

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

GARY GEORGE, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0118

Case Type: PA

DECISION NO. 36327-A

Appearances:

William Brauner, N9507 Hwy 12, Merrilan, Wisconsin, on behalf of Appellant Gary George.

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

DECISION AND ORDER

On February 29, 2016, Gary George filed an appeal with the Wisconsin Employment Relations Commission, pursuant to § 230.44(1)(c), Stats., asserting he had been suspended for one day without just cause by the State of Wisconsin Department of Corrections. The Commission assigned Laurie A. Millot and, subsequently, Danielle L. Carne to serve as Hearing Examiner. Examiner Carne conducted a hearing on August 16, 2016, in Black River Falls, Wisconsin. Thereafter, the parties submitted written post-hearing arguments, the last of which was received on October 4, 2016, at which point the record was closed.

On November 20, 2016, Examiner Carne issued a proposed decision affirming the suspension. No objections were filed and the matter became ripe for Commission consideration on January 3, 2017.

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

FINDINGS OF FACT

1. Gary George is employed as a Correctional Sergeant by the Department of Corrections at the Jackson Correctional Institution (“JCI”), and he had permanent status in class at the time of his discipline.

2. DOC is an agency of the State of Wisconsin that operates JCI in Black River Falls, Wisconsin.

3. On June 4, 2015, George directed angry profanities toward JCI management.

4. For his conduct of June 4, 2015, George was given a one-day suspension.

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 Gary George 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 of Gary George by the State of Wisconsin Department of Corrections is affirmed.

Signed at the City of Madison, Wisconsin, this 13th day of February 2017.

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.

Further, 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.

The State has the burden of proof to establish that George 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).

An important point of contention between the parties in this case is the exact basis for the discipline. The disciplinary letter recounts a chain of events covering a two-day period, starting with George's encounter with Warden Lizzie Tegels on June 3, 2015, and ending with his escorted departure from JCI on June 4, 2015. George believes the discipline was based on events from both days, which is problematic in his view because his request for a representative at the June 3 meeting was denied under the theory that it was not disciplinary. Based on the way the disciplinary letter is written, we understand how George might have developed the impression that the events of June 3 constituted a partial basis for his discipline. Nevertheless, based on DOC's assertion that the events of June 4 were the only basis for the discipline, we evaluate that conduct in isolation.

The record presents undisputed evidence regarding the events of June 4, 2015. At hearing, witnesses described George's conduct on that day as obstreperous and colored by the use of profanity. He erupted twice: first when he visited the security office with the job instruction document and second when he was placed on administrative leave and escorted off the jobsite. The corroborated descriptions of these incidents were not controverted by any witness at hearing, including George who did not provide testimony. In our view, this conduct standing alone is sufficient to warrant a one-day suspension. There is no question that such behavior is not appropriate, particularly when directed at superiors and occurring on the very heels of a job instruction outlining the unacceptability of such conduct.

Even the most generous contemplation of other points raised by George has not persuaded us that the investigation and discipline were unfair or an attempt to harass or bully him. The record shows that George was invited to "sit" at the beginning of the June 3, meeting with Tegels and Deputy Warden Buesgen, and later in the meeting Buesgen stated that George

had been on a “long leash”. We are not persuaded that the purpose of these fairly common statements was to portray George as a dog. Also, the meeting of June 3 was not disciplinary in nature, and the denial of George’s request for a representative does not raise suspicion.

Nor are we concerned that George was denied what is typically an immediate opportunity to do an intake interview regarding the harassment and bullying claim. Certainly George’s agitation might have been exacerbated by the fact that he first was told the intake interview would occur that day and then later told it could not occur right away due to the administrative leave decision. Nevertheless, DOC has shown that this change in plan was necessitated by George’s demeanor, and he was accurately reassured that the intake interview would happen on a later date. We also are not troubled by the fact that DOC failed to interview every single witness to George’s conduct of June 4. The scope of the investigation appears to have been adequate, and George did not take advantage of the opportunity at hearing to present witnesses to controvert DOC’s conclusions regarding what occurred. Finally, the fact that the individuals from DOC’s central office assigned to do the disciplinary investigation knew Tegels is nowhere near sufficient to support George’s suggestion of bias or corruption on their part.

Signed at the City of Madison, Wisconsin, this 13th day of February 2017.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott, Chairman

Rodney G. Pasch, Commissioner

James J. Daley, Commissioner