

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

ROY M. FIELDS, Appellant

vs.

SECRETARY, DEPARTMENT OF CORRECTIONS, Respondent.

Case 144
No. 71622
PA(adv)-219

Decision No. 33874-B

Appearances:

Sean Daley, Field Representative, AFSCME Council 24, P.O. Box 19, Ashippun, Wisconsin appearing on Appellant Roy M. Fields.

Bert St. Louis, Chief Labor Relations Specialist, Office of State Employment Relations, 101 East Wilson Street, Madison, Wisconsin, appearing on behalf of Respondent, Department of Corrections.

DECISION AND ORDER

Roy M. Fields appeals the imposition of a 10 day suspension from his employment with the Wisconsin Department of Corrections. The parties agreed to the following statement of the issue:

Whether there was just cause for the action of suspending Appellant for 10 days that was imposed by letter dated February 20, 2012?

The matter was heard on August 9, 2012 before Hearing Examiner Lauri A. Millot of the Commission's staff. The final argument was received by September 29, 2012. The Examiner issued a Provisional Proposed Decision and Order on February 11, 2013 which concluded that the Respondent Department of Corrections did not have just cause to suspend Appellant Fields. The Examiner provided Appellant the statutory period for submitting any request for fees and/or costs under Sec. 227.485, Stats. and no request was made.

On April 4, 2013, the Examiner issued a Proposed Decision and Order and advised the parties that any objections were to be filed on or before May 6, 2013. No objections were filed.

No. 33874-B

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

FINDINGS OF FACT

1. Respondent Department of Corrections (DOC) is an agency of the State of Wisconsin with statutory authority to manage correctional facilities. Among its facilities is the Fox Lake Correctional Institution (FLCI), a medium security facility for 1400 incarcerated males, located in Fox Lake, Wisconsin.

2. Roy M. Fields (Appellant) is employed at FLCI in the capacity of Facilities Maintenance Specialist - Advanced and has continuously maintained that position for more than seven years. Mike McCormick, Building and Grounds Superintendent, is Fields' supervisor and has been for three years.

3. As a part of McCormick's regular supervision of the maintenance personnel, he facilitates a daily morning meeting during which maintenance staff tell McCormick of their workload and responsibilities. Appellant has attended these meetings daily and is aware of McCormick's expectations and procedure at the meeting. On January 19, 2012 at the beginning of the daily meeting, McCormick tapped Appellant's shoulder and told him to wake up. Appellant immediately responded, "I am awake." During the same meeting, Appellant heard but intentionally did not respond to questions from McCormick.

4. On February 20, 2012, Warden Marc W. Clements issued the Appellant a 10 day suspension for violating Work Rule #3 - inattentiveness, sleeping, or engaging in unauthorized activities. The relevant portion of the letter described:

On January 19, 2012, during a daily morning staff meeting, Building and Grounds Superintendent Michael McCormick noticed that your eyes were closed. He tapped your shoulder at which time you opened your eyes. Shortly thereafter, Mr. McCormick called on you to contribute to the meeting. You did not immediately respond. Mr. McCormick called on you again. Once again, you did not respond. Only after being called upon a third time, did you respond.

As a Facilities Maintenance Specialist - Advanced in the Department of Corrections, you are expected to carry out the mission of our institution, and to assist in providing a safe and secure environment for both inmates and staff. Your position is one of significant trust and it is imperative that you stay alert at all times; if your eyes are closed for any amount of a (sic) time, you are unable to supervise offenders, contractors and your working environment. Your failure to stay alert is very serious and your actions significantly jeopardized the safety of both staff and inmates. Furthermore, your attentiveness to department meetings is important and your participation is expected.

. . .

5. Fields had been disciplined four times previously, all within ten months. McCormick was Appellant's immediate supervisor for all of these disciplinary actions. The discipline was progressive and includes a five-day suspension by letter dated February 7, 2012 for loss of a tool in violation of policy and exercising negligence; a three-day suspension by letter dated September 19, 2011 for "inattentiveness and possibly sleeping" in front of a computer in the vicinity of inmates; a one-day suspension by letter dated May 25, 2011 for horseplay, practical joking or other disruptive behavior; and a written reprimand by letter dated April 8, 2011 for inattentiveness, negligence and falsifying records for sleeping while supervising an outside contractor perform plumbing work at the facility.

6. There is insufficient evidence that Appellant had his eyes closed or was asleep during the January 19, 2012 meeting.

7. By failing to respond to McCormick's questions, Appellant was inattentive during the January 19, 2012 meeting.

Based on the above and Foregoing Findings of Fact, the Commission makes and issues the following

CONCLUSIONS OF LAW

1. The Commission has the authority to review this matter pursuant to Sec. 230.44(1)(c), Stats.

2. Respondent Department of Corrections has the burden of proof to establish just cause to suspend Appellant Roy M. Fields.

3. Respondent Department of Corrections has sustained its burden of proof as to some but not all of the misconduct upon which the 10-day suspension was premised.

4. Respondent Department of Corrections had just cause to suspend Appellant for five days.

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

ORDER¹

The 10 day suspension is reduced to a five day suspension and Respondent Department of Corrections shall take appropriate action to modify Appellant's personnel record and to make him whole.

Given under our hands and seal at the City of Madison, Wisconsin, this 25th day of July, 2013.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott /s/

James R. Scott, Chairman

Rodney G. Pasch /s/

Rodney G. Pasch, Commissioner

¹ Upon the issuance of this Order, the accompanying letter of transmittal will contain the names and addresses of the parties to this proceeding and notices to the parties concerning their rehearing and judicial review rights. The contents of that letter are hereby incorporated by reference as a part of this Order.

Fields v. DOC

MEMORANDUM ACCOMPANYING DECISION AND ORDER

This matter is before the Commission as an appeal of the decision to suspend Appellant for 10 days from his position as a Facilities Maintenance Specialist-Advanced at Fox Lake Correctional Institution for being inattentive and/or sleeping during a maintenance staff meeting on January 19, 2012.

Just Cause Analysis

The Commission applies a three-step analysis when reviewing an agency's decision to impose discipline: Did the employee engage in the alleged misconduct? If so, did it warrant some form of discipline? If so, was the discipline excessive? When answering the final question, the Commission must consider the nature of the misconduct; whether it impaired or tended to impair the agency's operations; the degree of any impairment, and the employee's prior work record. The agency bears the burden of proof, and must show by a preponderance of credible evidence that it satisfied all steps of the analysis. *See, Del Frate v. DOC*, Dec. No. 30795 (WERC, 2/2004).

Respondent disciplined Appellant for inattentiveness in violation of "Work Rule #3 – Inattentiveness, sleeping, or engaging in unauthorized activities." Respondent's Guidelines for Employee Disciplinary Action define inattentiveness as, "includes having one's eye's closed; having one's head resting on a table or desk; or failing to respond or acknowledge the presence of a management overseer as required by employing unit regulations."

The letter of discipline, dated January 19, described the Appellant's misconduct as:

On January 19, 2012, during a daily morning staff meeting, Building and Grounds Superintendent Michael McCormick noticed that your eyes were closed. He tapped your shoulder at which time you opened your eyes. Shortly thereafter, Mr. McCormick called on you to contribute to the meeting. You did not immediately respond. Mr. McCormick called on you again. Once again, you did not respond. Only after being called upon a third time, did you respond.

Appellant admitted to having heard all three questions posed by McCormick. Appellant explained that he did not understand the intent of McCormick's question and therefore did not answer. Appellant's explanation is not credible. The daily morning meeting is routine for the maintenance staff and Appellant was well aware that the standard practice at the meeting was for McCormick to address each staff person and ask what they were doing. If Appellant truly did not understand the question, it was incumbent upon him to ask for clarification rather than

sit there in silence. Thus, we are satisfied that Respondent has established that Appellant was inattentive.

As to the allegation that Appellant has his eyes closed or was sleeping during the meeting, the evidence establishes that McCormick and the maintenance staff were present on January 19, 2012 at the regular morning meeting in the maintenance bay. Staff were sitting in a circle and McCormick was standing and moving within the circle to address staff. Appellant was wearing his regular winter attire which was two hooded sweatshirts with the hoods up on his head. Appellant was sitting on a chair with his elbows resting on his knees and intermittently rubbing his hands together. Appellant was looking at his hands in his lap, thus his eyes were directed downward. McCormick was standing. McCormick was not situated in a position which would allow him to observe Appellant's eyes and therefore was unable to determine whether Appellant's eyes were open or closed. Appellant denied his eyes were closed, and the Appellant's body position did not afford McCormick the ability to visually observe and credibly assess whether Appellant's eyes were open or closed.

Respondent offered testimony from Warden Marc Clements, Human Resource Director Marla Pearce and Joy Tassler, none of whom were present in the maintenance bay on January 19, 2012. McCormick did not testify. These witnesses had no personal knowledge of the incident and their understanding of what transpired came directly from McCormick's written statement and any additional information obtained from McCormick. The testimony Clements, Pearce and Tassler offered relative to the January 19 incident was hearsay. In the face of Appellant's testimony denying that he had his eyes closed and/or was asleep and the evidence recited above as to Appellant's and McCormick's positioning during the January 19, 2012 meeting, Respondent's hearsay evidence does not establish that Appellant had his eyes closed/or was asleep during the meeting.

Given the foregoing, we conclude that Respondent has met its burden of proof as to some but not all of the conduct upon which Appellant's 10 day suspension was based. Therefore, we have concluded that Respondent had just cause for only a five day suspension and we have ordered Respondent to take appropriate action consistent with our conclusion.

Dated at Madison, Wisconsin this 25th day of July, 2013.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott /s/

James R. Scott, Chairman

Rodney G. Pasch /s/

Rodney G. Pasch, Commissioner

gjc
33874-B