

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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PAUL ZEITLER, Appellant,

vs.

STATE OF WISCONSIN, DEPARTMENT OF TRANSPORTATION, Respondent.

Case ID: 446.0004

Case Type: PA

Decision No. 36718

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**Appearances:**

Paul Zeitler, N3916 County Road AB, Luxemburg, Wisconsin, appeared on his own behalf.

Michael J. Gentry, 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 Transportation.

**DECISION AND ORDER**

On May 6, 2016, Paul Zeitler filed an appeal with the Wisconsin Employment Relations Commission, pursuant to § 230.44(1)(c), Stats., asserting that he had been suspended from his employment for one day without just cause by the State of Wisconsin, Department of Transportation. The Commission assigned the appeal to Examiner Karl R. Hanson who conducted a hearing on August 26, 2016, in Green Bay, Wisconsin. The parties filed written arguments, the last of which was received on September 3, 2016.

On October 7, 2016, Examiner Hanson issued a proposed decision affirming the suspension. Zeitler filed objections<sup>1</sup> and the State filed a response. The matter became ripe for Commission action on November 11, 2016.

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

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<sup>1</sup> Attached to the objections were four documents. Zeitler has not persuaded us as to why these documents could not have been presented during the hearing and thus they have not been considered. Had they been presented at hearing, the outcome of this matter would not have changed.

**FINDINGS OF FACT**

1. Paul Zeitler is employed by the State of Wisconsin, Department of Transportation and had permanent status in class at the time he was disciplined.

2. On November 24, 2015, agents of the Department of Transportation discovered that Zeitler kept various documents which contained personal identifiers in his work locker.

3. Zeitler was disciplined with a one-day suspension on December 21, 2015.

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 Transportation had just cause within the meaning of § 230.34(1)(a), Stats., to suspend Paul Zeitler 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 6th day of December 2016.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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James R. Scott, Chairman

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Rodney G. Pasch, Commissioner

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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.

Paul Zeitler had permanent status in class at the time of his one-day suspension without pay and his appeal alleges that the discipline was not based on just cause.

The State has the burden of proof to establish that Zeitler 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 November 24, 2015, employees from the Department of Transportation (“DOT”) Compliance, Audit and Fraud Unit (“CAFU”) searched the employee lockers at the Green Bay Division of Motor Vehicles (“DMV”) office. DOT initiated the search due to the conduct of another employee.

In the course of searching Zeitler’s locker, CAFU agents found multiple documents which contained personal identifiers. It is against DMV work rules and policies, except under limited and controlled circumstances, to store documents containing personal identifiers at its field offices. Personal identifiers include a person’s name, address, phone number, social security number, or image.

DOT’s investigators subsequently determined that many of the documents were training materials provided to Zeitler or did not contain personal identifiers. The investigators, however, determined that 167 records found in Zeitler’s locker contained personal identifiers. Some of these records included confiscated Social Security cards, driver license products, birth certificates, residency documents, and Social Security numbers written on paper. Some of these documents were original records or altered original documents.

The documents related to the period of 1993 to 2005. For a time during this period, Zeitler and other field agents were required to confiscate fraudulent records. At least one supervisor during this period told Zeitler and others to keep copies of documents they flagged

as fraudulent in case they ever needed to justify their actions or were called to testify in court. This changed by 2007.

Soon after, and in response to federal mandates regarding the protection of personal identifiers, DMV issued new policies forbidding employees from retaining any documents containing personal identifiers. Suspect documents were to be sent to CAFU immediately and no copies were to be retained at a field office. Documents held at a field office, awaiting some action from a customer, were to be kept in a designated, locked place.

These changes were announced to employees through email bulletins that employees are required to read and through announcements by managers. As late as November 19, 2015, Zeitler's supervisor reminded the Green Bay field office staff of the requirements for protection of personal identifiers during a brief meeting before the office opened.

Zeitler was aware of the changes and the current requirements related to documents containing personal identifiers. Zeitler reasoned that it was acceptable for him to keep the documents he had collected in his locker despite changes to the policy. He assumed that, because he was given permission or directed to keep some of the documents in the past, the policy changes only applied prospectively.

Ten years on from 2005 (when the most recent documents he kept were dated), and in light of the widely discussed policy changes regarding documents containing personal identifiers, it was not reasonable for Zeitler to assume the changes were only prospective. The policies apply to any documents containing personal identifiers, not just documents of a date certain and then forward. Years had passed since Zeitler was directed or specifically allowed to keep copies of documents and he was never called into court. It is reasonable that if Zeitler had any question about the broad changes, particularly given the inherent conflict between the plain language of the policy and the trove of documents containing personal identifiers kept in his locker, he should (and could at any time over the span of years) have asked a supervisor.

Although he was not a designated mentor, Zeitler also believed that some of the documents facilitated his informal mentorship of newer employees, who may not know what types of suspicious things to look for in documents. DOT training documents distributed to employees are not original documents and are redacted to not contain personal identifiers. Even if some of the documents Zeitler kept were fraudulent, the fact that they contain a name or Social Security number, real or fictitious, means the documents still contain personal identifiers. Additionally, the picture of a person is always a personal identifier. Zeitler's willingness to assist new employees is commendable, but he was not assigned to such a role or required to keep any training materials for it.

Zeitler also admitted to periodically accessing customer electronic records for the purpose of determining if he could purge any paper records he kept in his locker. Although he may not have done so within the past year, he did so after implementation of DMV's work rules which prohibit accessing electronic records without a business purpose. As maintaining

his personal collection of documents was not related to a current business purpose, Zeitler accessed such electronic records in violation of the DMV's rules.

Zeitler committed the misconduct alleged by DOT. He has a long employment history with DOT and experienced no discipline during his career until this incident. Nonetheless, his disregard for requirements related to the protection of personal identifiers is significant. The importance of safeguarding such information in the modern age is readily apparent. Despite his prior employment history, it was not excessive for DOT to discipline Zeitler with a one-day suspension given the significance of Zeitler's violation.

DOT had just cause to suspend Zeitler for one day as discipline for his actions.

Dated at Madison, Wisconsin, this 6th day of December 2016.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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James R. Scott, Chairman

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Rodney G. Pasch, Commissioner

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James J. Daley, Commissioner