

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

---

WILLARD FRANZEN, Appellant,

vs.

STATE OF WISCONSIN, DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0092

Case Type: PA

DECISION NO. 36395

---

**Appearances:**

Troy Bauch, Field Representative, AFSCME Wisconsin Council 32, 8033 Excelsior Drive, Madison, Wisconsin, appearing on behalf of Willard Franzen.

Amesia Xiong, Attorney, Department of Administration, 101 East Wilson, 10th Floor, P.O. Box 7864, Madison, Wisconsin, appearing on behalf of the State of Wisconsin, Department of Corrections.

**DECISION AND ORDER**

On August 18, 2015, Willard Franzen filed an appeal with the Wisconsin Employment Relations Commission pursuant to § 230.44(1)(c), Stats., asserting that he had been discharged without just cause by the State of Wisconsin, Department of Corrections. Hearing was held before Commission Examiner Lauri A. Millot on June 15, 2016, in Stanley, Wisconsin. The State made oral argument at the conclusion of the hearing, and Franzen filed written argument on July 15, 2016. Examiner Millot left the Commission's employment before a proposed decision was issued and the appeal was reassigned to Examiner Peter G. Davis.

On August 11, 2016, Examiner Davis issued a Proposed Decision and Order concluding there was just cause for the discharge. No objections were filed and the matter became ripe for Commission action on September 13, 2016.

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

**FINDINGS OF FACT**

1. Willard Franzen was employed by the State of Wisconsin, Department of Corrections as a Correctional Officer at the Stanley Correctional Institution and had permanent status in class at the time of his discharge on June 29, 2015.

2. On May 20, 2015, while patrolling the outer perimeter of the Institution in a vehicle, Franzen spent at least ten minutes viewing material on his cell phone instead of performing his security duties. Later in his shift, Franzen accidentally drove his vehicle into a post causing \$2,200 in damage. During the investigation into the accident, Franzen initially denied having a cell phone and denied watching material on his cell phone while on duty.

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 over this appeal 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 discharge Willard Franzen.

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

**ORDER**

The appeal is dismissed.

Dated in Madison, Wisconsin, on the 26th day of September 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.

Willard Franzen had permanent status in class at the time of his discharge and his appeal alleges that the discharge was not based on just cause.

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

Franzen's job was to drive slowly around the outer perimeter of the correctional facility to watch for attempts to break in or out or for other actions that might compromise the security of the facility. He was armed with a loaded shotgun. While on duty, Franzen admits he pulled over and watched material on a personal cell phone for at least ten minutes rather than maintaining vigilance. Later in the same shift, Franzen accidentally ran the vehicle into a post causing \$2,200 damage. During the investigation into the accident, Franzen lied about having a cell phone and watching material on the phone until it was obvious the cell phone was going to be discovered.

Franzen concedes that discipline was appropriate but argues that discharge was too severe a penalty. In support of that argument, he presented evidence of multiple instances in which far less discipline was imposed upon employees who had accidents, or who had cell phones in their possession while on duty, or who watched non-work related material while on duty, or who lied during an investigation. However, as the State persuasively points out, none of those employees engaged in all four types of misconduct applicable to Franzen. Therefore, we reject the claim that Franzen's discipline was not consistent with discipline received by comparable employees. Further, it is apparent that Franzen's actions had the potential to compromise the security of the correctional facility and that his lies compromised his future as

a credible witness in future proceedings. Given the foregoing, we conclude that the State had just cause to discharge Franzen.<sup>1</sup>

Dated in Madison, Wisconsin, on the 26th day of September 2016.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

---

James R. Scott, Chairman

---

Rodney G. Pasch, Commissioner

---

James J. Daley, Commissioner

---

<sup>1</sup> To the extent Franzen argues that possession of the cell phone was not clearly prohibited while he was performing his duties outside the perimeter, his utterance just prior to the phone's discovery persuasively establishes that he knew otherwise. As investigators were about to find his cell phone in his backpack, Franzen said "Oh shit. I'm fucked."