

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

TIMOTHY IMMEL, Appellant,

vs.

STATE OF WISCONSIN, DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0099

Case Type: PA

DECISION NO. 36171

Appearances:

Sean Daley, AFSCME Wisconsin Council 32, P.O. Box 19, Ashippun, Wisconsin, appearing on behalf of Timothy Immel.

Michael Gentry, Department of Administration, 101 E. Wilson Street, 10th Floor, Post Office Box 7864, Madison, Wisconsin, appearing on behalf of State of Wisconsin, Department of Corrections.

DECISION AND ORDER

On November 2, 2015, Timothy Immel filed an appeal with the Wisconsin Employment Relations Commission pursuant to § 230.44(1)(c), Stats., asserting that he had been disciplined without just cause by the State of Wisconsin Department of Corrections. The Commission assigned the appeal to Hearing Examiner Karl R. Hanson who conducted a hearing on January 26, 2016, in Plymouth, Wisconsin, and issued a proposed decision on February 23, 2016, upholding the suspension. No objections to the proposed decision were filed and the matter became ripe for Commission action on March 25, 2016.

Being fully advised in the premises, the Commission makes and issues the following:

FINDINGS OF FACT

1. Timothy Immel is employed as a Correctional Officer 2 by the Department of Corrections (“DOC”) at the Kettle Moraine Correctional Institution (“KMCI”) and had permanent status in class at the time he was disciplined.

2. The DOC is an agency of the State of Wisconsin that operates KMCI in Plymouth, Wisconsin.

3. On April 11, 2015, while working overtime as a housing unit sergeant, Immel was inattentive to his assigned duties.

4. On June 2, 2015, Immel was given a one-day suspension, without pay, for failing to comply with DOC work policies and directives, inattentiveness, and negligence in the performance of his duties.

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. The State of Wisconsin, Department of Corrections had just cause within the meaning of § 230.34(1)(a), Stats., to discipline Timothy Immel with a one-day suspension.

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

ORDER

The one-day suspension issued to Timothy Immel is affirmed.

Signed at the City of Madison, Wisconsin, this 26th day of July 2016.

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.

Timothy Immel had permanent status in class at the time of his one-day suspension. His appeal alleges that the suspension was not based on just cause.

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

On April 11, 2015, Immel worked an overtime shift at KMCI as a housing unit sergeant (and therefore a lead worker) on Unit 16. Shortly after Immel's shift ended, a Unit 16 inmate reported that he had been assaulted by two other inmates in the bunk area of Unit 16 during the prior shift. As a result of this allegation, the local sheriff's department undertook an investigation.

In the course of the investigation the sheriff's department reviewed security footage of Unit 16 taken over the course of Immel's shift. Upon doing so, the sheriff's department reported back to KMCI that the correctional staff on Unit 16 appeared to have been inattentive around the time of the assault.

Based on this information, KMCI initiated its own investigation, which also included a review of the camera footage from Immel's April 11, 2015 shift.¹ The footage showed Immel spending significant time throughout the shift reading at the sergeant's desk in Unit 16. At times, he was reading with his feet up on the desk or with his back to the inmates in Unit 16's housing area. At least part of the time Immel was reading an ESPN magazine. It is unknown whether Immel's other reading material was personal or work-related.

¹ Due to technical and / or user error, all but a small portion of the security camera footage from Unit 16 on April 11, 2015 was deleted. A witness testified regarding his review of the security footage before it was deleted and regarding notes he had created when he watched it.

On the shift in question, Immel was working a “straight eight”, which means the shift did not have a designated break time. An employee on a straight eight shift is instead allowed to work at a reduced level of activity for a period of time, while remaining at the post and maintaining responsibility for the supervision and operation of the work area. The testimony of various KMCI employees, including management personnel, revealed confusion as to the level of attentiveness that is to be maintained during periods of reduced activity. It also is unclear whether employees are permitted to read personal materials at those times. DOC generally permits employees to bring one item of personal reading material into KMCI to use on breaks, but it contends that such a privilege does not apply to shifts that do not allow for a designated break. There is no written policy that makes this point clear.

Notwithstanding these areas of confusion, DOC has proven that it had just cause for suspending Immel for one day. Regardless of what exactly is meant by “reduced” activity, the evidence shows that Immel spent an amount of time reading during his shift that greatly exceeded what any reasonable person would believe was allowed, and he assumed physical postures that no reasonable person would have found sufficiently attentive. With this level of attention, Immel could not have been purposefully monitoring the inmates under his charge. Indeed, a perception of inattentiveness is what prompted the local sheriff’s department to bring the content of the video footage to DOC’s attention.

At the time when the inmate assault occurred, the camera footage shows Immel’s attention being drawn away only momentarily from his reading, because he had heard a noise out of sight. Immel claims he thought it was the sound of a footlocker sliding along the floor, and he believed the sound had been made by an inmate standing at the foot of a bunk that Immel could see from his sitting position. Had Immel not been absorbed by his reading, though, he might have taken the initiative as a lead worker on his shift to discover that the source of the sound was an in-progress assault. His failure to do so caused his inattentiveness to rise to the level of negligence.

Immel has a 25-year record of service with DOC with very little discipline. Nevertheless, he received a letter of reprimand for failing to exercise good judgment in October of 2014. The one-day suspension Immel challenges here was the next step in DOC’s progressive disciplinary system.

For all of these reasons, discipline was warranted and a one-day suspension was not excessive.

Signed at the City of Madison, Wisconsin, this 26th day of July 2016.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott, Chairman

Rodney G. Pasch, Commissioner

James J. Daley, Commissioner