

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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GERALD KRUEGER, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0245

Case Type: PA

DECISION NO. 37465

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**Appearances:**

Sean P. Daley, Field Representative, AFSCME Council 32, N600 Rusk Road, Watertown, Wisconsin, appearing on behalf of Gerald Krueger.

Anfin Jaw, Legal Counsel, Department of Administration, 201 East Wilson, 10th Floor, P.O. Box 7864, Madison, Wisconsin, appearing on behalf of the State of Wisconsin Department of Corrections.

**DECISION AND ORDER**

On April 17, 2018, Gerald Krueger filed an appeal with the Wisconsin Employment Relations Commission asserting he had been suspended for five days without just cause by the State of Wisconsin Department of Corrections. The appeal was assigned to Examiner Peter G. Davis. A hearing was held on June 28, 2018, in Waupun, Wisconsin, and the parties made oral argument at the hearing's conclusion.

On July 5, 2018, Examiner Peter G. Davis issued a Proposed Decision and Order affirming the State of Wisconsin Department of Corrections' five-day suspension of Gerald Krueger. No objections were filed and the matter became ripe for Commission consideration on July 11, 2018.

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

**FINDINGS OF FACT**

1. Gerald Krueger is employed as a Correctional Officer by the State of Wisconsin Department of Corrections (DOC) at the Dodge Correctional Institution and had permanent status in class at the time of his suspension.

2. Krueger was tardy seven times in calendar year 2017. On November 28, 2017, he received a three-day suspension due to tardiness on September 22, 2017. On December 27, 2017, Krueger was tardy and subsequently received a five-day suspension.

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 did have just cause, within the meaning of § 230.34(1)(a), Stats., to suspend Gerald Krueger for five days

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

### **ORDER**

The five-day suspension of Gerald Krueger by the State of Wisconsin Department of Corrections is affirmed.

Signed at the City of Madison, Wisconsin, this 24th day of July, 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.

Gerald Krueger 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 Krueger 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).

Krueger was 30 minutes late for a December 27, 2017, overtime shift because he did not hear his alarm clock when it rang. Krueger was inevitably tired that day because he had recently worked multiple double shifts due to staff shortages. While the Commission understands that it may be difficult to always arrive at work on time under this circumstance (and other life stresses that Krueger was also experiencing), it remains a fundamental employee responsibility to arrive at work on time. Failure to do so inevitably and negatively impacts the State's operational needs. Thus, the Commission rejects Krueger's contention that the State has not met the operational impairment component of *Safransky*.

Krueger also contends that the suspension should be rejected because he was not allowed to have the representative of his choosing during the investigatory and pre-disciplinary meeting. As a consequence, Krueger asserts he was not able to present evidence of mitigating circumstances. However, the record establishes that Krueger was able to present a written statement detailing the mitigating circumstances he wanted the State to consider and that the investigatory meeting would have been delayed by at least one week had the meeting been rescheduled until his chosen representative was available. Therefore, the Commission does not find this contention to be a persuasive basis for rejecting the suspension.

Lastly, Krueger argues that a five-day suspension is overly harsh when measured against the limited extent of his misconduct, his good performance evaluations, and his ten years of seniority. However, as discussed earlier, the State has a valid operational interest in timely employee arrival. Further, the record establishes that the five-day suspension is sequentially the next step in a progression of discipline imposed on Krueger due to tardiness. In that context, while

it is apparent that the State does not wish to lose Krueger's services if tardiness continues to occur, the State is certainly within its just cause rights to progressively address Krueger's misconduct.

Given the foregoing, Krueger's suspension is affirmed.

Signed at the City of Madison, Wisconsin, this 24th day of July, 2018.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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James J. Daley, Chairman