

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

---

TAYLOR YOUNG, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0223

Case Type: PA

DECISION NO. 37282

---

**Appearances:**

Taylor Young, N8908 State Road 26, Burnett, Wisconsin, appearing on his own behalf.

Anfin Jaw, Attorney, Department of Administration, 101 East Wilson Street, 10th Floor, Post Office Box 7864, Madison, Wisconsin, appearing on behalf of State of Wisconsin Department of Corrections.

**DECISION AND ORDER**

On September 5, 2017, Taylor Young filed an appeal with the Wisconsin Employment Relations Commission, pursuant to § 230.44(1)(c), Stats. The appeal alleges that Young was suspended for three days without just cause by the State of Wisconsin Department of Corrections. The Commission designated Danielle L. Carne to serve as Hearing Examiner. Hearing was held on October 24, 2017, in Waupun, Wisconsin. While Young had been represented during the prehearing stage by Attorney Joseph Fischer of Watertown, Wisconsin, Attorney Fischer withdrew his representation on October 23, 2017, and Young appeared at the hearing on his own behalf. The parties submitted oral arguments at the close of the hearing, and on that day the record in this matter was closed.

On November 22, 2017, Examiner Carne issued a Proposed Decision and Order affirming the suspension. No objections were filed and the matter became ripe for Commission action on November 28, 2017.

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

**FINDINGS OF FACT**

1. The Department of Corrections (DOC) is an agency of the State of Wisconsin that, among other things, operates correctional facilities. The Waupun Correctional Institution is one such facility.

2. Taylor Young is employed as a Correctional Officer at the Waupun Correctional Institution and had permanent status in class at the time of his suspension.

3. In the course of his of duties, Young referred to a fellow female Correction Officer as a “bitch”.

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 Taylor Young 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 is affirmed.

Signed at the City of Madison, Wisconsin, this 15th day of December, 2017.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

---

James J. Daley, Chairman

**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.

Further, Section 230.44(1)(c), Stats., provides that a State of Wisconsin 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.

Taylor Young 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 Young was guilty of misconduct and that the misconduct constituted just cause for the imposed discipline. *Reinke v. Personnel Board*, 53 Wis. 2d 123 (1971); *Safransky v. Personnel Board*, 62 Wis. 2d 464 (1974).

On April 14, 2017, a Waupun correctional officer was on her way to work when she became ill. Upon arriving at work, she informed a supervisor of her condition and was allowed to return home. Following that, Young was ordered to work an extra shift due to her absence.

DOC has disciplined Young for a related event that allegedly occurred a few weeks later. Specifically, DOC found that on May 8, 2017, the correctional officer who had been sick was back at work and engaged in the task of sorting mail. Correctional Officers Brittany McCutcheon, Jordan Kijek, and Taylor Young were sorting mail with her. During the mail sorting, Kijek was asked why he was still at work. In response he reported that he was filling in for someone, "because the cunt called in". In response, Young stated, "You don't know what a cunt is until the bitch goes home sick at the beginning of her shift and you get told to stay five minutes before you were supposed to leave". Believing Young's statement was directed at her, the Correctional Officer who had been sick reported it to management. DOC disciplined Young for having made the statement with a three-day suspension, which he now appeals. Young's argument here is that DOC has not proven that the event occurred.

Brittany McCutcheon was not interviewed in the investigation that led to Young's discipline. She also did not testify at hearing. Kijek stated in his investigatory interview first that he did not recall if Young had been swearing, but later in his interview indicated that Young's statement had been derogatory. Kijek also did not provide testimony at the hearing. The sick employee indicated both in her investigatory interview and in her hearing testimony that Young had made the statement in her presence and that she was certain at the time that Young knew she had been the employee for whom he had filled in. She also indicated that Young did not use her name in making the comment, but he looked angrily straight into her eyes, she was wearing her nametag at the time, and other officers had told her that Young had been angry about having

been ordered to stay. She also reported that she told management about the event shortly after it occurred.

In Young's investigatory interview, he denied that he used the word "cunt", but in response to whether he had used the term "bitch" he stated the following: "Yes, I could have, it is in my vocabulary." The following statement also occurred in the course of Young's interview:

Q: Given a second chance, a do-over, would you handle the situation differently?

A: No, not really. If I would have known that she would take such offense to me using the word "bitch", I wouldn't have used it, but I don't know that because it was never discussed. I don't think that anyone should have to hold their tongue. If she would have said something to me about the situation when it happened, if she would have said she took offense to my use of the word, I would have apologized.

At hearing, Young testified that he did not recall using any profane language.

On balance, the evidence supports DOC's conclusion that Young used the derogatory term to refer to a coworker in her presence. Young admitted at hearing that he knew the identity of the employee who had called in sick, and the record shows that the employee was among those sorting mail on the day in question. Young argues that he did not admit in his interview to having used the term bitch, but only admitted that it is a term in his vocabulary. Yet his other statement from the interview constitutes an acknowledgement that he used the term. In light of this acknowledgment, Young's denial at hearing was not persuasive.

Young also claims that no other witness identified him as using derogatory language, but this assertion ignores the plain evidence on the record. Kijek stated that Young had made a derogatory comment. This statement carries weight, notwithstanding Kijek's earlier investigatory statement denying recollection. McCutcheon was not interviewed as part of the investigation, and DOC called neither McCutcheon nor Kijek to testify at hearing. These gaps might be meaningful were it not for the testimony of the sick employee. Her original report to management, her investigatory statements, and her hearing testimony are all perfectly consistent with one another in recounting that Young made the statement.

Having determined that the conduct occurred, it needs not be explained that such behavior is, to say the least, not courteous and constitutes just cause for discipline. Further, Young's three-day suspension followed a one-day suspension and, therefore, was appropriately progressive.

Given the foregoing, the Commission affirms the suspension.

Signed at the City of Madison, Wisconsin, this 15th day of December, 2017.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

---

James J. Daley, Chairman