

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

ANGELA HODGE, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0384

Case Type: PA

DECISION NO. 38770-A

Appearances:

Thomas B. Hodge, N3299 Lemmenes Parkway, Waupun, Wisconsin, appearing on behalf of Angela Hodge.

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.

AMENDED DECISION AND ORDER

On August 13, 2020, Angela Hodge 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 (DOC). The appeal was assigned to Examiner Peter Davis and a telephone hearing was held on October 15, 2020. DOC made oral argument at the conclusion of the hearing and Hodge submitted written argument on October 26, 2020. A Proposed Decision and Order was issued by Examiner Davis on November 24, 2020, affirming the one-day suspension. On November 30, 2020, Hodge filed objections and the matter became ripe for Commission consideration on December 7, 2020.

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

FINDINGS OF FACT

1. Angela Hodge (herein Hodge) is employed by the State of Wisconsin Department of Corrections (DOC) as a Nurse Clinician and had permanent status in class at the time of her April 1, 2020 one-day suspension.

2. When responding to an inmate who alleged that he had taken an overdose of medication, Hodge failed to take appropriate action.

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 Angela Hodge 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 Angela Hodge is affirmed.

Issued at Madison, Wisconsin, this 9th day of December, 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.

Angela Hodge 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 Hodge 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).

The suspension letter received by Hodge sets out the factual context for DOC's actions as follows:

Specifically, on January 23, 2020, you were called to restricted housing to see a patient who reportedly had taken 60 Naproxen. Upon arrival, you saw the patient, obtained vital signs and information from the patient. The patient informed you that he had taken 60 Naproxen tabs over the course of two days. An empty blister pack of Naproxen was found by security staff. During the encounter, the patient complained of chest discomfort at that time to you. Given this information and assessment, you did not perform a cardiac nor GI assessment, per nursing protocol for overdose or chest pain. Additionally, the MD on-call was not updated with the patient's complaints and findings, nor was a full assessment documented. You were aware the patient would be placed in restraints or observation, so the patient could be closely monitored by security staff. Later on during your shift, you called the unit around 2:45 am to check on patient. At this time, you were informed that the patient was lying comfortably with no complaints. You gave an in-person report to the primary care nurse at 6:30 am. The patient was seen by the primary care nurse at 8:30 am, and the inmate was sent out to the ER for further evaluation.

As at least partially referenced above, DOC faults Hodge for an incomplete assessment, failure to document the assessment done, failure to develop a plan of care, and failure to contact poison control and/or an advanced care provider. Hodge contends that her actions were consistent with her clinical judgment and that DOC protocols did not require that she take all of the actions

DOC contends were required. Hodge choose not to testify¹ during the hearing. The testimony of those that did testify persuades the Commission that Hodge did not take all appropriate action in response to the alleged overdose. While Hodge correctly argues that nursing protocols largely serve as a guide to appropriate clinical judgments, it nonetheless has been established that more needed to done and it was not. To the extent Hodge asserts that other employees also failed to follow protocols and were not disciplined, the record does not establish that DOC was aware of any such failures and DOC has asserted that it will review those matters for any appropriate action.

Given the foregoing, it is concluded that Hodge did engage in misconduct and that there was just cause for a one-day suspension.²

Issued at Madison, Wisconsin, this 9th day of December, 2020.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman

¹If the Commission were to accept Hodge's argument that her professional judgment allows her the ability to break from established protocol, absent testimony from her in regard to how and why that judgment was applied in this case the record is absent of any evidence to decide the matter on this issue.

²Hodge also asserts it was a conflict of interest for DOC to tap into the nursing expertise of the supervisor who initiated the disciplinary investigation when it was sorting out what actions Hodge should have taken. The Commission sees nothing improper in that dual role.