

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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MARK WAEDEKIN, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0530

Case Type: PA

DECISION NO. 39467

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**Appearances:**

Mark Waedekin, W8314 Forest Avenue Road, Eldorado, Wisconsin, appearing on his own behalf.

David G. Makovec, 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 May 12, 2022, Mark Waedekin 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).

A telephone hearing was held on July 1 and July 27, 2022, by Commission Examiner Peter G. Davis. The parties made closing arguments at the conclusion of the hearings. On July 29, 2022, Examiner Davis issued a Proposed Decision and Order rejecting the one-day suspension. DOC filed objections to the proposed decision on August 3, 2022; Waedekin filed a reply to the objections on August 4, 2022.

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

**FINDINGS OF FACT**

1. Mark Waedekin, herein Waedekin, was employed by the State of Wisconsin Department of Corrections (DOC) as a Chaplain until his retirement. He had permanent status in class at the time of his one-day suspension.

2. Waedekin did not approve or know of a volunteer using email to communicate with inmates.

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 Mark Waedekin 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 Mark Waedekin by the State of Wisconsin Department of Corrections is rejected, and he shall be made whole.

Issued at Madison, Wisconsin, this 26<sup>th</sup> day of August, 2022.

**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:

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.

Waedekin 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 Waedekin 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).

Waedekin is accused of knowing that a volunteer was emailing inmates and failing to report this rule violation. The accusation is based on a conversation with his supervisor and a comment Waedekin is alleged to have made to the volunteer in question. Waedekin denies having any knowledge that a volunteer was emailing inmates or approving such conduct. The volunteer in question had his volunteer status suspended as a consequence of his conduct.

As to the conversation between Waedekin and his supervisor, the record as a whole supports the conclusion that it occurred at a time when Waedekin knew the volunteer had been suspended but did not know why. Waedekin contends that during the conversation he was guessing as to why the suspension had occurred when he referred to emailing inmates. The supervisor understood Waedekin to be confessing that he knew the volunteer was emailing inmates. The Commission concludes that the supervisor misunderstood Waedekin and that he did not know the volunteer was emailing inmates.

In reaching this conclusion, the Commission not only finds Waedekin's explanation credible but also finds persuasive his contention that he would have no reason to approve of this prohibited conduct. Given the foregoing, the one-day suspension is rejected and Waedekin shall be made whole for lost wages.

Issued at Madison, Wisconsin, this 26<sup>th</sup> day of August, 2022.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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James J. Daley, Chairman