

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

DAVID CORRIE, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0231

Case Type: PA

DECISION NO. 37430

Appearances:

Craig Johnson, Attorney, Sweet and Associates LLC, 2510 East Capitol Drive, Milwaukee, Wisconsin, appearing on behalf of David Corrie.

Anfin Jaw, 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 December 22, 2017, David Corrie filed an appeal with the Wisconsin Employment Relations Commission asserting he had been suspended for one day without just cause by the State of Wisconsin Department of Corrections. The appeal was assigned to Examiner Raleigh Jones. A hearing was held on February 1, 2018, in Madison, Wisconsin, and the parties made oral argument at the conclusion of the hearing.

On March 6, 2018, Examiner Jones issued a Proposed Decision and Order affirming the suspension. No objections were filed and the matter became ripe for Commission consideration on March 13, 2018.

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

FINDINGS OF FACT

1. David Corrie is employed as a correctional sergeant at the Thompson Correctional Center and had permanent status in class at the time his suspension.
2. The Department of Corrections (DOC) is a State agency responsible for the operation of adult correctional facilities, including the Thompson Correctional Center located in Deerfield, Wisconsin. That responsibility includes caring for inmates in their custody.

3. An inmate injured his ankle/foot such that it was visibly swollen and discolored. When an inmate has a visible injury, the employee is supposed to contact the on-call nurse. Corrie did not do that.

4. DOC suspended Corrie for one day for not calling the on-call nurse regarding the inmate's injury.

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 David Corrie for one day.

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

ORDER

The one-day suspension of David Corrie by the State of Wisconsin Department of Corrections is affirmed.

Signed at the City of Madison, Wisconsin, this 30th day of March, 2018.

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.

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.

David Corrie 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 Corrie 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).

On Saturday, March 18, 2017, shortly before he was scheduled to leave work at 7:00 p.m., an inmate hobbled into Corrie's workstation supported by two other inmates. The inmate reported that he had injured his ankle/foot playing basketball. The inmate had apparently already removed his shoe and sock, because Corrie was able to see that the inmate's ankle/foot was visibly swollen and discolored (i.e. it was black and blue). The inmate told Corrie he had prior injuries to that ankle/foot and had had several surgeries on it. The inmate requested ice which was subsequently supplied. It is disputed whether the inmate expressly requested medical attention for his ankle/foot. The inmate contends he did request medical attention for same while Corrie denies that assertion. Before he left, Corrie completed part of an accident report regarding the matter. Therein, he wrote that the inmate said, "he does not need medical attention" Corrie then instructed his replacement – Sgt. Peterson – to finish the accident report, which she did. Before he left though, Corrie did not complete a form known as the refusal of medical attention form. Also, before he left, Corrie did not contact the after-hours on-call nurse regarding the inmate's injury. Corrie said that he did not contact the on-call nurse because he thought that the inmate had a sprained ankle and he did not consider that an emergency. Hours after Corrie left the facility, the inmate asked Peterson when he would be receiving medical care. Peterson told him that no medical care was going to be forthcoming because he (the inmate) had refused medical attention. The inmate disputed the assertion that he had ever refused medical attention. The inmate did not receive medical attention until the following Monday. On that day, a nurse at the facility examined the inmate's ankle/foot and deemed his injury serious enough that the inmate was transported to a hospital emergency room for medical treatment for same.

Both Corrie and Peterson received a one-day suspension for not calling the on-call nurse regarding the inmate's injury.

DOC has a policy that says when an inmate has medical needs at a time when the facility's nursing staff is off duty, the correctional staff is to contact the on-call nurse for guidance. The phrase "medical needs" covers any kind of injury, including a visible injury. Thus, the on-call nurse is supposed to be called whenever any type of visible injury occurs. DOC expects employees to comply with that policy. In this case, it is undisputed that Corrie did not do that. Not surprisingly, DOC faults him for his noncompliance with that policy.

Corrie offers several reasons to justify his not calling the on-call nurse. First, he contends that the inmate did not request medical attention. While in some cases it could be important whether the inmate did or did not request medical attention, that point is not important in this case. What is important in this case is that the inmate had a visible injury (i.e. his ankle/foot was visibly swollen and discolored/black and blue. As just noted, when an inmate has a visible injury – as he did here – the employee is supposed to call the on-call nurse and let the nurse decide what the next step will be. That is what Corrie should have done. However, he failed to do that.

Second, Corrie contends that the reason he did not contact the on-call nurse was because he thought that the inmate had just sprained his ankle, and he did not consider that to be a medical emergency (requiring a call to the on-call nurse). The problem with this claim is that DOC does not want its correctional officers to make decisions about what does or does not constitute a medical emergency. Rather, DOC wants the correctional officers to contact the on-call nurse in any situation where there is a visible injury and let the nurse make the call. Here, there was a visible injury, so the on-call nurse should have been called.

Having found Corrie's defenses unpersuasive, the Commission finds that Corrie can be held accountable for failing to call the on-call nurse.

In light of that conclusion, it is unnecessary to address the charge that Corrie also failed to complete a refusal of medical attention form. Thus, no comments are made regarding same.

Corrie's failure to call the on-call nurse regarding the inmate's injury constituted workplace misconduct. DOC had just cause to discipline him for that misconduct. A one-day suspension was not an excessive punishment for same. Additionally, it was internally consistent with the punishment meted out to Peterson.

Signed at the City of Madison, Wisconsin, this 30th day of March, 2018.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman