

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

R., Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0264

Case Type: PA

DECISION NO: 37495

Appearances:

Sean Daley, Field Staff, AFSCME Council 32, N600 Rusk Road, Watertown, Wisconsin, appearing on behalf of R.

Anfin Jaw, Attorney, Department of Administration, 101 East Wilson Street, 10th Floor, P.O. Box 7864, Madison, Wisconsin, appearing on behalf of the State of Wisconsin Department of Corrections.

ORDER DENYING MOTION FOR SUMMARY JUDGMENT

On September 4, 2018, R. filed an appeal with the Wisconsin Employment Relations Commission asserting he had been discharged without just cause by the State of Wisconsin Department of Corrections (DOC). On September 20, 2018, R. filed a motion for summary judgment. That same day, DOC filed a response opposing the motion.

Having considered the matter, the Commission makes and issues the following

ORDER

The motion for summary judgment is denied.

Dated at Madison, Wisconsin, this 4th day of October, 2018.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman

**MEMORANDUM ACCOMPANYING ORDER DENYING
MOTION FOR SUMMARY JUDGMENT**

The Commission uses the following standard in reviewing motions for summary judgment:

On summary judgment the moving party has the burden to establish the absence of a genuine, that is, disputed issue as to any material fact. On summary judgment the court does not decide the issue of fact; it decides whether there is a genuine issue of fact. A summary judgment should not be granted unless the moving party demonstrates a right to a judgment with such clarity as to leave no room for controversy; some courts have said that summary judgment must be denied unless the moving party demonstrates his entitlement to it beyond a reasonable doubt. Doubts as to the existence of a genuine issue of material fact should be resolved against the party moving for summary judgment. The papers filed by the moving party are carefully scrutinized. The inferences to be drawn from the underlying facts contained in the moving party's material should be viewed in the light most favorable to the party opposing the motion. If the movant's papers before the court fail to establish clearly that there is no genuine issue as to any material fact, the motion will be denied. If the material presented on the motion is subject to conflicting interpretations or reasonable people might differ as to its significance, it would be improper to grant summary judgment.

Grams v. Boss, 97 Wis.2d 332, 338-339, 294 N.W.2d 473 (1980), citations omitted.

In this matter, it is clear that there are disputes as to material fact. At a minimum, there is the untested assertion that R. has been treated differently than other employees with similar attendance patterns. Therefore, the motion is denied.

Dated at Madison, Wisconsin, this 4th day of October, 2018.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman