

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

ROBERT MASSEY, Appellant
vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0236
Case Type: PA

DECISION NO. 37450

Appearances:

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

Anfin Jaw, Attorney, Department of Administration, Division of Legal Services. 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 February 22, 2018, Robert Massey 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 April 23, 2018, in Green Bay, Wisconsin, and the parties made oral argument at the hearing's conclusion.

On May 24, 2018, Examiner Raleigh Jones filed a Proposed Decision and Order affirming Massey's one-day suspension. No objections were filed and the matter became ripe for Commission consideration on May 31, 2018.

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

FINDINGS OF FACT

1. Robert Massey is employed as a correctional sergeant by the State of Wisconsin Department of Corrections (DOC) at the Sanger Powers Correctional Center and had permanent status in class at the time of his suspension.

2. DOC is an agency of the State of Wisconsin and operates the Sanger Powers Correctional Center (SPCC) in Oneida, Wisconsin.

3. When an inmate has a medical emergency, the employee is supposed to contact the on-call nurse regarding the matter.

4. On May 10, 2017, an inmate at SPCC had a medical emergency. Massey became aware of same at 4:45 p.m. Although Massey subsequently checked on the inmate twice, he did not contact the on-call nurse regarding the inmate's condition till 5:30 p.m.

5. DOC suspended Massey for one day for his delay in contacting the on-call nurse about the inmate's medical emergency.

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 Robert Massey 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 Robert Massey by the State of Wisconsin Department of Corrections 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.

Robert Massey 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 Massey 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 May 10, 2017, at 4:45 p.m., an inmate told Massey that he should go check on an inmate who was unconscious. Massey immediately went to that inmate's room to check on the inmate. It was apparent that the inmate – who was laying face up on his bed – was having a medical emergency of some sort because he was unconscious and foaming at the mouth. Additionally, the inmate was sweating profusely, shaking, his eyes had rolled back, and his breathing was labored. Massey shook the inmate and called out the inmate's name in a loud voice, but the inmate was unresponsive to both the shaking and Massey's verbal inquiries. Massey knew the inmate was a diabetic. Massey did not provide any type of medical treatment to the inmate. Additionally, although Massey had a radio with him, he did not call anyone in the facility for help or call the on-call nurse. Massey then said that he would come back and check on the inmate in 15 minutes. Massey then left the inmate in his room with his roommate. Thereafter, Massey checked on the inmate twice at 15-minute intervals, namely at 5:00 and 5:15 p.m. Each time, there was no change in the inmate's condition. During one of his visits, Massey brought the inmate some juice, but the inmate did not drink it. At 5:30 p.m., Massey had to perform another work task, so he asked his coworker – Sgt. Peterson – to check on the inmate in question. Peterson then went to the inmate's room and found him laying face up in his bed. Peterson shook the inmate and spoke to him, but the inmate was unresponsive to both the shaking and Peterson's verbal inquiries. Peterson saw that the inmate was breathing but was having a medical emergency of some sort because spittle was coming out of his mouth. Peterson then ran and told Massey to call 911. Massey did not call 911, but instead called the on-call nurse. After Massey reached the on-call nurse and told her that the inmate was in his bed, was unresponsive, and was foaming at the mouth, the nurse told Massey to hang up the phone and immediately call 911, which Massey did. The inmate subsequently gained consciousness and was transported in an ambulance to a hospital for treatment of what turned out to be a diabetic reaction.

By Massey's own admission, this was his first medical emergency at SPCC.

It is apparent from Massey's actions in this matter that he took a wait and see approach in dealing with the inmate's medical condition. Massey decided at the outset to not call the on-call nurse, but instead to simply check on the inmate every 15 minutes to see if he had regained consciousness. The question in this case is whether Massey's inaction was in violation of DOC procedures. The Employer contends the inaction was not justified because the inmate was unconscious, foaming at the mouth, sweating profusely, shaking, his eyes had rolled back, and his breathing was labored. The Commission agrees with the Employer that under these specific circumstances, Massey should have immediately called the on-call nurse pursuant to DOC protocol specific to medical episodes. By taking a wait and see approach, Massey was essentially making his own call about the seriousness of the inmate's medical condition. DOC does not want its correctional officers to make that decision; rather, it wants the correctional officers to contact the on-call nurse about the medical emergency and let the nurse make that call. Here, since there were visible signs and symptoms that the inmate was having a medical emergency at 4:45 p.m., Massey should have called the on-call nurse at that time.

Massey emphasizes that he did call the on-call nurse (albeit later). However, the problem with giving Massey credit for that is that it overlooks his delay in making that call. As noted above, Massey became aware of the inmate's medical emergency at 4:45 p.m., yet he did not call the on-call nurse until 5:30 p.m. It is that part of Massey's conduct that was problematic. What Massey should have done was to call the on-call nurse at 4:45 p.m. – not 45 minutes later. While there were no adverse consequences for that delay, there certainly could have been.

Based on the above, the Commission finds that Massey's delay in contacting the on-call nurse regarding the inmate's medical emergency constitutes workplace misconduct warranting discipline. DOC had just cause to discipline him for that misconduct. A one-day suspension was not excessive punishment for same.

In so finding, the Commission has considered the fact that although the incident referenced above occurred in May 2017, the Employer did not impose discipline on Massey until December 2017. It is Massey's view that the discipline should be overturned on that basis alone. The Commission disagrees. Assuming for the sake of argument that such delay may be the basis for rejecting discipline, in this instance, the employee who performed DOC's investigation in this matter was injured in a car accident in September 2017 and was off work recuperating for three months. His absence for that period certainly contributed to the delay in imposing discipline here and does not absolve Massey from responsibility for his inaction.

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

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman