

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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LYNN M. HOCH, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0224

Case Type: PA

DECISION NO. 37284

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**Appearances:**

Lynn Hoch, 1567 Crystal Springs Avenue, Oshkosh, Wisconsin, appearing on her own behalf.

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

**DECISION AND ORDER**

On September 15, 2017, Lynn Hoch filed an appeal with Wisconsin Employment Relations Commission asserting she had been suspended for three days without just cause by the State of Wisconsin Department of Corrections. The appeal was assigned to Examiner Raleigh Jones. A hearing was held on October 18, 2017, in Fond du Lac, Wisconsin. The parties made oral arguments at the conclusion of the hearing.

On November 29, 2017, Examiner Jones 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. Lynn Hoch is employed as a correctional officer at the Taycheedah Correctional Institution and had permanent status in class at the time her suspension.

2. The Department of Corrections (DOC) is a State agency responsible for the operation of adult correctional facilities, including the Taycheedah Correctional Institution located in Fond du Lac, Wisconsin.

3. On April 25, 2017, the shift commander directed Hoch to don protective equipment to prepare for a possible cell extraction of an inmate. Hoch initially refused to comply with the directive, but later complied with same.

4. DOC suspended Hoch for three days for initially refusing to comply with the work directive noted above.

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 Corrections had just cause, within the meaning of §230.34(1)(a), Stats., to suspend Lynn Hoch for three days.

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

### **ORDER**

The three-day suspension of Lynn Hoch by the State of Wisconsin Department of Corrections is affirmed.

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

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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James J. Daley, Chairman

**MEMORANDUM COMPANY 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.

Lynn Hoch had permanent status in class at the time of her suspension and her appeal alleges that the suspension was not based on just cause.

The State has the burden of proof to establish that Hoch 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 Commission finds that the State met its burden of proof as to Hoch's suspension.

On April 25, 2017, an emergency situation arose when an inmate tied a bedsheet around her neck in her cell. In response, the shift commander decided that a cell extraction of the inmate might be necessary. To effectuate that, he directed a half-dozen employees to suit up (meaning to don protective equipment) for a possible cell extraction of the inmate. Hoch was one of the employees directed to participate in that possible cell extraction. Hoch was miffed about being given this directive. Immediately upon being given this directive to suit up, Hoch responded to the shift commander that someone else should do it (rather than her) – specifically, it should be someone with less seniority (than her). The shift commander ignored Hoch's comments and directed Hoch a second time to suit up. This time, Hoch responded that she was sick and was going home. Hoch was visibly upset and agitated when she said this. The shift commander accepted Hoch's statement that she was sick at face value and replied that he would put her down as sick. Hoch then left the building. Five minutes later, Hoch returned to the building and told the shift commander she would suit up and she did so. Ultimately, though, the suit-up team did not perform a cell extraction because it became unnecessary to do so.

It is apparent from the foregoing facts that Hoch did not initially comply with the shift commander's directive to suit up. When a supervisor gives an employee a legitimate order or directive, the employee is supposed to comply with the order or directive and do what they are told whether they like it or not. Employers have a legitimate interest in ensuring that employees follow the directives they are given. When employees fail to follow work orders or directives,

that conduct is obviously detrimental to the workplace environment. If an employee does not comply with a work directive or order, then their conduct constitutes insubordination and there can be adverse employment consequences as a result.

Hoch emphasizes that while she initially refused to suit up for the cell extraction, she later did so. Thus, she wants credit for later complying with the work directive. Her defense misses the mark because it ignores the timing of her compliance. As noted above, Hoch initially refused to comply with the directive and left the building. An employee is supposed to comply with a supervisor's work directive at the time it is given. Doing so later – as happened here – does not negate or remedy the original refusal to comply with the directive.

Hoch also calls attention to the fact that after she suited up, no cell extraction was performed. She sees that as significant and contends that it shows that her actions did not interfere with the cell extraction team getting ready to perform a cell entry. The Commission disagrees. The fact that the underlying work task (i.e. a cell extraction) was not ultimately performed does not lessen Hoch's insubordinate misconduct.

Finally, we address the question of whether the discipline imposed here was excessive. The record shows that prior to the discipline imposed here, Hoch received a one-day suspension earlier this year. Under DOC's disciplinary progression, the discipline that follows a one-day suspension is a three-day suspension. Since that was the discipline imposed here, that discipline cannot be deemed excessive.

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**

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James J. Daley, Chairman