

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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KEVIN ZIEGLER, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0457

Case Type: PA

DECISION NO. 38988

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Appearances:

Kevin Ziegler, 2556 Airport Road, Apt. 5, Portage, Wisconsin, appearing on his own behalf.

Anfin Jaw, 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 May 11, 2021, Kevin Ziegler 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 Corrections. The appeal was assigned to Examiner Raleigh Jones. A telephone hearing was held on July 12, 2021. The parties made oral argument at the conclusion of the hearing.

On August 9, 2021, Examiner Jones issued a Proposed Decision and Order affirming the one-day suspension by DOC. On August 10, 2021, Kevin Ziegler filed objections to the Proposed Decision. DOC did not file a reply by the deadline given of August 16, 2021.

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

**FINDINGS OF FACT**

1. Kevin Ziegler is employed by the State of Wisconsin Department of Corrections (DOC) as a correctional sergeant at Columbia Correctional Institution (CCI) and had permanent status in class at the time of his one-day suspension.

2. CCI is a correctional facility in Portage, Wisconsin operated by DOC, a state agency of the State of Wisconsin.

3. In December, 2020, Ziegler shared his opinion with two probationary correctional officers that two employees were having an inappropriate sexual relationship at work. He did that before he reported his concerns to a supervisor.

4. DOC suspended Ziegler 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 to review 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 Kevin Ziegler 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 Kevin Ziegler by the State of Wisconsin Department of Corrections is affirmed.

Issued at Madison, Wisconsin, this 31<sup>st</sup> day of August, 2021.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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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.

Kevin 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).

Ziegler works in the institution's control center where one of his job duties is to monitor the video feeds from the institution's camera system. He is supposed to use the cameras that are throughout the institution to monitor inmates. However, Ziegler sometimes uses the institution's camera system to monitor the whereabouts and activities of his coworkers. Not surprisingly, some of the coworkers who learned that Ziegler watched them via video feeds complained to management about Ziegler's conduct. Their complaints resulted in Ziegler's supervisor specifically instructing Ziegler to not use the cameras to track staff unless directed to do so by a supervisor.

Ziegler's suspension letter alleges that on December 12, 2020, he was:

acting as the institution control sergeant when you noticed on the institution's camera system that a supervisor and another sergeant went into what you believed to be the evidence room for a period of time before returning. Based upon what you observed, you called an officer in a nearby post and asked for his observations. You admitted to making implied and/or direct statements about the two observed employees having an inappropriate sexual relationship at work to at least three officers. By sharing your opinions about the actions of these two employees to multiple non-supervisory staff rather than reporting concerns directly to a supervisor, you defamed these staff members at the workplace and role modeled unconscionable behavior for probationary employees.

While Ziegler acknowledged that he has previously watched the two employees referenced in the preceding paragraph on camera as they hung out together in the institution, he contends he did not do so on the day in question. Instead, he avers that he watched them go into the evidence room through a window in the control center. While Ziegler thinks that is an important distinction, it really does not matter whether Ziegler watched the two employees on a video screen or out a window in the control center. That is because Ziegler was not disciplined for how he watched the two employees. Rather, he was disciplined for what he said about them and their activities to three correctional officers (hereinafter CO or COs).

What he said to the COs was that the two employees referenced above were having a sexual relationship in the workplace. He expressly told that to CO Surprise who was working with him in the control center and later to CO Ribbke. He implicitly said that to CO Tobias when he called him while the two employees were in the evidence room and said to him: “Hummm, I wonder what they’re doing.”

It is Ziegler’s view that he was entitled to his own opinion about the activities of his coworkers. However, Ziegler was not disciplined for having that opinion. Instead, he was disciplined for who he shared his opinion with. That is an important distinction and one that was obviously lost on Ziegler at the time.

What Ziegler should have done is **first** report his opinion that the two employees were engaging in an inappropriate sexual relationship in the workplace up the chain of command. That is how things are done in a paramilitary organization like a prison. While the record shows that Ziegler ultimately did that (i.e., report up the chain of command that the two employees were having an inappropriate sexual relationship in the workplace), he did that **after** he shared his opinion about the activities of the two employees with officers lower than him in rank (and thus down the chain of command). That was problematic for this reason: all Ziegler was doing was spreading a rumor that those employees were having a sexual relationship in the workplace. The three COs that Ziegler shared his opinion with were not empowered to do anything about it. Instead, all they could do (with this information) is spread it to others, which is how the proverbial rumor mill works. That is what subsequently happened.

By sharing that rumor with those three COs, Ziegler was certainly not being the role model that a sergeant, as a lead worker, is supposed to be. What is especially disconcerting about Ziegler’s conduct was that Ziegler shared his opinion with two probationary (and therefore relatively new) COs. By doing that, as the suspension letter noted, he “role modeled unconscionable behavior for probationary officers.”

DOC was within its rights in concluding that Ziegler’s sharing of his opinion with two probationary COs was inappropriate workplace behavior which was detrimental to the functioning of the workplace. As such, it constituted workplace misconduct for which he could rightly be disciplined. In so finding, we are not saying that spreading workplace gossip is always a disciplinable act. Our finding here is much narrower than that. In this instance it was a disciplinable act for Ziegler to spread workplace gossip about the two employees referenced in the suspension

letter because of who he shared that gossip with. Prior to this instance, Ziegler obviously thought he could share workplace gossip with everyone. He now knows otherwise.

Turning now to the level of discipline imposed here, the Commission finds that a one-day suspension was not an excessive punishment for Ziegler's misconduct. In so finding it is expressly noted that a one-day suspension is the first step in DOC's progressive discipline sequence. Additionally, it is noted that Ziegler received a one-day suspension in August, 2019 for other misconduct.

Given the foregoing, it is concluded that there was just cause for Ziegler's one-day suspension and it is therefore affirmed.

Issued at Madison, Wisconsin, this 31<sup>st</sup> day of August, 2021.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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James J. Daley, Chairman