

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

MICHAEL BUETTNER Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0442

Case Type: PA

DECISION NO. 38963

Appearances:

Richard Rice, Attorney, Fox & Fox, S.C., 124 West Broadway, Suite 100, Monona, Wisconsin appearing on behalf of Michael Buettner.

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.

DECISION AND ORDER

On March 17, 2021, Michael Buettner 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 (DOC).

A telephone hearing was held on June 2, 2021, by Commission Examiner Peter G. Davis. The parties made oral argument at the end of hearing.

On June 18, 2021, Examiner Davis issued a Proposed Decision and Order affirming the one-day suspension by DOC. On June 23, 2021, Appellant filed objections to the Proposed Decision. DOC did not file a reply to the objections by the deadline given of June 28, 2021.

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

FINDINGS OF FACT

1. Michael Buettner, herein Buettner, is employed by the State of Wisconsin Department of Corrections (DOC) as a Captain at Oakhill Correctional Institution. He had permanent status in class at the time of his suspension.

2. On August 30, 2020, Buettner engaged in intimidating and harassing behavior toward another DOC employee.

3. On September 19, 2020, Buettner engaged in discourteous behavior toward another DOC employee.

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 Michael Buettner 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 Michael Buettner is affirmed.

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

Buettner 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 Buettner 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 August 20, 2020, Buettner allegedly slammed a pass thru door and stared in an intimidating manner at another DOC employee. Buettner denies the conduct. However, credible testimony from several witnesses persuades the Commission that he did engage in the alleged conduct.

On September 19, 2020, Buettner allegedly berated a DOC employee during a telephone conversation. Buettner denies the conduct. However, credible testimony from the employee being berated and from several other employees who heard the employee's side of the conversation persuades the Commission that he did engage in the alleged conduct.

While each incident could be viewed as somewhat insignificant from an outsider's perspective, it is apparent from the testimony of the two impacted employees that the interaction with Buettner caused them substantial stress. It is also noteworthy that given Buettner's supervisory role, DOC can appropriately hold Buettner accountable for conduct that is inconsistent with successfully meeting his supervisory responsibilities.

Given the foregoing, the Commission concludes that DOC has proven that Buettner was guilty of misconduct. The Commission further concludes that there was just cause for the imposition of a one-day suspension - the lowest level of discipline that could have been imposed. Thus, the one-day suspension is affirmed.

Issued at Madison, Wisconsin, this 9th day of July, 2021.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman