

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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LATIFAH BALOGUN-OGBARA, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0606

Case Type: PA

DECISION NO. 40259

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Appearances:

Ronnelle Fields, 532 W. 15<sup>th</sup> Ave., Oshkosh, Wisconsin, appearing on behalf of Latifah Balogun-Ogbara.

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 November 15, 2023, Latifah Balogun-Ogbara 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 Katherine Scott Lisiecki.

A hearing was held in Oshkosh on January 16, 2024, by Examiner Scott Lisiecki. The parties submitted written closing arguments on February 9, 2024. On February 22, 2024, Examiner Scott Lisiecki issued a Proposed Decision and Order affirming the one-day suspension of Latifah Balogun-Ogbara by the DOC. No objections were filed by the parties by the deadline given of February 27, 2024.

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

**FINDINGS OF FACT**

1. Latifah Balogun-Ogbara (Balogun-Ogbara) is employed by the State of Wisconsin Department of Corrections (DOC), as a correctional officer at Oshkosh Correctional Institution (OCI). She had permanent status in class when she was suspended.

2. On July 5, 2024, Balogun-Ogbara was working as a correctional officer in a housing unit when she had a verbal altercation with an inmate. The inmate yelled that Balogun-Ogbara was racist.

3. Sergeant Paul Neyhard recommended discipline for the inmate. However, Balogun-Ogbara wanted the inmate to receive a more serious discipline. Balogun-Ogbara argued with Neyhard and called another supervisor outside her chain of command to ask her (the other sergeant) for her opinion.

4. Neyhard asked Balogun-Ogbara to move property to another area of the institution, and Balogun-Ogbara failed to do so.

5. Following an investigation, DOC suspended Balogun-Ogbara for one day for insubordination, failure or refusal to carry out verbal assignments, and harassing or treating others discourteously.

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 suspend Latifah Balogun-Ogbara 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 Latifah Balogun-Ogbara by the State of Wisconsin Department of Corrections is affirmed.

Issued at Madison, Wisconsin, this 8<sup>th</sup> day of March 2024.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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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.

Latifah Balogun-Ogbara 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 Balogun-Ogbara 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).

Balogun-Ogbara was employed as a correctional officer at Oshkosh Correctional Institution (OCI). Balogun-Ogbara was working in Q-Building when her supervisor, Sgt. Paul Neyhard, asked her to move property. It is uncontested that she did not do so.

Balogun-Ogbara argues that Neyhard was just asking her for a favor, because he said “please.” Although politely phrased, Neyhard’s request was still a directive from a supervisor and should have been followed.

Balogun-Ogbara further argues that she was not responsible for moving property. However, the DOC’s position description for a correctional officer includes, under worker activities: “Performance of miscellaneous duties as required.” Exhibit R-2, pg. 4.

Balogun-Ogbara further argues that anyone could have moved property before that day, implying that it was a non-urgent task and did not have to be performed by her. However, supervisors may use their discretion to determine when tasks should be completed and by whom.

Balogun-Ogbara further argues that she was unable to move the property because she was off the clock, and that she didn’t have a means of transportation. However, Balogun-Ogbara was given the instruction while on duty. If there were logistical obstacles to moving the property as directed, she should have communicated that to her supervisor.

On July 5, 2023, Balogun-Ogbara was monitoring the day room when she had a verbal altercation with an inmate. The inmate was yelling and called Balogun-Ogbara a racist. Balogun-

Ogbara demanded that the inmate be seriously disciplined. She called Lieutenant Nicholas Baatz, who told her to discuss a recommendation with Neyhard. Neyhard did not want to lock the inmate up, but Balogun-Ogbara disagreed and insisted that the inmate be locked up. Balogun-Ogbara kept arguing with Neyhard about the appropriate discipline. Sgt. Michael Helmeid, who was present, said that Balogun-Ogbara cut Neyhard off and continued talking, ignoring Neyhard and repeating herself. Unsatisfied with Neyhard's proposed discipline, Balogun-Ogbara called Sgt. Amanda Jones, who was outside of Balogun-Ogbara's chain of command, to ask Jones for her opinion.

Balogun-Ogbara argues that the inmate did not receive a more serious discipline because she is black and her coworkers are predominantly white. Balogun-Ogbara also believes that Baatz was retaliating against her by not ordering a more serious discipline. However, arguing with one's supervisor and going outside the chain of command are not appropriate ways to adjudicate such claims. Warden Cheryl Eplett testified that there is a process for adjudicating discrimination and retaliation claims, and that Balogun-Ogbara would have had the opportunity to take her disputes up the chain of command. Instead, Balogun-Ogbara argued with her supervisor while on the housing unit, where the inmates may have had the opportunity to observe the conflict and "staff split," or use disagreements between staff to undermine institutional security. By failing to disengage from the conflict to perform her job, Balogun-Ogbara showed a lack of judgment and could have created a security risk.

Balogun-Ogbara was insubordinate when she failed to follow a directive from her supervisor. Further, Balogun-Ogbara created a potential security risk when she refused to accept her supervisor's recommendation about inmate discipline and went outside the chain of command to ask another sergeant for their opinion. The State followed progressive discipline, following previous letters of expectation with this one-day suspension. There was just cause for the suspension, and the suspension is therefore affirmed.

Issued at the City of Madison, Wisconsin, this 8<sup>th</sup> day of March 2024.

## **WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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James J. Daley, Chairman