

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

GERALD REIFFERS, Appellant,

vs.

STATE OF WISCONSIN, DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0022

Case Type: PA

DECISION NO. 36329

Appearances:

Jim Parrett, Field Representative, AFSCME Wisconsin Council 32, N14436 - 17th Avenue, Necedah, Wisconsin, appearing on behalf of Gerald Reiffers.

Michael Gentry, Department of Administration, 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 DENYING MOTION TO DISMISS

Gerald Reiffers is a teacher employed by the State of Wisconsin, Department of Corrections and works at the Columbia Correctional Institution. In June of 2014, Reiffers took medical leave and requested that it be treated as Family and Medical Leave Act (FMLA) leave. The leave which was approved was for the period from June 3 until August 10, 2014. On June 24, 2014, Reiffers attempted to return to work and presented a fitness for duty release. The form noted that Reiffers could return to work but may need time off from work in the future if there were “flare-ups” of his condition.¹ DOC refused to permit Reiffers to return to work indicating that he had to either have a completely unrestricted return to work release or a new FMLA certification that certified him to take unscheduled, intermittent FMLA leave. Reiffers finally obtained (and DOC processed) new leave forms and he was permitted to return to work on July 9, 2014. The consequence of the delay was the loss of pay for the period from June 24 through July 8, 2014. DOC has moved to dismiss asserting we lack jurisdiction. Reiffers submitted a timely response.

¹ The movant provided an affidavit from the local human resources designee, including the agency’s forms and rules, but did not provide a copy of Reiffers’ fitness for duty release.

Clearly, a consequence of DOC's action was to "suspend" Reiffers from employment. Arguably not a disciplinary suspension, but a suspension nevertheless. Reiffers was ready, able and willing to return to work on June 24, 2014. The decision not to reinstate him was solely that of DOC. DOC's argument that this was a voluntary leave is disingenuous. The human resources manager had the option to return Reiffers to work and had a duty to "evaluate" the circumstances under applicable DOC regulations. More importantly, DOC may well have had a legal duty to return Reiffers to work. The FMLA regulations require that an employer presented with a return to work release "may not delay the employee's return to work while contact with the health care provider is made." 29 C.F.R. § 825.310(c). As a practical matter, nothing had changed with regard to Reiffers' health status or ability to return to work between June 24 and July 8, 2014. Reiffers was in effect suspended from work because of a perceived need to complete some form which basically repeated the same information contained on the original form.

We have recognized that the burden of proof in forced medical leave matters is different than in disciplinary matters. *Walsh v. DOC*, Dec. No. 35041 (WERC, 2014); *Anderson v. DSPS*, Dec. No. 34656-A (WERC, 2014). Reiffers is entitled to the opportunity to prove there was no just cause for his suspension from employment and, accordingly, we deny the motion to dismiss.

ORDER

The motion to dismiss is denied.

Signed at the City of Madison, Wisconsin, this 11th day of April 2016.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott, Chairman

Rodney G. Pasch, Commissioner

James J. Daley, Commissioner