

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

M. J. M., Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0275

Case Type: PA

DECISION NO. 37919

Appearances:

Yvonne Green, 5950 Potomac Place, Mount Pleasant, Wisconsin, representative appearing on behalf of and with M.J.M.

Anfin Jaw, 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 8, 2018, M.J.M. (M) filed an appeal with the Wisconsin Employment Relations Commission asserting she had been given a one-day suspension without just cause by the State of Wisconsin Department of Corrections. The appeal was assigned to Examiner Peter G. Davis. Due to inclement weather, the original hearing was postponed and final authority for the matter was transferred to Chairman James J. Daley pursuant to § 227.46(3)(a), Stats. A hearing was held on February 25, 2019, in Racine, Wisconsin. M filed a post-hearing brief on March 5, 2019.

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

FINDINGS OF FACT

1. M was employed as a Financial Specialist Senior by the State of Wisconsin Department of Corrections (DOC) and had permanent status in class at the time of her conduct on July 10, 2018.

2. On July 10, 2018, M was insubordinate to her supervisor and used profane and abusive language.

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 matter pursuant to § 230.44(1)(c), Stats.

2. The State of Wisconsin Department of Corrections had just cause, within the meaning of § 230.34(1)(a), Stats., to suspend M 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 M by the State of Wisconsin Department of Corrections is affirmed.

Signed at the City of Madison, Wisconsin, this 6th day of March, 2019.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley for the Commission

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.

M.J.M. (M) had permanent status in class at the time of her suspension and her appeal alleges that the one-day suspension was not based on just cause.

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

On July 10, 2018, M was assisting other workers in another area of the Racine Youthful Offender Correctional Facility (RYOCF) known as “Stores.” M returned from helping in this area to her desk in the administrative office at approximately 2:30 p.m. Upon her return her supervisor, Courtney Pederson, approached M at her desk. M was facing away from Pederson and testified she felt trapped due to the small dimensions of her workspace and the layout, and felt Pederson was encroaching upon her. Pederson instructed M there were several invoices that needed immediate attention and M needed to get those processed.

At this point, M reacted negatively. According to the testimony of witnesses and statements put into evidence, some loud and aggressive tirade ensued, with M shouting “I’m working on all this other shit” and “You can’t tell me to do some shit that’s only been sitting here for 2 days! I’ve been working my ass off on everything else.” Pederson then retreated to her office, after which M continued to speak to herself, until such point as she stated loudly “You know what? Fuck this, I’m going home sick.” This was followed by several items and drawers being loudly slammed and then, at approximately 2:37 p.m., M left stating “Fuck these people.” M, in her testimony, did not have a clear memory of the events that occurred, likely due to the heightened stress that contributed to the episode.

DOC proceeded to suspend M for one day, stating she had violated the following work rules:

- 3) Disobedience, insubordination, inattentiveness, negligence, failure to carry ...;
- 14) Intimidating, interfering with, harassing, demeaning, treating discourteously, or using profane or abusive language in dealing with others.

The evidence presented by DOC at the hearing demonstrates by a preponderance that M engaged in the behavior described. Taken as a whole, the incident shows a clear violation of the work rules in place. M's actions were insubordinate and showed a clear disregard for the employer's legitimate prerogative to regulate the workplace. M's behavior, if found permissible, would lead to the employees at RYCOF being able to replicate such outbursts and erode order in the workplace.

While the Commission has shown leniency in certain utterances of questionable language in past decisions, there is no reason to apply a deep analysis of such in this matter as the language was not the central issue for the discipline that was ultimately imposed. Instead the situation as a whole, with the physical slamming of items and shouting, is much more concerning than the flavorful language used by M in this instance. Collectively, M created a situation that her coworkers and supervisors found to be unprofessional and inappropriate in the workplace. This is the central concern DOC proceeded to discipline M for.

M argues that the responsibility for the incident lies with Pederson, indicating that by coming into her cubicle, Pederson's actions were intimidating and unprofessional. M states this caused heightened anxiety and provoked her actions. M further argues that she had FMLA status that Pederson was aware of. M states her leaving that day was a "fight or flight" coping skill, and her departure from the workplace was taught to her for how to deal with such conflicts.

The record does not adequately address whether M's FMLA certification required a reasonable accommodation from the employer in this instance. In fact, testimony offered from Pederson indicated that in past situations, M has been instructed to let her coworkers and supervisors know she "needs 5 minutes" in an effort to deescalate situations that are creating anxiety for M. There is no evidence that M requested this reprieve from her interaction with Pederson and, following Pederson's departure, the unprofessional behavior continued. M also puts emphasis on defending her decision to leave that day. There is no need for the Commission to make a determination if M was correct or at fault with leaving mid-day as the employer has not disciplined her for that action.

Given M's lack of prior discipline, a one-day suspension for an initial violation of Work Rules #3 and #14 is the first-step in progressive discipline and appropriate in this matter.

M's suspension is hereby affirmed.

Signed at the City of Madison, Wisconsin, this 6th day of March, 2019.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley for the Commission