

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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MICHAEL BROWN, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0463

Case Type: PA

DECISION NO. 39001

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Appearances:

Michael J. Brown, 508 Woodard Avenue, Tomah, 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 26, 2021, Michael Brown filed an appeal with the Wisconsin Employment Relations Commission asserting he had been suspended for five days without just cause by the State of Wisconsin Department of Corrections (DOC). The appeal was assigned to Examiner Peter G. Davis.

A telephone hearing was held on August 4, 2021 by Examiner Davis. DOC made oral argument at the end of hearing and Brown submitted written argument on August 6, 2021. On August 10, 2021, DOC advised that that it did not wish to file a response. On September 7, 2021, Examiner Davis issued a Proposed Decision and Order rejecting the five-day suspension by DOC and modifying the discipline to a one-day suspension. DOC filed objections to the Proposed Decision and Order on September 13, 2021 and Brown submitted a reply on September 20, 2021.

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

**FINDINGS OF FACT**

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

2. Brown used poor clinical judgment by performing an extraction.

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 did not have just cause within the meaning of Wis. Stat. § 230.34(1)(a) to suspend Michael Brown for five days but did have just cause to suspend him 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 five-day suspension of Michael Brown is modified to a one day-suspension and he shall be made whole for the difference.

Issued at Madison, Wisconsin, this 22<sup>nd</sup> day of September, 2021.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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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.

Brown 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 Brown 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).

Brown had no prior discipline on his record at the time he received a five-day suspension. However, DOC concluded a departure from the standard disciplinary progression was warranted because Brown had been grossly negligent and insubordinate when he performed an extraction.

Brown had previously been advised that he ought not perform difficult extractions. Brown subsequently performed an extraction that proved to be difficult and the patient suffered nerve damage. While the Commission is persuaded that it was not certain the extraction would be difficult, there is no doubt that Brown had been put on notice that he should err on the side of caution when assessing whether a surgery was within his skill set. Under those circumstances, performing the extraction reflected poor clinical judgment worthy of discipline

However, given lack of certainty as to difficulty of the surgery and the absence of an absolute prohibition against performing extractions, the Commission is persuaded that Brown's conduct was not grossly negligent or insubordinate. Thus, there is not just cause to skip the standard disciplinary progression and the five-day suspension has been modified to a one-day suspension.

Issued at Madison, Wisconsin, this 22<sup>nd</sup> day of September, 2021.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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James J. Daley, Chairman