

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

JASON SMITH, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0258

Case Type: PA

DECISION NO. 37498

Appearances:

Jason Smith, 1535 North 57th Street, Milwaukee, Wisconsin, appearing on his own behalf.

Anfin Jaw, 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.

DECISION AND ORDER

On July 18, 2018, Jason Smith 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 Peter G. Davis. A hearing was scheduled for September 26, 2018, in Milwaukee, Wisconsin. At 10:18 p.m. the night before the hearing, the Examiner received an email from Smith stating in its entirety, "I will not be able to make it tomorrow is it possible to reschedule?" At 10:27 p.m., the Examiner denied the requested postponement by the following email.

Given the last minute nature of this request, the hearing will proceed as scheduled unless the State agrees to postpone.

If the hearing proceeds tomorrow, the State will present its witnesses. If you are not present, you will be given a chance to explain your absence/why the matter should not proceed to a decision based on the evidence the State presents.

If you just decide not to pursue the appeal, you have that option=your appeal would then be dismissed without a finding as to whether the State had just cause to suspend you.

The State did not agree to a postponement. Smith did not appear at the hearing. Before the hearing began, a telephone call was made to Smith. Smith did not answer. The hearing proceeded with presentation of evidence and argument by the State. Shortly after the hearing ended, Smith called and spoke with the Examiner. Later that day, the Examiner summarized that phone conversation in the following email.

Following up on our brief phone conversation when you called in after the hearing had ended, you can receive a copy of the hearing testimony for \$25. I believe you have received a copy of the exhibits (1-7) from Atty Jaw-all were received as part of the evidence I will be considering when deciding whether you were suspended for just cause. If I don't hear from you before Weds Oct 3, I will assume I should proceed the issue a decision based on the evidence and argument presented today.

If you order and pay for a copy of the evidence presented today, you will then have brief opportunity to send me written argument as to why you were not suspended for just cause.

Lastly, I again confirm that you have the option of simply ending this matter by withdrawing your appeal. As indicated earlier, any final decision in this matter will be posted on the WERC website.

Smith did not respond to the email and thus the matter became ripe for action on October 4, 2018.

On October 9, 2018, Examiner Peter G. Davis issued a Proposed Decision and Order. No objections were filed and the matter became ripe for Commission consideration on October 16, 2018.

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

FINDINGS OF FACT

1. Jason Smith was employed as a Corrections Sentencing Associate-Senior by the State of Wisconsin Department of Corrections (DOC) and had permanent status in class at the time of his suspension.
2. Smith was insubordinate on April 16, 2018.
3. Smith was suspended for one day due to his insubordination.

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 Jason Smith 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 suspension of Jason Smith by the State of Wisconsin Department of Corrections is affirmed.

Signed at the City of Madison, Wisconsin, this 16th day of October, 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.

Jason Smith 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 Smith 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 April 16, 2018, Smith refused to follow a valid work instruction from his supervisor. This insubordinate misconduct provided just cause for the one-day suspension imposed by the State of Wisconsin Department of Corrections.

Signed at the City of Madison, Wisconsin, this 16th day of October, 2018.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman