

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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JONATHON WEBER, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0237

Case Type: PA

DECISION NO. 37436

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**Appearances:**

Jonathon Weber, 539 Rockrose Drive, Fond du Lac, Wisconsin, appeared on his own behalf.

Cara Larson, Attorney, Department of Administration, 101 E. Wilson Street, 10th Floor, P.O. Box 7864, Madison, Wisconsin, appeared on behalf of the State of Wisconsin Department of Corrections.

**DECISION AND ORDER**

On February 26, 2018, Jonathon Weber 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 March 29, 2018, in Fond du Lac, Wisconsin. The parties made oral arguments at the conclusion of the hearing.

On April 16, 2018, Examiner Jones 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 24, 2018.

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

**FINDINGS OF FACT**

1. Jonathon Weber is employed as a correctional officer by the State of Wisconsin Department of Corrections (DOC) at the Taycheedah Correctional Institution and had permanent status in class at the time he was disciplined.

2. DOC is an agency of the State of Wisconsin and operates the Taycheedah Correctional Institution in Fond du Lac, Wisconsin.

3. With certain exceptions not relevant here, DOC employees are not supposed to watch entertainment content on work computers while on duty. It is a work rule violation to do that.

4. While on duty in June and July 2017, Weber watched about two dozen movies on a work computer that he downloaded from the internet. These movies had no connection to his job duties as a correctional officer.

5. DOC suspended Weber for one day for doing that.

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 Corrections had just cause, within the meaning of § 230.34(1)(a), Stats., to suspend Jonathon Weber 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 Jonathon Weber by the State of Wisconsin Department of Corrections is affirmed.

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

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.

Jonathon Weber 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 Weber 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).

This is a straight forward disciplinary matter involving inappropriate use of a work computer. DOC has a department-wide policy regarding the use of information technology. Among other things, the policy expressly prohibits employees from “[u]sing the internet to stream services, music, radio broadcasts, and video clips . . . unless required by job function or special need.” Thus, DOC employees are not supposed to watch entertainment content on work computers. This work rule is well known, so employees know that listening or watching any non-work-related material is prohibited. The reason for the rule’s existence (in a correctional facility) is to avoid distractions from the primary task of guarding prisoners.

Weber broke this rule when he watched about two dozen movies in June and July 2017, on a work computer while on duty that he downloaded from the internet. Obviously, given the work rule just noted, that should not have occurred. It did though, so Weber engaged in workplace misconduct.

Weber claims that other employees did the same thing he did (i.e. watched movies,) but were not disciplined for it. In addressing this claim, it has been broken down into two separate parts.

The first part is whether other employees besides Weber have watched movies and/or videos while on duty at the institution. For the purpose of discussion, it is assumed that they have. Even making that assumption though, the Commission does not know how common it is for staff to watch movies and/or videos. Specifically, does it happen frequently or infrequently? Additionally, “watching” something on a computer conceivably covers everything from a

30-second video to watching a traditional two-hour movie. The point in making this distinction is to show that the duration of whatever is watched is important; arguably the longer it is, the more it distracts the person watching it from their primary work task (i.e. guarding prisoners). It would be one thing if Weber had shown that there were other employees who watched more movies and/or videos than he did (either in number or in length). However, he did not prove that. The only evidence in the record deals with Weber's computer usage. It shows that over the course of 15 days in June and July 2017, Weber watched about two dozen movies. According to the DOC's forensic computer examiner who reviewed Weber's internet usage for the time in question, Weber downloaded 225 hours of video. Consequently, even if some of Weber's co-workers also watched movies and/or videos, Weber did not prove that any of them watched more than he did.

The second part of Weber's disparate treatment claim is that his co-workers who watched movies and/or videos – just like he did - were not disciplined for it. The record facts show otherwise. Specifically, the record shows that three employees at the institution were charged with the same misconduct as Weber (i.e. watching movies and/or videos) and all three were disciplined for that. Additionally, the record shows that all three of those employees received at least a one-day suspension. What is noteworthy about that is that it is internally consistent with the punishment meted out to Weber (who also received a one-day suspension). That being so, no disparate treatment has been shown.

Given the foregoing, the Commission concludes there was just cause for a one-day suspension, the first step in DOC's progressive discipline sequence.

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

## **WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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James J. Daley, Chairman