

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

JOSEPH A. APPENFELDT, Appellant,

vs.

WISCONSIN DEPARTMENT OF HEALTH SERVICES, Respondent.

Case ID: 2.0000

Case Type: PA

DECISION NO. 35505

Appearances:

Joseph A. Appenfeldt, 2013 McKenna Boulevard, Madison, Wisconsin, appearing on his own behalf.

David A. Hart, Office of State Employment Relations, 101 East Wilson Street, 4th Floor, P.O. Box 7855, Madison, Wisconsin, appearing on behalf of the State of Wisconsin Department of Health Services.

DECISION AND ORDER

On July 25, 2014, Joseph A. Appenfeldt filed an appeal with the Wisconsin Employment Relations Commission pursuant to § 230.44(1)(d), Stats., asserting that he had been suspended for five days without just cause by the State of Wisconsin, Department of Health Services. The Commission assigned the appeal to Examiner Peter G. Davis for the purpose of conducting a hearing and issuing a proposed decision for the Commission's consideration. A hearing was held on October 28, 2014, in Madison, Wisconsin. The parties filed written argument by December 17, 2014.

Examiner Davis issued a proposed decision on March 6, 2015, concluding there was just cause for the suspension. No objections to the proposed decision were filed, and the matter became ripe for Commission action on April 7, 2015.

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

FINDINGS OF FACT

1. The Department of Health Services (“DHS”) is a State of Wisconsin administrative agency.

2. At the time of his suspension, Joseph A. Appenfeldt (“Appenfeldt”) had permanent status in class and was employed by DHS as a nurse at the Mendota Mental Health Institute.

3. On March 3, 2014, Appenfeldt was to administer ear drops in a patient’s ear. Instead, he erroneously administered the ear drops in the patient’s eye. The patient exclaimed “That shit burns.” Despite the patient’s complaint, Appenfeldt did not check to see if he had made a medication error and did not report the error as required by DHS policy.

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

CONCLUSION OF LAW

1. Based on the conduct described in Finding of Fact 3, the State of Wisconsin, Department of Health Services, had just cause within the meaning of § 230.34(1)(a), Stats., to suspend Joseph A. Appenfeldt for five days.

Based upon the above and foregoing Findings of Fact and Conclusion of Law, the Commission makes and issues the following

ORDER

The five-day suspension is affirmed.

Dated at Madison, Wisconsin, this 18th day of May 2015.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott, Chairman

Rodney G. Pasch, Commissioner

**MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSION OF LAW 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.

Appenfeldt had permanent status in class at the time of his five-day suspension and his appeal alleges that the suspension was not based on just cause.

The State has the burden of proof to establish that the employee was guilty of the misconduct and whether the misconduct constitutes just cause for the discipline imposed. *Reinke v Personnel Board*, 53 Wis.2d 123 (1971); *Safransky v Personnel Board*, 62 Wis.2d 464 (1974). 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 met its burden of proof as to the misconduct alleged and as to the length of the suspension imposed.

It is undisputed that Appenfeldt was the only nurse on duty with responsibility to administer medication to the patient in question. Video evidence and the testimony of the employee accompanying Appenfeldt that evening make it clear that he did administer medication to the patient that evening.

Appenfeldt concedes that it is possible he made a medication error by placing ear drops in the patient's eye. However, he argues that he was unaware of that possibility at the time and thus that he did not think he had anything to report. However, the testimony of the patient, the patient's mother, and the employee accompanying Appenfeldt combine to establish that the patient complained loudly upon receiving the drops in his eye. That complaint should have alerted Appenfeldt that he may have made an error, prompted him to double check his actions, prompted him to discover the error, and prompted him to report the error to minimize any damage that may have been done to the patient's health. Appenfeldt failed to respond appropriately in light of the patient's complaint.

While all acknowledge that medication errors do occur, it is Appenfeldt's failure to determine that he made an error combined with his failure to report the error that he should have uncovered that establish just cause for his five-day suspension.¹

Dated at Madison, Wisconsin, this 18th day of May 2015.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott, Chairman

Rodney G. Pasch, Commissioner

¹ Appenfeldt argues that he was not disciplined by the Wisconsin Board of Nursing and thus the DHS discipline should be overturned. By letter dated September 16, 2014, the Board advised that it had been presented with the "facts of the case" and then decided to close its file "without further action for Insufficient Evidence for a violation." We do not know what facts were presented to the Board. We do know that we are not bound by the Board's actions and that the evidence presented to us establishes just cause for a five-day suspension.