

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

SAMUEL BROOKS, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF HEALTH SERVICES, Respondent.

Case ID: 2.0045

Case Type: PA

DECISION NO. 37283

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 September 22, 2017, Samuel Brooks filed an appeal with the Wisconsin Employment Relations Commission asserting he had been suspended for five 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 November 9 and 22, 2017, in Madison, Wisconsin. The parties made oral argument at the conclusion of the hearing.

On November 27, 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 December 5, 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 July 6, 2017, Brooks was absent from work for two hours without legal entitlement or DHS approval and subsequently received a five-day suspension 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 five days.

Based on the above and foregoing Finding 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 15th day of December, 2017.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman

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).

Brooks had filed an FMLA claim with DHS. DHS advised Brooks' doctor that it needed some clarification as to the claim. Brooks' doctor advised Brooks that DHS had requested a clarification and that Brooks needed to sign a release to allow the doctor to proceed as DHS had requested.

Brooks believed that where, as here, the employer was requiring clarification as to his FMLA claim, the law entitled him to use paid worktime to do what was needed to obtain the requested clarification. Thus, Brooks asserts that he did not need to seek DHS approval to leave work and that he did not do so. DHS contends there was no legal right to use paid worktime in this circumstance and that Brooks falsely told supervisory employees that he had obtained approval from Human Resources to leave work.

Because Brooks does not assert that DHS approved his absence, the issue of whether he engaged in misconduct hinges on whether he had a legal right to use paid worktime. Neither Brooks nor his representative has been able to identify any such legal right. Therefore, Brooks engaged in misconduct when he was absent from work without a legal entitlement or employer approval.

Brooks had recently received a three-day suspension for other misconduct. Thus, progression to a five-day suspension is certainly not excessive.

Given all of the forgoing, the Commission concludes that DHS has just cause to suspend Brooks for five days.

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

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman