

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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WANDA HARRIS, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF HEALTH SERVICES, Respondent.

Case ID: 2.0081

Case Type: PA

DECISION NO. 38440

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**Appearances:**

Wanda Harris, 4471 N. 82<sup>nd</sup> St., Milwaukee Wisconsin, appearing on her own behalf.

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 Health Services.

**DECISION AND ORDER**

On February 27, 2020, Wanda Harris filed an appeal with the Wisconsin Employment Relations Commission asserting she had been suspended for one day without just cause by the State of Wisconsin Department of Health Services.

A telephonic hearing before Examiner Peter G. Davis was held on May 20, 2020. The parties made oral argument at the conclusion of the hearing.

On June 8, 2020, Examiner Davis issued a Proposed Decision and Order rejecting the suspension. On June 12, 2020, the State filed objections and on June 15, 2020, Harris filed a response.

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

**FINDINGS OF FACT**

1. At the time of her January 9, 2020 suspension, Wanda Harris was employed as an Income Maintenance Specialist by the State of Wisconsin Department of Health Services (DHS) and had permanent status in class.

2. On September 16, 2019 and December 9, 2019, Harris did not call in to work to report that she would be absent. Harris had a good faith belief that she was not obligated to call in.

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 over this appeal pursuant to Wis. Stat. § 230.44(1)(c), Stats.

2. The State of Wisconsin Department of Health Services did not have just cause, within the meaning of Wis. Stat. § 230.34(1)(a), to suspend Wanda Harris.

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 Wanda Harris by the State of Wisconsin Department of Health Services is rejected.

Issued at the City of Madison, Wisconsin, this 19<sup>th</sup> day of June, 2020.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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James J. Daley

**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.

Harris 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 Harris 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).

It is undisputed that Harris should have but did not call in on September 16 and December 9, 2019. However, the record evidence persuades the Commission that Harris had a good faith belief that no call in was needed due to circumstances surrounding her leave status. Therefore, it is concluded that no misconduct occurred and there was no just cause for a suspension. Thus, the suspension is rejected.

In response to the State's objections, the Commission acknowledges (as does Harris) the State's legitimate interest in having employees comply with call in procedures. The Commission further acknowledges that it has often sustained the discipline received by employees who fail to follow call in procedures. However, in this instance, the record as a whole establishes that Harris had a good faith belief that no call in was required. The State shall proceed to make Harris whole and expunge the suspension from her record.

Issued at the City of Madison, Wisconsin, this 19th day of June, 2020.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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James J. Daley