

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

MICHAEL BUETTNER, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0443

Case Type: PA

DECISION NO. 38965

Appearances:

Richard Rice, Attorney, Fox & Fox, S.C., 124 West Broadway, Suite 100, Monona, Wisconsin appearing on behalf of Michael Buettner.

Anfin Jaw, Attorney, 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 March 17, 2021, Michael Buettner 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 (DOC).

A telephone hearing was held on June 7, 2021, by Commission Examiner Raleigh Jones. The parties made oral argument at the end of hearing.

On June 25, 2021, Examiner Jones issued a Proposed Decision and Order affirming the three-day suspension by DOC. On June 30, 2021, Buettner filed objections to the Proposed Decision. DOC did not file a reply to the objections by the deadline given of July 6, 2021.

Being fully advised on the premises and having considered the matter, the Commission makes and issues the following:

FINDINGS OF FACT

1. Michael Buettner, herein Buettner, is employed by the State of Wisconsin Department of Corrections (DOC) as a Captain at Oakhill Correctional Institution. He had permanent status in class at the time of his suspension.

2. On both August 25 and 27, 2020, Buettner logged on his timesheet that he worked overtime those days by starting his workday at 4:30 am rather than his regular start time of 6 am.

3. DOC expects overtime to be approved by a supervisor prior to the scheduled event. Buettner did not have permission from his supervisor to work the overtime referenced in Finding 2.

4. DOC suspended Buettner for three days for not getting advance permission to work the overtime referenced in Finding 2.

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 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 suspend Michael Buettner 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 Michael Buettner is affirmed.

Issued at Madison, Wisconsin this 9th day of July, 2021.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman

MEMORANDUM ACCOMPANYING DECISION AND ORDER

Section 230.34(1)(a), Stats., states in pertinent part:

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.

Buettner 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 Buettner 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).

The following background is germane to this matter. In September 2020, Rebecca Blodgett, Oakhill's Security Director and Buettner's direct supervisor, had reason to review Buettner's timesheet for the last week of August 2020. After doing so, she had concerns about the accuracy of multiple entries. She then discussed her concerns with the warden and the warden authorized a formal investigation into the matter. When that investigation started, Buettner was placed on paid leave. Buettner was on paid leave for four months while DOC conducted this investigation as well as an investigation involving a separate unrelated matter. After the investigation into Buettner's timesheet was completed, the DOC investigator initially concluded that Buettner's timesheet entries for August 21, 22, 23, 25, 27 and 29, 2020 were inaccurate. DOC's investigator then met with Buettner on December 7, 2020 and reviewed the charges against him. In the course of defending himself, Buettner successfully rebutted some of the charges that his timesheet entries for the week in question were inaccurate. Following that meeting, DOC decided to not pursue disciplinary charges against Buettner for his timesheet entries for August 21, 22, 23, and 29, 2020. That said, it did decide to discipline him for his timesheet entries for August 25 and 27, 2020. Specifically, his suspension letter averred in pertinent part:

This action is taken based on the following facts. On August 25, 2020 you logged 4:30 am as your start time on your timesheet, but camera footage shows you arrived at 5:57 am. On this date, you were facilitating ERU training, and you stated you were preparing for the training by reading manuals, preparing equipment, and stopping to buy food to grill out at lunch. However, you failed to get permission regarding the overtime from your supervisor, Security Director Rebecca Blodgett about your start time of 4:30 am.

On August 27, 2020 you were scheduled for Taser training, which started at 8 am. You recorded on your time that your start time for this date was 4:30 am. However, you failed to get permission regarding the overtime from your supervisor Security Director Rebecca Blodgett regarding your start time of 4:30 am.

Per HR Policy 200 30.406 Leave Benefits, “Employees are responsible to accurately record their work time, account for all absences, and be aware of their leave allotments and balances.” Security Director Rebecca Blodgett indicated that she has communicated several times that the expectation for overtime is that it must be approved prior to the scheduled event.

Before the Commission reviews the charges made against Buettner in the suspension letter, it is noted at the outset that the above-referenced charges are narrower and more limited than originally contemplated. Originally, entries for six days were involved; that subsequently dropped to two days. That bears noting because at the hearing, Buettner defended himself against various charges that were not included in the suspension letter but were addressed at the December 7, 2020 investigatory meeting. However, since the only matters included in his suspension letter are the entries for August 25 and 27, 2020 referenced above, the Commission need not address any other timesheet matters except those.

To that end, the focus now turns to a review of the charges made against Buettner in the suspension letter. The charges contained in those three paragraphs can fairly be condensed to the following allegation: even if Buettner started his workday on those two days at 4:30 am as he listed on his timesheet, he still committed misconduct because he did not have permission from his supervisor to work that particular overtime.

It is Buettner’s view that he did not have to obtain approval from Blodgett for that overtime because he was training on those days. He was wrong; he did. It would be one thing if Buettner had shown that he had been given carte blanche authority to set his own hours, including authorizing his own overtime, on those days that he did training. However, he did not show that. That is not surprising because that is not how overtime is authorized in the public sector. Usually someone else has to authorize and approve it because of overtime’s impact on the budget. The record conclusively demonstrates that that was the case here, and Blodgett was the person who decided if overtime was authorized and approved. The following shows that at three separate supervisory staff meetings, Blodgett had told her subordinates that she had to authorize and approve their anticipated overtime in advance. Thus, they could not approve their own overtime.

The minutes from the May 8, 2019 Oakhill supervisory meeting provide in pertinent part:

Supervisor Overtime: expectation is to get approval from Ms. Blodgett and only to either cover shifts or to work on investigations. Based on the charts (see attached), it seems we need to reign in the OT of security supervisors. Please use your time management skills and self-manage so we can reduce the OT.

The minutes from the September 11, 2019 Oakhill supervisory meeting provide in pertinent part:

7. OT Reminder

Let Ms. Blodgett know if you are working OT.

The minutes from the November 14, 2019 Oakhill supervisory meeting provide in pertinent part:

9. Supervisor Core Hours

All OT needs to be documented in an email to Security Director Blodgett to say what you are working on.

Buettner attended those three staff meetings. Given the discussions referenced above in those staff meetings, Buettner was on notice that he needed to get Blodgett's approval for any overtime that he worked. Buettner avers that on August 25 and 27, 2020, he started his workday 1.5 hours early. His workday normally starts at 6 am and both days he logged on his timesheet that he started working at 4:30 am. For the purpose of discussion herein, it is assumed that Buettner was on-the-clock, so to speak, at 4:30 am. His doing that involved overtime because he was starting his paid workday 1.5 hours early. As already noted, Buettner needed permission from Blodgett to do that. It would be one thing if Buettner had offered into evidence emails that showed he requested to work overtime on the mornings of August 25 and 27, with Blodgett's written approval. However, he did not do so. In fact, Blodgett's unrebutted testimony was that she received no such emails from Buettner requesting to work overtime on those days, nor did she specifically approve his getting overtime by starting his work day at 4:30 am on each of those two days. Thus, it is clear that Buettner's overtime usage on those two days was unauthorized by his supervisor.

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

First, he notes that prior to this matter, he had never been questioned before about his timesheets. He sees that as significant. It suffices to say that the Commission does not. Just because DOC had not previously investigated Buettner's timesheets does not mean it was somehow precluded from doing so.

Second, he faults Blodgett for not discussing the timesheet matter with him privately before she took her concerns about certain entries to the warden. It would be one thing if there were just a few entries on Buettner's timesheet that Blodgett found troublesome. However, she thought there were multiple entries/discrepancies that were problematic. Under these circumstances, Blodgett was not obligated to discuss her concerns with Buettner privately. Aside from that, it was the warden that authorized the investigation into Buettner's timesheet, not Blodgett.

Finally, Buettner avers that between the hours of 4:30 to 6 am on the two days in question, he was preparing for the training work which he was doing that day. Thus, he essentially claims

he was entitled to be paid “prep time”. DOC disputes that claim and asserts it does not pay hourly employees “prep time” for any work they do before their shift starts. The Commission has decided that it need not opine on this claim because the Commission has already decided to assume for the sake of discussion that Buettner was working as he claimed between 4:30 and 6 am. Given that assumption, it is unnecessary to comment further on the topic of “prep time”.

Having addressed Buettner’s defenses and found them unpersuasive, the Commission finds that Buettner committed misconduct when he did not have permission from his supervisor to work overtime on August 25 and 27, 2020. He could fairly be disciplined for that. To the extent that Buettner thought he did not need to get advance approval for that overtime, he was just plain wrong. He did. He now knows otherwise.

The focus now turns to the level of discipline imposed here (i.e., a three–day suspension). The record shows that Buettner received a one day suspension for other misconduct on January 26, 2021. That was the day before discipline was imposed in this matter. That one day suspension was also appealed to the Commission. As of the date this proposed decision was issued, that one-day suspension was still on the books, so to speak, and had not been overturned. It could therefore be relied on for the purpose of progressive discipline. Under DOC’s progressive discipline sequence, the next level of discipline after a one day suspension is a three day suspension. Since that is what was imposed here, a three day suspension was progressive and not excessive.

Given the foregoing, it is concluded that there was just cause for the imposition of a three day suspension and it is therefore affirmed.

Issued at Madison, Wisconsin this 9th day of July, 2021.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman