

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

MARIA GAMBARO, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0605

Case Type: PA

DECISION NO. 40243

Appearances:

Maria Gambaro, W4557 Gillette Drive, Montello, Wisconsin, appearing on her own behalf.

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 Corrections.

DECISION AND ORDER

On November 6, 2023, Maria Gambaro 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 Corrections (DOC). The appeal was assigned to Commission Examiner Anfin Jaw.

A telephone hearing was held on January 3, 2024, by Examiner Jaw. The parties made oral argument at the conclusion of the hearing. On January 23, 2024, Examiner Jaw issued a Proposed Decision and Order affirming the one-day suspension of Maria Gambaro by the DOC. The parties did not file objections by the deadline given of January 29, 2024.

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

FINDINGS OF FACT

1. Maria Gambaro (Gambaro) is employed by the State of Wisconsin Department of Corrections (DOC) as a Licensed Psychologist at Columbia Correctional Institution (CCI) and had permanent status in class at the time of her one-day suspension.

2. The DOC is a state agency responsible for the operation of various corrections facilities including CCI, a maximum-security facility located in Portage, Wisconsin.

3. On July 24, 2023, Gambaro was inattentive and negligent on duty while working remotely when she failed to respond to multiple attempts to contact her, including email, telephone, and Microsoft Teams.

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 to review this appeal pursuant to Wis. Stat. § 230.44 (1)(c).

2. The State of Wisconsin Department of Corrections had just cause within the meaning of Wis. Stat. § 230.34(1)(a) to suspend Maria Gambaro 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 Maria Gambaro by the State of Wisconsin Department of Corrections is affirmed.

Issued at Madison, Wisconsin, this 20th day of February 2024.

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.

Maria Gambaro 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 Gambaro 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 a licensed psychologist at Columbia Correctional Institution, Gambaro provides mental health care and other direct services to offenders through therapy, including responding to crisis situations. Dr. Gambaro has a Bachelor of Arts Degree ('83), Master of Science Degree ('86), and a PhD ('02) from the University of Wisconsin-Madison.

On July 24, 2023, at 3:09 pm, Gambaro was working remotely and appeared to be away from her computer. Dr. Kelsey Stange, Gambaro's supervisor, attempted to call Gambaro on Microsoft Teams. Gambaro did not answer. Believing Gambaro must not have any work to do, due to the appearance of being away from her computer, at 3:11 pm, Dr. Stange emailed Gambaro requesting her to complete some reports.

At approximately 3:19 pm, institution housing unit (HU5) staff called Dr. Stange about an inmate who required urgent psychological services. Since Dr. Gambaro was assigned to cover HU5 crisis concerns, Dr. Stange again attempted to call Gambaro on Microsoft Teams. But again, received no answer. Dr. Stange called again at 3:20 pm but received no response or answer from Gambaro.

At 3:23 pm, Dr. Stange sent Gambaro an email advising her that the institution had a crisis situation, and that she (Stange) had been unable to reach her. Dr. Stange included a screenshot of Gambaro's "away status" from Microsoft Teams, which showed Gambaro had been away from her computer for 51 minutes at that time. Dr. Stange also advised that a peer would be asked to complete Gambaro's work, and further directed Gambaro to call her.

At approximately 3:30 pm, Dr. Stange advised the Deputy Warden of the situation, as well as a history of prior incidents. Dr. Stange was directed to complete a 15807 form, which is a report of a potential work rule violation. Dr. Stange was further asked to continue to attempt to make contact with Dr. Gambaro.

At 3:48 pm, Dr. Stange called Gambaro's cell phone, but received no response.

At 4:00 pm, Dr. Stange called Gambaro on Microsoft Teams, and again received no response or answer. Gambaro's Teams status still listed her as away from her computer.

At 4:07 pm, Dr. Stange called Gambaro again on Microsoft Teams. Once again, there was no response or answer from Gambaro. Gambaro's Teams status still listed her as away from her computer.

At 4:08 pm, an HR assistant attempted to call Gambaro on Microsoft Teams, and also received no response or answer. At 4:10 pm, HR provided Dr. Stange with Gambaro's husband's phone number. At 4:13 pm, Dr. Stange called the number provided by HR, which turned out to be Gambaro's home number, and was finally able to reach her. Gambaro claimed that she had been "sitting near" her computer and was not aware of any missed calls. Dr. Stange explained that she had called her several times on Microsoft Teams, as well as HR, and had attempted to reach Gambaro on her cell. Gambaro then signed-in to her computer, and subsequently acknowledged the number of missed calls. Dr. Stange asked Gambaro what she had been working on since she was not signed-in to her computer. Gambaro admitted that she was "caught up on everything, so nothing really. Just waiting for possible crisis contacts." Based on her admission, as well as her failure to respond to multiple attempts to contact her, including email, phone, and Microsoft Teams, it is concluded that Gambaro was inattentive and negligent while on duty. Thus, misconduct has been established.

Nonetheless, Gambaro asserts that her discipline should be rejected because of two main reasons. First, Gambaro claims the rule of double jeopardy applies here. She contends that she was previously disciplined for the incident in question. However, the evidence established that Gambaro was not disciplined, but that her work from home privileges were reduced from three days a week to one day a week. This reduction was not formal discipline.

Second, Gambaro argues that her supervisor never outlined clear expectations regarding being available while on duty, and that "available" is not defined within policy, and therefore is vague. As a highly educated professional, Gambaro's contention here is absurd. Gambaro was aware of the expectation to be available by email, phone, and Microsoft Teams, while working remotely. Availability does not need to be defined down to the minute. The evidence established that Gambaro was not working or signed-in to her computer and was unable to be reached for at least an hour and five minutes. Under the circumstances, the Appellant's arguments lack merit. Accordingly, the Commission finds that Gambaro can be held accountable for her misconduct.

Turning now to the level of discipline imposed here, the Commission finds that a one-day suspension was not an excessive punishment for Gambaro's misconduct. In so finding, it is

expressly noted that Gambaro received a job instruction on June 20, 2023, for being unavailable during scheduled work hours and a failure to notify her supervisor of her unavailability.

Given the foregoing, it is concluded that there was just cause for Gambaro's one-day suspension, and it is therefore affirmed.

Issued at Madison, Wisconsin, this 20th day of February 2024.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman