

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

TIMOTHY E. JOCHMAN, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0353

Case Type: PA

DECISION NO. 38450

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 30, 2020, Timothy E. Jochman 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 (DOC) The appeal was assigned to Commission Examiner Peter G. Davis. A telephonic hearing was conducted by Examiner Davis on June 4, 2020. The parties thereafter filed written argument, the last of which was received June 15, 2020.

On July 1, 2020, Examiner Davis issued a Proposed Decision and Order modifying the discharge to a five-day suspension. Jochman filed objections on July 2, 2020. DOC did not file a response and the matter became ripe for Commission consideration on July 8, 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 discharge.

2. Jochman was discharged for failing to perform assigned duties during a search for drugs.
3. Jochman chose to perform other work rather than assigned duties during the search for drugs.
4. At the time of the discharge, Jochman had three-day and five-day suspensions on his record.
5. Jochman's five-day suspension was rejected by the Commission on July 13, 2020.

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 engaged in misconduct by failing to perform assigned duties.
3. The State of Wisconsin Department of Corrections did not have just cause within the meaning of Wis. Stat. § 230.34(1)(a) to discharge Jochman.

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

ORDER

The discharge of Timothy E. Jochman is modified to reinstatement without back pay and demotion to the position of Correctional Officer.

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

Jochman had permanent status in class at the time of his discharge and his appeal alleges that the discharge 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).

The record as a whole satisfies the Commission that Jochman knew his assigned role during the drug search was to search for and bag any drugs found. Instead, it is undisputed he chose to engage in other work and thus none of the areas in question were searched during the 30-40 minutes in question. There is evidence in the record suggesting that Jochman may have decided that the search duties were beneath his status as a Sergeant. However, whatever his motivation, he was obligated to perform the duties he was assigned, and he did not do so. Thus, he engaged in misconduct worthy of discipline.¹

As reflected in the companion decision issued today, the Commission therein rejected the five-day suspension Jochman received only because he was denied due process by DOC-not because the record evidence did not establish his abuse of an inmate. Thus, although Jochman's formal disciplinary record for the purpose of this proceeding reverts to a three-day suspension and his misconduct here does not warrant a jump to discharge, his reinstatement is not without limitations. Jochman's actions in the five-day suspension matter and in a prior suspension appeal before this Commission² show a disturbing pattern of disrespect for inmates that could create

¹Jochman timely requested that certain video evidence be preserved, and DOC did not do so. However, the video in question does not have relevance to the question of what Jochman knew his assignment to be. Therefore, the failure to preserve the evidence did not deprive Jochman of due process.

²Jochman v DOC, Dec. No. 38268 (WERC, 11/19)

issues of safety and security within TCI. The severity of that pattern warrants that Jochman's reinstatement shall be without back pay. That same consideration also yields a conclusion that Jochman should not be trusted with the discretion and authority afforded him as a Sergeant and therefore upon his reinstatement he shall be demoted to Correctional Officer.

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

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman