

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

ERIC ZIEGLER, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0271

Case Type: PA

DECISION NO. 37794

Appearances:

Paul Oosterhouse, Sergeant, Taycheedah Correctional Institution, 751 County Road K, Fond du Lac, Wisconsin, appearing on behalf of Eric Ziegler.

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 October 25, 2018, Eric Ziegler filed an appeal with the Wisconsin Employment Relations Commission asserting he had been suspended for three days in September, 2018, without just cause by the State of Wisconsin Department of Corrections. A hearing before Examiner Peter G. Davis was held on December 12, 2018, in Fond du Lac, Wisconsin, and the parties made oral arguments at the conclusion of the hearing.

On December 26, 2018, Examiner Peter G. Davis issued a Proposed Decision and Order affirming the three-day suspension by the State of Wisconsin Department of Corrections on Eric Ziegler. No objections were filed and the matter became ripe for Commission consideration on January 3, 2019.

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

FINDINGS OF FACT

1. Eric Ziegler is employed as a correctional sergeant by the State of Wisconsin Department of Corrections at the Taycheedah Correctional Institution and has permanent status in class.

2. Because he was working on a puzzle with other employees, Ziegler did not have the opportunity to observe whether the mandated inmate cell check occurred.

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 Eric Ziegler 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 Eric Ziegler by the State of Wisconsin Department of Corrections is affirmed.

Signed at the City of Madison, Wisconsin, this 17th day January, 2019.

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.

Eric Ziegler 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 Ziegler 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).

It is undisputed that a correctional officer failed to perform a mandated observation check on an inmate and falsely reported on a paper form that the check had occurred. That officer received a one-day suspension. As a correctional sergeant, one of Ziegler's responsibilities was to insure the check in question occurred. Because he was working on a puzzle at the time in question, Ziegler did not have the opportunity to do so.

Ziegler contends that he had been given permission to work on the puzzle. Credible testimony by one of Ziegler's superiors (and common sense) indicates that at best Ziegler misunderstood an instruction that it was permissible to work on puzzles with inmates as a socializing activity.

Ziegler also asserts that he should have been able to rely on the paper record indicating that the observation check had been performed. It is not clear that Ziegler actually did contemporaneously check the paper record in question. But even if he did, DOC persuasively argues that his puzzle activity deprived him of the opportunity to meet his responsibility of actually observing the job performance of those employees whose work he directs.

Lastly, Ziegler argues that his superiors also should have been held responsible for the failure to perform the inmate observation. Assuming for the moment that this could be a persuasive argument, the evidence does not establish there were any superior officers on duty at the time in question.

In light of the foregoing, it is clear that Ziegler engaged in misconduct. As to the level of discipline imposed, the record indicates that he had received a one-day suspension for inattentive behavior in December, 2017, and thus a three-day suspension is the next level of progressive discipline. His prior one-day suspension also negates any contention that the three-day suspension

represents disparate treatment vis-à-vis the one-day suspension received by the correctional officer who failed to perform the cell check. Further, as the warden wisely testified, Ziegler had the higher-level lead worker responsibility to make sure the work got done and “he knows better” due at least in part because of his prior discipline.

Given all of the foregoing, the suspension is affirmed.

Signed at the City of Madison, Wisconsin, this 17th day January, 2019.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman