

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

GEORGE RICHARDSON, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0494

Case Type: PA

DECISION NO. 39293

Appearances:

George Richardson, 5110 Biscayne Ave. Unit C Apt. 16, Racine, Wisconsin, appearing on his own behalf.

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 September 30, 2021, George Richardson 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 (DOC). The appeal was assigned to Examiner Peter G. Davis.

A telephone hearing was held on November 18, 2021 by Examiner Davis. The parties made oral argument at the conclusion of the hearing and DOC provided supplemental argument and documentation that same day. On December 14, 2021, Examiner Davis issued a Proposed Decision and Order affirming the one-day suspension by DOC. Richardson filed objections to the Proposed Decision on December 20, 2021. DOC did not file a reply.

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

FINDINGS OF FACT

1. George Richardson, herein Richardson, is employed by the State of Wisconsin Department of Corrections as a Correctional Officer at the Racine Youthful Offender Correctional Facility and had permanent status in class when he was suspended.

2. On May 7, 2021, Richardson did not report for work and had not previously called in to report his absence.

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 George Richardson 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 George Richardson by the State of Wisconsin Department of Corrections is affirmed.

Issued at Madison, Wisconsin, this 14th day of January, 2022.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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.

George Richardson 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 Richardson 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).

On May 6, 2021, pursuant to DOC work rules, Richardson timely called in before the start of his shift. He believes he said he would be absent May 6 and May 7. The supervisor who received the call believes Richardson only said he would be absent May 6. That supervisor documented the call as having only referenced May 6. Clearly, either person could be mistaken as to their recollection. However, the existence of the written documentation by a supervisor (who has no incentive to be anything but truthful and accurate) persuades the Commission that Richardson did not advise DOC that he would be absent May 7. Therefore, the Commission concludes that Richardson was guilty of misconduct.

As to whether there was just cause for the discipline imposed by DOC, a one-day suspension is the lowest level of formal discipline that DOC can impose. In that context, the Commission is persuaded that there was just cause for that level of discipline.

Issued at Madison, Wisconsin, this 14th day of January, 2022.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman