

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

---

SUSAN KIMBALL, Appellant,

vs.

STATE OF WISCONSIN, DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0111

Case Type: PA

DECISION NO. 36338

---

**Appearances:**

Susan Kimball, 530 W. Jefferson, Waupun, Wisconsin, appeared on her own behalf.

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

**DECISION AND ORDER**

On January 6, 2016, Susan Kimball filed an appeal with the Wisconsin Employment Relations Commission pursuant to § 230.44(1)(c), Stats., asserting that she had been suspended for five days without just cause by the State of Wisconsin, Department of Corrections. The Commission assigned the appeal to Examiner Karl R. Hanson who conducted a hearing on March 31, 2016, in Waupun, Wisconsin. The parties made oral arguments at the conclusion of the hearing.

On April 29, 2016, Examiner Hanson issued a proposed decision concluding the State of Wisconsin, Department of Corrections had just cause to suspend Susan Kimball. No objections to the proposed decision were filed, and the matter became ripe for Commission consideration on June 1, 2016.

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

### **FINDINGS OF FACT**

1. Susan Kimball is employed as a Correctional Sergeant by the State of Wisconsin, Department of Corrections (“DOC”) at the Dodge Correctional Institution (“DCI”) and had permanent status in class at the time she was disciplined.

2. The Wisconsin Department of Corrections is an agency of the State of Wisconsin and operates DCI in Waupun, Wisconsin.

3. On April 29, 2015, Kimball failed to exercise good judgment when she yelled at another employee who was then dealing with prison visitors; Kimball’s conduct was demeaning of her coworker.

4. Kimball was given a five-day suspension on June 30, 2015, without pay, for failing to comply with DOC work policies and directives, inattentiveness, failing to exercise good judgment in the performance of her duties, and demeaning her coworker.

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 Susan Kimball with a five-day suspension.

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 issued to Susan Kimball is affirmed.

Signed at the City of Madison, Wisconsin, this 22nd day of June 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.

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 Kimball 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 29, 2015, Kimball worked as the lobby sergeant at DCI. She controlled access to and exit from DCI. Kimball worked in a protected control station with large windows, monitors, and mirrors and controlled the opening and closing of various doors into DCI. Assisting Kimball in the performance of her duties was Correctional Officer 2 Stephen Kain. Kain worked at a desk immediately outside of Kimball's control station and in DCI's lobby area.

In addition to assisting Kimball with her duties, Kain performed various other duties as the lobby officer. Specifically, on April 29, 2015, Kain processed visitors for admission into DCI to see inmates. Kain does not normally work the lobby officer post. On April 29, 2015, he was working overtime at that post. While aware of the lobby officer's duties, Kain did not customarily perform them. Although not stated as part of the lobby officer's duties, the lobby officer typically alerts the lobby sergeant when visitors are ready to be admitted to DCI by calling out "Left Door."

The incident described below occurred on April 29, 2015 when: (1) several DCI staff members were waiting for Kimball to open a door allowing them to exit DCI; (2) several visitors were waiting in the lobby to be processed by Kain for admission into DCI; (3) Kain was assisting two visitors standing at his desk in the lobby; and (4) several visitors were at the

“left” door waiting for Kimball to open it so they could enter DCI. In total about eight visitors where in the lobby area.

A visitor started to pull on the “left” door’s handle, causing it to rattle, perhaps demonstrating impatience to enter DCI. At the same time, DCI employees were gathering to leave through a different door controlled by Kimball. In response, Kimball yelled at Kain through a pass through opening that exists between their posts, “It’s your job to tell me when to open the left door. I don’t have eyes in the back of my head.”

Kain and other DCI employees testified that Kimball’s statement was yelled out loudly, could be heard by staff and the waiting visitors, and was made with “attitude” and sarcasm. Kain turned red, but responded only by saying, “Yes, ma’am.”

Kimball’s words and tone diminished Kain’s authority in the lobby area in front of DCI visitors. Kimball’s words were disrespectful and reflected poorly upon the management of DCI in front of visitors who were at DCI to see inmates. Kimball was demeaning of Kain, a coworker, in front of members of the public. DOC prohibits such demeaning behavior by a work rule.

Kimball also demonstrated a failure to exercise good judgment in violation of a DOC work rule. Kimball could (and should) have exercised greater self-control and corrected Kain in a more private manner. She could have used a telephone to talk with him or she could have called him over to the pass through portal and talked with him quietly so as to not allow visitors to hear their conversation. Kain was unfamiliar with the unwritten rules of how the lobby officers generally assisted the lobby sergeant. As a lead worker, Kimball could have defined her expectations of Kain at the start of their shift.

DOC demonstrated by a preponderance of the evidence that Kimball demeaned Kain and failed to exercise good judgment by her actions on April 29, 2015.

DOC did not establish by a preponderance of the evidence that Kimball was inattentive in the performance of her duties. DOC also failed to establish what, if any, written policy, executive directive, or administrative directive, Kimball allegedly violated on April 29, 2015, other than the work rules referred to above. In its disciplinary letter, DOC alleged that Kimball was inattentive and violated policy or directive.

Kimball previously received a five-day suspension within the preceding twelve months. Under DOC’s policy for progressive discipline, DOC could have disciplined Kimball with a ten-day suspension. For reasons that are unclear, DOC imposed a five-day suspension again and did not advance Kimball to a ten-day suspension, which is the penultimate step in DOC’s progression of discipline before discharge.

Suspending Kimball for five days without pay for demeaning Kain and failing to exercise good judgment on April 29, 2015, was not excessive discipline. DOC had just cause to discipline Kimball with a five-day suspension for her conduct on April 29, 2015.

Signed at the City of Madison, Wisconsin, this 22nd day of June 2016.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

---

James R. Scott, Chairman

---

Rodney G. Pasch, Commissioner

---

James J. Daley, Commissioner