

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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ADAM FRITZ, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0402

Case Type: PA

DECISION NO. 38787

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Appearances:

Adam Fritz, 960 13<sup>th</sup> Street, Fennimore, Wisconsin, and David Bowen, 922 Freedom Court, Lancaster, Wisconsin, appearing on behalf of Adam Fritz.

Anfin Jaw, 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 October 12, 2020, Adam Fritz 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 Corrections. The appeal was assigned to Examiner Raleigh Jones. A telephone hearing was held on December 14, 2020. The parties made oral argument at the conclusion of the hearing.

A Proposed Decision and Order affirming the suspension was issued by Examiner Raleigh Jones on January 6, 2021. No objections were filed and the matter became ripe for Commission consideration on January 12, 2021.

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

**FINDINGS OF FACT**

1. Adam Fritz is employed by the State of Wisconsin Department of Corrections (DOC) as a correctional sergeant at the Prairie du Chien Correctional Institution (PDCI) and had permanent status in class at the time of his one-day suspension.

2. PDCI is a correctional facility in Prairie du Chien, Wisconsin operated by DOC, a state agency of the State of Wisconsin.

3. After an inmate used a nebulizer, Fritz did not record its usage in the unit logbook.

4. DOC wants nebulizer use recorded in the unit logbook. DOC suspended Fritz for one day for not 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 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 Adam Fritz 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 Adam Fritz by the State of Wisconsin Department of Corrections is affirmed.

Issued at Madison, Wisconsin, this 19<sup>th</sup> day of January, 2021.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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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.

Adam Fritz 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 Fritz 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 May 20, 2020, inmate B and Fritz had an argument over B's use of a water faucet. In that argument, Fritz gave B multiple directives to stop using the faucet and return to his room. B eventually complied with Fritz's directive but was mad with Fritz afterwards.

Later, B told another officer that he (B) wanted to do a nebulizer treatment because he was having trouble breathing. B has asthma. A nebulizer is a small machine used for the treatment of asthma. It turns liquid medicine into a mist that is drawn into the lungs via a mouthpiece connected with a tube to the machine. The mist helps open the airway so breathing is easier. B was already in possession of the liquid medicine used in the nebulizer and had permission to have that medicine in his possession; all he needed was the nebulizer machine. There is a nebulizer machine for each unit at PDCI and Fritz went and got it. When Fritz turned the machine over to B, he twice asked B if he wanted to be seen by HSU (health services unit) staff, but B declined both times. B subsequently took the nebulizer back to his room and used it.

When Fritz's shift ended and he was replaced, Fritz verbally briefed the two incoming sergeants on both of the matters just referenced (i.e. that he and B had a verbal argument and that B had later used the nebulizer). Fritz did not record anything in the unit logbook about B's use of the nebulizer.

About the same time as the shift change, inmate B again experienced trouble breathing. An officer reported B's request for medical assistance to Captain Chesebro, and he responded to the call. Chesebro found B sitting on the floor leaning up against a pillar. B was in obvious distress and was clutching his chest, but was able to tell Chesebro that he has asthma and could not breathe.

B was also able to tell Chesebro that he had used the nebulizer earlier that day. Upon hearing that, Chesebro left the scene and looked in the unit logbook for an entry about B's use of the nebulizer earlier that day. There was no such entry. Chesebro then asked the officers nearby if they knew anything about B's prior use of the nebulizer that day, and they all replied in the negative. Eventually, the on-call nurse was contacted, and she subsequently checked on B's status. In the meantime, B had another nebulizer treatment which helped his breathing.

DOC subsequently conducted an investigation into the matter referenced above. After doing so, it faulted Fritz for not recording the use of the nebulizer in the unit logbook. DOC wants nebulizer use recorded in the unit logbook. DOC suspended Fritz for one day for not doing that.

We have decided to note at the outset that the investigation just referenced originally had nothing to do with Fritz's failing to chart the nebulizer's use. Instead, the reason the investigation commenced was because B filed an internal complaint against Fritz over the argument that ensued between them concerning B's use of the water faucet. While that was the original basis for the Employer's investigation, it ultimately turned out that DOC did not discipline Fritz for how he comported himself in his verbal exchange with B. That being so, the verbal exchange that B and Fritz had earlier in the day is not the focus of this case. Instead, the focus of this case is solely on the narrow question of whether Fritz should have charted B's use of the nebulizer in the unit logbook.

Fritz contends he did not need to do so for the following reasons. First, as already noted, when Fritz was relieved at the end of his shift, he verbally told the two incoming sergeants, among other things, that B had used the nebulizer. He wants credit for doing that. However, as this case shows, in a large work environment, there is a drawback to simply verbally informing a few people about something. The drawback is this: sometimes the information that is shared that way does not get to the people who ultimately need it. In this case, the person who ultimately needed the information that Fritz possessed about B's medical status was Captain Chesebro, and he was not one of the people that Fritz had verbally shared his information with. The two sergeants who heard the information that Fritz shared with them about B's medical status were not involved in B's later medical assistance call. Even if Chesebro had been able to learn from someone that Fritz possessed information about B's medical status, Fritz's shift had ended and he had left the facility. This situation is why DOC wants its employees to record information, particularly medical information, in writing in unit logbooks.

Second, Fritz contends that the reason he did not record B's use of the nebulizer is because the practice at PDCI is that employees do not record in the unit logbook when inmates use medication that they are allowed to keep in their possession (such as lancets and inhalers). A lancet is a finger stick blood sampler used by diabetics to obtain blood for testing blood sugar. An inhaler is a small device used for delivering medicine into the lungs. For the purpose of discussion, it is assumed that lancet and inhaler use is not recorded by PDCI staff in the unit logbook. However, even if that is the case and lancet and inhaler use is not recorded in the unit logbook at PDCI, that does not mean that nebulizer use does not have to be recorded. That is because there are two significant differences between an inmate using a lancet or inhaler and an inmate using a nebulizer. First, an inmate wanting to use either a lancet or inhaler does not need any other equipment because

they already possess what they need (i.e. either a lancet or an inhaler). In contrast, an inmate wanting to do a nebulizer treatment needs a piece of equipment not in their possession (namely, a nebulizer). As noted earlier, the nebulizer is needed to dispense the liquid medicine used to treat asthma. Thus, while an inmate wanting to do a nebulizer treatment would already be in possession of their liquid medicine, they would not be in possession of the nebulizer machine. An employee has to get it for them. Second, the record shows that lancet and inhaler use happens on a daily basis at PDCI. That is not the case with nebulizer use. Nebulizers are used on a much less frequent basis. Because of those differences, DOC wants nebulizer use recorded in the logbook, even if lancet and inhaler use is not recorded in the logbook. DOC has the right to make that decision (i.e. to distinguish nebulizer use from lancet and inhaler use) and require nebulizer use to be recorded. Building on that premise, employees who fail to record medical information that DOC wants recorded in the logbook can fairly be disciplined for not doing that. Finally, it would be one thing if Fritz had shown that nebulizer use (as opposed to lancet and inhaler use) was consistently not recorded by PDCI staff in the logbook. He did not show that. That means that the alleged practice that Fritz relied on did not cover nebulizers.

Third, Fritz contends that another reason he did not chart the nebulizer use in the logbook was because he was doing head count at the time and it was close to the shift change. Even if Fritz was busy at the time, that does not somehow excuse his failure to chart the nebulizer use in the logbook.

The Commission therefore finds that Fritz's proffered defenses are insufficient to excuse his failure to chart the nebulizer use in the logbook. Simply put, he should have recorded it. To the extent that Fritz thought he was justified in not charting the nebulizer use, he was wrong. He now knows that when the nebulizer gets used, it gets recorded in the logbook.

As for the level of discipline which was imposed here (i.e. a one-day suspension), the Commission finds that a one day suspension was not an excessive punishment. In so finding, it is expressly noted that a one-day suspension is the first step in DOC's progressive discipline sequence.

Given the foregoing, it is concluded that there was just cause for Fritz's one-day suspension and it is therefore affirmed.

Issued at Madison, Wisconsin, this 19<sup>th</sup> day of January, 2021.

## **WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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James J. Daley, Chairman