought he had called in to the facility at approximately 3:15 a.m. but did not recall to whom he spoke. Neither Lieutenant David Fischer, who worked from 2:00 p.m. on December 21 to 3:00 a.m. on December 22, nor Captain Andrew Wesner, who started his shift at 3:00 a.m. on December 22, acknowledged having received a call from Franck informing DOC he would not be reporting for work. Franck's first contact with DOC occurred at 10:20 a.m. when he returned Wesner's 6:02 a.m. call. We reject Franck's recollection that he called in and informed DOC.

Franck returned Wesner's call at 10:20 a.m. and requested use of sick leave for December 22. Human Resources Director Karla Souzek testified that it is the practice at the facility for employees who are scheduled to work, but fail to report, to be recorded as unpaid status until they call in at which time they can use accumulated leave time. DOC recorded Franck's time on December 22 as time without pay for 4 hours and 20 minutes and sick leave for 3 hours and 40 minutes.

At hearing Franck argued that he was not absent, but rather was "tardy" on December 22. Tardy is defined by Executive Directive #2 as "reporting for work after the start of scheduled work hours." Ex.R16. Souzek testified that tardy only applies if the employee calls in before two hours beyond their scheduled start time. Franck failed to call in until 10:20 a.m., did not report for work and, therefore, was absent not tardy.

¹ Franck was approved for an extended medical leave of absence to address his carpal tunnel condition beginning on December 23, 2014. Although Franck experienced difficulty with sleep due to this condition, he did not inform RGC management.

Franck also questioned DOC's decision in July of 2013 to accelerate Franck's discipline and skip the 1-day suspension and proceed directly to the 3-day suspension. Franck did not timely grieve or appeal that penalty thereby waiving his right to challenge it in this proceeding.

The progressive disciplinary system was applied to Franck providing him with repeated opportunity to change his behavior. He failed to do so and, accordingly, we affirm his discharge.

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

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott, Chairman

Rodney G. Pasch, Commissioner

James J. Daley, Commissioner