

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

JAIME SALINAS, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0450

Case Type: PA

DECISION NO. 38974

Appearances:

Jaime Salinas, 59712 North Buck Creek Road, Ferryville, Wisconsin, appearing on her own behalf.

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 April 12, 2021, Jaime Salinas 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 (DOC). The appeal was assigned to Commission Examiner Peter G. Davis.

On June 10, 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 on June 11, 2021. On August 2, 2021, Examiner Davis issued a Proposed Decision and Order rejecting the one-day suspension by DOC. No objections to the Proposed Decision were filed by the deadline given of August 9, 2021.

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

FINDINGS OF FACT

1. Jaime Salinas is employed by the State of Wisconsin Department of Corrections (DOC) as a Nurse and had permanent status in class at the time of her suspension.

2. Salinas did not violate existing DOC nursing protocols or procedures.

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 did not have just cause within the meaning of Wis. Stat. § 230.34(1)(a) to suspend Jaime Salinas 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 Jaime Salinas by the State of Wisconsin Department of Corrections is rejected.

Issued at the City of Madison, Wisconsin, this 10th day of August, 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.

Jaime Salinas 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 Salinas 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).

Following the death of an inmate, DOC conducted a standard review of the medical care the inmate had received. As part of that review, DOC concluded that Salinas failed to utilize a Chest Pain protocol and also did not follow a procedure for recording medical information. Neither alleged failure played any role in the inmate's death.

DOC asserts that either failure provided just cause for a one-day suspension.

As to the Chest Pain protocol portion of the dispute, DOC essentially contends that if an inmate references chest pain at any point during an examination, the nurse is obligated to utilize the established Chest Pain protocol even if other portions of the exam more specifically rule out chest pain. Salinas asserts that all DOC protocols allow a nurse to exercise clinical judgment and that when she did so, it was apparent that the Chest Pain protocol was not appropriate.

While DOC is entitled to require that nurses use the Chest Pain protocol if there is any mention of pain in the chest, DOC did not prove this requirement was ever conveyed to Salinas in training and the existing protocols do not clearly state any such requirement. As the evidence in totality establishes that Salinas otherwise exercised appropriate clinical judgment, no finding of misconduct is appropriate.

As to the record keeping allegation, DOC asserts that Salinas failed to create a paper record of a contact with another medical professional. Salinas persuasively argues that a continuing obligation to create a paper record (in addition to another type of record) was not clearly conveyed to her. The record satisfies the Commission that there was uncertainty as to the ongoing obligation

to provide a paper record. Therefore, the Commission concludes that Salinas' failure to do so was not misconduct.

Given the absence of misconduct, the suspension received by Salinas is rejected.

Issued at the City of Madison, Wisconsin, this 10th day of August, 2021.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman