

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

NICOLE ZIMPEL, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0380

Case Type: PA

DECISION NO. 38745

Appearances:

Cory Catlin, W8932 Hilltop Road, Portage, Wisconsin, appearing on behalf of Nicole Zimpel.

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 July 10, 2020, Nicole Zimpel filed an appeal with the Wisconsin Employment Relations Commission asserting she had been discharged without just cause by the State of Wisconsin Department of Corrections. The appeal was assigned to Examiner Peter Davis. A telephone hearing was held on September 21, 2020. The parties made oral argument at the conclusion of the hearing. A Proposed Decision and Order was issued by Examiner Davis on October 8, 2020, modifying the discharge to a three-day suspension and ordering the State of Wisconsin Department of Corrections to reinstate Zimpel and make her whole. No objections were filed by the parties and the matter became ripe for Commission consideration on October 14, 2020.

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

FINDINGS OF FACT

1. Nicole Zimpel (herein Zimpel) was employed by the State of Wisconsin Department of Corrections as a Correctional Officer and had permanent status in class at the time of her June 2, 2020 discharge.

2. On December 6, 2019, Zimpel was arrested for operating a vehicle while intoxicated and was subsequently convicted for that offense. During the arrest, Zimpel told the arresting officer multiple times that she was a correctional officer. Zimpel did not make those comments in an effort to influence the officer.

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 discharge Nicole Zimpel.

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

ORDER

The discharge of Nicole Zimpel is modified to a three-day suspension. The State of Wisconsin Department of Corrections shall reinstate Zimpel and make her whole.

Issued at Madison, Wisconsin, this 23rd day of October, 2020.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Commissioner

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.

Nicole Zimpel had permanent status in class at the time of her discharge and her appeal alleges that the discharge was not based on just cause.

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

It is undisputed that Zimpel was arrested and convicted for first offense operating a vehicle while intoxicated. Zimpel contends that a three-day suspension is the appropriate discipline for this off-duty misconduct. It is also undisputed that during the arrest, Zimpel told the arresting officer multiple times that she was a correctional officer. The State, contrary to Zimpel, contends that those comments were an effort to persuade the officer not to arrest her.

Clearly, Zimpel's comments create a strong inference that she was attempting to influence the arresting officer. Zimpel denies such an intent and claims the references were only in the context of her drunkenly questioning the officer as to whether she was going to lose her job. By the slimmest of margins, the Commission concludes Zimpel was not attempting to influence the officer. Thus, the discharge is modified to a three-day suspension.

Issued at Madison, Wisconsin, this 23rd day of October 2020.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Commissioner