

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

CHRISTINE FRITSCHÉ, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0543

Case Type: PA

DECISION NO. 39754

Appearances:

Lili Behm, Attorney, Hawks Quindel S.C., 409 East Main Street, P.O. Box 2155, Madison, Wisconsin, appearing on behalf of Christine Fritsche.

David 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 July 20, 2022, Christine Fritsche filed an appeal with the Wisconsin Employment Relations Commission asserting she had been suspended for five days without just cause by the State of Wisconsin Department of Corrections (DOC).

A telephone hearing was held on September 30, 2022, by Commission Examiner Peter G. Davis. The parties filed closing arguments on October 20, 2022. On October 25, 2022, Examiner Davis issued a Proposed Decision and Order modifying the five-day suspension to a three-day suspension. Fritsche filed objections on October 31, 2022. DOC did not file a response and the matter became ripe for Commission consideration of November 8, 2022.

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

FINDINGS OF FACT

1. Christine Fritsche, herein Fritsche, is employed by the State of Wisconsin Department of Corrections (DOC) as a Nurse Clinician 2 at the Prairie du Chien Correctional Institution. She had permanent status in class at the time of her suspension.

2. Fritsche shared information with another Institution employee that would allow unauthorized access to confidential medical records for reasons unrelated to patient care.

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 Christine Fritsche for five days, but did have just cause to suspend her for three 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 Christine Fritsche by the State of Wisconsin Department of Corrections is modified to a three-day suspension, and she shall be made whole for the difference with interest.¹

Issued at Madison, Wisconsin, this 10th day of November, 2022.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman

¹ See Wis. Admin. Code § ERC 94.07

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.

Fritsche had permanent status in class at the time of her suspension and her appeal alleges that the suspension was not based on just cause.

The State has the burden of proof to establish that Fritsche 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).

As reflected in Finding of Fact 2, to assist another employee's preparation for a Commission personnel appeal hearing, Fritsche provided another employee with information that could be utilized to access a patient's confidential medical record. Clearly, this action was unrelated to patient care. While Fritsche claims she had permission from a former supervisor to take this action, the Commission does not find her assertion to be credible as it seems highly unlikely that a supervisor would authorize such conduct. The Commission concludes that providing information that will allow another employee unauthorized access to confidential medical records for reasons unrelated to patient care was misconduct. Once that misconduct was discovered by DOC, it triggered a full-fledged investigation into whether Fritsche had engaged in other misconduct as to patient records.

The DOC investigation yielded 131 instances of alleged improper access to patient records during a time period of more than two years. In response, Fritsche did her own investigation and concluded that there were 18 instances in which she could not provide a patient-related basis to have accessed the patient record.² Fritsche contends that those 18 instances are attributable to an error she would have made when entering data into the patient record data base which, in turn, would have briefly exposed her to the record of a patient that was not hers.

After careful consideration of the record, the Commission concludes that Fritsche provided credible testimony as to a legitimate basis for her access to all but 18 of the patient records in dispute. Broadly characterized, that access related to patients who were to be transferred to PDCI,

² DOC concedes that Fritsche discovered several errors in the data used for the DOC investigation, but it is apparent that the remaining number would be more than sufficient to warrant a finding of serious misconduct if there was not a legitimate or excusable basis for the record access.

patients who had transferred from PDCI; former patients who needed assistance with their prescribed medications, preparation for high-risk on-call periods, assisting other DOC facilities with their transition to electronic medical records, and reviewing her care of a patient who passed away. When so concluding, the Commission of necessity also concludes that Fritsche did not violate any DOC patient record policies or procedures as to which she should have been aware that are related to her legitimate access to those records.

As to the 18 instances where Fritsche accessed patient records in error, while the Commission does condone those mistakes, the record does not provide a persuasive basis for concluding that said number of errors made over more than a two-year period of time exceeds what might be expected due to inevitable human error. Thus, the Commission concludes that those errors do not constitute misconduct worthy of any discipline.

Turning to a just cause consideration of the level of discipline Fritsche received, the record reflects that the five-day suspension was imposed as a skip in the normal disciplinary progression based on the DOC conclusion that Fritsche engaged both in the conduct referenced in Finding of Fact 2 and the 131 additional alleged instances of improper patient record access. Having rejected all but the alleged misconduct except for that referenced in Finding of Fact 2, the Commission concludes that there is no just cause basis for a skip in progression. However, the misconduct referenced in Finding of Fact 2 does provide just cause for imposition of the standard disciplinary progression applicable to Fritsche – in this instance a three-day suspension. Therefore, the five-day suspension has been modified to a three-day suspension and Fritsche shall be made whole for the difference with interest.

Issued at Madison, Wisconsin, this 10th day of November, 2022.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman