

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

MELISSA HEINZ, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF HEALTH SERVICES, Respondent.

Case ID: 2.0091

Case Type: PA

DECISION NO. 38761

Appearances:

Anthony Reeves, 516 East Bluff, Madison, Wisconsin appearing on behalf of Melissa Heinz and
Melissa Heinz, 114 Talmadge, Madison, Wisconsin appearing on her own behalf.

Cara Larson, 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
Health Services.

DECISION AND ORDER

On September 4, 2020, Melissa Heinz filed an appeal with the Wisconsin Employment Relations Commission asserting she had been suspended for three days without just cause by the State of Wisconsin Department of Health Services (DHS). The appeal was assigned to Examiner Peter Davis. A telephone hearing was held on November 11, 2020. The parties made oral argument at the conclusion of the hearing and Heinz submitted an additional exhibit and supplemental argument later that day.

A Proposed Decision and Order was issued by Examiner Davis on November 13, 2020, modifying the three-day suspension to a two-day suspension, and ordering the State of Wisconsin Department of Health Services to make Heinz whole for one day's wages. Objections were filed by DHS on November 17, 2020 and Heinz replied on November 18, 2020 and November 23, 2020. The matter became ripe for Commission consideration on November 23, 2020.

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

FINDINGS OF FACT

1. Melissa Heinz (herein Heinz) is employed by the State of Wisconsin Department of Health Services (DHS) as a Public Health Educator-Advanced and had permanent status in class at the time of her July 7, 2020 suspension.

2. Heinz had been advised in writing on multiple occasions that she needed approval to work past 6:00 pm. On May 14, 2020, Heinz was working remotely and did not have approval to work past 6:00 pm. She sent a work email to colleagues at 6:44 pm. At the time of this misconduct, Heinz had a one-day suspension on her record.

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 Health Services did not have just cause within the meaning of Wis. Stat. § 230.34(1)(a) to suspend Melissa Heinz for three days but did have just cause to suspend her for two days.

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

ORDER

The three-day suspension of Melissa Heinz is modified to a two-day suspension. The State of Wisconsin Department of Health Services shall make her whole for one day's wages.

Issued at Madison, Wisconsin, this 25th day of November, 2020.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley

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.

Melissa Heinz 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 Heinz 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).

DHS met its burden of proof as Heinz's misconduct. While she claims that she did not understand the need to obtain approval to work after 6:00 pm, the multiple emails she received on that topic could not have been clearer. Thus, Heinz was guilty of insubordination.

However, the degree of insubordination is tempered by the reality that it was Heinz herself who revealed her own misconduct by sending an email. Thus, there is some strength to Heinz's argument that this was not a "wanton, intentional" insubordinate act. Further, it is uncontested that Heinz had experienced a demanding emotional day of COVID-19 contact tracing prior to sending the 6:44 pm email which commended colleagues on a work project. Therefore, it is plausible that she had lost track of time. Given these mitigating factors, a reduction in the length of the suspension is warranted under the just cause standard. However, it should be clear to Heinz that further disregard for the directives of her supervisors will yield even more substantial discipline.

Issued at Madison, Wisconsin, this 25th day of November, 2020.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley