

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

JARED HUNT, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0445

Case Type: PA

DECISION NO. 38970

Appearances:

Christopher Foley, 225 North Adams Street, Apt. 205, Lancaster, Wisconsin, appearing on behalf of Jared Hunt.

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 March 31, 2021, Jared Hunt filed an appeal with the Wisconsin Employment Relations Commission asserting he had been discharged without just cause by the State of Wisconsin Department of Corrections (DOC). The appeal was assigned to Commission Examiner Peter G. Davis.

On July 1, 2021, a telephone hearing was held by Examiner Davis. The parties made oral argument at the end of hearing, with supplemental evidence and argument provided by July 7, 2021.

On July 8, 2021, Examiner Davis issued a Proposed Decision and Order affirming the discharge by DOC. On July 13, 2021, Jared Hunt filed objections to the Proposed Decision. The DOC did not file a reply by the deadline given of July 18, 2021.

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

FINDINGS OF FACT

1. Jared Hunt was employed by the State of Wisconsin Department of Corrections (DOC) at the Prairie du Chien Correctional Institution and had permanent status in class at the time of his discharge.

2. Hunt falsely reported that he had been assaulted by an inmate.

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 discharge Jared Hunt.

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

ORDER

The discharge of Jared Hunt by the State of Wisconsin Department of Corrections is affirmed.

Issued at the City of Madison, Wisconsin, this 26th day of July, 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.

Jared Hunt had permanent status in class at the time of his discharge and his appeal alleges that the discharge was not based on just cause.

The State has the burden of proof to establish that Hunt 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).

Hunt claimed in written reports that his elbow was injured when an inmate closed a cell door and either trapped Hunt's elbow in the door jamb or hit Hunt's elbow as the door was closing. DOC's investigation concluded that there was no inmate conduct that caused any injury to Hunt's elbow and therefore that Hunt was guilty of falsifying the written reports that claimed otherwise.

Hunt asserts that the assault did occur and that the differing written descriptions he provided as to the details of the assault can be attributed to COVID fog. He questions how he can be discharged without remedial training and when he received a generally positive performance review shortly before he was discharged. He contends that the video evidence presented by DOC is not conclusive.

Hunt was not discharged for providing differing written descriptions of an assault, but rather for describing an assault that DOC concluded never occurred. Thus, the focus of the Commission's analysis is on the basic question of whether the assault occurred. If it did not, there is no remedial training that DOC need provide as to the fundamental obligation not to lie in written reports. If it did not, then Hunt engaged in an act of misconduct that is appropriately considered for discipline even if Hunt's general prior performance was not so unsatisfactory as to warrant the end of his employment.

Evidence that the assault occurred is provided by Hunt's testimony and that of Correctional Officer A who asserts that Hunt showed him an elbow injury and that he advised Hunt to go to the hospital. It is noteworthy that Correctional Officer A's written statement makes no reference to being shown the elbow injury or encouraging a hospital visit, and nor does Hunt testify that he showed A an injury. Evidence that no assault occurred is provided by the written hearsay statements of two inmates and by a video of the scene at the time in question. There is testimony

from some witnesses that the video did not conclusively establish that there was no contact between Hunt's elbow and some part of the cell door. However, the Commission is persuaded that had there been contact of any kind with any part of the cell door that caused Hunt pain, the video would have reflected some contemporaneous reaction from Hunt. There was none in the video. Thus, the video corroborates the inmates' hearsay statements and satisfies the Commission that DOC has met its burden of establishing that there was no assault and therefore that Hunt falsely reported otherwise.

Given the seriousness of this dishonest misconduct and the one-day and three-day suspensions Hunt had recently received for other misconduct, the Commission has little trouble concluding that there was just cause for the discharge. Therefore, the discharge is affirmed.¹

Issued at the City of Madison, Wisconsin, this 26th day of July, 2021.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman

¹Wisconsin Stat. § 230.04(13m) authorizes the Administrator of the Division of Personnel Management within the Department of Administration to establish disciplinary standards that:

[A]llow an appointing authority to accelerate progressive discipline if the inadequacy, unsuitability, or inferiority of the personal conduct or work performance for which the employee is being disciplined is severe.

The Commission has interpreted this statutory provision to allow the State to depart from the standard disciplinary progression and "accelerate" the level of discipline where appropriate. See *Wessely v. DOT*, Dec. No. 37974-A (WERC, 10/20), aff'd *Wessely v. WERC*, 2020CV002325 (CirCt Dane, 6/21). Consistent with that interpretation, the Commission has upheld the discharge of employees where the employee's conduct warrants such a result. *Wessely*, supra; see also *Degner v. DOC*, Dec. No. 38471 (WERC, 8/20); *Hummelmeier v. DOC*, Dec. No. 38448 (WERC, 7/20).