

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

LASHAWNDA HAMPTON, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0481

Case Type: PA

DECISION NO. 39265

Appearances:

LaShawnda Hampton and Melanie Maki, 1728 9th Street, Upper, Racine, Wisconsin, appearing on behalf of LaShawnda Hampton.

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 August 11, 2021, LaShawnda Hampton filed an appeal with the Wisconsin Employment Relations Commission asserting she had been suspended for three days without just cause by the State of Wisconsin Department of Corrections. The appeal was assigned to Examiner Raleigh Jones.

A telephone hearing was held on September 23, 2021. The parties made oral argument at the conclusion of the hearing. A Proposed Decision and Order was issued by Examiner Jones on October 20, 2021, affirming the three-day suspension by DOC. No objections were filed by the parties by the deadline given of October 25, 2021.

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

FINDINGS OF FACT

1. LaShawnda Hampton is employed by the State of Wisconsin Department of Corrections (DOC) as an Office Operations Associate at the Racine Youthful Offender Correctional Facility (RYOCF) and had permanent status in class at the time of her three-day suspension.

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

3. December 31, 2020 was a legal holiday. Hampton did not have enough hours in her legal holiday leave balance to cover her absence that day, so she took 2.4 hours of unauthorized leave without pay (LWOP). DOC requires that LWOP be approved in advance. Hampton did not have approval to use LWOP on that day.

4. On March 18, 2021, Hampton had a late call in.

5. DOC suspended Hampton for three days for the attendance infractions noted in Findings 3 and 4.

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 LaShawnda Hampton 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 three-day suspension of LaShawnda Hampton by the State of Wisconsin Department of Corrections is affirmed.

Issued at Madison, Wisconsin, this 2nd day of November, 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.

LaShawnda Hampton 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 Hampton 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).

The following information is relevant to this case. State employees are expected to monitor their leave balances and not use more leave time than they have available. Employees who use more leave time than they have available are considered to be on unauthorized leave without pay (known as LWOP) and can be disciplined for doing that. Additionally, certain DOC employees who are going to be absent from a scheduled shift are expected to call in and report their impending absence before their shift starts. Non-uniformed employees (such as Hampton) are to call in 60 minutes prior to the start of their shift. Employees who fail to give this required notice can be disciplined for doing that.

Prior to the discipline involved here, DOC had formally disciplined Hampton twice for attendance related rule infractions. She previously received a one-day suspension on September 4, 2019, for not having appropriate leave time available, resulting in unauthorized leave without pay (LWOP). She also received a one-day suspension on September 3, 2020, for a late call in. In addition to this formal discipline, Hampton had also received two letters of expectation (LOEs) in 2020 for late call ins, and one in 2018 for unauthorized leave without pay (specifically, not having enough leave time to cover her absence and using LWOP without prior authorization).

It was in that context that Hampton had attendance infractions on December 31, 2020, and March 18, 2021. Here is what happened on those dates.

December 31, 2020 was a legal holiday. In order to get paid for the day, Hampton was supposed to use a category of leave known as legal holiday. Hampton did not have enough hours in her legal holiday balance to cover her absence that day, so she took 2.4 hours of unauthorized

leave without pay (LWOP). DOC requires that LWOP be approved in advance. Hampton did not have approval to use LWOP on that date. DOC does not approve LWOP retroactively.

On March 18, 2021, Hampton was scheduled to start work at 7 AM. That morning, she overslept and decided to take what she called a “mental health day.” As noted above, she should have called in her impending absence one hour before the start of her shift. That did not happen, and Hampton called in at 6:35 AM. Thus, she had a late call in that day.

In Hampton’s disciplinary notice, DOC faults her for her attendance infractions on December 31, 2020, and March 18, 2021. There is no question that her absences on those dates violated DOC attendance policies. It also constituted workplace misconduct warranting discipline.

At the hearing, Hampton offered these defenses to excuse and/or mitigate her conduct.

First, she contends this discipline is part of an on-going campaign by the warden to harass her. To support this claim, Hampton avers that she was in a car accident in August, 2020, and afterwards, the warden did not reach out to her to check on her status. According to Hampton, the warden has done that to other employees (i.e., check on employees who are dealing with health issues or other difficulties). Hampton sees the warden’s inaction toward her following her car accident as significant. The Commission does not. To the extent that Hampton raises a disparate treatment claim, it suffices to say she did not prove it.

Second, Hampton notes that she was on medical leave from January until July 2020, and after she returned to work she exchanged numerous emails with payroll about a number of leave matters. Hampton avers that in those emails, she was never informed that she was short of legal holiday hours, so she “could adjust [her] leave hours to ensure that [she] had enough time to cover upon [her] return to full duty.” Thus, Hampton contends it was not her fault that she overdrew her legal holiday balance on December 31, 2020. There are two problems with this claim. First, as noted above, state employees are expected to monitor their own leave balances and not use more leave time than they have available. That means it was Hampton’s responsibility to monitor her legal holiday leave balance. Second, while DOC was not obligated to monitor Hampton’s legal holiday leave balance, the record shows that a payroll employee did tell Hampton that she was short of legal holiday hours. Specifically, on September 3, 2020, a payroll employee notified Hampton in an email that because she had previously overused her legal holiday leave balance, she would be “2.4 hours . . . short on a future legal holiday.” Thus, Hampton was, in fact, given notice of a shortage in her legal holiday leave balance. Once Hampton was given that notice, the ball was then in her proverbial court and she had to seek advance approval to use LWOP on a legal holiday. That did not happen, and Hampton did not get advance approval to use LWOP on December 31, 2020. As already noted, the record shows that DOC requires that LWOP be approved in advance. While Hampton subsequently requested LWOP approval for December 31, 2020 retroactively, the record establishes that DOC does not approve LWOP retroactively.

We therefore find these defenses are insufficient to excuse and/or mitigate her attendance infractions.

The last question is whether the discipline imposed here (i.e., a three-day suspension) was excessive. As noted at the beginning of the discussion, the record shows that prior to the discipline imposed here, Hampton had received a one-day suspension on September 4, 2019, for not having appropriate leave time available, resulting in unauthorized leave without pay (LWOP), and a one-day suspension on September 3, 2020, for an untimely call in. This prior discipline shows that Hampton has had problems making timely call ins and monitoring her leave balances. This pattern repeated itself with the two attendance infractions involved here. Given Hampton's standing in the DOC's disciplinary progression, a three-day suspension was not excessive.

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

Issued at Madison, Wisconsin, this 2nd day of November, 2021.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman