

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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TIMOTHY E. JOCHMAN, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0348

Case Type: PA

DECISION NO. 38449

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**Appearances:**

Kenneth Tilleman, Representative, 829 Bechaud Avenue, North Fond du Lac, Wisconsin, appearing on behalf of Timothy E. Jochman.

Anfin Jaw, Attorney, Department of Administration, 101 East 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 March 13, 2020, Timothy E. Jochman filed an appeal with the Wisconsin Employment Relations Commission asserting he had been suspended for 5 days without just cause by the State of Wisconsin Department of Corrections. The appeal was assigned to Commission Examiner Peter G. Davis. A telephonic hearing was conducted by Examiner Davis on June 3, 2020. The parties thereafter filed written argument, the last of which was received June 15, 2020.

On June 30, 2020, Examiner Davis issued a Proposed Decision and Order rejecting the suspension. On July 6, 2020, the State filed objections and Jochman filed a response on July 8, 2020. The matter became ripe for Commission consideration on July 9, 2020.

Having considered the matter, the Commission makes and issues the following:

### **FINDINGS OF FACT**

1. Timothy E. Jochman (Jochman) was employed by the State of Wisconsin Department of Corrections (DOC) as a Correctional Sergeant at the Taycheedah Correctional Institution (TCI) and had permanent status in class at the time of his five-day suspension.

2. Jochman was suspended for failing to complete certain paperwork after having an inmate destroy contraband and for abusing and bullying the inmate in question.

3. Jochman's failure to complete certain paperwork was consistent with DOC practice at TCI.

4. The interaction between Jochman and the inmate was recorded on video as part of standard DOC protocol. DOC did not honor Jochman's timely request that the video be maintained.

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).

2. Jochman did not engage in misconduct by failing to complete certain paperwork related to destruction of contraband.

3. But for its failure to maintain relevant video evidence, the State of Wisconsin Department of Corrections would have met its burden of proof as to the allegation that Jochman engaged in misconduct by the manner in which he interacted with an inmate.

4. Because of its failure to maintain relevant video evidence, the State of Wisconsin Department of Corrections did not have just cause within the meaning of Wis. Stat. § 230.34(1)(a) to suspend Jochman for five days.

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

### **ORDER**

The five-day suspension of Timothy E. Jochman by the State of Wisconsin Department of Corrections is rejected.

Issued at Madison, Wisconsin, this 13th day of July, 2020.

**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.

Jochman had permanent status in class at the time of his suspension and his appeal alleges that the suspension was without just cause.

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

Jochman had a three-day suspension on his record at the time of the incident in question. DOC asserts he engaged in two related acts of misconduct-either of which would have allegedly been sufficient to warrant receipt of the five-day suspension in dispute here.

Jochman determined that an inmate was attempting to mail contraband (handmade items and drawings) to her children as Christmas presents. Consistent with DOC policy, he gave the inmate the choice of destroying the items or receiving discipline. The inmate chose to destroy the items and was understandably upset. DOC asserts that Jochman failed to complete certain paperwork documenting destruction of the items and engaged in misconduct by the manner in which he interacted with the inmate.

As to the paperwork in question, the evidence establishes that it has been the consistent long-standing practice to only complete paperwork following destruction of major items of contraband-not for minor items such as those in question here. Thus, although there may be a policy that indicates otherwise, the evidence of practice warrants a conclusion that Jochman's failure to complete any paperwork was not misconduct.

As to the interaction with the inmate, the evidence presented supports a finding that Jochman behaved inappropriately. The credible testimony of the inmate was particularly persuasive as to Jochman being "over the top" during the interaction which occurred in the presence of other inmates. However, the interaction was recorded on video and Jochman asked

that the video be preserved. DOC did not preserve the video. The video could have provided relevant evidence as to the nature and location of the interaction in question.

The Commission is presented with a Gordian Knot. Based on the evidence presented, Jochman did engage in misconduct. However, to uphold the discipline in light of the failure to preserve relevant evidence would be contrary to fundamental due process and would encourage destruction of potentially exculpatory evidence in future cases. Like Alexander, the Commission unties the Knot by slashing through it. The five-day suspension must be rejected but the evidence of misconduct will be considered in the context of the Commission's decision in Jochman's appeal of his discharge for subsequent alleged misconduct.

Given the foregoing, the suspension is rejected and Jochman shall be made whole through payment of five days wages.

Issued at Madison, Wisconsin, this 13th day of July, 2020.

## **WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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James J. Daley, Chairman