

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

DAVID M. EVANS, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF HEALTH SERVICES, Respondent.

Case ID: 2.0048

Case Type: PA

DECISION NO. 37448

Appearances:

Michael E. Grams, Sand Ridge Secure Treatment Center, P.O. Box 700, Mauston, Wisconsin, 53948-0700, appearing on behalf of David M. Evans.

Cara J. Larson, 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 March 9, 2018, David M. Evans filed an appeal with the Wisconsin Employment Relations Commission asserting he had been suspended for three days 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 30, 2018, in Mauston, Wisconsin. The State made oral argument at the hearing's conclusion, and Evans' representative filed written argument on May 8, 2018.

On May 22, 2018, Examiner Peter G. Davis filed a Proposed Decision and Order affirming Evans' three-day suspension. No objections were filed and the matter became ripe for Commission consideration on May 30, 2018.

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

FINDINGS OF FACT

1. David M. Evans is employed as a Psychiatric Care Technician-Advanced by the State of Wisconsin Department of Health Services (DHS) at the Sand Ridge Secure Treatment Center and had permanent status in class at the time of his suspension.

2. On December 18, 2017, Evans was two minutes late for the start of his 7:00 a.m. shift which thereafter resulted in his receipt of a three-day suspension on January 2, 2018. He had previously received a one-day suspension for tardiness on April 17, 2017.

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 David M. Evans 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 three-day suspension of David M. Evans by the State of Wisconsin Department of Health Services is affirmed.

Signed at the City of Madison, Wisconsin, this 1st day of June, 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 M. Evans 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 Evans 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).

Evans' supervisor manually checks off the names of the employees as they report for the 7:00 a.m. shift. He had not seen Evans and initially used a battery powered wall clock to determine that Evans was tardy. The supervisor returned to his office and then saw Evans report. He looked at his office computer screen and determined the time of Evans' arrival to be 7:02 a.m.

Evans contends he arrived at work by 7:00 a.m. and that the computerized clock used by the State to identify the time of his arrival may not have been accurate. Evans and fellow employee/representative Grams testified that there are inconsistencies between the "official time" used at Sand Ridge for various purposes and the time reflected on the screen of individual computers in use throughout the Treatment Center. Indeed, the testimony of various State witnesses was less than definitive as to whether all Sand Ridge computer screens show the same time of day. However, the video "key watcher" evidence presented by the State which recorded Evans' arrival on December 18 is sufficiently definitive to establish that Evans did not report for work on or before 7:00 a.m. That video evidence reflects an arrival time after 7:05 a.m., and it was not disputed that the "key watcher" is typically "fast" by no more than three minutes. It is also noteworthy that although Evans' recorded physical demeanor reflects an employee who does not believe he is tardy, Evans did not present evidence as to what, if any, time piece or device he checked to determine his arrival time.

Given the foregoing, the Commission concludes that the State has proven that Evans was tardy on December 18. Because he had previously received a one-day suspension for tardiness (after exhausting the three tardiness occasions that do not produce discipline), the Commission

concludes that there was just cause for a three-day suspension and said suspension is hereby affirmed.

Signed at the City of Madison, Wisconsin, this 1st day of June, 2018.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman