

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

MATTHEW TOWNSEND, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF HEALTH SERVICES, Respondent.

Case ID: 2.0112

Case Type: PA

DECISION NO. 39435

Appearances:

Sean Heiser, 1616 East Road 2, Edgerton, Wisconsin, appearing on behalf of Matthew Townsend.

Nicole M. 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 Health Services.

DECISION AND ORDER

On March 22, 2022, Matthew Townsend filed an appeal with the Wisconsin Employment Relations Commission asserting he had been suspended for one day without just cause by the State of Wisconsin Department of Health Services (DHS).

A telephone hearing was held on June 8, 2022, by Commission Examiner Anfin Jaw. The Respondent made an oral argument at the end of the hearing. Mr. Townsend submitted written argument on June 10, 2022. On June 14, 2022, Examiner Jaw issued a Proposed Decision and Order affirming the one-day suspension by DHS. The parties did not file objections by the deadline given of June 20, 2022.

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

FINDINGS OF FACT

1. Matthew Townsend, herein Townsend, is employed by the State of Wisconsin Department of Health Services (DHS) as a Supervising Officer 2 or Captain at the Mendota Mental Health Institute (MMHI). He had permanent status in class at the time of his suspension.

2. Townsend left his post as Captain without being relieved, leaving MMHI and the Central Wisconsin Center (CWC) campus without a security captain for three hours.

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 Health Services had just cause within the meaning of Wis. Stat. § 230.34 (1)(a) to suspend Matthew Townsend 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 Matthew Townsend by the State of Wisconsin Department of Health Services is affirmed.

Issued at the City of Madison, Wisconsin, this 29th day of June, 2022.

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.

Townsend had permanent status in class at the time of his suspension and his appeal alleges that the suspension was not based on just cause.

The State has the burden of proof to establish that Townsend 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 Townsend left his post as Captain without proper relief or authorization to leave on December 31, 2021, leaving MMHI and CWC without a security captain onsite for three hours. Townsend left at 11:30 p.m. and returned three hours later after being ordered to do so. Townsend nonetheless asserts just cause is lacking because: (1) management was aware of the shift vacancy and that it was the Security Director's responsibility to ensure that the shift was covered, and (2) he was not eligible to be ordered to cover third shift, forcing him to work 24 hours straight, since he was scheduled to work first shift on January 1, 2022.

As to Townsend's contention that it was the Security Director's responsibility to ensure that the third shift vacancy was covered on December 31, 2021, the record establishes that, while the Security Director is responsible for the overall schedule, it was the captains' protocol to work it out amongst themselves and fill any vacancies in the schedule. On December 31, 2021, both Captain Townsend and the Security Director assumed that the third shift vacancy was covered. But, no one showed up for third shift to relieve Townsend. At around 10:20 p.m., Townsend notified Security Director Mike Schultz, who then reached out to the other captains to figure out coverage. In frustration, Townsend did not wait for a resolution of the vacancy issue and left at the end of his shift at 11:30 p.m., without being relieved. In the meantime, Security Director Schultz found coverage for Townsend's first shift, averting a continuous 24 hours, and ordered Townsend to return to the institution. And, while Townsend did return back to work, he should not have left his post without being relieved or given permission to leave.

Given the foregoing, the Commission concludes that the admitted misconduct establishes just cause for a one-day suspension. As the first step in DHS's disciplinary progression schedule, the one-day suspension is not excessive, and is therefore affirmed.

Issued at the City of Madison, Wisconsin, this 29th day of June, 2022.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman