

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

BENJAMIN SWEENEY, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF HEALTH SERVICES, Respondent.

Case ID: 2.0077

Case Type: PA

DECISION NO. 38425

Appearances:

Benjamin Sweeney, 801 Martin Street, Mauston, Wisconsin, appearing on his own behalf.

Anfin Jaw, 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 Health Services.

DECISION AND ORDER

On January 9, 2020, Benjamin Sweeney 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 Health Services. The appeal was assigned to Examiner Raleigh Jones. A hearing was held on March 11, 2020, in Mauston, Wisconsin. The parties made oral arguments at the hearing's conclusion. On March 30 2020, Examiner Jones issued Proposed Findings of Fact, Conclusion of Law, and Order affirming the suspension. Neither party filed objections to the proposed decision and the matter became ripe for Commission consideration on April 5, 2020.

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

FINDINGS OF FACT

1. Benjamin Sweeney is employed as a Correctional Officer at the Sand Ridge Secure Treatment Center in Mauston, Wisconsin. He is an 18-year State of Wisconsin Department of Health Services (DHS) employee and had permanent status in class at the time of his suspension.
2. DHS is an agency of the State of Wisconsin and operates the Sand Ridge Secure Treatment Center (SRSTC) in Mauston, Wisconsin. SRSTC staff serve the treatment needs of male

patients placed at the facility pursuant to a court order.

3. On July 5, 2019, Sweeney told a food service worker to “shut up.” Sweeney also called that same food service worker a “patient lover.” Sweeney made these statements in front of staff and patients who heard them.

4. The statements Sweeney made that were referenced in Finding 3 were disrespectful and inappropriate for the workplace.

5. Sweeney was suspended for one day 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 over this appeal pursuant to § 230.44(1)(c), Stats.

2. The State of Wisconsin Department of Health Services had just cause, within the meaning of § 230.34(1)(a), Stats., to suspend Benjamin Sweeney 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 Benjamin Sweeney by the State of Wisconsin Department of Health Services is affirmed.

Issued at the City of Madison, Wisconsin, this 20th day of April, 2020.

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.

Benjamin Sweeney 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 Sweeney 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).

This case involves what Sweeney said to a food service worker on July 5, 2019. That day, food service worker Armitage was overseeing the serving of food to patients. The patients from one wing of the facility had been served and staff was getting ready to serve the other half. While getting ready to serve them, Sweeney came up to the serving line and indicated he wanted to be served. In response to Sweeney's request, Armitage told Sweeney that he could not be served until the rest of the patients had been served. Armitage's statement irked Sweeney because Sweeney did not want to wait until the rest of the patients had been served. Sweeney wanted to be served right then and there. An agitated and upset Sweeney then scoffed at what Armitage had just said and told Armitage in a loud voice to "shut up." Sweeney also told Armitage that he (Armitage) was going to get in a lot of trouble (for not serving Sweeney) and was going to have to talk to the (Sand Ridge) director about it. Armitage decided to not escalate the confrontation with Sweeney, so he said nothing more to Sweeney and served him his food. The patients who were working on the food serving line (and who were supervised by Armitage) heard Sweeney's comments to Armitage and reacted negatively to them. As Sweeney proceeded down the food serving line with his tray, he mumbled to himself. At one point, Sweeney said "patient lover" while looking at Armitage. This comment was said loud enough that it was heard by both staff and patients on the food serving line. Given its context and usage, it is apparent that Sweeney directed that comment at Armitage.

Afterwards, Sweeney told two co-workers what had just happened on the food serving line with Armitage. In the course of doing that, Sweeney said to them, "I guess I shouldn't have called him a fucking patient lover in front of everybody."

Two of the facts identified above are disputed. First, Sweeney contends he did not tell Armitage to “shut up.” According to Sweeney, he said “hurry up.” The problem with this claim is that no one else involved in this matter heard Sweeney say, “hurry up.” Instead, all the other witnesses heard Sweeney say, “shut up.” Second, as for using the phrase “patient lover,” Sweeney admits saying it, but he asserts he did not say it in a loud voice. While we will address the significance of Sweeney’s statement in more detail later, here we are simply addressing whether Sweeney made his “patient lover” statement in a loud voice. Once again, no one else involved in this matter supported Sweeney’s assertion that he did not make that statement loudly. Instead, all the other witnesses heard him say it loudly.

Having so found, the focus now turns to whether Sweeney’s comments in the food line were appropriate for the workplace. The Commission has no trouble finding they were not. That is because employees are supposed to be respectful to their co-workers and treat them courteously. Employees who are disrespectful and discourteous to their co-workers can fairly be disciplined for same. On the day in question, Sweeney was disrespectful and discourteous to Armitage when he told him to “shut up.” Additionally, he belittled Armitage in front of the patients he supervised on the food line. It would be one thing if the record showed that Armitage provoked or badgered Sweeney to the point that he shared some responsibility for what Sweeney said to him. However, the record does not show that. Instead, the record shows that it was Armitage who diffused the situation from escalating further by saying nothing back to Sweeney. Under these circumstances, Sweeney bears sole responsibility for what happened. Turning now to Sweeney’s “patient lover” comment, that too was inappropriate. While Sweeney tries to minimize its significance by contending that not that many people heard him say it, that claim misses the mark because the statement should not have been said at all (whether it was in a loud voice or not). It was a disrespectful slur that not only demeaned Armitage, but also the patients who heard it. As such, the statement was problematic because it had the potential to negatively affect the patient climate at Sand Ridge.

Sweeney offers the following defenses to excuse and/or mitigate his conduct. First, Sweeney wants to make this case be about who should get served first in the lunch line, patients or staff. As Sweeney sees it, staff should get served first and that essentially justifies his getting upset when Armitage would not serve him. However, that is not the focus of this case, so the Commission need not comment on same. Instead, the focus here is exclusively on Sweeney raising a fuss over a lunch tray and what he said to Armitage. Second, Sweeney claims that the investigation in this matter started because Armitage’s supervisor “enticed” Armitage to file a written complaint against Sweeney. Even if that is what happened, it does not matter. That is because an investigation into this matter was inevitable because - as Sweeney himself put it when he was telling his co-workers what happened - he made his statements on the lunch line “in front of everybody.” At that point, the proverbial cat was out of the bag. Finally, Sweeney noted that he later apologized to Armitage for his statements to him. Even if he did, that does not excuse his actions. The Commission therefore finds that the foregoing defenses are insufficient to excuse and/or mitigate Sweeney’s conduct. To the extent that Sweeney believes he was justified in being “frustrated” with Armitage and that his comments to him were appropriate, he was wrong. His comments on the food line that day were inappropriate, constituted workplace misconduct, and warranted discipline.

Regarding the level of discipline which was imposed here (i.e. a one-day suspension), the Commission finds that was not an excessive punishment for same. In so finding, it is expressly noted that a one-day suspension is the first step in DHS's progressive discipline sequence. The Commission therefore finds that DHS had just cause to suspend Sweeney for one day.

Issued at the City of Madison, Wisconsin, this 20th day of April, 2020.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman