

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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KEVIN LUEDTKE, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF MILITARY AFFAIRS, Respondent.

Case ID: 265.0004

Case Type: PA

DECISION NO. 37286

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**Appearances:**

Sean Daley, Field Representative, AFSCME Wisconsin Council 32, P.O. Box 19, Ashippun, Wisconsin, appearing on behalf of Kevin Luedtke.

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 Military Affairs.

**DECISION AND ORDER**

On September 18, 2017, Kevin Luedtke filed an appeal with the Wisconsin Employment Relations Commission pursuant to § 230.44(1)(c), Stats. The appeal alleges that the Appellant was suspended for three days without just cause by the State of Wisconsin Department of Military Affairs. The Commission designated Danielle L. Carne to serve as Hearing Examiner. Hearing was held on November 6, 2017, in Camp Douglas, Wisconsin. The parties submitted oral arguments at the close of the hearing and on that day the record in this matter was closed.

On December 6, 2017, Examiner Carne issued a Proposed Decision and Order rejecting the suspension. No timely objections were filed and the matter became ripe for Commission consideration on December 12, 2017.

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

**FINDINGS OF FACT**

1. The Department of Military Affairs (DMA) is an agency of the State of Wisconsin. Among other things, DMA operates a military base known as Volk Field in Camp Douglas, Wisconsin.

2. Kevin Luedtke (Luedtke) is employed as a Security Officer at Volk Field, and he had permanent status in class at the time of his discipline.

3. On May 3, 2017, Luedtke did not fail to respond promptly to an incident in a manner that was disobedient, insubordinate, inattentive, negligent, or that constituted a failure to carry out a directive.

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 Military Affairs lacked just cause within the meaning of § 230.34(1)(a), Stats., to suspend Kevin Luedtke 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 Kevin Luedtke is rejected. The State of Wisconsin Department of Military Affairs shall immediately make him whole and remove the suspension from his record.

Signed at the City of Madison, Wisconsin, this 5th day of January, 2018.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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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.

Kevin Luedtke 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 Luedtke 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 military base where Luedtke is employed houses both United States Army and Airforce operations. Because of the significant military resources present and because of its location in a rural area and along an interstate, security on the base is of paramount concern. Day-to-day considerations include the potential for hostile acts such as terrorism and large-scale assault. They also include potential efforts by unauthorized individuals to gather confidential information through the making of notes or drawings from outside the base with the use of cameras or other vision-enhancing devices. For this reason, base personnel are trained to be aware of suspicious activity and potential hazards both directly on the base and in the areas outside its perimeter. The risks posed by a compromise to base security include not only the loss of property, but also the loss of life and a threat to national security.

A force comprised of DMA employees provides security for the base. Luedtke has been employed as a security officer on the base for over two decades.

On May 3, 2017, Luedtke was working first shift. On that day, he was assigned regular patrol duties in addition to duties related to an aircraft training exercise taking place on the base. Because of the "Northern Lightening Exercise", there were many high-ranking personnel and significant government assets present on the base. Such assets included F-35 fighter jets, which are the newest aircraft in the Airforce arsenal. Luedtke's additional assignment required him to guard the physical space surrounding a particular aircraft that was present on base. The record indicates that Luedtke was the only officer on first shift assigned to handle this task.

At one point in the day Luedtke was in the security building eating his lunch, when he heard a call come over the radio regarding suspicious vehicles. The call was from Miller, a lead security officer posted at the base's main entrance gate. Luedtke testified at hearing that he could

not write down all the information coming in over the radio because Miller was talking very fast and the transmission was garbled. Luedtke could not understand where the vehicles were reportedly located. For this reason, Luedtke asked another employee who was present to place a call to the gate for clarification. When no one answered, Luedtke placed a second call to the gate.

Over the telephone, Luedtke learned from Miller that several cars had been reported parked just outside the perimeter at the west end of the base. Luedtke was to locate the vehicles and make a security assessment. In addition to receiving this clarification, Luedtke asked Miller whether it would be appropriate for him to travel to the reported location of the vehicles, given his additional assignment to guard the aircraft. Luedtke understood that the assignment required him to be within five minutes of the aircraft at all times, and he believed that traveling to a location outside the base would take him beyond this response zone. Luedtke asked Miller whether he might be able to do the investigation from inside the gate. Notwithstanding these concerns, Miller directed Luedtke to travel outside the base to check into the reported vehicles.

As Luedtke was then walking from the security building to his vehicle, he encountered the first shift security supervisor, Motschenbacher. Motschenbacher had been in a meeting, but had a radio set on low volume with him in the meeting. He had heard Miller's call dispatching the patrol unit to check on the vehicles. The meeting ended shortly thereafter, and Motschenbacher used the radio to inquire as to whether the patrol unit was on its way to the vehicles. When he finally established that the patrol unit had not yet left—Motschenbacher also had trouble understanding the garbled transmissions coming over the radio—he made his way to the security building. There he encountered Luedtke just outside the building, heading to his vehicle. Motschenbacher asked Luedtke why he had not yet responded, and Luedtke again raised the question about whether he should be travelling outside of his assigned five-minute zone. Motschenbacher directed Luedtke to respond to the call notwithstanding this limitation. Luedtke and Motschenbacher also had a brief exchange regarding Luedtke's question as to whether they would be able to do anything about vehicles beyond their jurisdiction. Motschenbacher reminded Luedtke of the security concerns and directed him to go to the vehicles.

Luedtke then got into his vehicle and travelled to the gate. He stopped momentarily at the gate to ask for additional information related to the description of the vehicles. He then proceeded outside the base to search for the vehicles. While he did not find vehicles at the originally reported location, he found vehicles parked elsewhere. He recorded information related to these vehicles as required.

The letter of suspension indicates that Luedtke's discipline was based on his failure to respond "promptly" to the vehicle incident when directed to do so. Among varying assertions as to how long it took Luedtke to respond to the call, the investigation report indicates that 10 to 15 minutes passed from when Luedtke was dispatched to when he responded. DMA's policy is that incidents such as the one at issue here involving the suspicious vehicles are to be investigated as soon as possible, but the record indicates that there is no established response time for doing so.

There is no question that, upon receiving Miller's call over the radio, Luedtke did not proceed immediately to his vehicle and directly to the gate. The problem with DMA's case, however, is that it has not effectively addressed any of the factors that appear to have legitimately extended Luedtke's response time.

Luedtke provided uncontroverted testimony, for example, indicating that Miller's initial dispatch was difficult to make out and, for that reason, necessitated a telephone call seeking clarification. (Indeed, it required two telephone calls because the first one was not answered.) Luedtke's assertion that the original dispatch was garbled and difficult to understand is believable given Motschenbacher's testimony that he also could not understand a radio transmission just a few minutes later and that he also had to seek clarification. DMA has not demonstrated that Luedtke's decision to make a telephone call seeking clarification was inappropriate under the circumstances.

The record further indicates that Luedtke expressed his concern that the dispatch would take him beyond the five-minute response requirement associated with his aircraft assignment. DMA has not contended that Luedtke was wrong about this response expectation. It also has not shown that Luedtke should have known how to resolve the apparent contradiction in his duties, particularly on a busy day when a special event was going on and Luedtke knew he was the only security officer assigned to the particular aircraft. Moreover, the fact that Luedtke sought such clarification twice is explained by the fact that, after Luedtke already had received clear direction from Miller, Motschenbacher asked Luedtke in the parking lot for an explanation as to why he had not responded. Luedtke then had a second conversation reviewing the same issues.

Similarly, DMA has not shown that Luedtke's decision to seek additional information relating to the description of the vehicles at the gate was inconsistent with his responsibilities. Miller's testimony that the information already "should have" been provided is confusing, given that the information would have come from Miller himself. This evidence, therefore, is not an appropriate basis for concluding that Luedtke was negligent.

The presence of these reasonable explanations and the absence of policy providing specific direction contrary to Luedtke's actions undermine DMA's ability to meet its burden in this case.

Given the foregoing, the Commission rejects the suspension.

Signed at the City of Madison, Wisconsin, this 5th day of January, 2018.

## **WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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James J. Daley, Chairman