

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

BRITTANY INGLE, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0478

Case Type: PA

DECISION NO. 39277

Appearances:

James P. Logan, Representative, Oakhill Correctional Institution, 5212 County Road M, Oregon, Wisconsin, appearing on behalf of Brittany Ingle.

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

On August 4, 2021, Brittany Ingle 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 matter was assigned to Commission Examiner Peter G. Davis.

A telephone hearing was held on October 4, 2021 by Examiner Davis. The parties made oral argument at the end of the hearing. On November 8, 2021, Examiner Davis issued a Proposed Decision and Order reinstating Ingle with no back pay. On November 9, 2021, DOC filed objections and Ingle responded on November 11, 2021. On November 12, 2021, Ingle responded to an inquiry from the Commission.

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

FINDINGS OF FACT

1. Brittany Ingle, herein Ingle, was employed by the State of Wisconsin Department of Corrections (DOC) at the Oak Hill Correctional Institution as a Correctional Officer. At the time of her discharge, she had permanent status in class and had recently received a five-day suspension.

2. On March 18, 2021, Ingle failed to call in before the start of her shift to report that she would be absent.

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 have just cause within the meaning of Wis. Stat. § 230.34 (1)(a) to discharge Brittany Ingle.

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

ORDER

The discharge of Brittany Ingle by the State of Wisconsin Department of Corrections is affirmed.

Issued at Madison, Wisconsin, this 19th day of November, 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.

Ingle 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 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).

It is undisputed that Ingle was guilty of misconduct when she failed to call in to report her absence from work on March 18, 2021.

As to whether that misconduct provided just cause for discharge, it is undisputed that under DOC's standard disciplinary progression, discharge was the next step given Ingle's disciplinary history. However, on or about March 15, 2021, Ingle received paperwork needed to process an FMLA request. Ingle plausibly contends that due to COVID restrictions on access to her medical provider, she was delayed in returning the needed paperwork until April 17. DOC approved her FMLA request on April 19 retroactive to April 4. But for COVID restrictions, it is conceivable that Ingle would have been able to return the needed paperwork within a time frame that would have allowed FMLA leave to be in place retroactive to March 18. While approved FMLA leave may have been a basis for excusing Ingle's failure to timely call in prior to the start of her shift, the Commission is satisfied that FMLA leave would not have excused her failure to call in after her shift had started until DOC contacted her. Therefore, the Commission concludes that Ingle's misconduct constituted just cause for her discharge.

Issued at Madison, Wisconsin, this 19th day of November, 2021.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman