

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

MARK WAEDEKIN, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0531

Case Type: PA

DECISION NO. 39472

Appearances:

Mark Waedekin, W8314 Forest Avenue Road, Eldorado, Wisconsin, appearing on his own behalf.

David G. Makovec, 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 May 12, 2022, Mark Waedekin filed an appeal with the Wisconsin Employment Relations Commission asserting he had been suspended for three days without just cause by the State of Wisconsin Department of Corrections (DOC).

A telephone hearing was held on July 27, 2022, by Commission Examiner Anfin Jaw. The parties made oral closing arguments at the conclusion of the hearing. On August 8, 2022, Examiner Jaw issued a Proposed Decision and Order rejecting the three-day suspension. DOC filed objections to the proposed decision on August 15, 2022; Waedekin filed a reply to the objections on August 18, 2022.

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

FINDINGS OF FACT

1. Mark Waedekin, herein Waedekin, was employed by the State of Wisconsin Department of Corrections (DOC) as a Chaplain at Dodge Correctional Institution (DCI) until his retirement. He had permanent status in class at the time of his suspension.

2. DCI is a correctional facility located in Waupun, Wisconsin operated by the DOC, an agency of the State of Wisconsin.

3. On November 22, 2021, Waedekin accepted a donated Bible from a chapel volunteer in the DCI parking lot and placed the Bible in his vehicle.

4. Waedekin later realized that the Bible had double-stitching, which is prohibited, so he eventually returned it to the volunteer.

5. Waedekin did not accept the Bible for a specific inmate.

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 not have just cause within the meaning of Wis. Stat. § 230.34(1)(a), to suspend Mark Waedekin 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 Mark Waedekin by the State of Wisconsin Department of Corrections is rejected, and he shall be made whole.

Issued at Madison, Wisconsin, this 26th day of August, 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.

Waedekin 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 Waedekin 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).

Waedekin is accused of violating a work rule prohibiting staff from delivering, procuring to be delivered, or possessing items with intent to give them to an incarcerated person (PIOC). In an interview and in the hearing, chaplain volunteer Doug Schoen (Schoen) testified that he dropped off a Bible for a specific PIOC at the prison. However, the PIOC had been transferred to another facility, so Schoen got the Bible back. He then happened to see Waedekin in the parking lot and decided to give the Bible to him to give to the PIOC. Waedekin put the Bible in his vehicle temporarily, until a required donation report could be filled out. Later, Waedekin realized the Bible had double stitching – which is prohibited, since PIOC's can use it to store drugs – and never attempted to bring it into the institution or give it to a PIOC. The Bible was then returned to Schoen the next week.

The DOC suspended Waedekin for violating a portion of its policy, based on Wis. Stat. § 302.095, which prohibits persons from delivering, procuring to be delivered, or possessing with intent to deliver any article with the intent to give it to a confined inmate, contrary to rules or regulations and without the warden or superintendent's knowledge or permission. Specifically, Waedekin was disciplined for accepting the donated Bible for a specific inmate.

Waedekin credibly testified he never promised Schoen he would give the Bible to a particular PIOC. Further, after discovering that the Bible was double-stitched, he called Schoen, told him that double-stitched Bibles weren't allowed, and arranged to return the Bible to Schoen.

The record established that it was against policy to accept donations for specific inmates. While Waedekin initially accepted the Bible, he never attempted to deliver or donate it. Thus, it is illogical to conclude that he intended to give the Bible to a specific inmate.

The State failed to provide any evidence that the Bible even made it into the facility, much less that Waedekin delivered the Bible or intended to give the Bible to a specific PIOC. Although he accepted the Bible, once he discovered it was double-stitched and contrary to DOC policy, he returned it to Schoen. Therefore, the Commission concludes that Waedekin did not violate DOC policy because he did not accept the Bible for a specific inmate.

Given the foregoing, the three-day suspension is rejected and Waedekin shall be made whole.

Issued at Madison, Wisconsin, this 26th day of August, 2022.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman