

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

MARY FREITAG, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF HEALTH SERVICES, Respondent.

Case ID: 2.0123

Case Type: PA

DECISION NO. 39761

Appearances:

Sean Heiser, Field Representative, AFSCME Council 24, 1616 East Road 2, Edgerton, Wisconsin, appearing on behalf of Mary Freitag.

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 Health Services.

DECISION AND ORDER

On August 4, 2022, Mary Freitag filed an appeal with the Wisconsin Employment Relations Commission asserting she had been suspended for one day without just cause by the State of Wisconsin Department of Health Services.

A telephone hearing was held on October 7, 2022, by Commission Examiner Katherine Scott. The parties submitted written arguments on October 14, 2022. A Proposed Decision and Order was issued on November 11, 2022, by Examiner Scott, affirming the one-day suspension by the Department of Health Services. No objections were filed by the parties by the deadline given of November 16, 2022.

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

FINDINGS OF FACT

1. Mary Freitag (Freitag) is employed by the State of Wisconsin Department of Health Services (DHS) as a Psychiatric Care Technician at Mendota Mental Health Institute (MMHI). She had permanent status in class when she was suspended.

2. On December 31, 2021, Freitag said she wanted to “push water on” an MMHI patient. However, Freitag did not wake the patient or force them to drink water.
3. Freitag read the patient’s doctor’s orders, which is outside the scope of her position as a Psychiatric Care Technician.
4. Freitag made copies of the patient’s chart and brought them outside of MMHI.
5. DOC suspended Freitag for one day for failure to comply with agency policies or procedures and unauthorized use of confidential records.

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 Health Services had just cause within the meaning of Wis. Stat. § 230.34 (1)(a) to suspend Mary Freitag 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 Mary Freitag by the State of Wisconsin Department of Corrections is affirmed.

Issued at Madison, Wisconsin, this 25th day of November, 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.

Mary Freitag 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 Freitag was guilty of the alleged misconduct and that the misconduct constituted just cause for the discipline imposed. *Reinke v. Personnel Bd.*, 53 Wis.2d 123 (1971); *Safransky v. Personnel Bd.*, 62 Wis.2d 464 (1974).

Freitag worked the night shift on December 31, 2021. According to nurse Caitlyn Lantz and psychiatric care technician Dawda Sangyand, who were on duty that night, Freitag said she was going to “push fluids” on a patient. *See Exhibit R-5, pgs. 25–27.*

However, Lantz testified that she never witnessed Freitag either waking or “pushing water on” the patient. Freitag credibly testified that when she entered the unit, the patient was awake. The patient did not have access to water, and fellow employee Leah Lengfeld credibly testified that MMHI’s nursing policy requires Freitag to offer patients have access to water on her rounds. *See Exhibit R-5, pg. 23.* Freitag said that since the patient was awake, she offered him water, which he refused. Since the State never provided a witness who saw Freitag either waking the patient or pushing water on the patient, the State failed to meet its burden to prove that Freitag woke or pushed fluids on the patient.

In her interview and in the hearing, Freitag admitted that she read the patient’s doctor’s orders in case the nurse missed orders. *See Exhibit R-5, pg. 19.* Freitag’s disciplinary letter stated that this was outside the scope of her position as a psychiatric care technician, which Freitag did not contest. *See Exhibit R-5, pg. 1.*

Freitag made copies of the patient’s chart and brought those copies to her investigatory interview. She says she was doing so on the advice of her representative, Sean Heiser, and that she

only made these copies to assist in the investigation. However, this is a violation of MMHI's patient medical record confidentiality policy: "Medical records may not be removed from the Institute at any time unless required by law and authorized by the Institute Director or his/her designee." *See* Exhibit R-6, pg. 2. Freitag testified that she did not seek permission from her supervisor – or anyone else – to reproduce or remove these records. Further, MMHI Director Gregory Van Rybroek credibly testified that staff are trained not to take records home. Freitag should have known to disregard her representative's advice and not enter the patient's chart for a reason unrelated to patient care. She should certainly have known better than to make copies and remove them from MMHI.

Freitag read a patient's doctor's orders, which was outside the scope of her position. Further, Freitag entered patient records for personal reasons unrelated to patient care, made copies of these records, and removed them from MMHI. In doing so, she violated departmental policies protecting the confidentiality of patient medical records. The Commission concludes that this misconduct establishes just cause for a one-day suspension, and the suspension is therefore affirmed.

Issued at Madison, Wisconsin, this 25th day of November, 2022.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman