

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

DEREK RAISANEN, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0318

Case Type: PA

DECISION NO. 38289

Appearances:

Sean Daley, Field Representative, AFSCME Wisconsin Council 32, N600 Rusk Road, Watertown Wisconsin, 53098, appearing on behalf of Derek Raisanen.

Cara J. Larson, Attorney, Department of Administration, 101 East Wilson, 10th Floor, P.O. Box 7864, Madison, Wisconsin, 53707-7864, appearing on behalf of the State of Wisconsin Department of Corrections.

DECISION AND ORDER

On October 11, 2019, Derek Raisanen filed an appeal with the Wisconsin Employment Relations Commission asserting he had been suspended for three days without just cause by the State of Wisconsin Department of Corrections. The appeal was assigned to Examiner Raleigh Jones. A hearing was held on December 10, 2019, in Portage, Wisconsin, and the parties made oral argument at the hearing's conclusion.

On January 8, 2020, Examiner Jones issued a Proposed Decision and Order affirming the suspension. Raisanen filed objections on January 10, 2020. The State did not file a response and the matter became ripe for Commission consideration on January 16, 2020.

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

FINDINGS OF FACT

1. Derek Raisanen is employed as a correctional sergeant by the State of Wisconsin Department of Corrections (DOC) at the Columbia Correctional Institution and had permanent status in class at the time of his suspension.

2. DOC is an agency of the State of Wisconsin and operates the Columbia Correctional Institution (CCI) in Portage, Wisconsin.

3. Per DOC's attendance policy, employees who have more than six attendance occurrences in a calendar year can be disciplined for that.

4. Raisanen had seven attendance occurrences in 2019.

5. DOC suspended Raisanen for three days for his seventh occurrence.

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 Derek Raisanen for three days.

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 Derek Raisanen by the State of Wisconsin Department of Corrections is affirmed.

Signed at the City of Madison, Wisconsin, this 6th day of February, 2020.

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.

Derek Raisanen had permanent status in class at the time of his suspension and his appeal alleges that the suspension was not based on just cause.

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

When a Department of Corrections (DOC) employee is absent from work and wants to use sick leave, medical verification must be submitted when the employee returns to work. Late verifications are not permitted. If the employee provides timely medical verification, the absence is considered excused. However, if the employee does not provide timely medical verification, then the absence is considered unexcused, and the employee is charged with what is known as an occurrence. Per DOC's attendance policy, "excessive absenteeism occurs when an employee ... has within a calendar year more than five occurrences." This same policy goes on to provide that when an employee has a sixth occurrence, a letter of expectation will be issued. If the employee has more occurrences than that, they face formal discipline. This rule is well known in the department and employees know they face discipline if they have more than six occurrences in a calendar year.

All the dates hereinafter occurred in 2019. On August 4, Raisanen was scheduled to work two back-to-back eight-hour shifts. He called in sick for the first shift that day but worked the second shift. On August 15, Raisanen brought in a doctor's note to excuse his use of sick leave on August 4.

Earlier that year, Raisanen was absent from work on January 6, March 6, March 11, March 24 and March 31. Those five absences were all categorized as occurrences because Raisanen did not provide medical verification afterwards. Raisanen was then absent on June 15. After that, per DOC policy, Raisanen received a letter of expectation which notified him that his absence on June 15 was his sixth occurrence of the year. That letter indicated "that if you do not follow the expectations in Executive Directive #2, you may be subject to the progressive disciplinary process,

up to and including termination from your position.” The Executive Directive just referenced provides in Section VIII, B, 4(b) that “beyond the sixth occurrence, the employee will be investigated and may receive formal discipline”.

It is in that context that Raisanen was subsequently absent from work and wished to use sick leave on August 4. DOC subsequently determined that Raisanen’s absence on August 4 counted as an occurrence within the meaning of DOC’s attendance policy. This occurrence was his seventh for the year. Given that, the Commission has no choice but to conclude that Raisanen committed workplace misconduct by exceeding the number of allowable occurrences in a calendar year.

Raisanen asserts that his conduct should nonetheless be excused and his discipline overturned. His claims are addressed below.

Raisanen notes that he did submit a doctor’s slip for his August 4 absence. As stated prior, per DOC policy the medical verification was due on Raisanen’s first day back to work on August 5. Raisanen worked from August 4 - 11, received medical verification on August 14 while in Hurley, and submitted the verification on August 15.

Although Raisanen works in Portage, his primary residence is in Hurley, about 225 miles away. He commutes between those two places and has an apartment in Portage. Because of this distance Raisanen argues that it was impractical to get a medical verification until his next scheduled day off due to the increased amount a Portage-based doctor would cost due to being out of his insurance network. Additionally, he notes that his personal providers were in Hurley, not Portage.

The Commission is unpersuaded by the argument presented by Raisanen that he should be allowed additional time due to the location of his preferred medical provider. Raisanen was aware of the policy and consequences for a seventh occurrence. This is highlighted by him having received the Letter of Expectation following his sixth occurrence. Having been specifically forewarned of impending discipline it was incumbent upon Raisanen to provide the proper medical documentation according to the procedure dictated by DOC. Additional costs were his to bear and is not a recognizable defense to deviating from DOC’s stated timeline to submit medical verification to excuse the absence. DOC’s policy allows for six occurrences without discipline. This allowed Raisanen six opportunities prior the matter at hand to comply with DOC’s directives. Had he done so in any of the prior occurrences, there would be no discipline at the present. His failure to comply has exceeded DOC’s arguably generous allowance for deviation.¹

¹ In his objection to the proposed decision, Raisanen points out that the conditions of working at a prison are not favorable to one’s health (pointing to the exhaustion of overtime and the personal hygiene of inmates as a basis for such), and that DOC’s policy may seem generous facially, but realities are that staff get sick often. In no way does the Commission wish to give the impression that it’s not aware, nor appreciative, of the efforts and sacrifices made by those who work within our prison system. The Commission is keenly aware of such. However, given that Raisanen waited 10 days to get a medical verification from a local provider, as well as his ability to work the second part of the day in question’s schedule, other questions are presented as to the veracity of this particular illness which the Commission need not delve into due to the non-rebutted prima facie evidence presented.

Raisanen also argues that he was given disparate treatment, namely that a co-worker was allowed to not submit a timely medical verification without any discipline issued.

Disparate treatment does not exist in this instance. For disparate treatment to occur, similarly situated employees must have engaged in similar conduct with different levels of discipline imposed. The example of co-worker Parenteau that Raisanen brings to the Commission's attention is significantly different. Parenteau brought a verification the next workday after his absence, and that verification was rejected by DOC as being inadequate. Parenteau went back to his provider and subsequently provided a verification that provided the appropriate information. Parenteau did comply as directed, it was his medical provider who failed to adequately perform, and when informed of this, Parenteau took immediate corrective action. Additionally, Parenteau had not exceeded the amount of occurrences where he was facing discipline. Both of these distinctions do not allow for a conclusion of disparate treatment by the Commission.

Having addressed the defenses proffered by Raisanen and found them unpersuasive, the final question is whether a three-day suspension was excessive for this misconduct. The record shows that Raisanen received a one-day suspension on January 17, 2019 for an attendance related infraction. Since this case also involves an attendance related infraction, the Commission declines to reduce the discipline imposed here. Accordingly, the Commission concludes there was just cause for Raisanen's three-day suspension.

Signed at the City of Madison, Wisconsin, this 6th day of February, 2020.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman