

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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NATASHA BRANCH, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0565

Case Type: PA

DECISION NO. 39807

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Appearances:

Natasha Branch, c/o Fox Lake Correctional Institution, W10237 Lake Emily Rd, Fox Lake, Wisconsin, appearing on her own behalf.

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 December 16, 2022, Natasha Branch filed an appeal with the Wisconsin Employment Relations Commission asserting she had been suspended for three days without just cause by the State of Wisconsin Department of Corrections (DOC).

A telephone hearing was held on February 7, 2023, by Commission Examiner Anfin Jaw. The parties made oral argument at the end of the hearing. On March 6, 2023, Examiner Jaw issued a Proposed Decision and Order modifying the three-day suspension by DOC to a one-day suspension. DOC filed objections to the Proposed Decision on March 9, 2023. Branch did not file a response by the deadline given of March 14, 2023.

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

**FINDINGS OF FACT**

1. Natasha Branch is employed by the State of Wisconsin Department of Corrections (DOC) as a Correctional Sergeant at Fox Lake Correctional Institution (FLCI), and she had permanent status in class at the time of her suspension.

2. FLCI is a correctional facility located in Fox Lake, Wisconsin operated by DOC, a state agency of the State of Wisconsin.

3. On July 4, 2022, Branch was discourteous to two inmates when she yelled loudly at them during cell count.

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 Natasha Branch for three days but did have just cause to suspend her 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 three-day suspension of Natasha Branch by the State of Wisconsin Department of Corrections shall be modified to a one-day suspension, and she shall be made whole for the difference with interest<sup>1</sup>.

Issued at Madison, Wisconsin, this 11<sup>th</sup> day of April, 2023.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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James J. Daley, Chairman

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<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.

Natasha Branch 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 Branch 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 Branch was loud and discourteous to two inmates when she yelled at them during cell count on July 4, 2022. What is in dispute is whether she used profanity when she yelled at the inmates, and whether she forcefully pushed open their cell door and caused injury to one of the inmates.

Inmates A.H. and L.B. both testified that Branch kicked or opened their door violently. Both inmates claimed that the door hit L.B.'s arm and the back of his head, leaving a mark on his arm and a knot or bruise on his head. Both inmates also claimed that Branch used profanity when she yelled at them about standing for count. Correctional Officer Hilt testified that Branch was loud but disagreed that Branch used any profanity. Officer Hilt was down the hall and did not observe inside the cell. Branch testified that she did not forcefully slam the cell door open, but it hit the wall loudly. Neither inmate was near the door, both were on their beds. Branch also explained that she enforces the rules, and therefore inmates may be motivated to get her into trouble. She also takes count very seriously because it is her responsibility to verify that the inmates are alive and accounted for. Branch conceded that her tone could have been considered unprofessional or discourteous.

DOC asserts that Branch was "aggressive" and used both hands to push open the cell door with force hitting an inmate in the back of his head. The Department contends there is just cause for a three-day suspension because Branch's conduct was grossly negligent by causing a substantial risk to the safety of the inmates under the agency's care. The record does not support that contention.

A careful review of the video evidence shows that Branch did not kick open the cell door. Also, it does not appear that Branch forcefully or aggressively pushed open the door. Branch is seen using her hands as she's speaking, but the video does not have any audio. It does appear that Branch was loud enough that a few inmates peeked their head out of their cell doors, and Officer Hilt quickly redirects them back into their cells. The video evidence only provides an angle viewed from down the hallway of the cell block. There was no video evidence showing inside A.H. and L.B.'s cell.

The Commission is not persuaded that inmates A.H. and L.B. were telling the truth about what actually occurred. Inmate A.H. provided conflicting statements during his investigatory interview and his testimony at the hearing. Inmate L.B.'s testimony was focused on his ability to file a lawsuit against Branch for her conduct. While both inmates asserted there was a knot or bruise on the back of L.B.'s head, health assessment notes indicate "no bump, [a]brasion, bruising or deformity present." Furthermore, Officer Hilt credibly testified that she did not hear any profane language. Under the circumstances, we find inmates A.H. and L.B. not credible.

Turning to a just cause consideration of the level of discipline Branch received, the record reflects that the three-day suspension was imposed as a skip in the normal disciplinary progression based on the DOC conclusion that Branch engaged in both the conduct referenced in Finding of Fact 3 and the gross negligence or conduct which causes a substantial risk to the safety of the inmates under the agency's care. Having rejected the alleged misconduct except for that referenced in Finding of Fact 3, the Commission concludes that there is no just cause basis for a skip in progression. However, the misconduct referenced in Finding of Fact 3 does provide just cause for imposition of the standard disciplinary progression applicable to Branch, having previously received a non-disciplinary Letter of Expectation for unprofessional communication towards an inmate. Therefore, the three-day suspension shall be modified to a one-day suspension and Branch shall be made whole for the difference with interest.

Issued at Madison, Wisconsin, this 11<sup>th</sup> day of April, 2023.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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James J. Daley, Chairman