

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

SAMUEL BROOKS, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF HEALTH SERVICES, Respondent.

Case ID: 2.0041

Case Type: PA

DECISION NO. 37264

Appearances:

William Leanderts, Representative, 1401 Loftsgordon Avenue, Madison, Wisconsin, appearing on behalf of Samuel Brooks.

Cara Larson, Attorney, Department of Administration, Division of Legal Services, 201 East Wilson Street, 10th Floor, P.O. Box 7864, Madison, Wisconsin, appearing on behalf of the State of Wisconsin Department of Health Services.

DECISION AND ORDER

On August 23, 2017, Samuel Brooks filed an appeal with the Wisconsin Employment Relations Commission asserting he had been suspended for three days without just cause by the State of Wisconsin Department of Health Services. The appeal was assigned to Examiner Peter G. Davis. A hearing was held on September 26, 2017, in Madison, Wisconsin. The parties made oral argument at the conclusion of the hearing.

On October 20, 2017, Examiner Davis issued a Proposed Decision and Order affirming the suspension. No objections were filed, and the matter became ripe for Commission consideration on October 26, 2017.

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

FINDINGS OF FACT

1. Samuel Brooks is employed as a Psychiatric Care Technician by the State of Wisconsin Department of Health Services (DHS) and had permanent status in class at the time of his suspension.

2. On May 16, 2017, Brooks behaved inappropriately during a lengthy and loud discussion with two DHS supervisors and received a three-day suspension on June 7, 2017, for his misconduct.

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 over this appeal pursuant to § 230.44 (1)(c), Stats.

2. The State of Wisconsin Department of Health Services had just cause within the meaning of § 230.34(1)(a), Stats., to suspend Samuel Brooks for three days.

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

ORDER

The suspension of Samuel Brooks by the State of Wisconsin Department of Health Services is affirmed.

Signed at the City of Madison, Wisconsin, this 7th day of November, 2017.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Commissioner

MEMORANDUM ACCOMPANYNG 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.

Samuel Brooks had permanent status in class at the time of his suspension and his appeal alleges that the suspension was not based on just cause.

The State has the burden of proof to establish that Brooks 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 testimony in this matter presents a “they said/he said” scenario. Two DHS supervisors testified credibly that on May 16, 2017, Brooks engaged in what the suspension letter correctly characterizes as “intimidating, loud, belittling, threatening and disrespectful behavior.” Brooks credibly denied engaging in such behavior. Fortunately, the record contains written documents that provide a persuasive basis for resolving this credibility dispute.

Shortly after their May 16 conversation with Brooks, both of the DHS supervisors wrote lengthy statements detailing Brooks’ behavior. Those statements are largely consistent with each other and with the supervisors’ testimony at hearing. Written documents containing Brooks’ statements do not provide any level of detail as to the May 16 conversation and can generally be viewed as attempting to justify what occurred. The Commission finds the written statements of the two supervisors to be a persuasive basis upon which to credit their testimony at hearing.

Brooks makes a variety of claims as to why his behavior did not warrant discipline.

First, he asserts that the work rules/code of conduct cited by the State are vague and that, as a consequence, Brooks did not understand what behavior violated the rules/code. This assertion is rejected because with or without rules/codes, Brooks’ conduct clearly exceeded what any employee would know to be appropriate.

Next Brooks claims the meeting was a “set up,” designed to antagonize him through the presence of an additional supervisor with whom he has “history” and who he did not want to be

present. The record establishes that there was a valid reason for the additional supervisor to be present. While that supervisor's presence clearly did antagonize Brooks, his frustration in that regard does not excuse the behavior that was triggered. In somewhat the same regard, Brooks points out that he was agitated because he was reporting offensive conduct directed toward him by a coworker. However, his agitation does not excuse the conduct that ensued.

Additionally, Brooks contends that the suspension should be set aside because DHS had already taken "corrective action" by transferring Brooks to a different work assignment. However, the record establishes that the transfer was related to the State's interest in conducting an investigation of work issues raised by Brooks and others – not as discipline for Brooks' May 16 misconduct. The Commission further notes that there would have been nothing per se inappropriate for the State to transfer and suspend Brooks as a disciplinary response.

While not all heated workplace discussions warrant a conclusion that misconduct occurred, Brooks' conduct on May 16 exceeded what the State might otherwise be expected to tolerate. Because Brooks already had a one-day suspension on his record, the three-day suspension imposed here was not excessive.

Given all of the forgoing, the Commission concludes that the State had just cause to suspend Brooks for three days.

Signed at the City of Madison, Wisconsin, this 7th day of November, 2017.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Commissioner