

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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DAWN HAWKINSON, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0405

Case Type: PA

DECISION NO. 38803

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Appearances:

Junior Gebert, Representative, and Dawn Hawkinson, W1801 State Road 16, Fall River, Wisconsin, appearing on behalf of Dawn Hawkinson.

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 Corrections.

**DECISION AND ORDER**

On October 19, 2020, Dawn Hawkinson 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. The appeal was assigned to Examiner Raleigh Jones. A telephone hearing was held on January 15, 2021. At the conclusion of the hearing, the Appellant submitted a written closing statement, and the Respondent made an oral closing statement.

On February 1, 2021, Examiner Jones issued a Proposed Decision and Order affirming the suspension. The Appellant filed objections on February 8, 2021.

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

**FINDINGS OF FACT**

1. Dawn Hawkinson is employed by the State of Wisconsin Department of Corrections (DOC) as a Correctional Sergeant at the John Burke Correctional Center (JBCC) and had permanent status in class at the time of her one-day suspension.

2. JBCC is a minimum-security correctional facility in Waupun, Wisconsin operated by DOC, a state agency of the State of Wisconsin.

3. Between January and April 2020, Hawkinson committed five separate acts of misconduct.

4. DOC consolidated the five acts of misconduct referenced in Finding 3 into one disciplinary matter and suspended her for one day for those actions.

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 Dawn Hawkinson 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 Dawn Hawkinson by the State of Wisconsin Department of Corrections is affirmed.

Issued at Madison, Wisconsin, this 10<sup>th</sup> day of February, 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.

Dawn Hawkinson 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 Hawkinson 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).

Before we address the various charges against Hawkinson, we are first going to address the following due process claims which she raises. First, Hawkinson contends that DOC's investigation in this matter was biased because the investigation started after coworkers made false statements to management about how she had comported herself with inmates. When management received these employees' claims, it did what employers are supposed to do when they receive a claim from an employee or someone about objectionable conduct/behavior by another employee. It investigated the claim. It would have been remiss for DOC not to do so. While management could have used an insider from JBCC to conduct the investigation, DOC decided to have someone from outside JBCC, who did not know Hawkinson or the other employees involved, conduct the investigation. That was DOC's call to make. The investigator conducted a textbook investigation. She first interviewed potential witnesses. In doing so, she interviewed 27 employees and 17 inmates, with some being interviewed several times. After that, she compiled a 125 page report and made determinations about the facts. In doing that, she was a neutral fact finder. In our view, there is nothing about DOC's investigation that raises any proverbial "red flags" with the Commission. Given the foregoing, the Commission finds that DOC's investigation was not biased or tainted. It therefore passes muster.

Second, Hawkinson objects to the length of time that it took to complete the investigation. She notes in this regard that DOC began its investigation in February of 2020 and she was disciplined on August 24, 2020. According to Hawkinson, her discipline should be rejected because it was issued in an untimely fashion. The Commission finds otherwise. Investigations sometimes take a long time to complete, particularly when 44 people are interviewed, and a 125-page report is compiled (as happened here). Additionally, there is no requirement that a state

employee disciplinary investigation be completed within a certain time frame. This claim is therefore rejected.

Third, Hawkinson notes that some of the work rules she was alleged to have violated in her disciplinary letter were not referenced in her pre-disciplinary letter. She sees that as significant. The Commission does not. What the Commission reviews in any disciplinary appeal is the final disciplinary letter which also provides notice to Hawkinson as what she needs to defend against. Thus, the fact that the final disciplinary letter references certain work rules that were not referenced in the pre-disciplinary letter is of no consequence.

Fourth, Hawkinson notes she received a Letter of Expectation (LOE) the same day she received her suspension letter. LOEs are considered non-disciplinary in nature and specifically say so. Hawkinson's LOE was captioned "Fraternization and Professionalism". It went on to notify her that staff is expected to follow:

Executive Directive (ED) 16; Fraternalization Policy as it relates to your daily responsibilities as a Correctional Sergeant; noting it is prohibited to knowingly form close friendship with persons in our care (PIOC), visiting with PIOC not directly related to your duties at the center, offering special consideration or treatment, and receiving any type of goods.

Hawkinson further notes that the first charge leveled against her in the suspension letter essentially claims that she violated DOC's fraternization policy. Putting these two matters together (i.e., the LOE and the first claim in the suspension letter), she contends that since both the LOE and the suspension letter reference DOC's fraternization policy, she is being subjected to double jeopardy. There is some overlap between the issued addresses in LOE and one of the five acts of misconduct. However, as the Commission notes later in this decision, Hawkinson can be viewed as very fortunate to have only received a one-day suspension for the multiple instances of misconduct. Thus, even if the first instance of misconduct were to be set aside as already covered by the LOE, Hawkinson's one day suspension would be more than supported by the other four instances of misconduct.

Next, since this case involves alleged employee misconduct, we have decided to note at the outset how DOC wants its employees to comport themselves in the workplace. First, employees are not supposed to be disrespectful or unprofessional to their coworkers. Second, employees are not supposed to engage in horseplay. Third, employees are not supposed to use profanity. Fourth, employees are not supposed to harass their coworkers or retaliate against them, particularly after they are interviewed as part of an ongoing internal investigation. Finally, employees are not supposed to fraternize with inmates because of the inherent imbalance of power that exists between staff and inmates in a prison. In the context of this case, the fraternization policy prohibits staff from "knowingly forming close friendships" with inmates; "visiting that is not job related;" "offering any special consideration or treatment"; and "receiving goods." The reason DOC does not want employees to engage in any of the foregoing conduct is because doing those things causes the workplace to break down and not function properly. Employees who engage in the foregoing proscribed conduct can be disciplined for doing that.

The focus now turns to the various charges made against Hawkinson in the suspension letter. Hawkinson chose not to testify during the hearing. The testimony of those who did testify persuades the Commission that Hawkinson committed the five acts referenced in the suspension letter. Our rationale follows.

The first incident cited in the suspension letter is this:

On January 10, 2020, you were directed by JBCC Captain Nathan Haynes to keep your interactions with PIOC professional, in particular PIOC MB; however, you failed to follow this directive and continued to visit and have one on one contact with PIOC MB to include January 18 and February 14, 2020 and reading a personal magazine belonging to PIOC MB.

**(Note:** The acronym PIOC stands for “person in our care.” It is a synonym for inmate.)

Here is some background for this charge. In late 2019, Hawkinson’s fellow sergeants on the third shift, who are all males, noticed that Hawkinson was spending a lot of time talking with, and being with, certain inmates, particularly inmates B-G and B. That was unusual behavior for Hawkinson to do. Hawkinson’s fellow sergeants were concerned for her safety and wellbeing as well as their own. Several sergeants talked to Hawkinson about her behavior with those inmates and told her to stop it, but Hawkinson did not do so. She continued to spend a lot of time talking with, and being with, inmates B-G and B one on one. Not surprisingly, this became a big topic of conversation at JBCC with both staff and inmates.

Some of Hawkinson’s fellow sergeants also talked to their supervisor, Captain Haynes, about Hawkinson’s suspicious behavior and apprised him of their concerns that Hawkinson was spending too much time with certain inmates. Haynes ultimately heard these reports from nine sergeants.

On January 2, 2020, Hawkinson learned that a sergeant was going to tell Haynes that she was spending a lot of time with inmate B. As a preemptory move, Hawkinson went to Haynes herself and told him that another sergeant was going to tell him that she was spending a lot of time with inmate B. After Hawkinson said this to Haynes, he asked Hawkinson if she was spending a lot of time with inmate B, and she replied in the negative. Haynes then told Hawkinson to maintain appropriate professional boundaries with all inmates. By his own admission, Haynes talked to Hawkinson that day in general terms about boundaries, and did not explore any specifics with Hawkinson about her relationship with inmate B.

On January 10, 2020, Haynes sought out Hawkinson on his own volition and talked with her about her relationship with inmate B. This time, Haynes told Hawkinson in plain terms to “distance herself” from inmate B and henceforth only deal with him on a professional level. He also reminded her of DOC’s fraternization policy.

After being given this directive, Hawkinson did not “distance herself” from inmate B as Haynes had directed. Instead, the record shows that she had one on one contact with inmate B on numerous occasions at his cell door, at his work area, and while walking in the corridors. Additionally, Hawkinson had one on one contact with inmate B in the boot room on January 18 and in the canteen on February 14, 2020. Hawkinson’s disciplinary letter only references the last two matters though (i.e., her interactions with inmate B on January 18 and February 14, 2020), so we will do likewise.

In her written closing statement, Hawkinson challenged numerous aspects of her coworkers’ assertions about those two matters (i.e., her interactions with inmate B in the boot room on January 18 and the canteen on February 14, 2020). However, the Commission need not address Hawkinson’s claims about those matters or make detailed findings about what occurred in the boot room on January 18 and in the canteen on February 14, 2020 because the disciplinary letter did not go into detail about the two incidents. Instead, all the disciplinary letter said was that Hawkinson “continued to visit and have one on one contact with PIOC MB to include January 18 and February 14, 2020 . . .” Thus, the charge against Hawkinson is simply that she “visited” and had “one on one contact” with inmate B on those two dates. The record evidence establishes that she did, in fact, “visit” with inmate B on those two dates and also had “one on one contact” with him on those dates. Additionally, there is no question that Hawkinson read a personal magazine that belonged to inmate B. The foregoing establishes that all the claims contained in the first charge were substantiated.

The second incident cited in the suspension letter is this:

On or about February, 2020, you did engage in horseplay by wrapping toilet paper around the seat of a state vehicle utilized for project crew; all in the presence of a PIOC.

Here is some background for this charge. An employee parked a state van in the JBCC parking lot so that it took up two parking spaces. When Hawkinson heard what the employee had done, she decided to play a practical joke on the employee who had parked the van that way. Here is what she did. She took inmate B-G with her out to the JBCC parking lot and wrapped toilet paper around the driver’s seat of the van. Hawkinson did the actual toilet papering; the inmate just watched.

In the disciplinary letter, DOC characterized Hawkinson’s action as “horseplay.” The Commission has no trouble accepting that characterization.

In her closing statement, Hawkinson cited the following statement that was made in the Commission’s decision in *Sawall v. DOC*, Dec. No. 34019–D (May, 2015) on page 4:

If an employer maintains a work rule that is widely and commonly violated, it forfeits the right to suddenly, with no explanation, single one employee out for a violation. There can be no just cause for violation of a rule that is frequently violated and never enforced.

She urges its application here. For the purpose of context, it is noted that in the *Sawall* case, the Commission overturned a suspension imposed on an employee who uttered a profanity to a supervisor (who, it turned out, was her husband). In overturning the suspension, the Commission specifically noted that the Employer conceded that the use of profanity in the workplace was commonplace and typically did not lead to the imposition of discipline. Here, though, no record evidence was offered by Hawkinson that horseplay was commonplace in the workplace, and if it was, that it typically did not lead to the imposition of discipline. Additionally, DOC did not concede either of the foregoing points (as it did in *Sawall*). In the absence of such evidence, the Commission finds that DOC has not waived its right to discipline employees for engaging in horseplay. Consequently, the finding from the *Sawall* decision noted above is inapplicable here.

The third incident cited in the suspension letter is that:

On April 20, 2020, you did utilize profanity and were disrespectful in the workplace during a verbal interaction with another JBCC staff member.

Here is some background for this charge. On April 20, 2020, Hawkinson and Sgt. Degroff had a full-blown argument while on duty in front of other staff and inmates. The argument started in the food service area and continued as they both went to the control station. During this argument, both used profanity and swore at the other, and both spoke in loud voices so that their argument was heard by staffers and inmates. According to a witness, Degroff tried to end the argument at the control station, but Hawkinson would not let that happen. From that point forward, Hawkinson alone kept the argument going.

In the disciplinary letter, DOC accused Hawkinson of using “profanity” and being “disrespectful in the workplace.” Eye witness testimony confirms that that happened. Thus, this charge was also substantiated.

In her closing statement, Hawkinson again cites the same statement that the Commission made in *Sawall* that was quoted and reviewed above and urges its application here. Once again though, no record evidence was offered by Hawkinson that using profanity and being disrespectful to coworkers was commonplace in the workplace, and if it was, that it typically did not lead to the imposition of discipline. Additionally, DOC did not concede either of the foregoing points (as it did in *Sawall*). In the absence of such evidence, the Commission finds that DOC has not waived its right to discipline employees for engaging in profanity and being disrespectful to coworkers. Consequently, the finding from the *Sawall* decision noted above is inapplicable here.

In so finding, it is also noted that Degroff (the other person involved in this argument with Hawkinson) received a LOE for his part in this matter.

The discussion on the final two matters cited in the suspension letter is consolidated because they involve identical conduct by Hawkinson with two coworkers. These two matters are addressed in inverse order. The fifth incident cited in the suspension letter is this:

On or about March 19, 2020, during the investigation process, you did directly approach a JBCC staff member in Control and begin directing comments towards the staff member pertaining to the investigation; the staff member attempted to disengage in the conversation; and the interaction was witness[ed] by another staff member.

The fourth incident cited in the suspension letter is this:

On or about April 1, 2020, during the investigation process, you did approach a JBCC staff member and question him about talking about you, noting you heard this information from PIOC at the center and following him into the center; this interaction was witnessed by other staff.

Here is some background for these two charges. Hawkinson was interviewed as part of the Employer's investigation on March 19, 2020. At the end of that interview, the investigator specifically told Hawkinson "[t]here is zero tolerance for retaliation and this is an active investigation." In a second interview on April 10, 2020, Hawkinson admitted that she understood she was not supposed to retaliate against any employee who participated in the Employer's investigation, and that doing so was prohibited and would subject her to discipline.

It was in that context that on March 19, 2020, after Hawkinson had just been directed to not retaliate against any employee who participated in the Employer's investigation, that she went up to Degroff and asked him what he had said about her in his interview with the investigator. Degroff told Hawkinson he could not talk about it, and tried to move on, but Hawkinson would not let that happen. An argument then ensued between them. (Note: This is the same argument that was addressed when we reviewed the third incident). When this ongoing argument continued in the Control area, Hawkinson told Degroff "you're fucking with my livelihood." Hawkinson also told Degroff that he should not "say anything" because he was friends with her (Hawkinson's) brother.

Then on April 1, 2020, Hawkinson had a similar confrontation with Sgt. U'ren where she harassed him about what he had told the investigator in his interview. As U'ren walked into work that day, Hawkinson flagged him down and said "why are you talking shit about me, because I've never talked shit about you." In response, U'ren answered "they called me up front and asked me questions, so I told them the truth." When U'ren asked Hawkinson where she got her information, Hawkinson responded that she got it from inmates. U'ren then walked away from Hawkinson, but Hawkinson followed him into the building and continued to ask him what he had said to the investigator.

There is no question that Hawkinson did what she was accused of doing in the fourth and fifth charges. As already noted, at the end of her first interview, the investigator specifically told Hawkinson that she was not supposed to retaliate against anyone over the testimony they had given



as part of DOC's investigation. Hawkinson violated this directive when she confronted, questioned, and harassed Degroff and U'ren<sup>1</sup> because of their testimony in DOC's investigation. Doing those things constituted retaliation. It is an understatement to say she should not have done that. To the extent she did not understand that before she was disciplined, she does now.

Having found that Hawkinson did what she was charged with doing, the next question is whether that constituted workplace misconduct warranting discipline. We have no trouble concluding that it did.

The final question is whether the discipline imposed on Hawkinson (i.e., a one-day suspension) was excessive. We find it was not for these reasons. First, a one-day suspension is the first step in DOC's progressive discipline sequence. Second, while DOC could have easily disciplined Hawkinson for each of the five incidents separately, it did not do that. Instead, as was its right, DOC consolidated the five incidents into one disciplinary matter. Third, because of the number of incidents involved, DOC could have advanced the discipline beyond a one day suspension. It decided not to do so. The Commission finds that under these circumstances, a one-day suspension was not excessive.

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

Issued at Madison, Wisconsin, this 10<sup>th</sup> day of February, 2021.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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James J. Daley, Chairman

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<sup>1</sup>In her objections, Hawkinson contends that U'ren sexually harassed her. If she has not already done so, she is free to report this alleged misconduct to DOC for investigation and possible discipline.