

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

KAYLA POMPEY, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0507

Case Type: PA

DECISION NO. 39415

Appearances:

Kayla Pompey, 1104 Rock Avenue #11, Waupun, Wisconsin, appearing on her own behalf.

Nicole Rute, 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 January 13, 2022, Kayla Pompey 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 Corrections.

A telephonic hearing before Chairman James J. Daley was held on March 16, 2022. The parties made oral argument at the conclusion of the hearing.

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

FINDINGS OF FACT

1. At the time of her December 2, 2021, one-day suspension, Kayla Pompey was employed as a Correctional Sergeant by the State of Wisconsin Department of Corrections and had permanent status in class.
2. Pompey was tardy for work on October 20, 2021 for the fourth time during 2021.

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 § 230.44(1)(c), Stats.

2. The State of Wisconsin Department of Corrections did have just cause, within the meaning of § 230.34(1)(a), Stats., to suspend Kayla Pompey 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 Kayla Pompey is affirmed.

Issued at the City of Madison, Wisconsin, this 11th day of April, 2022.

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.

Pompey 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 Pompey 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 Pompey was tardy for the fourth time in 2021. Thus, misconduct has been established. Under the terms of Executive Directive #2, a one-day suspension is the specified discipline for the fourth tardy, and such a disciplinary response does not offend a just cause standard.

Nevertheless, Pompey first argues that the suspension should be rejected because she provided medical documentation that the new medication she had been prescribed may cause her some drowsiness. She therefore overslept. However, the record establishes that the doctor's note did not specifically excuse her tardiness on the date in question, October 20, 2021. While the Commission is sympathetic, we do not find this argument to be a mitigating basis for rejecting the suspension.

Pompey also asserts that her discipline should be reduced due to the allegation of disparate treatment in comparison to other discipline that has been given at Dodge Correctional Institution. In order for the Commission to reach a conclusion as to the existence of disparate treatment, a grievant must demonstrate that they are being treated differently than another employee who is a) similarly situated, for b) similar conduct. *See Morris v. DOC*, Dec. No. 35682-A (WERC, 07/15). We will briefly address the example presented by Pompey.¹

¹ DOC Executive Directive #2 became effective December 15, 2020. The Commission will therefore only address comparable discipline related to tardiness issued after the effective date of the policy.

Correctional Officer Tacita M. Pietrantonio was issued a Letter of Expectation from Dodge Correctional Institution for her 4th tardy within calendar year 2021. The DOC clarified that Pietrantonio's 3rd and 4th tardy were consolidated into one action in this instance due to multiple factors, including their proximity, out of office HR staff, and an administrative mistake. However, it is the DOC's standard of practice that it follows the progressive discipline schedule set forth in Executive Directive #2, wherein staff are allowed two tardies in a calendar year; the 3rd tardy results in a Letter of Expectation; the 4th tardy results in formal discipline; and each additional tardy results in progressive formal discipline. As an example, the DOC showed that Officer Eric K. Diener received a Letter of Expectation from Dodge Correctional Institution for his 3rd tardy in calendar year 2021. Therefore, the circumstances surrounding Pietrantonio's Letter of Expectation, along with the DOC's explanation and example, do not satisfy the disparate treatment test.

Given the foregoing, Pompey's one-day suspension is affirmed.

Issued at the City of Madison, Wisconsin, this 11th day of April, 2022.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman