

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

TAMARA BRANTLEY, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF HEALTH SERVICES, Respondent.

Case ID: 2.0102

Case Type: PA

DECISION NO. 39282

Appearances:

Tamara Brantley, 601 Wauona Trail, Lot 98, Portage, Wisconsin, appearing on her own behalf.

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 Health Services.

DECISION AND ORDER

On August 30, 2021, Tamara Brantley filed an appeal with the Wisconsin Employment Relations Commission asserting she had been suspended for one day without just cause by the State of Wisconsin Department of Health Services (DHS). The appeal was assigned to Examiner Raleigh Jones. A telephone hearing was held on October 25, 2021. The parties made oral argument at the conclusion of the hearing.

On November 12, 2021, Examiner Jones issued a Proposed Decision and Order affirming the one-day suspension by DHS. The parties did not file any objections to the Proposed Decision by the deadline given of November 17, 2021.

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

FINDINGS OF FACT

1. Tamara Brantley is employed by the State of Wisconsin Department of Health Services (DHS) as a resident care technician at the Central Wisconsin Center and had permanent status in class at the time of her one-day suspension.

2. Central Wisconsin Center is an intermediate care center for the developmentally disabled in Madison, Wisconsin operated by DHS, a state agency of the State of Wisconsin.

3. On May 13, 2021, Brantley did not comply with a work directive she was given by a supervisor to change a resident out of her wet and soiled clothes.

4. DHS suspended Brantley for one day 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 Health Services had just cause within the meaning of Wis. Stat. § 230.34 (1)(a) to suspend Tamara Brantley for one day.

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

ORDER

The one-day suspension of Tamara Brantley by the State of Wisconsin Department of Health Services 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., 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.

Tamara Brantley 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 Brantley 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).

Brantley's job is to provide care to residents at the center and assist them with their daily living needs. Among other things, that involves changing their clothing when they are wet and/or soiled.

Before we turn our attention to the record facts, we begin our discussion with these general comments about the workplace. When employees are given a work directive or order, they are supposed to perform that task. Thus, they are supposed to comply with the directives they are given by supervisors and do what they are told whether they like it or not. Simply put, that is how the workplace operates. Employers have a legitimate interest in ensuring that employees follow the directives they are given. While there are some exceptions to this general rule when the directions are illegal or unsafe, none of those exceptions apply here. When employees fail to follow workplace orders or directives, that conduct is obviously detrimental to the workplace environment. Employees who do not follow legitimate workplace orders/ directives can be disciplined for doing that.

The reason the foregoing was noted is because on May 13, 2021, Brantley did not comply with a workplace order she received. On that date, a supervisor told Brantley to change a resident. The resident in question, AH, was wet and soiled. Brantley moved the resident from the day room to her room via a wheelchair but did not change her. Instead, Brantley left the resident in her wet and soiled clothes. After the supervisor learned that Brantley had not changed AH as she directed, the supervisor did it herself and gave AH a shower.

Brantley raises two separate claims about this matter. First, she contends that the supervisor did not make it clear to her that she was supposed to change AH. The exact wording of the

supervisor's statement to Brantley is disputed. According to the supervisor, she told Brantley that "A__ is wet and needs to be changed." In contrast, Brantley claims that the supervisor said "A__ needs attention." According to Brantley, she did not know what the supervisor meant by that statement. Even if that is what the supervisor said, we think that its meaning – given its context and usage in a care facility – made it clear that the resident needed to be changed. If Brantley did not understand what the supervisor's statement meant, it was up to Brantley to ask the supervisor for clarification of what she meant. Brantley did not do that though. To the extent that Brantley thought she was not given an order to change AH, she just plain wrong. She was. She should have done as directed.

Second, Brantley contends there was not time for her to change AH because it was at the end of her shift (i.e., 4:30 pm). Even if it was, Brantley should have completed the assigned task. If doing that involved working past the end of her shift, the overtime matter could have been resolved later. Aside from that, the record facts simply do not support Brantley's claim that she received the directive to change AH at 4:20 pm as she claimed. That is because the supervisor averred she gave Brantley that directive at 4:10 pm. Additionally, two of Brantley's coworkers told Brantley that AH was wet and soiled about 3:30 pm. That establishes that Brantley was put on notice that AH needed to be changed before the supervisor directed her to do that.

In addition to the defenses already addressed, Brantley also offered these defenses to excuse and/or mitigate her conduct.

First, she contends that a coworker was available to change AH. Even if that was the case, the supervisor tasked Brantley with doing that work. The supervisor was empowered to do that. Once the supervisor tasked Brantley with doing that work, Brantley should have done it.

Second, Brantley maintains that her inaction towards AH was not done out of malice. She sees that as significant. The Commission does not. The question here is not whether Brantley's inaction towards AH was done out of malice. Instead, the question is simply whether Brantley did what she was directed to do. The answer to that question is no, she did not.

Finally, Brantley submits that rather than receiving formal discipline, she should have instead been informally counseled about the matter. DHS maintains it had previously counseled Brantley about her care of residents and that counseling had proven ineffective in changing her behavior, so it moved to formal discipline. For her part, Brantley disputes the Employer's assertion that she had previously been counseled. To support this claim, Brantley notes that she keeps a detailed diary of each workday and there is nothing in her diary about any such counseling. The Commission finds that the absence of such entries in Brantley's work diary proves nothing. As already noted, Brantley's supervisors testified they had previously counseled Brantley about her care of residents. Brantley offered no persuasive evidence why that testimony should not be credited.

Having found those defenses insufficient to excuse and/or mitigate her conduct, we find that Brantley committed misconduct when she did not follow a work directive to change a resident on May 13, 2021. That misconduct, in turn, warranted formal discipline.

In so finding, it is noted that the suspension letter also referenced a separate matter where Brantley did not dress a naked resident. All the suspension letter says about the matter is “There was also a resident who was left in their room naked.” Brantley’s failure to dress the resident was obviously problematic and created a dignity issue for the resident. While the Commission certainly does not condone Brantley’s failure to dress the resident, that is not the focus of this case. Instead, DHS put the focus on Brantley’s failure to follow a supervisor’s directive. It could do that. However, in the naked resident matter, Brantley was not given a direct order by a supervisor to dress the resident. Since no such direct work order was given to Brantley, it cannot be said that Brantley failed to follow a supervisor’s directive to dress the naked resident. This finding does not alter our conclusion regarding Brantley’s misconduct involving AH.

Turning now to the level of discipline imposed here, the Commission finds that a one-day suspension was not an excessive punishment for Brantley misconduct. In so finding, it is expressly noted that a one-day suspension is the first step in DHS’ progressive discipline sequence.

In sum, the Commission finds there was just cause for Brantley’s one-day suspension and it is therefore affirmed.

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

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman