

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

SCOTT BROWN, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF VETERANS AFFAIRS, Respondent.

Case ID: 39.0015

Case Type: PA

DECISION NO: 38426

Appearances:

Scott Brown, 1082 Chandler Lane, Sun Prairie, Wisconsin, appearing on his own behalf along with Chad McCafferty, 2135 Rimrock Road, Madison, Wisconsin.

Cara J. Larson, Department of Administration, 101 East Wilson Street, 10th Floor, P.O. Box 7846, Madison, Wisconsin appearing on behalf of the State of Wisconsin Department of Veterans Affairs.

DECISION AND ORDER

On December 23, 2019, Scott Brown filed an appeal with the Wisconsin Employment Relations Commission asserting he had been suspended for one day without just cause by the State of Wisconsin Department of Veterans Affairs (DVA).

A hearing before Examiner Peter G. Davis was held on March 4, 2020 in Madison, Wisconsin. The parties made oral argument at the conclusion of the hearing. Examiner Davis issued a Proposed Decision modifying the discipline on April 3, 2020. Brown objected to the Proposed Decision on April 5, 2020, and DVA objected to the Proposed Decision on April 6, 2020.

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

FINDINGS OF FACT

1. At the time of his November 15, 2019 one day suspension, Scott Brown was employed as a Veterans Benefits Specialist by the State of Wisconsin Department of Veterans Affairs and had permanent status in class.

2. On September 26, 2019, Brown angrily left a meeting with his supervisor when he perceived the meeting was over.

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 Veterans Affairs did not have just cause, within the meaning of § 230.34(1)(a), Stats., to suspend Scott Brown 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 suspension of Scott Brown by the State of Wisconsin Department of Veterans Affairs is rejected.

Issued at the City of Madison, Wisconsin, this 20th day of April, 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.

Scott Brown 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 Brown 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 Commission consulted with the Examiner as to the witnesses' demeanor during the hearing.

It is undisputed that Brown was asked by a supervisor to attend a meeting with a co-worker to discuss issues related to a negative work relationship between the co-worker and Brown. Brown initially refused to attend but was directed to do so and followed that directive. The meeting took place and included loud and angry dialogue. After feeling he was not being allowed to talk, Brown left the meeting.

Brown contends that he did not engage in misconduct because he thought the meeting was over and, in any event, was not ordered to stay. It seems clear the meeting became heated, Brown became angry.

DVA has not established that Brown violated the directive of staying in the meeting and thus being in violation of Work Rule #3. The issue as to whether the meeting was over is cloudy at best. DVA had two managers in the meeting, Korbol and Hendrickson. Korbol testified clearly when asked whether the meeting was over when Brown left that "It was unclear", thus giving weight to Brown's assertion that he understood the meeting to be over. When asked why he didn't go after Brown or order him to remain in the meeting, Hendrickson testified that it wouldn't accomplish anything, that due to the escalation of the meeting Brown needed to be left alone to cool down. Korbol demonstrates the lack of clarity in whether the meeting was over and

Hendrickson describes a meeting that was over in fact if not in formality. Given the testimony offered, DVA has not met its burden in this regard.

Based on the above, the Commission finds the Department of Veterans Affairs did not have just cause to discipline Brown for his misconduct. The discipline is rejected and Brown shall be made whole in all respects.¹

Issued at the City of Madison, Wisconsin, this 20th day of April, 2020.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman

¹ The failure of the employer to establish just cause should not be construed by Brown as a justification of his past or future actions. The record established Brown has some issues with self-management of anger and temper, which could give rise to future disciplinary actions. The Commission strongly recommends to Brown to work on controlling those issues in potential future workplace incidents.