

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

---

BRENT HOFFMAN, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF HEALTH SERVICES, Respondent.

Case ID: 2.0130

Case Type: PA

DECISION NO. 39798

---

**Appearances:**

Steve Prudhomme, N8959 8<sup>th</sup> Avenue, New Lisbon, Wisconsin, appearing on behalf of Brent Hoffman.

Nicole 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 Health Services.

**DECISION AND ORDER**

On November 18, 2022, Brent Hoffman 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 Health Services (DHS).

A telephone hearing was held on January 25, 2023, by Commission Examiner Anfin Jaw. The Respondent made oral argument at the end of the hearing. The Appellant submitted closing argument on January 26, 2023. The Respondent filed a written reply on January 31, 2023.

On February 16, 2023, Examiner Jaw issued a Proposed Decision and Order, modifying the one-day suspension of Hoffman to a Letter of Expectation. On February 21, 2023, DHS filed objections to the Proposed Decision and on February 24, 2023, Hoffman filed a response to the objections.

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

**FINDINGS OF FACT**

1. Brent Hoffman is employed by the State of Wisconsin Department of Health Services (DHS) as a Psychiatric Care Supervisor at Sand Ridge Secure Treatment Center (SRSTC) and had permanent status in class at the time of his suspension.

2. SRSTC is a secure treatment center in Mauston, Wisconsin operated by DHS, a state agency of the State of Wisconsin. SRSTC houses Wisconsin's Sexually Violent Persons Program.

3. On July 17, 2021, Hoffman was included on an email string related to a non-work-related golf outing that contained inappropriate and obscene language, including a few sexual innuendoes.

4. Afterwards, Hoffman addressed his concerns with the author of the emails and directed the individual to stop sending them.

5. DHS suspended Hoffman for one day for failing to report the inappropriate conduct and potential policy violation to human resources.

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 did not have just cause within the meaning of Wis. Stat. § 230.34(1)(a) to suspend Brent Hoffman 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 Brent Hoffman shall be modified to a Letter of Expectation and Hoffman shall be made whole for the difference with interest.<sup>1</sup>

Issued at Madison, Wisconsin, this 9<sup>th</sup> day of March, 2023.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

---

James J. Daley, Chairman

---

<sup>1</sup> 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.

Hoffman 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 Hoffman 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).

It is undisputed that Hoffman received an email string on July 21, 2021, related to a non-work-related golf outing that contained the term, “Chomo” (widely known prison slang for child molester). Further down in the email string, there was more information related to the golf outing, including two of the team names, “The Swingin’ Dicks,” and “Babes w/ Balls.” After receiving the emails, Hoffman addressed his concerns with the author of the emails, J.G., and directed J.G. to stop sending the emails. After the conversation, Hoffman did not receive any additional emails related to the golf outing.

DHS conducted an investigation into the emails after management received a Respectful Workplace complaint from an employee in November 2021. Given the large number of staff involved in the email exchanges and chains, the investigation was referred to the Division of Personnel Management (DPM) at the Department of Administration. DPM began conducting investigatory interviews in May 2022. The delay was due to workload and other personnel turnover issues. Hoffman was interviewed in July 2022. During his investigatory interview, Hoffman was honest and forthcoming. He acknowledged that he understood what “CHOMO” meant and admitted that it was inappropriate and offensive. During the investigation and at the hearing, Hoffman conceded that he should have reported it to human resources. He further recognized that, as a supervisor, he has a higher responsibility and duty to report any potential violation of the respectful workplace policy.

Accordingly, we find that Hoffman committed workplace misconduct when he failed to report the inappropriate conduct to human resources.

Turning now to the level of discipline imposed. Not only did Hoffman successfully redirect J.G.'s inappropriate conduct, he was one of the only individuals out of almost 40 staff members interviewed that was forthcoming in the investigation, as well as the hearing. He was truthful, admitted that the term "CHOMO" is commonly known by his coworkers, and acknowledged the inappropriateness of the sexually laced theme of the golf outing. Furthermore, he recognized his responsibility as a supervisor and his duty to report the behavior. Under the circumstances, the Commission concludes that DHS did not have just cause for a one-day suspension, but that a Letter of Expectation is appropriate.

Given the foregoing, it is concluded that the one-day suspension be modified to a Letter of Expectation and that Hoffman shall be made whole for the difference with interest.

Issued at Madison, Wisconsin, this 9<sup>th</sup> day of March, 2023.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

---

James J. Daley, Chairman