

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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CINDY LEA OSTROWSKI, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0539

Case Type: PA

DECISION NO. 39492

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Appearances:

Cindy Lea Ostrowski, 475 Courtland Avenue, Oshkosh, Wisconsin, appearing on her own behalf.

Attorney David G. Makovec, 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 23, 2022, Cindy Lea Ostrowski 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 (DOC).

A telephone hearing was held on September 1, 2022, by Commission Examiner Anfin Jaw. The parties made oral arguments at the conclusion of the hearing. On September 13, 2022, Examiner Jaw issued a Proposed Decision and Order affirming the one-day suspension by DOC. The parties did not file objections to the Proposed Decision by the deadline given of September 19, 2022.

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

**FINDINGS OF FACT**

1. Cindy Lea Ostrowski, herein Ostrowski, is employed by the State of Wisconsin Department of Corrections (DOC) as a Correctional Sergeant at Oshkosh Correctional Institution (OSCI). She had permanent status in class at the time of her suspension.

2. OSCI is a correctional facility located in Oshkosh, Wisconsin, operated by DOC, a state agency of the State of Wisconsin.

3. Ostrowski was insubordinate on January 5, 2022.

4. Ostrowski was suspended for one day due to her insubordination.

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 had just cause within the meaning of Wis. Stat. § 230.34 (1)(a) to suspend Cindy Lea Ostrowski 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 Cindy Lea Ostrowski by the State of Wisconsin Department of Corrections is affirmed.

Issued at Madison, Wisconsin, this 22<sup>nd</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.

Ostrowski 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 Ostrowski 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 September 23, 2021, Corrections Program Supervisor (CPS) Jeffrey Lawrence emailed his staff updated policy changes, including one related to inmate cell moves. Specifically, “[a]ll cell moves must have approval of a CPS. In the absence of a CPS, a security supervisor must be contacted to obtain permission.” Ostrowski received the email and was aware of the policy change.

On January 5, 2022, two cellmates were not getting along with each other on Sergeant Ostrowski’s unit. This was an ongoing problem and Ostrowski reported her concerns to CPS Lawrence. Lawrence denied moving one of the inmates to a different cell. However, based on her experience, Ostrowski believed a move was appropriate to separate the inmates and prevent confrontation or escalation. Near the end of her shift, Ostrowski sought approval for a cell move from a security supervisor instead of CPS Lawrence, who was on grounds and available by phone, email, or radio. Presumably, she did not contact CPS Lawrence because she disagreed with his instructions. In doing so, Ostrowski intentionally circumvented CPS Lawrence’s clear direction and was insubordinate.

The Commission has previously held that when a supervisor gives an employee a legitimate order or directive, the employee is supposed to comply with the order or directive and do what they are told, whether they like it or not. *See Reesman v. DOC*, Dec. No. 37301 (WERC, 2/18). In *Reesman*, the Commission further stated that “[e]mployers have a legitimate interest in ensuring that employees follow the directives they are given. When employees fail to follow orders or directives, that conduct is obviously detrimental to the workplace environment. If an employee does not comply with a work order or directive, then their conduct constitutes insubordination, and there can be adverse employment consequences as a result.”

Here, Ostrowski argues that she was trying to be proactive and prevent a serious security issue between the two cellmates. She wanted to resolve the issue before the end of her shift by separating them. She got approval from a security supervisor and emailed CPS Lawrence about the move after it had taken place. While the cell move may have been an appropriate decision, Ostrowski received clear instructions that any moves were to be approved by the CPS. Undoubtedly, she disagreed with CPS Lawrence's cell move denial and sought approval from a different supervisor who was unaware of Lawrence's directions. Under the circumstances, the Commission concludes that Ostrowski's conduct constituted insubordination and workplace misconduct.

In her defense, Ostrowski claims that an investigation into her conduct and ultimately her discipline was in retaliation for reporting her concerns about CPS Lawrence's alleged misconduct. The record shows Lawrence did not initiate the investigation and did not participate in the decision to impose discipline. Thus, the Commission rejects this argument.

Lastly, the Commission turns to Ostrowski's contention that she is being singled out and treated differently than other unit staff who have been insubordinate to CPS Lawrence. Ostrowski argues that there were two officers who were not investigated or disciplined for their insubordination. An employee who asserts that her conduct should be excused, or her discipline reduced because comparable coworkers were treated more favorably has the burden of proving that contention. *See Morris v. DOC*, Dec. No. 35682-A (WERC, 7/15). However, aside from Ostrowski's testimony, she provided no other evidence to support her disparate treatment claim. Therefore, the Commission does not find this argument to be persuasive.

Given the forgoing, the Commission finds that Ostrowski's insubordination provided just cause for the one-day suspension imposed by the DOC. We further find that a one-day suspension was not an excessive punishment for Ostrowski's misconduct. In so finding it is expressly noted that a one-day suspension is the first step in DOC's progressive discipline sequence. The one-day suspension is affirmed.

Issued at Madison, Wisconsin, this 22<sup>nd</sup> day of September, 2022.

## **WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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James J. Daley, Chairman