

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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SCOTT BROWN, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF VETERANS AFFAIRS, Respondent.

Case ID: 39.0016

Case Type: PA

DECISION NO: 38487

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**Appearances:**

Scott Brown, 1082 Chandler Lane, Sun Prairie, Wisconsin, appearing on his own behalf along with Chad McCafferty, 461 Tower Road, Rio, Wisconsin.

Anfin Jaw, Department of Administration, 101 East Wilson Street, 10th Floor, P.O. Box 7846, Madison Wisconsin appearing on behalf of the State of Wisconsin Department of Veterans Affairs.

**DECISION AND ORDER**

On July 1, 2020, Scott Brown filed an appeal with the Wisconsin Employment Relations Commission asserting he had been suspended for one day without just cause by the State of Wisconsin Department of Veterans Affairs. The appeal was assigned to Examiner Raleigh Jones. A telephone hearing was held on September 3, 2020. The parties made oral argument at the conclusion of the hearing.

On September 25, 2020, Examiner Jones issued a Proposed Decision and Order affirming the suspension and Brown filed objections on September 28, 2020. The Department of Veterans Affairs did not respond, and the matter became ripe for Commission consideration October 6, 2020.

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

**FINDINGS OF FACT**

1. At the time of his one-day suspension, Scott Brown was employed as a Veterans Benefits Specialist by the State of Wisconsin Department of Veterans Affairs (DVA) and had permanent status in class.

2. Brown sent his supervisors unprofessional and insubordinate emails in relation to a vacation request on April 15, 2020 and again on April 16, 2020 in relation to a meeting request.

3. DVA suspended him for one day for doing that.

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 to review this matter pursuant to Wis. Stat. § 230.44(1)(c).

2. The State of Wisconsin Department of Veterans Affairs had just cause, within the meaning of Wis. Stat. § 230.34(1)(a) to suspend Scott Brown 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 Scott Brown by the State of Wisconsin Department of Veterans Affairs is affirmed.

Issued at the City of Madison, Wisconsin, this 23<sup>rd</sup> day of October 2020.

### **WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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James J. Daley, Commissioner

**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.

Scott Brown had permanent status in class at the time of his suspension and his appeal alleges that the suspension was not based on just cause.

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

This case involves an email exchange Brown had with his supervisors on April 15, 2020 over a vacation request and on April 16, 2020 over a meeting request. DVA viewed Brown's emails as unprofessional and insubordinate. Brown disagrees.

Brown's working relationship with his supervisors has become combative and contentious. As just one example, Brown had a meeting with his supervisor on September 26, 2019 that involved what was later described as "loud and angry dialogue". Brown left the meeting when he thought it was over. His supervisor did not think the meeting was over when Brown left, so DVA subsequently suspended Brown for one day for leaving the meeting when he did. Brown appealed the suspension to the Commission and the Commission overturned it. *Brown v. DVA*, Dec. No. 38426 (WERC, 4/2020). In so finding, the Commission's decision included the following footnote directed at Brown:

FN1. The failure of the employer to establish just cause should not be construed by Brown as a justification of his past or future actions. The record established Brown has some issues with self-management of anger and temper, which could give rise to future disciplinary actions. The Commission strongly recommends to Brown to work on controlling those issues in potential workplace incidents.

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This case involves the next chapter in this ongoing workplace drama.

In this case, Brown was suspended for one day for what he wrote in an email chain to his supervisors. Before the Commission addresses what Brown wrote though, we have decided to note that Brown received a letter of expectation on April 29, 2019 regarding his “Professional Conduct and Communications.” The purpose of that letter of expectation was to provide him with “instructions and guidance pertaining [to his] professional conduct and communications.” The letter provided in pertinent part:

It is Management’s expectation that moving forward:

- Effective communication and professionalism are mandatory skills for your position. You are expected to treat colleagues, DVA leadership and members of the public with respect and courtesy at all times including during one-to-one communications.
- You shall refrain from sending emails that are argumentative, unprofessional, and insubordinate.
- You will work cooperatively with your colleagues and DVA leadership at all times.
- You will be mindful of the tone of emails and other forms of communication you send to others in and outside of the agency. All communications will be respectful and without condescension or demeaning language or suggestion.

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This memorandum additionally provides notice that failure to comply with the aforementioned expectations may result in disciplinary action, up to an including termination.

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The focus now turns to what Brown wrote to his supervisors.

On April 15, 2020, Brown sent an email to his supervisor, Zachary Hendrickson, asking to take a day of vacation on Monday, May 20, 2020. Hendrickson replied as follows:

Scott,

It is uncertain if Beth will be back Monday. She is going to let me know by the end of the week. Therefore, I’m going to hold off on approving this request. If she is not back on Monday, I’m going to decline the request because we are short staff as it is and there is a lot of work that needs to be done and we need everyone working.

If the time off needed is for an appointment, can you take off for just the time you need and not the entire day? If so, please adjust the request and I’ll approve regardless if Beth is back on Monday.

Brown then responded to Hendrickson as follows:

I'm not trying to be a pain but it is frustrating to hear that Shannon Miller and her crew are doing basically nothing and I can't get a day off because we are short staffed? Why can they skate and I can't even get a legitimate day off? Why can't they go to DMA or DWD? It just seems like the VBRC is always getting the short end of things and it's frustrating. This whole operation is very de-motivating.

Brown also included division administrator Donald Placidi in his response.

Hendrickson then responded to Brown as follows:

Scott,

I do not know what Shannon Miller or her staff's job entails and how they are handling it working from home. I'm certain there is some level of accountability and their bosses are ensuring that the work is getting done. DOA/DMA and DVA will determine if additional staff are needed for other agencies and those decisions are well outside of my control and your control.

You work in the VBRC. Your job is entirely different than theirs and everyone else's in the department. It has always been communicated that we (VBRC) need to maintain staffing levels in order to effectively provide services to veterans. This is especially important during this time. I had no control over Leslie or Beth being reassigned. This is no different than being in the office. As of now, it is just you and Jennifer in the VBRC until Beth returns. If we were in the office and Beth was scheduled off that day, this request would be denied based on previous guidance of needing two staff in the VBRC. Matt and I can assist and are willing to assist when we can, but we do not have the capacity to take on the daily tasks for a full day in addition to our other duties.

Don't worry about what others are doing or not doing. Right now, I need you to focus on your work and the rest of the team to focus on their jobs and helping veterans.

Several minutes later, Hendrickson sent Brown this email:

Scott,

Like I said in my last email, I'm willing to approve you for a couple hours off that day, just not the entire day if Beth isn't back. She is going to let me know by the end of the week if she is going to be back on Monday. So if you want to amend the request to have off a couple hours at the beginning or at the end of the day, I will approve it.

Brown then responded to Hendrickson as follows:

When I am being treated like dirt it becomes almost impossible to concentrate. Just because management gave away staff is not my issue. I see you are off on Wed. I guess the rules don't apply to everyone.

Three minutes later, Brown sent another response to Hendrickson:

Just forget it. If this is your way of motivating me then may I suggest another approach.

About his same time, Placidi – who had been included in the email chain by Brown – responded for the first time. He wrote the following to Brown:

Scott,

I understand your frustration. However, my concerns are with the VBRC and my direct staff. What Shannon or any other divisions are doing is not of our concern. I am worried about the operations of the Veterans Assistance Section and with the current staffing arrangement it is not possible to approve this at this time. I do see that Zach didn't officially deny this but is asking to wait until we know more on what is going on with Beth to ensure we have proper coverage.

Regarding DWD or DMA every agency and every part of DVA is contributing to assisting during this pandemic. I would advise to work with your supervisor as he is trying to be flexible by offering alternatives.

I also understand these times are challenging and we are all working through these challenges and it is added concern and stress. Please know I am not taking that lightly and doing what we can to be accommodating as need be.

Please let me know if you have any other questions.

Thanks!

Brown then sent the following email to Placidi:

Why can't Zach fill in? I see he has Wed off this week. I guess I don't understand why there are two separate set of rules.

Placid then responded as follows to Brown,

Scott,

As previously stated your request is not approved at this time. I expect you to report to work at your scheduled time.

Thanks!

One minute later, Brown sent the following reply to Placidi:

Thanks for the motivational message.

The next day (April 16, 2020), Hendrickson sent Brown the following email:

Scott,

I'm setting this phone conference to discuss your Letter of Expectation regarding attendance. Please use the conference call details below.

Brown responded to Hendrickson as follows:

You can just send me the letter there is nothing to talk about.

Hendrickson then responded to Brown as follows:

That's not how it works. I'm going to discuss the letter and expectations with you.

That same minute, Brown responded to Hendrickson as follows:

You can do that in an email can't you?

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The Commission has no trouble deciding that Brown's emails to his supervisors crossed the proverbial line of acceptable workplace conduct. Simply put, his emails to his supervisors were unprofessional and disrespectful. In contrast, the supervisors' emails to Brown were entirely professional.

Brown contends that the supervisors should have told him that his emails were getting unprofessional and insubordinate so that he could dial down his rhetoric. The Commission disagrees. Given the prior directive in the letter of expectation to watch what he said and wrote, it was his job – not theirs – to ensure that what he said in his emails was not argumentative and combative, but rather professional and respectful.

In his objections to the proposed decision, Brown argued that during the hearing Placidi hung up before Brown had finished his questioning. That allegation is incorrect. Placidi stated that if he was not going to be allowed to answer that he had no further responses, at which time Brown replied "Okay. Thank you.", at which point Placidi left the hearing. Regardless, the Commission offered to reconvene the hearing for the purpose of allowing Brown to further question Placidi. However, Brown declined this opportunity.

Brown committed workplace misconduct when he sent the emails in question to his supervisors because they violated the expectation referenced in his letter of expectation that henceforth his communications with management be professional in tone. Employers have a right to expect their employees to be professional and respectful in emails to supervisors. Here, Brown was not. Since Brown's emails above were not professional in tone, that constituted workplace misconduct which, in turn, warranted discipline.

The Commission further finds that the level of discipline imposed here (i.e. a one-day suspension) was not excessive punishment for same. In so finding, it is expressly noted that a one-day suspension is the first step in DVA's progressive discipline sequence. Thus, Brown's one day suspension passes muster with the Commission.

Issued at the City of Madison, Wisconsin, this 23<sup>rd</sup> day of October 2020.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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James J. Daley, Commissioner