

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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RONNELLE FIELDS, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0536

Case Type: PA

DECISION NO. 39496

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Appearances:

Ronnelle Fields, 532 W. 15<sup>th</sup> Avenue, Oshkosh, Wisconsin, appearing on her own behalf.

Nicole M. Porter, 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 13, 2022, Ronnelle Fields filed an appeal with the Wisconsin Employment Relations Commission asserting she had been suspended for five days without just cause by the State of Wisconsin Department of Corrections (DOC).

A telephone hearing was held on August 30, 2022, by Commission Examiner Anfin Jaw. The parties filed closing arguments on September 9, 2022. Fields submitted additional argument on September 12, 2022. DOC did not file a response by the given deadline of September 13, 2022.

On September 20, 2022, Examiner Jaw issued a Proposed Decision and Order modifying the five-day suspension to a three-day suspension. DOC filed objections to the Proposed Decision and Order on September 26, 2022. Fields did not file a response and the matter became ripe for Commission consideration on October 4, 2022.

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

### **FINDINGS OF FACT**

1. Ronnelle Fields, herein Fields, is employed by the State of Wisconsin Department of Corrections (DOC) as a Correctional Officer at the 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. On March 23, 2022, Fields was scheduled to work the day shift; 6:30AM-6:30PM.

4. From 1:00PM-2:30PM on March 23, 2022, Fields was approved for paid leave time to leave work to participate in a civil service interview.

5. Fields failed to return to work as scheduled after the interview and did not notify a supervisor or the proper authority of her absence.

6. DOC suspended Fields for five days for the conduct referenced in Finding 5.

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 Ronnelle Fields for five days, but did have just cause to suspend her 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 five-day suspension of Ronnelle Fields by the State of Wisconsin Department of Corrections is modified to a three-day suspension and she shall be made whole for the difference with interest.<sup>1</sup>

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<sup>1</sup> See Wis. Admin. Code ERC 94.07.

Issued at Madison, Wisconsin, this 11<sup>th</sup> day of October, 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.

Fields 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 Fields 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 March 23, 2022, Fields was approved for paid leave time to participate in a civil service interview at the Wisconsin Resource Center (WRC) located at 1505 North Drive, Winnebago, Wisconsin. Fields was scheduled to work a 12-hour shift that day at OSCI from 6:30AM to 6:30PM, with approved leave from 1:00PM to 2:30PM. It is undisputed that Fields failed to return to work after her scheduled interview and did not notify the proper authority of her absence for the remainder of her scheduled shift.

Fields was falsely under the impression that she did not have to return to work after her interview. This erroneous impression is irrational. Leaves of absences for civil service interviews are paid leaves of absences. Paid leave time includes the time necessary to participate in the interview and travel time to and from the interview site. The WRC is less than three miles away from OSCI or less than 10 minutes away. Fields left OSCI around 12:45PM and her interview ended at approximately 2:00PM. Under the circumstances, she is accountable for failing to return to work after her interview and approved leave, as well as failing to notify a supervisor or the proper authority of her absence for the remainder of her shift.<sup>2</sup>

Based on the above, the Commission finds DOC had just cause to discipline Fields for her misconduct. The Commission now turns to a Wis. Stats. § 230.44(1)(c) just cause review of the level of discipline imposed here.

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<sup>2</sup> DOC also asserted that Fields was scheduled for overtime on March 23, 2022, from 6:30PM to 10:30PM, and was a no call no show for the OT shift. However, credible testimony persuades the Commission that there was a scheduling error, or the shift was not on Fields' posted schedule. Therefore, the Commission finds that Fields is not at fault for the OT shift absence.

Fields had previously received a one-day suspension on September 8, 2021 and a written reprimand in lieu of a three-day suspension on February 3, 2022 for an attendance violation. DOC imposed a five-day suspension on Fields and argues that this level of suspension should be upheld by the Commission because it is next step in the applicable progressive disciplinary structure established by the Administrator of the Division of Personnel Management pursuant to Wis. Stat. § 230.04(13m).

While the Administrator has a statutory obligation to create a progressive disciplinary structure, the Commission has a statutory obligation under Wis Stats. § 230.44(1)(c) to determine if there was just cause for the suspension imposed on Fields. That statutory obligation pre-existed the passage of 2015 Wisconsin Act 150 and remains unchanged today.

Importantly, Wis. Stats. § 230.44(1)(c) does not create the right to seek just cause Commission review of written reprimands such as the one received by Fields on February 3, 2022.<sup>3</sup> Thus, had Fields filed an appeal as to her written reprimand in lieu of a three-day suspension, the Commission would have dismissed the appeal for lack of jurisdiction. However, in light of Fields' inability to challenge whether that written reprimand was for just cause, we would have advised the parties that any challenge as to a subsequent five-day suspension would be reviewed under the just cause standards applicable to a jump from a one-day suspension to a five-day suspension.<sup>4</sup> The Commission will apply that same standard of review here. To do otherwise would be to abdicate our statutory just cause obligation despite the absence of an employee right to challenge prior discipline upon which the State premises its current action.

Applying the applicable just cause standard to Fields' misconduct here, the Commission concludes that her misconduct is not sufficiently severe to warrant a jump from a one-day suspension to a five-day suspension. Instead, exercising its discretion to determine the level of discipline appropriate under a just cause standard, the Commission concludes a three-day suspension is appropriate.<sup>5</sup> Fields shall be made whole for the difference with interest.

Issued at Madison, Wisconsin, this 11<sup>th</sup> day of October, 2022.

## WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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James J. Daley, Chairman

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<sup>3</sup> The written reprimand is not a "suspension" within the meaning of Wis. Stat. § 230.44(1)(c) because there is no loss of pay. See *Schallock v. DOC*, Dec. No. 36326 (WERC, 4/16); *Oberlin v. DHS*, Dec. No. 36921 (WERC, 3/17); *Brown v. DVA*, Dec. No. 38482 (WERC, 9/20); *Anderson v. ETF*, Dec. No. 39417 (WERC, 4/22).

<sup>4</sup> See *Bodney v. DHS*, Dec. No. 39445 (WERC, 7/22)

<sup>5</sup> When the discipline imposed is modified pursuant to the Commission's authority under Wis. Stat. § 230.44(4)(c), the Commission is not bound to follow any disciplinary progression established by the employing agency. See *Wholf v. DOC*, Dec. No. 36317 (WERC, 5/16); *Waterman v. DOC*, Dec. No. 36741 (WERC, 12/16); *Nowak v. DOC*, Dec. No. 37951 (WERC, 6/19). Rather, as part of the exercise of its Wis. Stat. § 230.44(1)(c) just cause jurisdiction, the Commission has discretion to determine the appropriate level of discipline.