

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

BRENT EXNER, Appellant,

vs.

DEPARTMENT OF CORRECTIONS, Respondent

Case ID: 1.0031

Case Type: PA

DECISION NO. 35770

Appearances:

Mr. Brent Exner, 308 East 8th Street, Westfield, Wisconsin, appearing on his own behalf.

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

DECISION AND ORDER

Brent Exner filed a timely appeal with the Wisconsin Employment Relations Commission contesting his one-day suspension. Hearing on the matter was held on April 13, 2015, in Portage, Wisconsin. The hearing examiner was Lauri A. Millot. The parties offered closing arguments at hearing. On July 31, 2015, Examiner Millot issued her Proposed Decision and Order. Neither party filed any objections.

Based on the record evidence and arguments of the parties, the Commission makes and files the following Findings of Fact, Conclusions of Law and Order:

FINDINGS OF FACT

1. Appellant Brent Exner (hereinafter "Exner") is a correctional officer hired prior to April 9, 2012, and currently working at the Columbia Correctional Institution.

2. Respondent Department of Corrections (hereinafter "DOC") is a state agency responsible for the operation of adult correctional facilities, including Columbia Correctional

Institution (hereinafter, "CCI"), a maximum secure facility located in Portage, Wisconsin. Michael Dittman is the Warden at CCI.

3. Exner was working first shift on July 3, 2014, in Segregation Unit A and kicked shut the upper trap door to Inmate Tallman's cell because he perceived a threat to his personal safety. Exner immediately informed Unit Sergeant James Kottka that he had kicked the trap door shut and that Tallman was claiming injury to his finger.

4. Exner completed an incident report documenting his interaction with Tallman and recorded, but did not specify, how he closed the trap door.

5. Exner was issued a one-day suspension for violating DOC work rules consistent with DOC's progressive discipline policy.

6. Exner was negligent and failed to exercise good judgment when he reengaged with Tallman causing his injury.

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. DOC had just cause within the meaning of § 230.34(1)(a), Stats., to suspend Exner for one day for work rules.

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

ORDER

The suspension of Brent Exner is affirmed.

Signed at the City of Madison, Wisconsin, this 2nd day of November 2015.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott, Chairman

Rodney G. Pasch, Commissioner

James J. Daley, Commissioner

MEMORANDUM ACCOMPANYING DECISION AND ORDER

This is a routine disciplinary action based upon Exner's failure to exercise an appropriate level of care in performance of his duties. The DOC concluded, following an investigation, that Exner kicked a trap door to close it injuring an inmate.

On July 3, 2014, Exner was dispensing medication to inmates housed in the Segregation Unit and encountered Tallman who failed to follow Exner's verbal directive and remove his hands from the unsecured cell door trap. Testimony established that this was a "common occurrence" with Tallman. Exner disengaged and stepped away from the unsecured cell door with the intent to follow established protocol and report Tallman's non-compliance to Kottka. While departing, Exner believed the cell door had closed prompting him to change course, returning to Tallman's cell in order to secure the trap. When Exner was within two to three feet of the cell trap door, he observed something white in the trap area, became concerned for his safety, and reacted by kicking the trap shut to avoid being "dashed" by the inmate.¹ Exner reported to the control bubble and apprised Kottka of the incident. The record establishes that Exner admitted to having kicked the door and that he informed Kottka that Tallman claimed his finger was injured.²

DOC faults Exner's decision to return to Tallman's cell after disengaging, concluding that Exner's action not only deviated from policy, but also placed Exner's safety in jeopardy, placed the security of the institution in jeopardy, and injured Tallman. Exner explained that he returned to the cell door because he saw an opportunity to secure the trap. Training dictates that after non-compliance to a verbal directive by an inmate in a non-emergency situation, staff are to create separation and seek out the assistance of supervisory personnel who will organize and coordinate reengagement. Had Exner consulted with the unit sergeant and allowed management to determine the next course of action, not only would Exner's safety have been assured, but Tallman's safety would have similarly been protected. Exner's decision to stray from CCI training and established protocol not only created the opportunity for Tallman to "dash" Exner and resulted in injury to Tallman, but also required that Exner use force. While it is acceptable in some circumstances to reengage, all witnesses testified that decisions relative to reengaging are driven by elevated safety and security concerns and there was no justifiable reason for Exner to reengage, especially given Exner's knowledge of this inmate. Exner's discipline was warranted.

Exner was disciplined consistent with DOC's progressive discipline procedure.

¹ "Dash" or "being dashed" is a slang term used to describe an inmate throwing an unknown liquid substance from a drinking cup at a correctional officer.

² At hearing DOC identified the absence of any reference in the incident report by Exner of the "white cup" which prompted his wariness of being dashed. DOC did not discipline Exner for this exclusion from the written incident report.

Signed at the City of Madison, Wisconsin, this 2nd day of November 2015.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott, Chairman

Rodney G. Pasch, Commissioner

James J. Daley, Commissioner