

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

LONEL LEBLANC, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0260

Case Type: PA

DECISION NO. 37768

Appearances:

Lonel LeBlanc, 916 Fond du Lac Avenue, Fond du Lac, Wisconsin, appearing on his own behalf.

Cara Larson, Attorney, Department of Administration, 101 E. 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 31, 2018, Lonel LeBlanc filed an appeal with the Wisconsin Employment Relations Commission asserting he had been suspended for three days without just cause by the State of Wisconsin Department of Corrections. The appeal was assigned to Examiner Raleigh Jones. A hearing was held on September 12, 2018, in Fox Lake, Wisconsin. The parties made oral arguments at the hearing's conclusion.

On October 23, 2018, Examiner Jones issued a Proposed Decision and Order affirming the three-day suspension of Lonel LeBlanc by the State of Wisconsin Department of Corrections. No objections were filed, and the matter became ripe for Commission consideration on October 30, 2018.

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

FINDINGS OF FACT

1. When the matter involved here happened, Lonel LeBlanc was employed as a Supervising Officer 2 (i.e. a captain) at the Fox Lake Correctional Institution (FLCI) in Fox Lake, Wisconsin. He had permanent status in class at the time of his suspension.

2. On March 7, 2018, LeBlanc called in sick for an employee who he supervised. In doing so, he made various statements that were not true.

3. LeBlanc was suspended for three days for doing that.

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 Lonel LeBlanc for three days.

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

ORDER

The three-day suspension of Lonel LeBlanc by the State of Wisconsin Department of Corrections is affirmed.

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

Lonel LeBlanc 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 LeBlanc 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 March 7, 2018, LeBlanc and a group of FLCI employees (hereinafter group) went to a bar after a training conference. While they were there LeBlanc drank alcohol to the point that, by his own admission, he became drunk. Two members of this group who were scheduled to work the third shift that night – Blasel and Birdyshaw – called in sick from the bar. LeBlanc then asked another member of the group – corrections officer Andrea Hernandez – if she was going to call in sick (for the third shift), to which she answered in the negative (meaning she was not going to call in sick). Notwithstanding Hernandez’s answer, LeBlanc – without being asked – then called FLCI and told one of his subordinates – Lt. Congleton – that Officer Hernandez would not be coming into work that night. LeBlanc then elaborated as follows: he said that Hernandez was sick, that she was at his house, and that she was throwing up. None of these statements were true because Hernandez was not sick at the time; she was not at LeBlanc’s house (but rather was with LeBlanc at the bar); and she was not throwing up at the time. After Congleton received LeBlanc’s call, he listed Hernandez as using sick leave and took her off the schedule for that night. Hernandez did not work the third shift that night.

Most disciplinary appeals that the Commission reviews involve misconduct at work. That is not the situation here. The discipline imposed here was for (alleged) off-duty misconduct. LeBlanc was not at work when this incident happened. When an employee is disciplined for off-duty misconduct, the Commission has to address whether there is a nexus between that conduct, the employee’s position, and the employer’s legitimate business interests. In this case, the nexus is apparent on its face. That is because LeBlanc’s off-duty misconduct (i.e. his phone call to FLCI reporting that Hernandez was sick and was not coming in for her shift) obviously

impacted the staffing level at FLCI that night. Due to LeBlanc's phone call, FLCI had one less corrections officer working that night than was originally scheduled.

The Commission has no trouble concluding that LeBlanc's phone call to FLCI regarding Hernandez was inappropriate and inexcusable. All the statements that LeBlanc made to Congleton in that phone call about Hernandez and her condition were not true. Contrary to LeBlanc's assertions, Hernandez was not sick at the time, she was not at LeBlanc's house, and she was not throwing up at the time. When LeBlanc made these untruthful statements about Hernandez and her condition, he violated DOC Work Rule #1 which proscribes giving "false information." That same work rule mandates that employees are to give "truthful, accurate and complete information" LeBlanc did not do that in his phone call to FLCI.

LeBlanc offers the following defenses to excuse and/or mitigate his conduct.

First, he notes that he was drunk when he made the phone call in question. The Commission understands that. The Commission is also aware that drunk people make outrageous statements. However, being drunk does not excuse individuals from their bad acts. Thus, LeBlanc can be held responsible for what he said in that phone call, notwithstanding his intoxication at the time. LeBlanc is responsible and accountable for what he said in his intoxicated state.

Second, LeBlanc contends that he could call in on behalf of Hernandez. In making our decision, the Commission need not decide whether an employee (or a supervisor) can call in on behalf of another employee. The issue here is this: when an employee calls in sick for another employee, can they make statements that are untrue? The answer to that question is no, they cannot. Here, though, when LeBlanc called in on behalf of Hernandez, he made statements about Hernandez and her condition that simply were not true. That was problematic and what he was disciplined for.

Third, LeBlanc notes that while his actions occurred on March 7, 2018, he was not disciplined until July 2, 2018. Thus, it took DOC about four months to issue the discipline in question. It is LeBlanc's view that the discipline should be overturned on that basis alone. The Commission disagrees. Even if the Commission were to accept the premise that it should not take DOC four months to issue discipline, DOC offered plausible explanations why it took that long in this case, stating the employees who were tasked with performing DOC's investigation worked at institutions other than FLCI, and the DOC administrators who decided on the level of discipline had many other matters on their proverbial plate. The foregoing matters contributed to the delay in imposing discipline.

Fourth, LeBlanc faults DOC over the fact that he was notified of his discipline in a phone call while he was on vacation. Once again, it is LeBlanc's view that his discipline should be overturned on that basis alone. The Commission disagrees. While there may be a case sometime where the employer's method of notification of discipline is so inappropriate that the discipline is overturned on that basis, it suffices to say here that this is not that case.

Having found the foregoing defenses insufficient to excuse and/or mitigate LeBlanc's conduct, the Commission finds that DOC had just cause to discipline LeBlanc for his (off-duty) misconduct.

The focus now turns to the level of discipline imposed here (i.e. a three-day suspension). Prior to this incident, LeBlanc had not previously been disciplined. Thus, this was his first disciplinary offense. The normal progressive disciplinary sequence for State employees is to receive a one-day suspension for their first disciplinary offense. That did not happen here. DOC instead skipped that step and went to the second step of the disciplinary progression (which is a three-day suspension). The Commission concludes that DOC could permissibly skip a step in the normal disciplinary progression. LeBlanc is a supervisor, and DOC wants its supervisors to be held to a higher standard than subordinate staff. Simply put, it wants supervisors to be role models, be professional and maintain self-control. As DOC sees it, LeBlanc did not do that here. Second, DOC concluded that LeBlanc's behavior set a bad example for other supervisors and subordinate staff. Finally, DOC concluded that LeBlanc's untruthful statements in his phone call undermined his credibility and damaged his relationship with other supervisors and the employees he supervised. The Commission is hard pressed to disagree. The Commission therefore finds that a three-day suspension for this misconduct by a supervisor was not excessive. Accordingly, the three-day suspension is affirmed.

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

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman