

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

JAMIE CARR, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0354

Case Type: PA

DECISION NO. 38453

Appearances:

Jamie Carr, 3617 Washington Ave., Apt. 1, Racine, Wisconsin, appearing on her own behalf.

Anfin Jaw, Department of Administration, 101 East Wilson St., 10th Floor, P.O. Box 7864, Madison, Wisconsin, appearing on behalf of the State of Wisconsin Department of Corrections.

DECISION AND ORDER

On April 6, 2020, Jamie Carr 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 Corrections. The appeal was assigned to Examiner Raleigh Jones. A telephone hearing was held on June 15, 2020. The parties made oral arguments at the conclusion of the hearing.

On July 7, 2020, Examiner Jones issued a Proposed Decision and Order affirming the suspension. No objections were filed, and the matter became ripe for Commission consideration on July 14, 2020.

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

FINDINGS OF FACT

1. Jamie Carr is employed as a correctional officer at the Racine Youthful Offender Correctional Facility (RYOCF) and had permanent status in class at the time of her suspension.
2. The Department of Corrections (DOC) is a state agency responsible for the operation of correctional facilities, including RYOCF located in Racine, Wisconsin.

3. RYOCF has a work rule that requires correctional officers to call in a minimum of two hours before the start of a shift if they will not be reporting to work.

4. On November 10, 2019, Carr was scheduled to start work at 6:00 a.m. That day at 5:25 a.m. she called into work, said she was sick and would not be reporting that day.

5. Carr's call in on November 10, 2019 reporting her absence was untimely and violated RYOCF's call in work rule.

6. Carr was issued a one-day suspension for her late 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).

2. The State of Wisconsin Department of Corrections had just cause, within the meaning of Wis. Stat. § 230.34(1)(a), to suspend Jamie Carr 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 one-day suspension of Jamie Carr by the State of Wisconsin Department of Corrections is affirmed.

Issued at the City of Madison, Wisconsin, this 17th day of July, 2020.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman

MEMORANDUM ACCOMPANYING DECISION AND ORDER

Wisconsin Stat. § 230.34(1)(a) 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.

Wisconsin Stat. § 230.44(1)(c) 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.

Jamie Carr 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 Carr 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).

RYOCF has a work rule that requires correctional officers to call in a minimum of two hours before their scheduled start time if they will not be reporting to work. This work rule allows the institution to find a replacement, hold staff over, and/or reassign staff in order to provide coverage for all posts. The record shows that DOC routinely disciplines employees who violate this work rule and have late call ins.

On November 10, 2019, Carr was scheduled to start a shift at 6:00 a.m. That morning she was in pain from a chronic medical condition and decided to miss her shift and use sick leave. Per RYOCF's call in work rule, she was supposed to report her absence two hours prior to the start of her shift. In the context of this case, that meant she was supposed to call in by 4:00 a.m. Instead, Carr called in at 5:25 a.m. and reported that she was sick and would not be in for her regular shift.

When she did this, Carr knew that RYOCF employees are supposed to call in a minimum of two hours before their scheduled start time if they will not be reporting to work. The reason Carr knew that is because she had done the very same thing early in 2017 (i.e. she had called in late to report her absence), and afterwards she got a letter of expectation from RYOCF regarding its call in expectation. That document, dated February 28, 2017, apprised her that henceforth in the event she was going to be absent and miss her shift, she was expected to call in at least two hours prior to the start of her shift; if she did not, she would be disciplined for it. Because of that, Carr told the supervisor who took her call at 5:25 am on November 10, 2019 that she knew her call in was late.

Given that prior notice, we have no trouble finding that Carr violated RYOCF's call in work rule when she failed to timely report her absence on November 10, 2019. Carr should have called in at least two hours before her scheduled start time that day. She failed to do that, so discipline was warranted.

The focus now turns to Carr's defenses.

First, Carr invites us to consider why she missed work on the day in question. According to Carr, it was because she was in pain from a chronic medical condition. Building on that premise, she avers she could not drive to work. In this case though, the Commission need not delve into why Carr missed work. That is because DOC did not fault Carr for using sick leave on the day in question. Instead, it only faulted her for not reporting her absence in a timely fashion. That being so, the reason Carr missed work that day has no bearing on the outcome herein.

Second, it is Carr's view that the 2017 letter of expectation referenced above should have evaporated before now. However, notwithstanding Carr's view that the letter of expectation is dated, the fact of the matter is that the letter of expectation has not evaporated. Consequently, DOC could fairly cite it in the disciplinary notice for the proposition that Carr had previously been advised what RYOCF's procedure was for reporting an absence in a timely fashion.

Third, Carr raises a disparate treatment claim. For disparate treatment to occur, similarly situated employees must have engaged in similar conduct with different levels of punishment imposed. It would be one thing if Carr had shown that other employees had untimely call ins (like she did) and were not disciplined for same. However, Carr did not offer a single specific example to prove her assertion. Under these circumstances, Carr did not prove her assertion so the Commission finds that no disparate treatment was shown to exist.

Finally, Carr notes that the day after her untimely call in, she sought medical treatment for her condition and a doctor gave her what is commonly known as a doctor's note. That note asked for her to be excused from work from November 10 through November 12 due to an "ongoing medical issue". DOC subsequently accepted that doctor's note and categorized Carr's absences on November 10, 11 and 12, 2019 as "excused". Carr contends that since DOC subsequently categorized her absence on November 10 as excused, her untimely call in on that same day should also be excused. While that outcome does seem logical, the record shows that DOC's practice is to the contrary and DOC does not allow a doctor's slip to excuse a late call in. From DOC's perspective, a late call in is a completely separate matter from whether an absence is excused or unexcused. The record also shows that DOC affords each employee five "freebies" each year for attendance occurrences. When this matter occurred, Carr had used all of her attendance freebies for the year. Under these circumstances, the Commission concludes that DOC offered legitimate non-discriminatory reasons why Carr's doctor's slip did not excuse her late call in on November 10, 2019.

Turning now to the level of discipline imposed here, the Commission finds that a one-day suspension was not an excessive punishment for Carr's misconduct. In so finding, it is expressly

noted that a one-day suspension is the first step in DOC's progressive discipline sequence. Thus, the discipline imposed here passes muster.

Issued at the City of Madison, Wisconsin, this 17th day of July, 2020.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman