

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

ASHLEY VALE, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0610

Case Type: PA

DECISION NO. 40254-A

Appearances:

Nicholas Fairweather, Hawks Quindel, P.O. Box 2155, Madison, Wisconsin, appearing on behalf of Ashley Vale.

David Makovec, Attorney, Department of Administration, 101 E. 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 5, 2023, Ashley Vale filed an appeal with the Wisconsin Employment Relations Commission asserting she had been discharged without just cause by the State of Wisconsin Department of Corrections (DOC). The appeal was assigned to Commission Examiner Katherine Scott Lisiecki.

A telephone hearing was held on February 13, 2024, by Examiner Scott Lisiecki. The parties submitted written closing arguments on February 19, 2024. On March 13, 2024, Examiner Scott Lisiecki issued a Proposed Decision and Order affirming the discharge of Ashley Vale by the DOC. Vale filed objections to the Proposed Decision on March 18, 2025. The DOC did not respond by the given deadline of March 25, 2024.

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

FINDINGS OF FACT

1. Ashley Vale (Vale) was employed by the State of Wisconsin Department of Corrections (DOC), as a correctional officer at Prairie du Chien Correctional Institution (PDCI). She had permanent status in class when she was discharged.
2. On March 14, 2023, Vale allowed an inmate in a restricted, staff-only area, violating a November 2022 security directive.
3. Vale fraternized with an inmate by engaging in lengthy, one-on-one conversations with him and approving messages at his request.
4. Following an investigation, DOC discharged Vale for failure to comply with agency policies or procedures, insubordination or negligence, fraternization, and gross negligence.

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 had just cause within the meaning of Wis. Stat. § 230.34(1)(a) to discharge Ashley Vale.

Based on the above and foregoing Findings of Fact and Conclusions of Law, the Commission makes and issues the following:

ORDER

The discharge of Ashley Vale by the State of Wisconsin Department of Corrections is affirmed.

Issued at Madison, Wisconsin, this 3rd day of April 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.

Ashley Vale had permanent status in class at the time of her discharge and her appeal alleges that the discharge was not based on just cause.

The State has the burden of proof to establish that Vale 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).

Vale was employed as a correctional officer at Prairie du Chien Correctional Institution (PDCI). Vale was observed speaking to an inmate, M.A., frequently and at length. On March 14, 2023, Vale allowed M.A. to enter a restricted area, a room containing inmate cleaning equipment, a cage for the shooting program, and sharps. This was caught on security footage. A November 2022 security directive prohibited allowing inmates into the room at any time.

In addition to allowing an inmate into a restricted area, the State alleges that Vale fraternized with M.A. by having long conversations with him. Vale argues that she was not fraternizing with M.A., because he repeatedly approached her and struck up conversations with her. Officers Hanson and O'Connell testified that M.A. was talkative and would attempt to have lengthy conversations with other staff members. Executive Directive 16, the DOC's Fraternization Policy, prohibits:

Having personal contacts or being in a social or physical relationship with an individual listed under Section V(A). The policy does not prohibit personal contacts that are required for employees to perform their duties. It also does not prohibit incidental personal contacts in group activities such as church-related or sporting events. The policy prohibits personal contacts that are usually one-to-one such as ... knowingly forming close friendships, corresponding or communicating in person.

See Exhibit R-5, pg. 3.

Here, Vale had lengthy conversations with M.A. that were not required to perform her duties. These conversations were one-on-one, in person, and went on for some time. Although M.A. initiated these conversations with PDCI officers, it takes two to maintain a conversation. Officers are still responsible for drawing appropriate lines and ending a conversation. Long, one-on-one conversations can create an impression of favoritism and fraternization, even when the subject is innocuous. Therefore, Vale fraternized with M.A. by having long, one-on-one conversations with him.

The State further alleges that Vale fraternized with M.A. by disproportionately reviewing his kiosk messages. The State argues that, as a correctional officer, Vale was not responsible for reviewing kiosk messages (this had previously been part of her responsibilities when she was on light duty). The State further argues that she reviewed a disproportionate number of messages for inmate M.A.: 166 out of 421 messages, or approximately 39% of the messages Vale reviewed were for M.A. Vale argues that she maintained the authority to review messages after leaving light duty and continued to do so to help out her colleagues. However, she also admitted that she did so because M.A. asked her to. This is fraternization. The Fraternization Policy prohibits: “Extending, promising, or offering any special consideration or treatment to an individual listed under Section V(A) [an offender]. This provision includes giving special preference outside normal work practices.” See Exhibit R-5, pg. 4. By approving M.A.’s messages, rather than approving inmate’s messages generally, Vale gave M.A. special treatment.

The State further alleges that Vale frequently failed to conduct her assigned perimeter checks for “a period of time leading up to late February 2023.” However, Vale argues that she did not complete her assigned interior perimeter checks because she was “collapsed,” or pulled for other duties. She credibly testified that if she was unable to perform the checks right away in the morning, she would complete them later in the day. The State failed to refute Vale’s credible testimony.

Vale argues that she received disparate treatment, since other employees violated the November 2022 security directive and were not terminated. An employee who raises a disparate treatment claim has the burden of proving that contention. The Commission has long recognized that disparities in discipline may, under certain circumstances, affirmatively defend against discipline despite the existence of misconduct. Underlying that position is the notion that if an employer treats one employee significantly more harshly than a similarly situated coworker for similar misconduct, inherent unfairness exists. See *Morris v. DOC*, Dec. No. 35682-A (WERC, 7/15). PDCI recreation leader Mary Kate Hermsen allowed inmates to enter the restricted area, allowed them to store their personal belongings in the restricted area, spent an extended amount of time conversing with an inmate, and gave that inmate additional recreation time to complete a sewing task without formal approval, which violated an inmate work policy. See *Hermsen v. DOC* (WERC, 3/24). Hermsen was only given a three-day suspension. However, Vale’s conduct can be distinguished from Hermsen’s. While both employees allowed inmates into restricted areas and engaged in long conversations with an inmate, Vale was alone in the restricted area with an inmate for nearly fifteen minutes. Further, Vale performed a favor for an inmate by reviewing his messages at his request. This is much more serious than allowing an inmate to perform work without completing the appropriate form, as Hermsen did. Since Vale’s conduct is not comparable

to Hermsen's, Vale did not bear her burden of proving she was subject to disparate treatment for fraternization.

Vale was grossly negligent when she allowed an inmate into a restricted area on March 14, 2023. Warden Pete Jaeger testified about how important it is that correctional officers follow security directives to avoid creating an unsafe environment in the facility. Vale's negligence could have jeopardized the institution's safety and the safety of inmates. Further, Vale fraternized with an inmate by having long conversations with him and reviewing messages at his request. Her actions constitute serious misconduct and warrant a skip in progressive discipline. There was just cause for the discharge, and the discharge is therefore affirmed.

Issued at the City of Madison, Wisconsin, this 3rd day of April 2024.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman