

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

LINDSEY HUMMELMEIER, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0351

Case Type: PA

DECISION NO. 38448

Appearances:

Michael Kuborn, Attorney, 3475 Omro Road, Suite 200, P.O. Box 2845, Oshkosh, Wisconsin, 54903-2845, appearing on behalf of Lindsey Hummelmeier.

Cara Larson, Attorney, Department of Administration, 101 East Wilson, 10th Floor, P.O. Box 7864, Madison, Wisconsin, 53707-7864, appearing on behalf of the State of Wisconsin Department of Corrections.

DECISION AND ORDER

On March 25, 2020, Lindsey Hummelmeier filed an appeal with the Wisconsin Employment Relations Commission asserting she had been discharged without just cause by the State of Wisconsin Department of Corrections. The appeal was assigned to Examiner Raleigh Jones. A telephone hearing was held on May 27, 2020. The parties made oral argument at the conclusion of the hearing.

On July 1, 2020, Examiner Jones issued a Proposed Decision and Order affirming the discharge. Objections were filed by Hummelmeier on July 6, 2020 and the State did not file a response. The matter became ripe for Commission consideration on July 14, 2020.

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

FINDINGS OF FACT

1. Lindsey Hummelmeier (Hummelmeier) was employed as a correctional officer by the State of Wisconsin Department of Corrections (DOC) at the Taycheedah Correctional Institution and had permanent status in class at the time of her discharge.

2. DOC is an agency of the State of Wisconsin and operates the Taycheedah Correctional Institution (TCI) in Fond du Lac, Wisconsin.

3. On December 1, 2019, Hummelmeier was tasked with guarding a TCI inmate at a hospital who had received medical care.

4. That inmate had an intravenous (IV) line that ran from the inmate to an IV machine.

5. While guarding the inmate, Hummelmeier disconnected the IV line that ran from the inmate to the IV machine and then turned the IV machine off.

6. Correctional officers at TCI are not trained to remove an IV. Doing that is not part of their job.

7. DOC discharge Hummelmeier for her conduct referenced in Finding 5.

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 Wis. Stat. § 230.44(1)(c).

2. The State of Wisconsin Department of Corrections had just cause, within the meaning of Wis. Stat. § 230.34(1)(a), to discharge Lindsey Hummelmeier.

3. Lindsey Hummelmeier is not a prevailing party within the meaning of Wis. Stat. § 227.485(3).

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

ORDER

1. The discharge of Lindsey Hummelmeier by the State of Wisconsin Department of Corrections is affirmed.

2. Lindsey Hummelmeier's motion for fees and costs is denied.

Issued at the City of Madison, Wisconsin, this 21st day of July, 2020.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman

MEMORANDUM ACCOMPANYING DECISION AND ORDER

Wisconsin Stat. § 230.34(1)(a) 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.

Wisconsin Stat. § 230.44(1)(c) 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.

Lindsey Hummelmeier had permanent status in class at the time of her discharge and her appeal alleges that the discharge was not based on just cause.

The State has the burden of proof to establish that Hummelmeier 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).

Inmates at TCI are sometimes taken off site to a local hospital to have their medical needs addressed. When that happens, a correctional officer accompanies the inmate off site. This is known as a medical vigil. The correctional officer who is tasked with performing a medical vigil takes the inmate off site and transports them to the hospital, waits with the inmate until they are discharged from the hospital, and then transports them back to TCI.

When correctional officers are tasked with performing a medical vigil with an inmate, they are not supposed to perform any medical treatment on them. The reason is because that is not part of a correctional officer's job. A correctional officer at TCI is responsible for the security, custody and control of inmates. That is also their job when they escort inmates off site for a medical vigil. While there could conceivably be emergencies where a correctional officer might perform say CPR on an inmate or coworker, that scenario is not involved here. Correctional officers are not trained by DOC to perform any kind of medical treatment on inmates. As it relates to this case, correctional officers are not trained by DOC to remove/disconnect an intravenous (hereinafter IV) line.

DOC has a policy dealing with the procedures correctional officers are to follow at medical vigils. That policy does not say anything about disconnecting an inmate's IV line. Specifically, there is no proscription therein that says that correctional officers are not to disconnect an inmate's IV line. The reason that proscription is not contained in that policy is because it was deemed unnecessary to say it. Insofar as the record shows, DOC has never had a situation - prior to the instant case - where a correctional officer on a medical vigil disconnected an inmate's IV line. If a medical emergency arises while a correctional officer is with an inmate on a medical vigil, the correctional officer is supposed to contact the medical staff and let them deal with it; they are not supposed to deal with it themselves. Once again, the reason is because that is not their job.

On December 1, 2019, Hummelmeier was tasked with being a vigil officer for a TCI inmate. On that day, Hummelmeier took inmate PL off site and transported her to a local hospital where she received medical treatment. After PL received medical treatment, she went to a hospital room for recuperation. Hummelmeier stayed with PL in the room until her shift ended at 2 am. While Hummelmeier was with PL in the room, a nurse hooked PL up to an IV machine. According to Hummelmeier, PL was restless afterwards and could not sleep.

About 1:50 am, an alarm on the IV machine went off. It is unclear from the record why that happened. According to Hummelmeier, this alarm beeped 8 to 12 times. It can be inferred from what happened next that Hummelmeier was irritated by the incessant beeping. Hummelmeier admits she then did the following on her own volition without consulting with any medical staff or TCI supervisor. She first hit a button on the IV machine to stop the beeping, but the beeping continued. She then told PL she (Hummelmeier) was going to unplug her IV so she would be more comfortable. According to Hummelmeier, PL did not object to what Hummelmeier planned to do. Hummelmeier then disconnected the IV line that ran from the inmate to the IV machine and then turned off the IV machine. After Hummelmeier did the foregoing, she did not tell the hospital nursing staff what she had done; nor did she tell a TCI supervisor what she had done; nor did she write it down in a TCI logbook that was in the room; nor did she tell the correctional officer who relieved her at 2 am. According to Hummelmeier, PL was not as restless after her IV was removed.

When Hummelmeier's shift ended at 2 am, another correctional officer from TCI, Ruetter, showed up to replace Hummelmeier on the vigil. Hummelmeier then left the room. Shortly thereafter, Ruetter noticed that PL's IV had been disconnected, that the IV machine was turned off, and that the IV machine had been unplugged from the wall and the electrical cord had been wrapped around the IV machine. Ruetter considered that odd, so she made an entry in the logbook. Her entry said "Correctional officer Hummelmeier disconnected inmate from IV."

About 2:15 am, a hospital nurse came into the inmate's room. The nurse immediately noticed that the inmate's IV had been disconnected. The nurse was upset by that, and asked PL who had unplugged her IV. PL responded that Hummelmeier had done it. The nurse reattached the IV. Insofar as the record shows, PL was not harmed by her IV line being disconnected for about 25 minutes.

When Ruetter's shift ended, she told her supervisor, Quakenboss, what Hummelmeier had done. Quakenboss, in turn, filed a report regarding same. An investigation was subsequently conducted into the matter referenced above. The DOC investigator interviewed numerous employees as part of the investigation. When the investigator interviewed Hummelmeier, she read Hummelmeier her *Garrity* rights at the beginning of the interview. When the investigator subsequently prepared her written report, she did not include therein that she read Hummelmeier her *Garrity* rights at the start of the interview.

In some disciplinary cases, our first task is to decide whether the employee did what they are charged with doing. Here, though, we do not need to do that because Hummelmeier admits that she did what she was charged with doing, namely disconnecting the IV line that ran from the inmate to the IV machine and then turning off the IV machine. Additionally, while she did not

admit to unplugging the IV machine from the wall, several witnesses testified without contradiction that the IV machine was unplugged from the wall. Given that uncontradicted testimony, we further find that Hummelmeier also unplugged the IV machine from the wall.

No one directed Hummelmeier to disconnect the inmate's IV, nor did the inmate ask her to do it. Instead, Hummelmeier did it on her own volition without permission. Before she did it, she did not consult with any medical staff (even though she was in a hospital), nor did she check with her supervisor back at TCI or with anyone else at TCI about the propriety of what she planned to do.

The focus now turns to her motive for doing what she did. While one could infer from the record that she disconnected the inmate's IV and turned off the IV machine to stop the beeping that was occurring, we have decided to give Hummelmeier the benefit of the doubt and accept her assertion that the inmate was restless in her bed, and Hummelmeier thought that disconnecting her IV would make her less restless. However, even if that was her motive for doing what she did, that good intention does not matter.

Moreover, after she disconnected the inmate's IV, she did not tell anyone what she had done. Specifically, she did not tell any medical staff at the hospital, nor did she tell her supervisor or anyone else at TCI, nor did she tell the correctional officer who relieved her ten minutes later. If Hummelmeier had told any of those people what she had done, it is likely they would have said what we say now: it was a monumental mistake for Hummelmeier to do what she did. She should not have done it.

Hummelmeier offers a number of defenses which she contends should excuse/mitigate her conduct. We address them next.

First, Hummelmeier notes that before she went to work at TCI in October 2018, she formerly worked as a CNA (certified nursing assistant) at two assisted living facilities in Wisconsin several years ago. She avers that in those jobs, she disconnected IVs from residents "more than once." She maintains that because of that prior work experience, she knew how to disconnect an IV.

The Commission finds that even if Hummelmeier did know how to do that, her prior work experience did not somehow authorize or permit her to disconnect the inmate's IV for these reasons. To begin with, that was not part of her job as a correctional officer on the medical vigil. Hummelmeier was at the hospital with the inmate to provide security and keep the inmate in custody during her hospital visit. That was it; Hummelmeier was not there to perform any medical tasks on the inmate whatsoever. DOC employs other people to do that (i.e. deal with inmates' medical needs). We are referring, of course, to DOC's medical staff at each institution. That medical staff has specialized medical training and certification that Hummelmeier does not have. DOC did not hire Hummelmeier to be a member of its medical staff at TCI. Instead, it hired her to be a correctional officer. While none of the TCI medical staff was with Hummelmeier and the inmate at 1:50 am on the day in question, they did not need to be for this simple reason: Hummelmeier and the inmate were in a hospital. If the inmate had any medical needs,

Hummelmeier was to let the hospital staff deal with it. Unfortunately, Hummelmeier did not do that and instead opted to do it herself. It is assumed for the purpose of discussion that Hummelmeier was once a State certified CNA. Rhetorically speaking, did that fact allow her to disconnect the inmate's IV line? No it did not. The fact that Hummelmeier may have once been a state certified CNA and disconnected an IV before did not authorize or entitle her to remove the inmate's IV. That is because at TCI, CNAs are not empowered to disconnect IVs; only nurses can do that. Finally, it is noteworthy that Hummelmeier admitted that when she removed an IV when she worked at one of the assisted living facilities, she did so under the supervision of an RN. Here, of course, Hummelmeier removed the inmate's IV without a nurse supervising the event. That was significant because Hummelmeier was in a hospital at the time where medical staff was available.

Second, Hummelmeier averred that another reason she removed the inmate's IV was because the IV bag was empty. If that was a reason, Hummelmeier did not say anything about it to the inmate at the time. All Hummelmeier told the inmate was that she was going to unplug her IV so that she would be more comfortable. Hummelmeier also maintains that she "improved" the inmate's condition, and made her more comfortable, by disconnecting her IV. This claim misses the mark because Hummelmeier was not supposed to do anything at the hospital to "improve" the inmate's condition or make her more comfortable. As already noted, that was not her job; it was medical staff's job to do that.

Third, Hummelmeier asserted she did not harm the inmate by disconnecting the IV. To support that premise, she relies on the testimony of her expert witness, John Walsh. Walsh is an RN and a former TCI employee who was once the assistant health services manager. He is now retired. By his own admission, his employment at TCI did not end well. He testified that in his view, the inmate was not harmed by Hummelmeier's actions. Even if Walsh is correct and Hummelmeier did not injure or harm the inmate by disconnecting her IV, that does not somehow lessen the significance of Hummelmeier's conduct. What is important here is that the inmate could have been harmed by Hummelmeier's conduct. Not only did Hummelmeier expose the inmate to a risk of harm, she did so unnecessarily. Additionally, Hummelmeier exposed DOC to liability for her actions.

Having addressed those defenses dealing with the facts and found them unpersuasive, we find that Hummelmeier committed misconduct when she disconnected the inmate's IV.

We now turn to her remaining arguments.

Hummelmeier claims that one aspect of DOC's investigation in this matter was flawed. In this case, DOC conducted an investigation after it learned what Hummelmeier had done at the hospital. As part of that investigation, the investigator interviewed witnesses. Afterwards, the investigator wrote a report which summarized her findings. Hummelmeier avers that summary was tainted because there is no reference therein that she was given her Garrity rights before she was interviewed. (Note: Garrity rights protect public employees from being compelled to incriminate themselves during investigatory interviews conducted by their employer). That is true; there is nothing on the form that says that happened. However, at the hearing, the investigator testified without contraction that Hummelmeier was read her Garrity rights at the start of the interview.

That being so, we find that DOC's investigation was not tainted or unfair because it failed to include that information in the investigative summary form.

Finally, Hummelmeier contends that she did not violate any express work rule by disconnecting the inmate's IV. That is true; there is no work rule that expressly proscribes correctional officers from disconnecting IVs from inmates. However, it is implicit that correctional officers are proscribed from doing that because they are not trained to perform that act. That is not surprising when one considers that correctional officers are not trained to perform any kind of medical tasks on inmates because it is not part of their job. The fact that correctional officers are not trained to disconnect IVs means they are not supposed to do it.

The focus now turns to whether Hummelmeier's misconduct was sufficiently serious to warrant discharge. When a DOC employee commits misconduct, DOC traditionally references its work rules and then asserts that the employee's misconduct violated one or more of those rules. DOC did that here and asserted in Hummelmeier's discharge letter that her conduct violated work rules which proscribe "negligence" and "gross negligence". Those words /phrases are legal terms of art that are usually used in a tort context, but their inclusion in Hummelmeier's discharge letter shows that they can be used in the employment context too. While it might be necessary in some cases to parse the exact meanings of those terms, we need not do that here. Instead, it suffices to say that their inclusion in Hummelmeier's discharge letter passes muster with the Commission.

In the objection to the Proposed Decision, Hummelmeier's position is generally that of "no harm, no foul", relying on her medical background training and the "non-severe" nature of her actions. What this objection fails to address is the potential for harm that could have been caused by her actions. If a driver is going 100 mph on a rural road, do we ignore it so long as no one was hurt? Of course the driver would be held responsible for their actions because of the potential for harm that could come from such an action. Such is the case of Hummelmeier's actions here. Had Hummelmeier reported the problems with the IV to the hospital staff¹ it is very probable that the Commission would view such conduct as mitigating her erroneous actions. Hummelmeier did none of these things, thus compounding the potential for harm to the inmate in question. While it's true that, as Hummelmeier argues, the consequences of her actions were not severe, in fact it is the potential harm that may have been caused that allows the Commission to find the conduct was sufficiently severe to allow the discharge to stand.

Hummelmeier's misconduct does not fall within the confines of the Wis. Stat. § 230.34(1)(a) list of conduct that specifically allows for discharge without regard to progressive discipline. However, Wis. Stat. § 230.04(13m) and the provisions of Sec. 410.030 of the Wisconsin Human Resources Handbook authorized by Wis. Stat. § 230.04(13m) allow discharge to be a disciplinary response for serious misconduct such as that present here where the employee has not

¹While Hummelmeier argues her past medical training gives her the authority to act as she did, it undercuts her decision making to have not reported this issue to any other hospital authority or DOC relief, a communication that such past training and background would most certainly have mandated she do.

previously progressed through all portions of a disciplinary progression. The Commission finds Hummelmeier's misconduct to be sufficiently serious to provide just cause for discharge.

The Commission therefore affirms the discharge of Hummelmeier.

Issued at the City of Madison, Wisconsin, this 21st day of July, 2020.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman