

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

SUSAN RODENCAL, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0177

Case Type: PA

DECISION NO. 36761

Appearances:

Susan Rodencal, 436 Pine Tree Drive, Fond du Lac, Wisconsin, appeared on her own behalf together with her representative, John Reese.

Anfin Jaw, Department of Administration, 101 E. Wilson Street, 10th Floor, P.O. Box 7864, Madison, Wisconsin, appeared on behalf of the State of Wisconsin Department of Corrections.

DECISION AND ORDER

On October 14, 2016, Susan Rodencal filed an appeal with the Wisconsin Employment Relations Commission, pursuant to § 230.44(1)(c), Stats., asserting that she had been suspended from her employment for three 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 November 29, 2016, in Fond du Lac, Wisconsin. The parties made oral arguments at the close of the evidentiary hearing.

On December 23, 2016, Examiner Hanson issued a proposed decision affirming the suspension. No objections to the proposed decision were filed and the matter became ripe for Commission consideration on January 24, 2017.

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

FINDINGS OF FACT

1. Susan Rodencal is employed by the State of Wisconsin Department of Corrections and had permanent status in class at the time she was suspended.

2. On March 24, 2016, Rodencal notified a supervisor at Taycheedah Correctional Institution that she could not work her scheduled overtime shift, five minutes before it was scheduled to begin.

3. Rodencal was disciplined with a three-day suspension on June 6, 2016, by the Department of Corrections for failing to notify a supervisor of an absence at least ninety minutes before her start time as required.

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 Rodencal with a three-day suspension.

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 13th day of February 2017.

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 Rodencal had permanent status in class at the time of her three-day suspension without pay and her appeal alleges that the discipline was not based on just cause.

The State has the burden of proof to establish that Rodencal 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 March 24, 2016, Rodencal was scheduled to work an overtime shift beginning at 10:00 p.m. at the Taycheedah Correctional Institution in Fond du Lac, Wisconsin. About a week earlier, a supervisor at Taycheedah contacted Rodencal and offered her the overtime shift. She accepted the shift and it was added to her schedule. The Department of Corrections uses an online scheduling tool that employees may access at work or at home to view their scheduled work assignments. Rodencal does not frequently check the online calendar because, as a transportation officer, her actual hours of work vary and are not the standard hours used in the online calendar. She tracks her schedule herself.

Rodencal was dealing with significant health issues for both of her parents at the time and forgot that she was scheduled to work on March 24. That evening, she took prescribed medication before preparing for bed. At about 9:55 p.m. another officer from Taycheedah called Rodencal because she had not arrived for her scheduled shift. Ultimately, Rodencal spoke with a supervisor, Captain Tracy Malouf. Rodencal told Malouf she did not think she could work that evening due to the effects of medication she had taken due to her illness, and she would use Family and Medical Leave Act (“FMLA”) leave previously authorized her by a doctor. Although Rodencal was authorized to use FMLA leave as needed, she did not use it with any frequency.

Rodencal was able to use FMLA leave, but she was still required under its terms to follow DOC’s rules to provide timely notice when she would use it. Rodencal and other

employees are required to notify a supervisor at Taycheedah of any absence at least ninety minutes prior to a scheduled shift. Rodencal knew of DOC's requirement to notify the institution at least ninety minutes prior to any absence. Rodencal provided notice about five minutes before her shift was to start. She thereby committed the misconduct alleged by DOC.

Rodencal argues that in addition to the personal issues she was then dealing with, her good work and attendance record are mitigating factors that DOC should have taken into account more when deciding on the level of discipline. Although Rodencal has had few problems during the term of her employment with DOC, those she has had were related to attendance. In 2014, Rodencal was disciplined twice for work rule violations related to attendance. She received a one-day suspension followed by a three-day suspension. DOC imposed a three-day suspension in this case, instead of the next step in its disciplinary system, because Rodencal had been discipline-free for more than a year.

The record shows that the discipline imposed against Rodencal is consistent with what DOC has done in similar cases. Rodencal accepted the overtime assignment for March 24 when it was offered to her. It was reasonable that DOC required her to appear for work on time or provide adequate notice if she would not be at work. In the latter case, DOC would then have time to find a replacement to fill Rodencal's shift.

DOC had just cause to suspend Susan Rodencal for three days and such a suspension was not excessive discipline.

Signed at the City of Madison, Wisconsin, this 13th day of February 2017.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott, Chairman

Rodney G. Pasch, Commissioner

James J. Daley, Commissioner