

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

JASON WENZEL, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0420

Case Type: PA

DECISION NO. 38919

Appearances:

Jason Wenzel, W13055 Hill Road, Brandon, Wisconsin, appearing on his own behalf.

William Ramsey, 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 December 16, 2020, Jason Wenzel filed an appeal with the Wisconsin Employment Relations Commission asserting he had been suspended for five days 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 March 2, 2021. DOC and Wenzel made oral argument at the conclusion of the hearing.

On March 25, 2021, Examiner Davis issued a Proposed Decision and Order concluding DOC did not have just cause to suspend Wenzel for five days, modifying the 5-day suspension to a 3-day suspension and requiring Wenzel be made whole for the difference. No objections to the Proposed Decision and Order were filed by either party on or before the deadline of March 30, 2021.

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

FINDINGS OF FACT

1. Jason Wenzel (herein Wenzel) has been employed by the State of Wisconsin Department of Corrections (DOC) for 25 years and had no prior discipline at the time of his October 16, 2020 suspension.

2. On June 28, 2020, Wenzel was restraining an inmate and used a hand placement that was not a technique trained by DOC.

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 did not have just cause within the meaning of Wis. Stat. § 230.34(1)(a) to suspend Jason Wenzel for five days.

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

ORDER

The five-day suspension received by Jason Wenzel is modified to a three-day suspension and he shall be made whole for the difference.

Issued at Madison, Wisconsin, this 6th day of April, 2021.

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.

Jason Wenzel 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 Wenzel 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 State met its burden of proof as to the alleged misconduct. While it appears Wenzel would have been authorized to use a more forceful technique to subdue the inmate, the less forceful technique he chose to use was not a “trained technique” and put the inmate’s well being at risk. Although the inmate was not injured, use of unauthorized force is serious misconduct that warrants skipping the standard disciplinary progression. However, in light of Wenzel’s 25 years of service and clean disciplinary record, a five-day suspension (which places Wenzel one step away from discharge for any future work rule violation) exceeds that allowable under a just cause analysis. Therefore, the five-day suspension has been modified to a three-day suspension.

Issued at Madison, Wisconsin, this 6th day of April, 2021.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman