

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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EVAN WHITE, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0471

Case Type: PA

DECISION NO. 39014

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Appearances:

Evan White, 1403 East 9th Street, Merrill, Wisconsin, appearing on his own behalf and Seth Clark, Representative, appearing on behalf of Evan White.

Nicole Rute, 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 June 24, 2021, Evan White 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 Commission Examiner Peter Davis.

A telephone hearing was held on September 15, 2021. The parties made oral argument at the end of hearing and submitted supplemental evidence and argument on September 23, 2021. On October 12, 2021, Examiner Davis issued a Proposed Decision and Order affirming the five-day suspension by DOC. No objections to the Proposed Decision were filed by the parties by the deadline given of October 18, 2021.

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

**FINDINGS OF FACT**

1. Evan White, herein White, is employed by the State of Wisconsin Department of Corrections (DOC) at the Lincoln Hills/Copper Lake Schools as a Youth Counselor-Advanced. He had permanent status in class at the time of his suspension.

2. On July 31, 2020, White used an unreasonable level of force on a male youth.
3. On December 8, 2020, White used an unreasonable level of force on two female youths.

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 Evan White for five days.

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 Evan White by the State of Wisconsin Department of Corrections is affirmed.

Issued at Madison, Wisconsin, this 20<sup>th</sup> day of October, 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.

Evan White 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 White 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).

White had no prior discipline on his record at the time of his suspension. However, DOC concluded a departure from the standard disciplinary progression was warranted because White engaged in an unreasonable use of force in three instances. In each instance, DOC agrees that some use of force was needed but contends that the force White used exceeded what was reasonable and had the potential to cause injury.

White asserts he did what was necessary in each instance to avoid the potential for injury to staff and to end the unruly and violent behavior of the youths in question.

The Commission readily acknowledges the difficult and at times dangerous situations confronted by staff at Lincoln Hills/Copper Lake Schools on a regular basis. Thus, it is clear that use of force is often legitimately needed to subdue unruly and at times violent youth.

White credibly testified that he has had to use force on hundreds of occasions and that management review of those instances has never previously found his use to be unreasonable. However, his spotless past does not mean that his use of force in the three instances in question might not have been unreasonable and deserving of discipline.

On July 31, 2020, White intervened to subdue a dangerous male youth who had been fighting with another youth and then with staff. He grabbed the youth by his hair and then threw him at least 3-4 feet to the ground. While grabbing hair is not a “trained” technique, DOC’s discipline for this instance is not based on the grabbing of the hair but rather that White then threw the youth some distance rather than lowering him to the ground. The youth was not injured but

could have been had he landed in a slightly different part of the room. The record as a whole (and in particular the video evidence) persuades the Commission that throwing the youth was not a reasonable use of force.

On December 8, 2020, White assisted other staff when subduing a female youth who was refusing to return to her room. White administered a knee strike which brought the resisting youth to the floor and then administered a second knee strike while she was being handcuffed by other staff. White contends the second strike was appropriate to quickly bring the youth under control because he was urgently needed in a second ongoing situation. However, the Commission concludes that any urgency created by the second situation did not warrant the second knee strike to the youth. Thus, the record as a whole (and in particular the video evidence) persuades the Commission that the second knee strike was not a reasonable use of force.<sup>1</sup>

In the second December 8 incident, White again assisted other staff when subduing a female youth who was refusing to return to her room. While the youth was being stabilized against the wall, White administered a knee strike to the back of the youth's thigh. DOC asserts that there was no need for the knee strike because other use of force techniques would have been adequate. Based on the record as a whole (and in particular the video evidence), the Commission agrees.

Having found that White engaged in three unreasonable uses of force, the issue becomes whether there was just cause for DOC to impose a five-day suspension. There can be no doubt that the unreasonable use of force qualifies as "conduct by an employee which causes a substantial risk to the safety and security of our facilities, staff, the community or inmates, offenders or juvenile offenders under our care." within the meaning of that portion of Executive Directive #2 which authorizes skipping disciplinary progression for serious misconduct. Given that there are three instances of serious misconduct, the Commission concludes there is just cause for a five-day suspension.

Issued at Madison, Wisconsin, this 20<sup>th</sup> day of October, 2021.

## **WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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James J. Daley, Chairman

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<sup>1</sup> DOC contends that while use of the first knee strike was appropriate, White used improper technique and caused injury to the youth. White disputes that injury occurred and contends that any injury was caused by the youth's movement at the time the strike was made. From the evidence presented, the Commission is unable to determine if White can be faulted for the location of the first strike.