

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

LASHAWNDA HAMPTON, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0413

Case Type: PA

DECISION NO. 38931

Appearances:

LaShawnda Hampton, 1033 Lockwood Avenue, Racine, Wisconsin appearing on her own behalf.

Anfin Jaw, Attorney, Department of Administration, 101 E. 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 November 27, 2020, LaShawnda Hampton filed an appeal with the Wisconsin Employment Relations Commission asserting she 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.

A telephone hearing was held on February 2 and March 3, 2021. Due to issues as to witness availability, the parties waived compliance with the 120-day period established by Wis. Stat. § 230.445(3)(c)2. for issuance of a final Commission decision. On March 3, 2021, DOC made oral argument and Hampton filed written argument.

On April 20, 2021, Examiner Davis issued a Proposed Decision and Order modifying the five-day suspension to a one-day suspension. On April 22, 2021, DOC filed objections to the Proposed Decision and Order and on April 27, 2021, Hampton filed a reply to the objections.

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

FINDINGS OF FACT

1. LaShawnda Hampton, herein Hampton, is employed by the State of Wisconsin Department of Corrections as a Program Assistant 2-Maintenance at the Racine Youthful Offender Correctional Facility (RYOC). She had permanent status in class at the time of suspension.

2. On November 22, 2019, Hampton contacted her direct supervisor to report she would be absent. RYOC procedure announced by the RYOC warden required that she contact her shift supervisor and then her direct supervisor.

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 just cause within the meaning of Wis. Stat. § 230.34(1)(a) to suspend LaShawnda Hampton 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 of LaShawnda Hampton is modified to a one-day suspension. Hampton shall be made whole for the difference.

Issued at the City of Madison, Wisconsin, this 14th day of May, 2021.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman

MEMORANDUM ACCOMPANYING DECISION AND ORDER

Section 230.34(1)(a), Stats., states in pertinent part:

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.

Hampton 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 Hampton 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).

At the time in question, Hampton's call to her direct supervisor to report her absence was consistent with formally adopted RYOC policy. However, the RYOC warden had advised non-uniformed employees such as Hampton that they were obligated to first call the shift supervisor and then call their direct supervisor. Hampton was obligated to follow the warden's directive and her argument otherwise is rejected. The warden's call-in procedure was formally adopted several months later.¹

Hampton's primary attack on the suspension is based on a lengthy series of claims that the warden is acting disparately by failing to investigate or act upon alleged misconduct by one of Hampton's co-workers. Those claims are fully supported by Hampton's direct supervisor Jeff Sommerfeldt. The warden denies all claims of disparate treatment. As reflected by the evidence presented in this matter and by the Commission's recent decision in *Sommerfeldt v. DOC*, Dec. No. 38753 (WERC, 11/20), it is clear there are ongoing issues within the maintenance staff at RYOC and between Hampton and Sommerfeldt and the warden. While there is some evidence that supports Hampton's claim, the Commission concludes she has not met her burden to establish disparate treatment as to which claims of misconduct are pursued and which are not.

There remains the question of whether a five-day suspension for Hampton's misconduct is consistent with the just cause standard. The five-day length of the suspension is premised on the one-day and three-day suspensions that Hampton had previously received. As a general matter, the Commission has found and continues to find that suspensions imposed on a progressively more

¹ In its objections, DOC asserts that Hampton's call also did not honor a 60-minute deadline for calling in before the start of a shift. Importantly, the suspension letter issued to Hampton only specifically references the failure to call the appropriate supervisor. The failure to specifically reference the timing of the call arguably places it off limits for DOC to now rely upon as a basis for discipline. In any event, assuming it is appropriate to consider the merits of this contention, the tardy nature of the call does not alter the outcome of this matter.

lengthy basis are consistent with the just cause standard. However, no harm to RYOC operations was caused by the manner of Hampton's call, she was following the formally adopted call-in protocols, and she had what she perceived to be privacy concerns about contacting the shift supervisor. Considering all of the circumstances present in this matter, the Commission concludes that imposition of the five-day suspension is not consistent with the just cause standard and the length of the suspension has been reduced to a one-day suspension.² Hampton shall be made whole for the difference.

Issued at the City of Madison, Wisconsin, this 14th day of May, 2021.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman

² When the discipline imposed is modified pursuant to the Commission's authority under Wis. Stat. § 230.44(4)(c), the Commission is not bound to follow any disciplinary progression established by the employing agency. See *Wholf v. DOC*, Dec. No. 36317 (WERC, 5/16); *Waterman v. DOC*, Dec. No. 36741 (WERC, 12/16); *Nowak v. DOC*, Dec. No. 37951 (WERC, 6/19). Rather, as part of the exercise of its Wis. Stat. § 230.44(1)(c) just cause jurisdiction, the Commission has discretion to determine the appropriate level of discipline.