

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

KATHERINE TURNER, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF TRANSPORTATION, Respondent.

Case ID: 446.0028

Case Type: PA

DECISION NO. 39011

Appearances:

Katherine Turner, 2043 Orchard Street, Racine, 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 Transportation.

DECISION AND ORDER

On July 21, 2021, Katherine Turner filed an appeal with the Wisconsin Employment Relations Commission asserting she had been discharged without just cause by the State of Wisconsin Department of Transportation (DOT). The appeal was assigned to Commission Examiner Raleigh Jones.

A telephone hearing was held on September 13, 2021, by Examiner Jones. The parties made oral argument at the end of the hearing. On September 28, 2021, Examiner Jones issued a Proposed Decision and Order affirming the discharge by DOT. Appellant filed objections on October 1, 2021. DOT did not file a reply by the deadline given of October 6, 2021.

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

FINDINGS OF FACT

1. Katherine Turner was employed by the State of Wisconsin Department of Transportation (DOT), Division of Motor Vehicles (DMV), as a customer service representative (CSR) at the Racine station. She was in that position since April, 2014. She had permanent status in class at the time of her discharge.

2. On April 30, 2021, Turner's daily deposit was \$59 short, and this missing money was never located, recovered or accounted for.

3. DOT discharged Turner for negligence in handling state funds.

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 Transportation had just cause within the meaning of Wis. Stat. § 230.34(1)(a) to discharge Katherine Turner.

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

ORDER

The discharge of Katherine Turner by the State of Wisconsin Department of Transportation is affirmed.

Issued at Madison, Wisconsin, this 20 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.

Turner 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 Turner 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).

As part of their job, Customer Service Representatives (CSRs) collect money from Division of Motor Vehicles (DMV) customers for various licensing transactions and services. They put the money collected during the day in a drawer. Each CSR has their own drawer; thus, they do not share drawers. Each CSR is responsible for their own funds. At the end of their shift, CSRs count the money, record and deposit it. In doing that work, they are supposed to follow cash handling procedures prescribed by DMV “including the organization of the cash drawer and properly securing fees collected.”

Prior to the discipline at issue here, DOT had formally disciplined Turner three times for her failure to follow DOT financial and accountability policies and procedures. She previously received a one-day suspension on January 15, 2019 for failing to deposit \$832 in processing funds and leaving funds unsecured at the counter after business hours; a three-day suspension on January 14, 2020 for a \$100 cash shortage of the daily deposit where the cash was not found; and a five-day suspension on September 8, 2020 for leaving \$126 in cash unsecured overnight. In addition to this formal discipline, she was counseled about various financial accountability, accuracy and security concerns on April 27, 2018; June 12, 2018; June 28, 2018; and August 30, 2019. In addition, she received letters of expectation (LOEs) about various financial accountability and security matters on November 28, 2017; June 12, 2018; and November 19, 2018. These LOEs gave her specific and detailed expectations concerning how she was to deal with and account for the money she collected each day. In state employment, an LOE is not considered formal discipline, but it goes into the employee’s personnel file and stays there permanently. DOT 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 Turner had financial accountability and security issues again on April 30, 2021. Turner made a cash deposit at the end of her shift of \$943.50. This money deposit was witnessed and documented as required. When the funds for that date were reconciled several days later by another employee, it was discovered that Turner's cash deposit for April 30, 2021 did not balance with the day's financial reconciliation report. Specifically, Turner's deposit should have been \$1002.50, not \$943.50. Thus, Turner's daily cash deposit was \$59 short. DOT officials then checked the transaction detail report for any possible explanation for this \$59 discrepancy. While one transaction was found that had two payment methods, that transaction was later ruled out as a potential issue. Additionally, the amounts did not work out to the \$59 difference. No other transaction discrepancy was found. DOT officials also checked with Turner about the missing money, but she could not account for it. She specifically denied taking or borrowing it. Turner told DOT officials she counted the money several times by hand and then used the cash counter several times to ensure the accuracy of her count. She also told them that some bills (specifically 10s and 50s) were sticking together that day, but that would not account for the odd amount of \$59. Both Turner and her supervisor then searched Turner's work area to no avail. They also checked the till drawer again to make sure there was nothing underneath or behind it. Doing this established that Turner did not leave the missing money in her drawer. Ultimately, the missing \$59 was never located, recovered or accounted for.

In Turner's disciplinary notice, DOT cited the policies and work rules dealing with financial security and accountability and contended Turner violated them when her daily deposit was \$59 short on that date. That letter went on to provide:

Although you denied taking or borrowing the money, the security and protection of state funds was compromised when you did not deposit the correct amount of funds to be collected that day. In addition, you were found to be negligent in handling state funds by not taking every reasonable precaution to protect the funds from loss.

At the hearing, Turner did not offer any explanation for the missing money. Instead, she simply characterized it as a mistake. She further acknowledged she had difficulties handling cash.

Since Turner did not offer any explanation for the missing money, the Commission has no choice but to reach the same conclusion that DOT did (namely, that Turner was negligent in not depositing the correct amount of funds she collected that day). There is no question that the amount of money she deposited that day was \$59 short. Doing that violated DOT policies and work rules dealing with financial security and accountability. It also constituted workplace misconduct warranting discipline.

Turner offered these defenses to excuse and/or mitigate her conduct.

First, she notes that she has a variety of health conditions and neurological disabilities. There is no question that Turner is so afflicted. While the Commission is personally empathetic with her plight, those health conditions and disabilities do not excuse the conduct she was disciplined for. While Turner essentially invites the Commission to consider whether her health

issues contributed to the conduct she was disciplined for, we decline to do that. Consequently, notwithstanding her health issues, Turner is still responsible for her actions.

Second, Turner contends she was not given the accommodations she needed to do her job. Because of her various health conditions and disabilities, Turner knew from experience how the accommodation process works. Here is an overview of that process. It starts with the employee making an accommodation request. Then, a state medical coordinator works with the employee making the request and management to formulate a specific accommodation request and consider its operational impact. After that, the medical coordinator submits the accommodation request to the employee's medical provider, who then signs off on the need for a workplace accommodation for the employee. DOT's records show that the latest accommodation which was granted to Turner was the following:

- Usage of work time to develop a checklist to use going forward during nightly cash drops.
- Modification to the DMV BFS dress code to allow the use of a non-descriptive hat or visor while servicing customers.
- If you plan to use your own hat, please be sure to get approval from your supervisor prior to use to ensure the hat meets the standards agreed upon.
- If you do not have a hat or visor that meets your needs, DMV may purchase you one for use while at work.

At the hearing, Turner contended the above accommodations were inadequate. However, if Turner felt the accommodations were inadequate and wanted different ones, she could have formally requested them. She did not do so. Moreover, the time to request different accommodations was before the incident occurred for which she was disciplined; not afterwards.

Turner proposed at the hearing that she be given a "cashless window" as an accommodation so that going forward she would not have to handle cash. This proposed accommodation is problematic for this reason: employees do not get to pick what job duties they perform - the employer does that. Here, DOT has decided that CSRs must handle cash, and that it is an essential part of their job. That is DOT's call to make. Because of that, the "cashless window" option Turner proposed at the hearing for herself going forward simply was not viable.

Finally, Turner contends she was not given due process by DOT. The record conclusively shows otherwise. To begin with, when Turner started having cash handling problems, DOT officials worked with her informally and counseled her. When that did not work, they gave her numerous letters of expectation that were intended to help her improve her work performance. Next, after those efforts did not work, DOT officials resorted to formal discipline. Under DOT's formal disciplinary process, employees are given up to three suspensions prior to discharge: a one-day, a three-day, and a five-day suspension. Turner received all those suspensions. Finally, after the incident involved here occurred, DOT officials met with Turner and obtained her side of the proverbial story. After that, DOT officials had what is called a pre-disciplinary meeting with her. The various steps which have just been reviewed constitute due process for Wisconsin state employees facing discipline. DOT was not legally required to do more for Turner. Because of

that, there is nothing about Turner's treatment by DOT that raises any red flags with the Commission. We therefore find she received due process before discipline was imposed here.

The last question is whether the discipline imposed here (i.e., discharge) was excessive. As we have already noted, prior to the discipline imposed here, Turner had received a one-day suspension, a three-day suspension and a five-day suspension. Those suspensions occurred within a 21-month period. All this discipline was for financial accountability and security issues. This prior discipline establishes that Turner had chronic problems with financial accountability and security. This pattern repeated itself on April 30, 2021, when Turner, once again, lost money from her cash drawer. Given Turner's standing in DOT's disciplinary progression, discharge was the next disciplinary step. Under these circumstances, discharge was not excessive.

In sum, it is concluded that there was just cause for Turner's discharge and it is therefore affirmed.

Issued at Madison, Wisconsin, this 20th day of October, 2021.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman