

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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CRYSTAL DAVIS, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0292

Case Type: PA

DECISION NO. 37978

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**Appearances:**

Crystal Davis, 650 Mustang Lane, Fond du Lac, Wisconsin, and Aldon Lehmann, Representative, 751 County Road K, Fond du Lac, Wisconsin, appearing on behalf of Crystal Davis.

Anfin Jaw, 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 April 26, 2019, Crystal Davis filed an appeal with the Wisconsin Employment Relations Commission asserting she had been suspended for three days without just cause by the State of Wisconsin Department of Corrections. A hearing before Examiner Peter G. Davis was held on July 22, 2019, at the Taycheedah Correctional Institution in Fond du Lac, Wisconsin. The State made oral argument at the conclusion of the hearing, and Davis filed written argument on July 29, 2019.

On August 8, 2019, Examiner Davis issued a Proposed Decision and Order affirming the suspension. No objections were filed and the matter became ripe for Commission consideration on August 14, 2019.

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

**FINDINGS OF FACT**

1. At the time of her March 6, 2019 three-day suspension, Crystal Davis had permanent status in class and was employed as a correctional officer by the State of Wisconsin Department of Corrections (DOC) at the Taycheedah Correctional Institution. In August, 2018, Davis received a one-day suspension for failing to follow inmate observation protocol and falsifying related records.

2. In 2018, Davis violated DOC policy against fraternization by disclosing certain personal information to an inmate.

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 did have just cause, within the meaning of § 230.34(1)(a), Stats., to suspend Crystal Davis for three days for the conduct described in Finding of Fact 2.

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

**ORDER**

The three-day suspension of Crystal Davis is affirmed.

Signed at the City of Madison, Wisconsin, this 23rd day of August, 2019.

**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.

Crystal Davis 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 Davis 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).

The State asserts Davis told inmates about medications she was taking, her vacation experiences, a house break-in, and a personal relationship with another employee and thereby violated the policy against fraternization. The State presented an inmate witness who so testified. Davis did not testify but attacks the credibility of the inmate contending she may have fabricated her testimony or simply overheard the information when Davis was unavoidably talking with coworkers.

The inmate witness testified credibly and there is no evidence in the record that gives her motivation to be less than truthful. The inmate was generally quite positive about Davis' work performance and had nothing to gain by being anything other than truthful. Indeed, she credibly expressed some concern that she might face some retaliation for her willingness to testify.<sup>1</sup> Therefore, based on the inmate's testimony, it is concluded Davis did make direct comments regarding personal matters.<sup>2</sup> It is further concluded those comments exceeded what is appropriate in terms of a professional inmate/correctional officer relationship and, as testified to by Taycheedah Warden Cooper, have the potential to create personal relationships that jeopardize the safety of those working in and residing in the institution.

Having concluded that Davis engaged in misconduct, the question becomes whether there was just cause for a three-day suspension. Because Davis had recently received a one-day

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<sup>1</sup> As was noted during the hearing, any such retaliation will be met with the strongest possible response.

<sup>2</sup> Davis questions why other inmates who allegedly had similar direct conversations about personal matters with Davis were not questioned by the State or did not testify. The State is entitled to make its own decisions about how to conduct an investigation and who to have testify at hearing. Davis has the right to attack those decisions but also had the right to present witnesses she believed would present evidence supporting her appeal. She has exercised the first right but did not exercise the second. Here, the existence of other potential witnesses does not in and of itself make the testimony of the inmate who did testify any less credible.

suspension, the Commission concludes just cause did exist for the progressive discipline of a three-day suspension.

Signed at the City of Madison, Wisconsin, this 23rd day of August, 2019.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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James J. Daley, Chairman