

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

BRITTANY INGLE, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0479

Case Type: PA

DECISION NO. 39007

Appearances:

James Logan and Brittany Ingle, 1730 Gateway Blvd., Beloit, Wisconsin, appearing on behalf of Brittany Ingle.

Nicole Rute, 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 August 4, 2021, Brittany Ingle filed an appeal with the Wisconsin Employment Relations Commission asserting she had been suspended for five days without just cause by the State of Wisconsin Department of Corrections (DOC). The appeal was assigned to Examiner Raleigh Jones. A telephone hearing was held on September 2, 2021. The parties made oral argument at the conclusion of the hearing.

On September 17, 2021, Examiner Jones issued a Proposed Decision and Order affirming the five-day suspension by DOC. No objections were filed by the deadline given of September 22, 2021.

Being fully advised in the premises, the Commission makes and issues the following:

FINDINGS OF FACT

1. Brittany Ingle is employed by the State of Wisconsin Department of Corrections (DOC) as a correctional officer at the Oakhill Correctional Institution (OCI) and had permanent status in class at the time of her five-day suspension.

2. OCI is a correctional facility in Oregon, Wisconsin operated by DOC, a state agency of the State of Wisconsin.

3. On January 31, 2021, Ingle was tardy reporting to work.

4. DOC suspended Ingle for five days for doing that.

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 suspend Brittany Ingle for five days.

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

ORDER

The five-day suspension of Brittany Ingle by the State of Wisconsin Department of Corrections is affirmed.

Issued at Madison, Wisconsin, this 6th day of October, 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.

Brittany Ingle 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 Ingle 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).

Prior to the discipline at issue here, DOC had formally disciplined Ingle three times for attendance related work rule violations. She previously received a one day suspension on December 5, 2018 for being tardy; a three day suspension on July 17, 2019 for being tardy; and a five day suspension on March 17, 2020 for a late call in. In addition to this formal discipline, she had also received several letters of expectation (LOEs) regarding attendance related matters. DOC utilizes a system of progressive discipline that is cumulative from the first violation until the employee is discipline free for 12 months.

It was in that context that Ingle had attendance issues again on January 31, 2021.

If a correctional officer is going to be late coming into work or be absent, they are supposed to call in and report it a minimum of two hours before the start of their shift. This work rule allows management to find a replacement, hold staff over and/or reassign staff in order to provide coverage for all posts. DOC also has a work rule that if an employee arrives to work more than two hours after their scheduled start time, they are subject to discipline.

On January 31, 2021, Ingle was scheduled to start work at 6 am, but was a no call/no show (meaning she did not call into work before her shift started or report to work as scheduled). When she did not call-in or report to work as scheduled, an OCI supervisor called her and asked if she was coming into work. She replied in the affirmative, but said she was running late. Ingle told the supervisor she would be there by 8 am. She ultimately arrived at work at 8:25 am. Thus, she was about two and a half hours late to work.

In Ingle's disciplinary notice, DOC faults Ingle for being tardy on January 31, 2021. There is no question that she was tardy that day. That violated DOC attendance policies. It also constituted workplace misconduct warranting discipline.

Ingle attempts to turn her absence into a FMLA case by contending that at one point, she told a person at OCI that she was taking FMLA leave that morning. The problem with her claim is that when this absence occurred, Ingle did not have approval to use FMLA leave to cover any absences. While Ingle had approval to use FMLA leave in 2020 for an on-going medical issue, her right to use FMLA leave expired at the end of that calendar year. After that, it needed to be renewed. It was Ingle's responsibility to renew her FMLA application in a timely fashion. She did not do so. Thus, she was not authorized to use FMLA leave on the date in question. While Ingle applied for FMLA leave for calendar year 2021 in April of that year, the OCI Human Resources (HR) director concluded that Ingle's FMLA leave was not retroactive to the date of the absence involved here (i.e. January 31, 2021) because no unique or extenuating circumstances were present. No evidence was presented by Ingle at the hearing which would allow the Commission to find otherwise.

Although Ingle did not testify at the hearing, she offered these defenses to excuse and/or mitigate her conduct. First, she notes that while her conduct occurred on January 31, 2021, DOC did not start its investigation into same until March 3, 2021. She objects to the timing of the start of her investigation. It would be one thing if Ingle had shown that she was somehow prejudiced by the timing of the start of DOC's investigation. However, she did not show that. Aside from that, there simply is no requirement that a state employee disciplinary investigation be started within a certain timeframe. Second, she avers that the roads were snow covered and slick on the day in question. Even if they were, Ingle was still responsible for getting to work on time. Finally, she notes that she called into work several times while she was on her way to update them on her status. She sees that as significant. The Commission does not. We therefore find these defenses are insufficient to excuse and/or mitigate Ingle's conduct.

The last question is whether the discipline imposed here (i.e. a five day suspension) was excessive. As noted at the beginning of the discussion, the record shows that prior to the discipline imposed here, Ingle had received a one day suspension, a three day suspension and a five day suspension. These suspensions occurred within a 16 month time period. All this prior discipline was for attendance related infractions. This prior discipline establishes that Ingle had chronic attendance problems. This pattern repeated itself on January 31, 2021 when Ingle, once again, had an attendance infraction. Given Ingle's standing in the DOC disciplinary progression, another five day suspension was not excessive.

In sum, the Commission finds there was just cause for Ingle's five-day suspension and it is therefore affirmed.

Issued at Madison, Wisconsin, this 6th day of October, 2021.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman

