

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

DENICE DOYING, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0016

Case Type: PA

DECISION NO. 35764

Appearances:

Mr. Sean Daley, Field Representative, AFSCME Council 32, P.O. Box 19, Ashippun, Wisconsin, appearing on behalf of Denice Doying.

Mr. Amesia N. Xiong, Attorney, Department of Administration, Office of the Secretary, 101 E. Wilson Street, 10th Floor, P.O. Box 7864, Madison, Wisconsin, appearing on behalf of State of Wisconsin Department of Corrections.

DECISION AND ORDER

On November 3, 2014, Denice Doying filed an appeal with the Wisconsin Employment Relations Commission pursuant to § 230.44(1)(c), Stats., asserting that she had been suspended for one day without just cause by the State of Wisconsin, Department of Corrections. The appeal was assigned to Examiner Stuart D. Levitan who conducted a hearing on December 9 and 12, 2014, in Sheboygan, Wisconsin. The parties thereafter filed written argument by March 13, 2015.

Due to Examiner Levitan's retirement, the appeal was then reassigned to Examiner Peter G. Davis who consulted with Examiner Levitan as to the demeanor of the witnesses. Examiner Levitan indicated that the demeanor of the witnesses did not impact his view of the credibility of their testimony.

On July 28, 2015, Examiner Davis issued a proposed decision upholding the suspension. No objections to the proposed decision were filed and the matter was ripe for Commission action on August 28, 2015.

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

FINDINGS OF FACT

1. The Department of Corrections (“DOC”) is a State of Wisconsin administrative agency which operates prisons and correctional facilities.

2. At the time of her suspension on July 11, 2014, Denice Doying had permanent status in class and was employed by DOC as a correctional officer at the Kettle Moraine Correctional Institution (“KMCI”).

3. On March 3, 2014, Doying and Correctional Officer Benike transported inmates to and back from the University of Wisconsin Hospital in Madison, Wisconsin.

4. Doying and Benike shared the responsibility of insuring that inmates are strip searched before departing the hospital and again upon reaching KMCI.

5. During the time that the strip searches would normally have been conducted, Benike was performing other transportation-related duties that took him away from the inmates’ location. Benike assumed that Doying had insured that the strip searches had occurred during his absence.

6. The strip searches did not occur.

7. Doying knew the strip searches did not occur.

8. Doying provided false, inaccurate or incomplete information during the investigatory process.

Based upon 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 appeal pursuant to § 230.44(1)(c), Stats.

2. By virtue of the conduct described in Findings of Fact 6 through 8, the State of Wisconsin Department of Corrections had just cause within the meaning of § 230.34(1)(a), Stats., to suspend Denise Doying for one day.

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

ORDER

The suspension of Denise Doying is affirmed.

Dated at Madison, Wisconsin this 14th day of September 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.

Denice Doying had permanent status in class at the time of her one-day suspension and her 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 Doying's suspension.

I. WAS DOYING GUILTY OF MISCONDUCT?

It is undisputed that on March 3, 2014, Doying and Benike were responsible for the strip searches of inmates when leaving the hospital and again upon return to KMCI and that the strip searches did not occur at KMCI. The record also clearly establishes that the strip searches did not occur at the hospital. Therefore, it is clear that Doying was guilty of misconduct.

Unlike Benike (who was away performing other transportation-related duties at the time the strip searches would normally be conducted and assumed Doying had made sure the searches occurred), the degree of Doying's misconduct is not mitigated by any other evidence. Doying knew the strip searches had not occurred and thus intentionally failed to meet her responsibilities. In addition, she was less than forthcoming in the disciplinary investigation into the events of March 3, 2014.

II. DID DOYING'S MISCONDUCT CONSTITUTE JUST CAUSE FOR A ONE-DAY SUSPENSION?

Doying had a clean disciplinary record at the time the State imposed the one-day suspension. The record reflects that the "standard" disciplinary progression would have meant imposition of a written reprimand, but the State concluded it was appropriate to "jump" a step in the progression and impose a one-day suspension given the nature of the misconduct. Because Doying's intentional misconduct had the potential to jeopardize employee and inmate safety and security, and because she was less than forthcoming about her conduct during the disciplinary investigation, we conclude the State had just cause to impose the one-day suspension.¹

Dated at Madison, Wisconsin this 14th day of September 2015.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott, Chairman

Rodney G. Pasch, Commissioner

James J. Daley, Commissioner

¹ In reaching this conclusion, we have considered the evidence presented by Doying of alleged disparate disciplinary treatment vis-a-vis other employees and do not find it to be a persuasive basis to overturn the suspension.