

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

ROBERT JOHNSON, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0183

Case Type: PA

DECISION NO. 36914

Appearances:

Paul Maki, W7071 North Road, Mauston, Wisconsin, appeared on behalf of Robert Johnson.

Anfin Jaw, 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 December 12, 2016, Robert Johnson 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 five days without just cause by the State of Wisconsin Department of Corrections. The Commission assigned the appeal to Examiner Raleigh Jones who conducted a hearing on February 6, 2017, in New Lisbon, Wisconsin.

On March 8, 2017, Examiner Jones issued a Proposed Decision and Order determining that Johnson was suspended for just cause. Johnson filed objections on March 13, 2017. No response to the objections was received by the Department of Corrections and the matter became ripe for Commission consideration on March 17, 2017.

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

FINDINGS OF FACT

1. Robert Johnson is employed as a correctional officer by the State of Wisconsin Department of Corrections at the New Lisbon Correctional Institution (NLCI) and had permanent status in class at the time he was disciplined.

2. The Department of Corrections is an agency of the State of Wisconsin and operates NLCI in New Lisbon, Wisconsin.

3. It is a work rule violation for the Department of Corrections' employees to download games to their work computer.

4. Robert Johnson downloaded games to his work computer.

5. On September 30, 2016, the Department of Corrections suspended Johnson for five days for downloading games to his work computer.

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 Robert Johnson for five days.

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

ORDER

The appeal is denied.

Signed at the City of Madison, Wisconsin, this 17th day of April 2017.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott, Chairman

Rodney G. Pasch, Commissioner

James J. Daley, Commissioner

MEMORANDUM ACCOMPANYING DECISION AND ORDER

This is a relatively straight forward disciplinary matter. DOC maintained a clear and simple work rule barring the downloading of games onto a work computer. The rule found in Executive Directive 50, Section VII, subsection U, prohibits the “downloading, loading or storing software, including ... games ... for use on DOC laptops, workstations or servers.” The purpose (in a correctional facility) is to avoid distractions from the primary task of guarding prisoners. Johnson admits he intentionally broke the rule by downloading Monopoly, Yahtzee, and Billiards. While Johnson denied playing the games, the evidence revealed that in fact he did play during 2016.

Johnson’s only argument is that the five-day disciplinary suspension was excessive. The examiner found and we agree that it was not excessive. Johnson had two 1-day suspensions and one 3-day suspension during the preceding 2-year period.¹ That history easily supported the 5-day suspension.

On appeal to the Commission, Johnson’s agent also raised several arguments which were based on facts not presented below and we do not consider such matters. Accordingly, we affirm the discipline imposed upon Johnson.

Signed at the City of Madison, Wisconsin, this 17th day of April 2017.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott, Chairman

Rodney G. Pasch, Commissioner

James J. Daley, Commissioner

¹ Johnson also had a 10-day suspension which was rejected by the Commission. *See Johnson v. DOC*, Dec. No. 36747 (WERC, 2/2017). That discipline was not considered here.