

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

CAPRICIA COTTON, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0465

Case Type: PA

DECISION NO. 39003

Appearances:

Capricia Cotton, 1115 Ohio Street, Racine, Wisconsin, appearing on her own behalf and Marie McCrackin, 1628 North Main Street, Racine, Wisconsin, appearing on behalf of Capricia Cotton

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 June 7, 2021, Capricia Cotton filed an appeal with the Wisconsin Employment Relations Commission asserting she 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.

A telephone hearing was held on August 19, 2021 by Examiner Davis. DOC made oral argument at the end of hearing and Cotton submitted written argument on August 26, 2021. On September 9, 2021, the parties responded to an informational request from Examiner Davis. On September 15, 2021, Examiner Davis issued a Proposed Decision and Order concluding DOC did not have just cause to discharge Cotton. Examiner Davis modified the discipline to a 3-day suspension and reinstatement. DOC filed objections to the Proposed Decision on September 17, 2021 and Cotton filed a reply on September 20, 2021.

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

FINDINGS OF FACT

1. Capricia Cotton, herein Cotton, was employed by the State of Wisconsin Department of Corrections (DOC) as a Correctional Officer. She had permanent status in class at the time of her discharge.
2. Cotton repeatedly accessed DOC records for no authorized purpose.
3. Cotton used inappropriate language when describing inmates.
4. Cotton did not violate the DOC fraternization policy.

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 discharge Capricia Cotton but did have just cause to suspend her for three days.

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

ORDER

The discharge of Capricia Cotton is modified to a three-day suspension. She shall be reinstated and made whole.

Issued at Madison, Wisconsin, this 4th day of October, 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.

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

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

Cotton had no prior discipline on her record at the time of her discharge. However, DOC concluded a departure from the standard disciplinary progression was warranted because Cotton had accessed the DOC database for no authorized purpose, used inappropriate language when describing inmates, and had been fraternizing with an inmate while he was in custody.

Cotton admits that she accessed the DOC database for no authorized purpose but contends that such unauthorized access is commonplace among employees and no discipline is imposed.¹ She may well be correct regarding rampant unauthorized access but there is no significant evidence that DOC supervisory or managerial employees are aware of this type of misconduct. Absent such awareness, a disparate treatment claim cannot be successful.

Cotton also admits that on two occasions she used inappropriate language² to describe inmates. The Commission would not be surprised if such language is relatively common but there is no persuasive evidence that DOC has failed to act when it was aware of such misconduct.

Cotton denies having any relationship with inmate B while he was in custody. She admits having a social relationship with inmate B after he was released. To the extent DOC relies on

¹ Much of the access is triggered by employee curiosity as to inmate-related information. There is very distressing evidence that some employees treat an inmate better or worse depending on what is learned as to the nature of the inmate's crime.

² "White supremacist" and "punk ass inmates" were the phrases used. While each term might have been an accurate description of the inmate or inmates in question, DOC is certainly within its rights to prohibit use of such language that has the potential to inflame.

evidence provided by the former inmate (who did not testify) after Cotton ended their relationship, that reliance is certainly misplaced. Even DOC obviously discounted many of the former inmate's overblown and inconsistent claims. Ultimately, the only credible evidence to support DOC's claim of an inappropriate relationship is Cotton accessing the DOC database 17 times to view inmate B's information during a one-month period shortly before he was released. From that access, a relationship could be inferred. But it is just as, if not more, plausible that Cotton was sizing up the inmate for a post-custody relationship that did in fact develop. Therefore, while the access was misconduct, DOC has failed to prove that Cotton had a relationship with inmate B that violated the DOC policy against fraternization.³

Remaining for consideration is the question of what discipline is appropriate under the just cause standard for the misconduct that has been proven. Clearly, in the absence of a successful claim of fraternization, just cause for discharge no longer exists. However, the Commission is satisfied that the combination of the two acts of misconduct that Cotton admits⁴ provides just cause for a three-day suspension. Therefore, Cotton shall be reinstated and made whole.

Issued at Madison, Wisconsin, this 4th day of October, 2021.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman

³ In its objections, DOC again unpersuasively argues that it proved that Cotton had a personal relationship with the inmate while he was incarcerated.

⁴ Cotton wrongly accessed DOC records an additional 90 times after inmate B was released.