

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

LUCINDA CHAMPION, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF HEALTH SERVICES, Respondent.

Case ID: 2.0047

Case Type: PA

DECISION NO. 37435

Appearances:

Lucinda Champion, 375 Bayley Avenue, Platteville, Wisconsin 53818, appearing on her own behalf.

Anfin Jaw, Attorney, Department of Administration, Division of Legal Services. 201 East Wilson, Tenth Floor, P.O. Box 7864, Madison, Wisconsin 53707-7864, appearing on behalf of the State of Wisconsin Department of Health Services.

DECISION AND ORDER

On February 5, 2018, Lucinda Champion filed an appeal with the Wisconsin Employment Relations Commission asserting she had been suspended for one day 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 April 10, 2018 in Madison, Wisconsin and the parties made oral argument at the hearing's conclusion.

On April 20, 2018, Examiner Davis issued a Proposed Decision and Order affirming the one-day suspension. No objections were filed and the matter became ripe for Commission consideration on April 26, 2018.

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

FINDINGS OF FACT

1. Lucinda Champion is employed as a Purchasing Agent-Senior by the State of Wisconsin Department of Health Services (DHS) and had permanent status in class at the time of her suspension.

2. In July 2017, Champion received a formal letter of expectation from DHS for, among other matters, "refusals to follow directions from management on multiple occasions"

3. On September 20, 2017, a DHS customer posed a question to DHS staff. Champion received an email from a management employee asking her to review the question and then to “Please get back to me after you review and thank you.” Champion emailed her response to the management employee and simultaneously provided a blind email copy thereof to the customer.

4. Champion was suspended for one day for sending the blind email copy.

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 Health Services had just cause, within the meaning of § 230.34(1)(a), Stats., to suspend Lucinda Champion for one day.

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

ORDER

The one-day suspension of Lucinda Champion by the State of Wisconsin Department of Health Services is affirmed.

Signed at the City of Madison, Wisconsin, this 11th day of May, 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.

Lucinda Champion 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 Champion 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).

Champion was suspended for providing a customer with a blind copy of an email she sent to a DHS manager.

Champion generally suggests that that she did not understand she was to let the DHS manager review her proposed response before anyone from DHS responded to the customer. If she was indeed uncertain, asking the DHS manager for clarification (particularly given the letter of instruction she had recently received) would have been a prudent action. If Champion was not uncertain as to the directions she had received but rather believed direct contact with the customer was appropriate, she presumably would have provided a “regular” email copy to the customer. But she instead utilized a blind copy.

Champion did not provide a specific explanation as to why she provided the customer a blind copy of her email response to a DHS manager. She did indicate that she may have done so in the past to ensure that management did not distort her response to a request for information. Viewing the record evidence as a whole, it is concluded that her use of the blind copy was an intentional disregard for the direction she had been given and clearly constituted substantial misconduct.

As to the level of discipline received, Champion argues that the suspension conflicts with DHS work rules because her misconduct is not one of the “serious acts” listed therein which allow for a departure from a progressive disciplinary sequence. However, Champion had previously been warned about the need to follow management directives. A one-day suspension is the next step in the DHS progressive disciplinary “schedule”. Therefore, this argument is rejected. Champion also suggests that a one-day suspension is at odds with what she believes to be her appropriate FLSA status and argues that a letter of reprimand in lieu of suspension was mandated. Whatever her FLSA status might be, in *Schallock v DOC*, Dec. No. 36326 (WERC, 11/16), the Commission

generally rejected the argument that FLSA mandates the “in lieu of” approach for employees. Thus, this argument is also rejected.

Champion also contends that this matter should have been resolved informally and that management pursued formal discipline because of an ongoing friendship between the current DHS appointing authority and a prior supervisor as to whom Champion initiated proceedings that led to that supervisor’s departure from State service. If the State’s disciplinary response had exceeded a one-day suspension, Champion’s alternative theory may well have had some traction. But given the significant level of misconduct and facial progressive legitimacy of the State’s disciplinary response, it is rejected.

Champion asserts that the suspension should be overturned because she was denied the representative of her choice during the investigatory meeting. She testified that the State concluded that her request to be represented by a former supervisor presented a conflict of interest. The Commission lacks a persuasive basis for second guessing the State’s judgment in this regard and notes that Champion did have a representative present. Further, Champion did not present evidence as to how a different representative might have impacted the result of the investigation. Therefore, this argument is rejected. Champion also contends the timing of certain management communications was inconsistent with the timing of the investigation into her misconduct. The Commission finds that the timing of the management communication was not improper.

Given the foregoing, the one-day suspension is affirmed.

Signed at the City of Madison, Wisconsin, this 11th day of May, 2018.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman