

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

JACOB LEPAGE, Appellant,

v.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0484

Case Type: PA

Decision No. 39004

Appearances:

Sean Daley, Business Representative, AFSCME Council 32, N600 Rusk Road, Watertown, Wisconsin, appearing on behalf of Jacob LePage.

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 DENYING MOTION FOR SUMMARY JUDGMENT

On August 17, 2021, Jacob LePage filed an appeal with the Wisconsin Employment Relations Commission (the Commission) asserting that the Department of Corrections (DOC) suspended him for five days without just cause. On August 26, 2021, LePage filed a Motion for Summary Judgment. On September 1, 2021, DOC filed an objection to the Motion for Summary Judgment. On September 7, 2021, LePage filed a response to DOC's objection. The matter is now ripe for Commission consideration.

Having considered the matter, the Commission concludes the motion for summary judgment should be denied.

NOW, THEREFORE, it is:

ORDERED

The motion for summary judgment is denied.

Issued at Madison, Wisconsin, this 17th day of September, 2021.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman

MEMORANDUM ACCOMPANYING DECISION AND ORDER
DENYING MOTION FOR SUMMARY JUDGMENT

LePage received a five-day suspension from DOC for off duty conduct which he grieved and appealed to the Commission. A hearing on that matter is set for October 19, 2021.

LePage now asks the Commission to grant summary judgment in his favor (and reject his suspension). In effect, LePage asserts that there are no circumstances under which DOC could meet its just cause burden.

To grant a motion for summary judgment for an appellant in a discipline matter, the Commission must be satisfied that the employer could not establish just cause for discipline even if all of the facts asserted by the employer are accepted as true. The Commission is not so satisfied. DOC asserts that it conducted its own investigation into LePage's conduct and concluded said conduct negatively impacted LePage's ability to perform his duties as a Youth Counselor. Assuming those facts to be true, it is not beyond the realm of possibility that DOC could establish just cause for discipline.

Therefore, the motion for summary judgment is denied and the hearing now set for October 19, 2021 will proceed.

Issued at Madison, Wisconsin, this 17th day of September, 2021.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman