

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

CHRISTOPHER MARTINEZ, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0541

Case Type: PA

DECISION NO. 39505

Appearances:

Christopher Martinez, 609 W. Pleasant Street, Apt. C, Portage, 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 July 11, 2022, Christopher Martinez 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 matter was assigned to Commission Examiner Anfin Jaw.

A telephone hearing was held on September 20, 2022, by Examiner Jaw. The parties made oral argument at the end of the hearing. On October 11, 2022, Examiner Jaw issued a Proposed Decision and Order affirming the one-day suspension by DOC. No objections were filed by the parties by the deadline given of October 17, 2022.

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

FINDINGS OF FACT

1. Christopher Martinez, herein Martinez, is employed by the State of Wisconsin Department of Corrections (DOC) as a Correctional Sergeant at Columbia Correctional Institution (CCI). He had permanent status in class at the time of his suspension.

2. CCI is a correctional facility located in Portage, Wisconsin, operated by DOC, a state agency of the State of Wisconsin.

3. On February 25, 2022, Martinez acted in a manner that was disrespectful and unprofessional towards a supervisor.

4. On February 25, 2022, Martinez failed to promptly notify the proper authority of an unscheduled 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 did have just cause within the meaning of Wis. Stat. § 230.34 (1)(a) to suspend Christopher Martinez 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 Christopher Martinez by the State of Wisconsin Department of Corrections is affirmed.

Issued at Madison, Wisconsin this 4th day of November, 2022.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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.

Martinez 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 Martinez 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 February 25, 2022, Martinez was tardy to work when he arrived at 6:04am for his 6:00am shift. The shift commander and supervisor that morning was Captain Sanneh, who informed Martinez that he was tardy. In response to Captain Sanneh, Martinez said something to the effect of “This is fucking bullshit, I’m not doing this today, fucking write me up.” Martinez then turned around, said “FMLA” and walked out of the institution.

At the hearing, Martinez admitted to being tardy that day, but did not recall swearing. While witnesses reported slight differences in exactly what was said, the message was consistent: “Fucking put me down for FMLA”; “This is fucking bullshit”; “Fuck that, I’m not doing this today”; “You know, fucking write me up, I’m fucking not fucking dealing with this shit fuck”; “Well write me up then, fuck it put me down for FMLA, I’m tired of this shit”. Credible testimony persuades the Commission that Martinez behaved in a manner that was disrespectful and unprofessional to his supervisor and engaged in misconduct worthy of discipline. As the Commission has previously held, particularly in the para-military setting of a prison, public and private respect for superior and supervising officers is of paramount importance. *See Trefz v. DOC*, Dec. No. 39278 (WERC, 11/21).

Furthermore, by leaving the institution that day, Martinez was absent for his scheduled shift. While his absence may be excused per FMLA, the late notification is not. For unscheduled absences, security staff must call in no later than two hours prior to the start of their shift. Therefore, Martinez committed misconduct by failing to promptly notify the proper authority of his unscheduled absence.

Turning now to the level of discipline imposed here, the Commission finds that a one-day suspension was not an excessive punishment for Martinez's misconduct. In so finding, it is expressly noted that a one-day suspension is the first step in DOC's progressive discipline sequence.

Given the foregoing, it is concluded that there was just cause for Martinez's one-day suspension and it is therefore affirmed.

Issued at Madison, Wisconsin this 4th day of November, 2022.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman