

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

JOHN GLINIECKI, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0314

Case Type: PA

DECISION NO. 38291

Appearances:

Attorneys Anthony L. O'Malley and Michelle Wenninger, Zacherl, O'Malley & Endejan, S.C. 115 South Main Street, Fond Du Lac, Wisconsin, appearing on behalf of John Gliniecki.

Anfin Jaw, 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 September 16, 2019, John Gliniecki filed an appeal with the Wisconsin Employment Relations Commission asserting he had been discharged without just cause by the State of Wisconsin Department of Corrections.

A hearing before Examiner Peter G. Davis was held on December 16 and 17, 2019 at Taycheedah Correctional Institution in Fond du Lac, Wisconsin. The parties made oral argument at the conclusion of the hearing. On December 20, 2019, Gliniecki filed a motion for attorney fees and costs.

On December 23, 2019, a stenographic transcript of the hearing was received. On January 6, 2020, the record was closed upon receipt of an exhibit.

By action taken on January 7, 2020, the Wisconsin Employment Relations Commission directed that Examiner Davis had final authority to issue the Commission's decision pursuant to Secs. 227.46 (3)(a), Stats.

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

FINDINGS OF FACT

1. At the time of his July 2, 2019 discharge, John Gliniecki was employed as a Nursing Supervisor by the State of Wisconsin Department of Corrections at the Taycheedah Correctional Institution.

2. John Gliniecki engaged in misconduct by allowing the nature of a patient's crime to influence the treatment the patient received and by failing to adequately supervise the patient's treatment.

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 not have just cause, within the meaning of § 230.34(1)(a), Stats., to discharge John Gliniecki but did have just cause to demote him and to suspend him for 30 days.

3. John Gliniecki is a prevailing party within the meaning of Sec. 227.485, Stats., but the position of the State of Wisconsin Department of Corrections as to his discharge was substantially justified within the meaning of Sec. 227.485(2)(f), Stats.¹

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

ORDER

1. The discharge of John Gliniecki is modified to a demotion to the position of Nurse Clinician 2 and a 30-day suspension.²

Signed at the City of Madison, Wisconsin, this 14th day of January, 2020.

¹ The State met its burden to show (1) a reasonable basis in truth for the facts alleged; (2) a reasonable basis in law for the theory propounded; and (3) a reasonable connection between the facts alleged and the legal theory advanced.

² When the discipline imposed is modified pursuant to the Commission's authority under Sec. 227.44(4)(c), Stats., the Commission is not bound to follow any disciplinary progression established by the employing agency. *Wholf v. DOC*, Dec. No. 36317 (WERC, 5/16); *Waterman v. DOC*, Dec. No. 36741 (WERC, 12/16); *Kaufert v. DOC*, Dec. No. 37989 (WERC, 9/19). Rather, when exercising its Sec. 230.44(1)(c), Stats. just cause jurisdiction, the Commission has discretion to determine the appropriate level of discipline.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Peter G. Davis

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.

John Gliniecki had permanent status in class at the time of his discharge and his appeal alleges that the discharge was not based on just cause.

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

A patient with complex medical needs and mobility issues arrived at Taycheedah after having been convicted of molesting her grandson. Six days after her arrival and subsequent admission into Taycheedah's medical facility, the patient was dead. Gliniecki was the direct supervisor of the employees in the health care facility in which the patient resided.

After investigating the circumstances surrounding the patient's death, the State discharged Gliniecki, a probationary nurse and a probationary certified nursing assistant.

Prior to the patient's admission into Taycheedah's medical facility, a nurse was aware of the patient's needs and mobility issues and was preparing a suitable hospital type bed for the patient's use. Gliniecki subsequently directed the nurse to instead prepare a standard bed stating something to the effect of "if she can molest her grandson, she can get her butt in and out of bed."

Gliniecki believed that the patient was physically more capable than she appeared to be. Based on that perception, he gave directions to medical staff that if the patient found her way to the floor, she should be left on the floor with a pillow, blanket and call light until she was ready to assist staff returning to bed. Some staff interpreted this direction in the context of Gliniecki's belief that the patient was malingering and were inclined to leave the patient on the floor without ongoing observation. Such conduct was directly contrary to the medical care the patient was entitled to receive and was, at best, a consequence of a lack of precision by Gliniecki when

providing direction to staff. Gliniecki either was aware of this inappropriate treatment or failed to adequately supervise employees to discover same.

Gliniecki contends that his initial comment regarding the patient's crime did not impact the patient's care. The record as a whole indicates otherwise. Gliniecki's comment reflected an attitude that infected the quality of the care the patient received during the entirety of her stay. Gliniecki further argues that his instructions to staff were entirely appropriate, unquestioned by those present, and reflected standard protocol for preventing patient and staff injury. However, the record reflects that some who were present were uncertain as to the legitimacy of the instructions and, to their credit, acted in the patient's best interests. Other staff took their cue from Gliniecki's attitude toward the patient and provided inappropriate care.

Gliniecki's actions reflect both improper medical judgments and a failure to adequately supervise employees. Such serious misconduct warrants serious discipline. A demotion reflects Gliniecki's supervisory failures. A 30-day suspension reflects his decision to have the patient's crime impact the care she received.

Because Gliniecki is generally by all accounts a very good nurse and the patient's death was caused by unrelated factors, it is concluded that discharge is too severe a penalty.

Signed at the City of Madison, Wisconsin, this 14 th day of January, 2020.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Peter G. Davis