

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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JON KREGER, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF WORKFORCE DEVELOPMENT, Respondent.

Case ID: 303.0016

Case Type: PA

DECISION NO. 39808

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**Appearances:**

Jon Kreger, 5201 Marsh Road, McFarland, 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 Workforce Development.

**DECISION AND ORDER**

On December 19, 2022, Jon Kreger 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 Workforce Development (DWD).

A telephone hearing was held on March 1, 2023, by Commission Examiner Peter G. Davis. The parties made oral argument at the conclusion of the hearing. On March 6, 2023, Examiner Davis issued a Proposed Decision and Order affirming the one-day suspension by DWD. No objections were filed by the parties by the deadline given of March 13, 2023.

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

**FINDINGS OF FACT**

1. At the time of his suspension, Jon Kreger, herein Kreger, was employed by the State of Wisconsin Department of Workforce Development (DWD) as an Executive Staff Assistant and had permanent status in class.

2. Kreger sent discourteous emails to his supervisors and DWD human resources staff after having received a Letter of Expectation directing him to keep such communications professional and warning him that failure to follow the content of the Letter could result in discipline.

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 Workforce Development did have just cause within the meaning of Wis. Stat. § 230.34 (1)(a) to suspend Jon Kreger 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 Jon Kreger by the State of Wisconsin Department of Workforce Development is affirmed.

Issued at the City of Madison, Wisconsin, this 13<sup>th</sup> day of April, 2023.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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James J. Daley, Chairman

**MEMORANDUM ACCOMPANYING DECISION AND ORDER**

Wisconsin Stat. § 230.34(1)(a) states in pertinent part that “An employee with permanent status in class ... may be removed, suspended without pay, discharged, reduced in base pay or demoted only for just cause.”

Wisconsin Stat. § 230.44(1)(c) 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.”

Kreger had permanent status in class at the time of his suspension and his appeal alleges that the State did not have just cause to suspend him.

The State has the burden of proof to establish that Kreger was guilty of the alleged misconduct and whether the misconduct constitutes just cause for the decision imposed. *Reinke v. Personnel Bd.*, 53 Wis.2d 123 (1971); *Safransky v. Personnel Bd.*, 62 Wis.2d 464 (1974).

To his credit, Kreger admits that the emails in question were discourteous.<sup>1</sup> However, he contends that there was no just cause for the suspension because the recipients of the emails were not disciplined for the misconduct that prompted him to send the emails.

In *Allen v DNR*, Dec. No. 37294 (WERC, 2/18), the Commission rejected the defense Kreger makes in this matter. In that decision, the Commission held that workplace frustrations do not excuse an employee from behaving in the courteous manner in communications with other employees. Thus, whatever the merits of Kreger’s frustrations, he engaged in misconduct by sending the multiple emails in question.

As to the issue of whether his misconduct provided just cause for a one-day suspension, Kreger had previously received a Letter of Expectation warning him that further discourteous behavior could lead to discipline. In that context, it is clear that there was just cause for a one-day suspension, the first level of progressive discipline. Therefore, the suspension is affirmed.

Issued at the City of Madison, Wisconsin, this 13<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> One example is an email stating “Good morning to two of the worst bosses I've ever had.”