

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

VALENCIA GUILLONTA, Appellant,

vs.

STATE OF WISCONSIN, DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0151

Case Type: PA

DECISION NO. 36402

Appearances:

Valencia Guillonta, 3346 N. 1st Street, Milwaukee, Wisconsin, appeared on her own behalf with her representative, Reinis Ozolins.

Mark A. Herman, 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 May 20, 2016, Appellant Valencia Guillonta filed an appeal with the Wisconsin Employment Relations Commission, pursuant to § 230.44(1)(c), Stats., asserting that she had been demoted 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 July 6, 2016, in Milwaukee, Wisconsin. The parties made oral arguments at the conclusion of the hearing.

On August 19, 2016, Examiner Hanson issued a Proposed Decision and Order concluding there was just cause for the demotion. The Appellant filed objections and the State filed a response. The matter became ripe for Commission action on September 14, 2016.

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

FINDINGS OF FACT

1. Valencia Guillonta is employed by the State of Wisconsin, Department of Corrections and had permanent status in class at the time she was disciplined.

2. On September 7, 2015, Guillonta and two correctional officers used force to place restraints on Inmate Colletti when she physically resisted their efforts to restrain her.

3. Guillonta was involuntarily demoted from the rank of Supervisor 2 (Captain) to Correctional Sergeant on February 29, 2016, for failing to characterize and treat the interaction with Inmate Colletti as a “use of force” incident, in violation of DOC’s work rules.

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 demote Valencia Guillonta.

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.

Signed at the City of Madison, Wisconsin, this 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.

Valencia Guillonta had permanent status in class at the time of her demotion and her appeal alleges that the demotion was not based on just cause.

The State has the burden of proof to establish that Guillonta 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 September 7, 2015, Guillonta was on duty as a Supervisor 2 (Captain) at the Milwaukee Secure Detention Facility (“MSDF”). Guillonta was called to a housing unit to deal with an inmate, Colletti, who refused to return to her cell from a shower area when directed to do so. Guillonta directed two correctional officers to assist her. When Colletti did not comply with Guillonta’s verbal commands, Guillonta determined it was necessary for the officers to enter the shower area, put restraints on Colletti, and move her to temporary lock up (“TLU”).

If an inmate offers any physical resistance that staff must overcome, DOC characterizes the interaction as a use of force incident. DOC defines force as “[t]he exercise of strength or power to overcome resistance or to compel another to act or to refrain from acting in a particular way.” DOC differentiates between passive resistance and physical resistance. They define passive resistance as “[r]esistance from a subject which does not physically counteract staff’s attempts at control and which does not create a risk of bodily harm to the staff or to another.” DOC employees who testified in this matter uniformly agreed that even the slightest physical resistance by an inmate which must be overcome results in the use of force by staff.

Guillonta describes Colletti’s behavior on September 7, 2015 as passive resistance. She testified that the two correctional officers assisting her were new and had difficulty placing restraints on Colletti. She therefore provided them with hands on training and had them place the restraints on Colletti properly after their first attempt was not correct. Guillonta maintains

that the officers stabilized Colletti and placed the restraints on her, but at no time did Colletti offer physical resistance.

While restraining Colletti, one of the officers told her to “stop resisting.” Guillonta described this response as unnecessary and something that an inexperienced officer may say to an inmate based upon his training.

One of the officers involved in the incident testified that Colletti, who was much smaller than the officers, offered some degree of physical resistance. She slid along a wall and was stabilized against it with the officer’s leg and torso. While stabilized against the wall, Colletti continued to move, attempting to turn toward Guillonta while talking to her.

Although it is difficult to clearly see details, security camera footage corroborates this. In the video, Guillonta and two officers can be seen with Colletti. At one point in the video the entire group moves abruptly along the wall. DOC’s witnesses and, tellingly, one of Guillonta’s witnesses agreed that at that point in the video the group of officers is using force against the inmate.

DOC does not fault Guillonta for using force in this situation. The warden and those reviewing the incident determined that the use of force against Colletti was appropriate. The warden and DOC fault Guillonta for not then following DOC’s established procedure after a use of force incident. This includes steps such as debriefing staff, preparing written statements regarding the incident, and offering medical care to the inmate. None of these things happened after Colletti was moved to TLU.

Supervisors at MSDF, including Guillonta, are routinely trained on the use of force and the procedures to be completed after a use of force incident. Guillonta was recently disciplined with a ten-day suspension for another instance in which she used force and did not complete the procedures required afterwards.

Guillonta failed to recognize that Colletti’s resistance, slight as it was, resulted in the use of force by her and her staff. The failure to then document the incident violated DOC’s policies and creates potential liability for the agency in the event of a claim subsequently filed by the inmate. Guillonta committed the misconduct alleged by DOC. Given her recent reprimand and ten-day suspension for a similar infraction, discipline was warranted.

The warden at MSDF determined that Guillonta could not maintain her position as a supervisor while failing to understand and enforce the procedures related to the use of force. He considered discharge to be a last resort because of the time and resources invested in Guillonta as an employee. Under its system of progressive discipline and following a ten-day suspension, DOC would normally discharge an employee for any work rule infraction. In this case, DOC kept Guillonta employed, but in a role in which she would not have supervision over incidents involving the use of force. Demotion was not excessive discipline.

DOC had just cause to demote Guillonta for failing to follow its procedures related to the use of force on September 7, 2015.

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

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott, Chairman

Rodney G. Pasch, Commissioner

James J. Daley, Commissioner