

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

---

JARED FRANKE, Appellant,

vs.

STATE OF WISCONSIN, DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0119

Case Type: PA

DECISION NO. 36411

---

**Appearances:**

Sean Daley, AFSCME Wisconsin Council 32, P.O. Box 19, Ashippun, Wisconsin, appearing on behalf of Jared Franke.

William H. Ramsey and Amesia N. Xiong, Department of Administration, 101 E. Wilson Street, 10th Floor, P.O. Box 7864, Madison, Wisconsin, appearing on behalf of the State of Wisconsin, Department of Corrections.

**DECISION AND ORDER**

On March 1, 2016, Appellant Jared Franke filed an appeal with the Wisconsin Employment Relations Commission, pursuant to § 230.44(1)(c), Stats., asserting that he had been suspended for one day without just cause by the State of Wisconsin, Department of Corrections. On July 13, 2016, the parties filed a Stipulation of Facts and Stipulated Exhibits with the Commission. The parties also filed written arguments, the last of which was received on July 13, 2016. The Commission assigned the appeal to Examiner Karl R. Hanson.

On August 26, 2016, Examiner Hanson issued a proposed decision dismissing the appeal. No objections were filed and the matter became ripe for Commission consideration on September 27, 2016.

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

**FINDINGS OF FACT**

1. Jared Franke is employed by the State of Wisconsin, Department of Corrections and had permanent status in class at the time he was disciplined.

2. On May 24, 2015, Franke struck another DOC employee in the arm with his elbow after engaging in a verbal altercation that the other employee started.

3. On November 4, 2015, DOC suspended Franke for one day, for failing to exercise good judgment, 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 suspend Jared Franke for one day.

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 at Madison, Wisconsin, this 17th day of October 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.

Jared Franke had permanent status in class at the time of his discipline and his appeal alleges that the discipline was not based on just cause.

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

The parties stipulate that on May 24, 2015, Correctional Officers Jared Franke and Scott Hansen got into a verbal altercation at work. Events began when Hansen questioned Franke about his duties in a way that implied Hansen was dissatisfied that he, instead of Franke, had to perform a certain task.

Franke eventually walked away and in doing so hit Hansen's arm with his own elbow. Hansen then challenged Franke "to finish this in the parking lot." Franke submitted an incident report (minimizing his own role in the events and omitting mention of the elbow check) which started an investigation.

Franke and Hansen did not have any confrontations with each other before this event and have not had any since. Both requested some form of intervention to discuss their relationship, but DOC declined to engage in such a conflict resolution effort. Instead, DOC punished the two officers for their respective roles in the May 24, 2015 incident.

DOC had just cause to suspend Franke for one day.

Hansen committed misconduct by starting a verbal altercation with Franke. Once Franke took the bait and continued the argument, from which he could have walked away, he also engaged in misconduct. Escalating the confrontation by hitting Hansen's arm with his elbow was certainly misconduct on Franke's part.

Despite our awareness that prison is a “PG-13” work environment (as pointed out by Franke’s representative), Franke’s conduct warranted discipline. DOC is justified in expecting its employees to not engage in or escalate verbal confrontations with coworkers. Franke previously received a written reprimand for unrelated conduct. A one-day suspension after this incident was not excessive discipline.

Dated at Madison, Wisconsin, this 17th day of October 2016.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

---

James R. Scott, Chairman

---

Rodney G. Pasch, Commissioner

---

James J. Daley, Commissioner