

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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CHRISTOPHER ALBRENT, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0538

Case Type: PA

DECISION NO. 39486

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Appearances:

Sean Daley, Business Agent, AFSCME Council 32, AFL-CIO, N600 Rusk Road, Watertown, Wisconsin, appearing on behalf of Christopher Albrent.

David 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 June 22, 2022, Christopher Albrent filed an appeal with the Wisconsin Employment Relations Commission asserting that he had been suspended for one-day without just cause by the State of Wisconsin Department of Corrections (DOC).

A telephone hearing was held on August 17, 2022, by Commission Examiner Anfin Jaw. The parties made oral arguments at the end of the hearing. On September 7, 2022, Examiner Jaw issued a Proposed Decision and Order modifying the one-day suspension by DOC to a Letter of Expectation. The parties did not file objections to the Proposed Decision by the deadline given of September 12, 2022.

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

**FINDINGS OF FACT**

1. At the time of his suspension, Christopher Albrent, herein Albrent, was employed by the State of Wisconsin Department of Corrections as a Youth Counselor at Copper Lake/ Lincoln Hill School (CLS/LHS). He had permanent status in class.

2. On October 7, 2021, Albrent, who served as the CLS/LHS locksmith, cut a key to the Human Resources office and fixed it to the key set of a limited-term employee (LTE), without submitting a DOC-1593 key request form.

3. The CLS/LHS Superintendent and Deputy Superintendent have encouraged Albrent to cut keys for new employees or employees changing positions without submitting a DOC-1593 key request form or receiving verbal or written approval from them.

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 Christopher Albrent 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 Christopher Albrent shall be modified to a Letter of Expectation and he shall be made whole.

Issued at the City of Madison, Wisconsin, this 20<sup>th</sup> day of September, 2022.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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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.

Albrent 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 Albrent 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).

On October 7, 2021, a supervising youth counselor asked Albrent, a youth counselor at CLS/LHS, who also served as the institution's locksmith, when a LTE's key to the Human Resources office would be ready. Albrent then cut a key to the Human Resources office and fixed it to the LTE's key set. Albrent did not submit a DOC-1593 key request form for this key change or send an email request to the Safety Director. Following an investigation, Albrent received a one-day suspension without pay for failing to comply with written agency policies, negligence, and permitting others to enter restricted areas without authorization.

The formal procedure for key requests, Key Control Policy 300.05.18, requires that a supervisor submit a written key request, form DOC-1593, to designated staff, which at CLS/ LHS included the Superintendent, Deputy Superintendent, and the Security Director (herein "leadership"). Once the form is approved by leadership, the locksmith is authorized to cut and provide the key.

However, the formal procedure for key requests was rarely followed at CLS/LHS. Superintendent Klint Trevino and Deputy Superintendent Earl Heier testified at the hearing that instead of using DOC-1593 key request forms, they often made requests via email or verbally, followed by an email. They testified that this usually occurred when the request was time-sensitive, or in "complicated situations" with multiple keys or multiple recipients. Heier further testified that there were situations where he verbally requested that Albrent issue keys but did not follow up in writing.

Further, whenever there was a staffing change or new hire, the Superintendent and Deputy Superintendent expected Albrent to automatically prepare the new set of keys without receiving

a written or verbal request, much less completing a DOC-1593. In an April 2021 email, Heier told Albrent that “[i]n the future if/when we have social worker assignment changes communicated to you and the request is an exchange for one key for another ... you can promptly proceed with this update – feel free to track me down ... if you would like to confirm any details.” Albrent provided many more emails showing that he frequently received informal key requests.

The weight of the evidence shows that leadership at CLS/LHS allowed and even encouraged Albrent to follow an informal process for fulfilling key requests. “A mitigating circumstance exists in regard to the appellant’s reliance on informal policies and procedures.” *See Hintz v. DOC*, 97-0079-PC, 8/2/99 (p. 21). Albrent relied on the informal procedures in place for approving and cutting keys, due in part to leadership encouraging him to do so.

The emails provided by Albrent also show that supervisors often requested keys directly from him without completing a DOC-1593 form. When he cut the key for the LTE, Albrent was following a request from a supervising youth counselor. “An employee is supposed to comply with a supervisor’s work directive at the time it is given.” *See Hoch v. DOC*, Dec. No. 37284 (12/17) at 4. Albrent was following a supervisor’s directive, which is another mitigating circumstance.

It is worth noting that no harm resulted from Albrent providing this key without written approval from leadership. When the Deputy Superintendent became aware that the LTE had the key and asked Albrent to remove it, Albrent did so promptly. Furthermore, Albrent credibly testified that even if the LTE had used the key, she would not have had access to confidential HR records, since those were kept in locked filing cabinets to which she did not have a key.

Lastly, Albrent has had no prior discipline in his 17 years of service at DOC. During the hearing, his supervisors repeatedly praised his work and described him as one of their best employees.

Given the foregoing, it is concluded that the one-day suspension be modified to a Letter of Expectation and that Albrent be made whole in all other regards.

Issued at Madison, Wisconsin, this 20<sup>th</sup> day of September, 2022.

## **WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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James J. Daley, Chairman