

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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RICHARD PETERSON, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0534

Case Type: PA

DECISION NO. 39494

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**Appearances:**

Richard Peterson, 2055 S. River Road, Rhinelander, Wisconsin, appearing on his own behalf.

Nicole M. Porter, 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 23, 2022, Richard Peterson 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).

A telephone hearing was held on August 16 and 17, 2022 by Examiner Peter G. Davis. The parties submitted written argument by September 2, 2022. Pursuant to Wis. Stat. § 227.46(3)(a), Examiner Davis has been given final authority to issue the Commission's decision.

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

**FINDINGS OF FACT**

1. Richard Peterson, herein Peterson, is employed by the State of Wisconsin Department of Corrections (DOC) as a Corrections Program Supervisor at the Copper Lake/Lincoln Hills School. He had permanent status in class at the time of his suspension.

2. Peterson did not engage in misconduct on July 22, 2021.

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 Richard Peterson 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 Richard Peterson by the State of Wisconsin Department of Corrections is rejected, and he shall be made whole with interest.

Issued at Madison, Wisconsin, this 19<sup>th</sup> day of September, 2022.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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Peter G. Davis

**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.

Peterson 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 Peterson 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 July 22, 2021, two youthful male offenders refused to return to their rooms in the portion of Lincoln Hills that housed the most disruptive offenders. Peterson was in charge of that portion of Lincoln Hills at that time and elected to wait the offenders out in hopes that they would ultimately return to their rooms voluntarily. Peterson's other option was to have staff members forcibly return the offenders to their rooms. Peterson decided against using that option in part because one of the two youths had already caused multiple staff injuries in prior physical confrontations.

At the end of his shift, Peterson called the Security Director and told him that the "wait them out" option was currently being utilized. The Security Director apparently assumed that the offenders would be forcibly returned in the near future if they did not return voluntarily. That did not happen because staff who replaced Peterson elected to continue to wait the youth out. Later in the evening, a third youth joined the other two and they began destroying that portion of Lincoln Hills. Staff and Lincoln County law enforcement personnel were ultimately able to subdue and arrest the youths in question. Several staff were injured while attempting to quell what can fairly be called a riot. Peterson did not learn of the riot until he returned to work the next day.

DOC contends there is just cause for a five-day suspension because Peterson failed to follow procedure when he elected not to use force to return the youth to their rooms and failed to fully inform the Security Director of the situation during the end of shift phone call. The record does not support either contention.

A preponderance of the credible evidence establishes that Peterson had the discretion to act as he did. While part of the standard response sequence does include the appearance on scene

of staff prepared to use force, the evidence does not support the DOC contention that Peterson was obligated to direct use of force when those staff members arrived on scene during Peterson's shift. While it is clear the DOC approach to gaining youth compliance had ebbed and flowed over time and was trending toward a less lenient approach, it is also clear that the "wait them out" approach continued to be in use in multiple instances at the time in question. DOC correctly argues that if the youth were engaging in property destruction, policy did require forceful intervention. But during Peterson's shift, there was no property destruction of consequence. Indeed, there is evidence that the youth in question had advised staff that they would voluntarily return to their rooms in the evening.

As to the alleged failure to fully communicate with the Security Director, the Commission acknowledges that both Peterson and the Security Director have an incentive after the fact to testify in a manner that supports their respective positions in this matter. However, because at the time of the telephone conversation there was no reason to believe the situation was anything other than a fairly routine occurrence, the Commission concludes that Peterson had no reason not to fully inform the Security Director as to the status of matters. To the extent the Security Director made an assumption that force would shortly be used to compel compliance by the two youth, his assumption cannot fairly be laid at Peterson's feet.

Given the foregoing, the Commission concludes that Peterson did not engage in any misconduct on July 22, 2021.<sup>1</sup> Because there was no misconduct, there was no just cause for the five-day suspension. Therefore, the suspension is rejected, and Peterson shall be made whole with interest.<sup>2</sup>

Issued at Madison, Wisconsin this 19<sup>th</sup> day of September 2022.

## **WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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Peter G. Davis

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<sup>1</sup> The suspension letter also asserts that when communicating with one of the two youths, Peterson violated Work Rule 12, which prohibits "Unauthorized access, disclosure, destruction or use of information or records that could reasonably be considered confidential." The record reflects that when asked why another youth had been transferred to another DOC facility, Peterson responded with an inaccurate nonsensical answer. DOC contends that Peterson should not have responded at all. Given the content of Peterson's response, the Commission concludes that no information that could reasonably be considered confidential was disclosed. However, at most, a reminder to Peterson that responses to questions such as that posed by the youth are to be avoided would have been sufficient.

<sup>2</sup> See Wis. Admin. Code ERC § 94.07.