

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

ALEXANDER HARTZHEIM, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0365

Case Type: PA

DECISION NO. 38474

Appearances:

Brian Wackett, Representative, 1406 Flyway Drive, Waupun, Wisconsin, appearing on behalf of Alexander Hartzheim.

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 May 11, 2020, Alexander Hartzheim (Hartzheim) filed an appeal with the Wisconsin Employment Relations Commission asserting he had been suspended for five days without just cause by the State of Wisconsin Department of Corrections (DOC). The appeal was assigned to Commission Examiner Peter Davis. A telephone hearing was conducted by Examiner Davis on July 29, 2020. DOC made oral argument at the conclusion of the hearing. Hartzheim filed written argument on August 1, 2020. The record was closed on August 26, 2020, upon receipt of certain video evidence by Examiner Davis.

On August 27, 2020, Examiner Davis issued a Proposed Decision and Order affirming the suspension. No objections were filed, and the matter became ripe for Commission consideration on September 2, 2020.

Being fully advised on the premises and having considered the matter, the Commission makes and issues the following:

FINDINGS OF FACT

1. The State of Wisconsin Department of Corrections (DOC) is a state agency that among other matters operates Dodge Correctional Institution (DCI).

2. Alexander Hartzheim (Hartzheim) is employed by the DOC as a Correctional Officer at DCI and had permanent status in class at the time of his April 30, 2020 suspension.

3. On October 22, 2019, Hartzheim used excessive force on an inmate.

4. DOC suspended Hartzheim for the gross negligence described in Finding of Fact 3.

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 Alexander Hartzheim 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 Alexander Hartzheim by the State of Wisconsin Department of Corrections is affirmed.

Issued at Madison, Wisconsin, this 3rd day of September 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.

Alexander Hartzheim 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 Hartzheim 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).

On October 22, 2019, Hartzheim was part of a team tasked with securing a difficult inmate using bed restraints and a spit mask. The inmate was not cooperative. During the interaction with the inmate, Hartzheim pushed a large clear plastic shield onto the inmate's face and chest with substantial force. Hartzheim's action was judged by DOC to be a use of excessive force that risked injuring the inmate and was not justified by any danger the inmate posed to staff.

Hartzheim disputes the excessive force determination emphasizing the danger posed by the inmate and the verbal threats the inmate directed at staff-including the Captain in charge of the security team (who was then Hartzheim's girlfriend and now his fiancé). While this was clearly a difficult situation, the Commission's review of the record yields no persuasive basis for overturning DOC's judgment that this was an excessive use of force.

Hartzheim then asserts that the discipline should be overturned because he had not been trained in the use of the shield. This argument fails as it is apparent that Hartzheim knew use of the shield was appropriate to prevent inmate blood and fluids from hitting staff and had been trained on appropriate techniques for restraining an inmate's head that did not include pressing a shield on an inmate's head with substantial force.

Hartzheim next contends that his level of discipline should be reduced because he received the same discipline as the Captain who was present and failed to direct him to stop his use of the shield. While Hartzheim is correct that supervisors are held to a higher standard than employees,

the Captain and Hartzheim engaged in different types of conduct.¹ Thus, DOC's decision not to impose a higher level of discipline on the Captain does not provide a persuasive basis for reducing the level of discipline received by Hartzheim.

Lastly, Hartzheim alleges that other employees (Kim and Jaynes) have engaged in the same type of shield use and not been disciplined. The Commission is satisfied that the shield use in those other instances was momentary and with limited force and thus was far different from Hartzheim's conduct. Therefore, the absence of discipline for Kim and Jaynes does not provide a valid basis for attacking the suspension Hartzheim received.

Given all of the foregoing, the Commission concludes that DOC had just cause to suspend Alexander Hartzheim for five days.

Issued at Madison, Wisconsin, this 3rd day of September 2020.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman

¹Because the Captain has her own appeal pending before the Commission, no judgment is being made here as to whether she engaged in misconduct-only a determination that her conduct differed from Hartzheim's.