

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

RITA LOKEMOEN, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0246

Case Type: PA

DECISION NO. 37466

Appearances:

Sean Daley, Field Representative, AFSCME Council 32, N600 Rusk Road, Watertown, Wisconsin, appeared on behalf of Rita Lokemoen.

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 April 17, 2018, Rita Lokemoen 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 Corrections. The appeal was assigned to Examiner Raleigh Jones. A hearing was held on June 13, 2018, in Stevens Point, Wisconsin. The parties made oral argument at the hearing's conclusion.

On July 6, 2018, Examiner Raleigh Jones issued a Proposed Decision and Order affirming the State of Wisconsin Department of Corrections' one-day suspension of Rita Lokemoen. 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. Rita Lokemoen is employed as a youth counselor by the State of Wisconsin Department of Corrections (DOC) at Copper Lake / Lincoln Hills Schools and is a 22-year DOC employee with permanent status in class at the time of her suspension.

2. DOC is an agency of the State of Wisconsin and operates Copper Lake / Lincoln Hills Schools in Irma, Wisconsin.

3. On December 18, 2017, Lokemoen was tasked with supervising a youth during the youth's hearing. During that hearing, Lokemoen's eyes were closed for much of the hearing.

4. DOC suspended Lokemoen for one day for her inattentiveness during the youth's hearing.

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 Rita Lokemoen 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 Rita Lokemoen 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

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.

Rita Lokemoen 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 Lokemoen 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 December 18, 2017, Lokemoen was tasked with escorting a male youth to and from a hearing and supervising him during the hearing. Prior to the hearing, Lokemoen put shackles and restraints on the youth. Not all youth at the school are put in shackles and restraints for hearings, but this youth had been violent in the past. Lokemoen then escorted the youth to his hearing on the school's grounds. After they arrived, Lokemoen attended the hearing along with the youth and two other employees. All four of them sat at a table; Lokemoen and the youth were on one side with the others seated across from them. The two employees seated across from Lokemoen had an unobstructed view of Lokemoen's face. Also, during the hearing, Lokemoen leaned back in her chair (as opposed to leaning forward). There was also a TV monitor in the room whereby another person participated in the meeting. Lokemoen's responsibility during the hearing was to observe the youth and be ready to react accordingly based on the youth's behavior during the hearing. The hearing lasted about 30 minutes. For much of that time, Lokemoen's eyes were closed and she appeared (to the two other employees in the room) to be sleeping. While her eyes were closed, Lokemoen put the palm of her hand on the side of her head to support her head. Occasionally, her head would move forward involuntarily (meaning her head bobbed). During the meeting, the youth also saw that Lokemoen's eyes were closed. It was disconcerting to the two employees that Lokemoen's eyes were closed during the hearing because she (Lokemoen) could not see what the youth was doing, and they did not know how the youth was going to react. During the hearing, neither employee took any action to get Lokemoen's attention such as touching her, but both tried to get Lokemoen's attention via eye contact. They were unsuccessful in doing so because Lokemoen's eyes were closed until the end of the hearing. When the hearing was over, Lokemoen opened her eyes and escorted the youth out of the hearing room without incident.

Following the hearing, one of the employees who was in the hearing room reported Lokemoen's actions to Petar Karna (Lokemoen's supervisor). Karna, in turn, reported Lokemoen's

actions to the school's security director. An investigation was subsequently commenced into Lokemoen's actions.

After the investigation was finished, DOC suspended Lokemoen for one day for her conduct on December 18, 2017. The disciplinary letter, which was dated February 18, 2018, alleged that on December 18, 2017, Lokemoen was inattentive while she was supervising a youth during the youth's hearing. The disciplinary letter also alleged that Lokemoen did not have her body camera activated when she had physical contact with the youth on the day in question and escorted him to the hearing.

We focus first on Lokemoen's conduct during the youth's hearing. The two employees who were with Lokemoen in the hearing room – and could clearly see her face across the table - credibly testified that Lokemoen had her eyes closed for much of the hearing and appeared to be sleeping. Lokemoen admits that her eyes were closed during the hearing, but is adamant that she was not sleeping. Whether Lokemoen actually slept during the hearing is not relevant as it suffices to say that at a minimum she was inattentive to what was happening during the hearing. Lokemoen's job during the hearing was to observe the youth and be ready to react accordingly based on the youth's behavior during the hearing. This youth had been violent in the past; that is why he was in shackles and restraints. Even if Lokemoen was listening to what was happening during the hearing – as she said she was - her job that day was to observe what was happening at the hearing, not merely to listen. Simply put, she could not do that job (i.e. observe the youth) effectively with her eyes closed.

Lokemoen offers the following defenses to excuse and/or mitigate her conduct.

First, she contends that during the youth's hearing, she experienced chest pains which she attributed to workplace stress. Building on that premise, Lokemoen avers that she tried to calm herself during the hearing by closing her eyes. It would be one thing if Lokemoen had proven that a bona fide medical condition or emergency caused her inattentiveness during the hearing. She did not prove that though. While she did show that she went to her doctor two weeks after the hearing involved here, and that the doctor put her on high blood pressure medication, the fact that Lokemoen has high blood pressure does not excuse or justify her inattentiveness during the hearing.

Second, Lokemoen implies that if it was disconcerting to the two employees in the hearing room that her eyes were closed during the hearing, and they had security concerns about it, then they could have done more to get her attention such as calling out her name or touching her. However, it was not their responsibility to do that; Lokemoen alone bears responsibility for her actions. Besides, both employees credibly testified that they decided not to do the things that Lokemoen proposed (i.e. calling out her name or touching her) because it would have embarrassed Lokemoen by drawing attention to her conduct to the person on the TV monitor who was unaware of Lokemoen's conduct. Both employees thought it was unprofessional to do that.

Third, during the hearing it became apparent that conflict exists between Lokemoen and her supervisor, Karna. Building on that, Lokemoen essentially blames Karna for her discipline. We find that blame is misplaced. Even if there is bad blood between them, Karna had no role in the investigation that was conducted. Additionally, Karna was not involved in the decision to discipline Lokemoen.

Having found the foregoing defenses unpersuasive, the Commission finds that Lokemoen can be held accountable for her inattentiveness during the hearing in question.

Based on the above, the Commission concludes that Lokemoen's inattentiveness during the hearing constituted workplace misconduct warranting discipline. DOC therefore had just cause to discipline her for that misconduct.

Finally, the Commission finds that the level of discipline imposed here (i.e. a one-day suspension) was not excessive. This is not the first time Lokemoen was disciplined for inattentiveness. The record shows that she received a written reprimand for inattentiveness in 2015 and a one-day suspension for the same offense in 2016. That suspension was not appealed to the WERC. Second, earlier this year, DOC imposed a one-day suspension on another employee at the facility for inattentiveness. That employee (Kaminski), like Lokemoen, was a non-probationary employee. That discipline is cited because it is internally consistent with the discipline meted out to Lokemoen. Under these circumstances, a one-day suspension passes muster.

In light of that conclusion, it is unnecessary to address the additional charge made against Lokemoen (i.e. that she did not have her body camera activated when she escorted the youth to the hearing). Thus, no comments are made regarding same.

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

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman