

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

SUSAN KIMBALL, Complainant

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent

Case ID: 1.0039

Case Type: PA

DECISION NO. 35768

Appearances:

Mr. Anthony J. Gunderson, Representative, 124 George Street, Randolph, Wisconsin, appeared on behalf of Appellant Susan Kimball.

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

DECISION AND ORDER

On January 26, 2015, Susan Kimball filed an appeal with the Wisconsin Employment Relations Commission pursuant to § 230.44(1)(c), Stats., asserting that she had been given a five-day suspension without just cause by the State of Wisconsin Department of Corrections. The Commission assigned the appeal to Examiner William C. Houlihan who conducted a hearing on May 7, 2015, in Waupun, Wisconsin. The parties made closing arguments at the conclusion of the hearing.

On July 29, 2015, Examiner Houlihan issued a proposed decision upholding the suspension. No objections to the proposed decision were filed and the matter was ripe for Commission review on August 31, 2015.

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

FINDINGS OF FACT

1. Appellant Susan Kimball is employed as a correctional sergeant by the State of Wisconsin Department of Corrections at the Dodge Correctional Facility in Waupun, Wisconsin.

2. Respondent State of Wisconsin Department of Corrections is an agency of the State of Wisconsin which operates the Dodge Correctional Facility in Waupun, Wisconsin.

3. On June 19, 2014, Kimball was working in a secure portion of the Dodge Correctional Facility. She exited the security bubble to secure her allotted meal and deliberately propped the door to the bubble open, preventing the door from closing and locking.

4. On November 17, 2014, Kimball was given a five-day unpaid suspension for her failure to secure the door.

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 to review this matter pursuant to § 230.44(1)(c), Stats.

2. Respondent State of Wisconsin Department of Corrections had just cause, within the meaning of § 230.34(1)(a), Stats., to issue a five-day suspension to Appellant Susan Kimball.

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

ORDER

The five-day suspension of Susan Kimball is affirmed.

Dated at the City of 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.

Susan Kimball had permanent status in class at the time of her 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).

Kimball is a sergeant, employed by the DOC in the Dodge Correctional Facility. She has been an employee of the DOC for a period of approximately ten years. Kimball was given a five-day suspension without pay for leaving a door propped open on June 19, 2014.

On the day in question, Kimball and Corrections Officer Scott Van Pay were staffing a unit control bubble within the Dodge Correctional Facility. The bubble is a secure area with glass walls that permit the occupants to maintain visual surveillance of four adjoining bunk areas. The bubble is located in the center of the prisoner bunk areas and is essentially surrounded by those bunk areas. There is a heavy steel door leading into the bubble, which locks automatically when the door is allowed to close naturally. The four bunk areas house 144 inmates.

At the time of the incident, Van Pay and Kimball were angry with one another and were not on speaking terms. Van Pay left the bubble to get a meal and subsequently returned. Kimball subsequently did the same. According to Kimball, Van Pay left the door propped open and she thereafter moved through it and gently guided the door to the frame so that it did not latch. Van Pay indicated that the door was closed and latched as Kimball prepared to exit, and that she had to release the lock to leave. Van Pay indicated he did not notice that the door had

been propped open when Kimball left and only became aware of that fact when she returned to the bubble and was able to let herself in.

Van Pay reported Kimball's failure to secure the door. The matter was investigated, and Kimball was given a ten-day suspension, which was subsequently modified to a five-day suspension when previously issued discipline, unrelated to this matter, was rescinded.

The five-day suspension, arising out of the June 19, 2014 event, was issued on November 17, 2014. As of that date, Kimball had a three-day suspension, dated December 3, 2013, for failure to exercise good judgment, a one-day suspension, dated October 4, 2013, for lack of adequate notice when calling in sick; and a written reprimand, dated May 23, 2013, for lack of adequate notice when calling in sick on her record.

The record in this proceeding contains a number of examples of DOC employees who have been disciplined for failing to secure doors within correctional facilities. Kimball testified that it is common for employees of the Dodge Correctional Facility, including supervisory employees, to leave doors propped open for personal convenience.

It is not disputed that Kimball deliberately left the door propped open. The door was unsecured for a very short period of time, estimated to be 20 to 30 seconds.

We believe the behavior is disciplinable. The door is designed to lock if allowed to close naturally. It requires an effort to guide the door back to the frame so that it does not latch. In essence, what Kimball did was to frustrate the lock design.

The lock is there for a purpose and the purpose is central to the mission of the prison. The security system of the prison is designed to prohibit inmates from escaping. Walls, guards, and locked doors combine to contribute to that most primary function. The door to the bubble is an integral component of the security system directly related to prison operation. The bubble serves as the control and observation room for authorities to monitor the activities of the inmates. The locked door secures the two occupants of the bubble from the large number of inmates housed in the adjoining four bunks. Inmates are never permitted to enter the secure bubble.

Under the circumstances surrounding this matter, prisoners had direct access to the bubble door. Leaving it unsecured left the sole occupant of the bubble vulnerable to inmates who might seek to seize control of the command center complete with hostages. This is the very occurrence the door is designed to prevent.

Kimball asserts that Van Pay reported her actions as retaliation for events that occurred between the two previously which led to their hostile relationship. She may well be right in this regard. However, this does not immunize her from discipline for behavior which is otherwise

subject to discipline. The malice which prompted the report does not bar the administration from enforcing the security needs of the facility.

The door was only propped open for a matter of minutes or seconds. It is certainly possible that observant inmates, noting that a corrections officer had left the bubble, could act swiftly. More to the point, we find it difficult to articulate a line which delineates when discipline is appropriate and when it is not. We are not prepared to conclude that it is acceptable to disarm the security door of a prison for some arbitrary period before discipline may be imposed.

Many doors within the facility are, at times, left unsecured. Testimony indicates that there is a distinction drawn between areas in which inmates are permitted and areas where they are not.

The door to the secure bubble is there for a purpose and the correction officers are well aware of that purpose. The locked door is fundamental to the operation and mission of the correctional facility. We feel that management is entitled to use discipline to modify the behavior of those who undermine the security of the prison.

Under the circumstances the discipline imposed cannot be deemed excessive. Kimball was in the six step DOC disciplinary progression. She had a three-day suspension on her then current record. The DOC disciplinary progression calls for a five-day suspension for the next offence. The record reflects that others have been disciplined for the same or similar conduct. We do not believe Kimball has been singled out. Kimball testified that others, including captains and lieutenants, have left doors deliberately unsecured. However, the details of those matters are not in the record. There is no evidence that management has failed to investigate and respond to such behavior if it exists.

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

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott, Chairman

Rodney G. Pasch, Commissioner

James J. Daley, Commissioner