

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

JON CHRISTIANSEN, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0546

Case Type: PA

DECISION NO. 39756

Appearances:

Jon Christiansen, 6361 South 27th Street, Lot 91, Franklin, Wisconsin, appearing on his own behalf.

Nicole 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 August 1, 2022, Jon Christiansen 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.

A hearing was held on October 6, 2022, in Milwaukee, Wisconsin, by Commission Examiner Katherine Scott. The parties made oral arguments at the end of the hearing. On October 31, 2022, Examiner Scott issued a Proposed Decision and Order affirming the three-day suspension by the Department of Corrections. Christiansen filed objections to the Proposed Decision on November 7, 2022. The Department of Corrections did not file a reply to the objections by the deadline given of November 12, 2022.

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

FINDINGS OF FACT

1. Jon Christiansen (Christiansen) is employed by the State of Wisconsin Department of Corrections (DOC), Division of Community Corrections (DCC), as an Office Operations

Associate or Status Keeper at DCC's Chase Avenue office. He had permanent status in class when he was suspended.

2. The Chase Avenue office had a policy that required employees to use a Sign In/Out board when they arrived and left the office.

3. Christiansen failed to use the Sign In/Out board on six separate occasions in May 2022, after specifically being directed to do so by his supervisor.

4. When Christiansen's supervisor sent him an email reminder to use the in/out board, he threatened to call the police on her.

5. DOC suspended Christiansen for three days for insubordination and failure to comply with agency policies.

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 Jon Christiansen 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 Jon Christiansen by the State of Wisconsin Department of Corrections is affirmed.

Issued at Madison, Wisconsin, this 28th day of November, 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.

Jon Christiansen 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 Christiansen was guilty of the alleged misconduct and that the misconduct constituted just cause for the discipline imposed. *Reinke v. Personnel Bd.*, 53 Wis.2d 123 (1971); *Safransky v. Personnel Bd.*, 62 Wis.2d 464 (1974).

Christiansen was employed as an Office Operations Associate or Status Keeper at DCC's Chase Avenue office. He was supervised by Program Support Supervisor Angela Nash. The Chase Avenue office had a policy requiring employees to use the Sign IN/OUT Board when they were working in the office. *See* Exhibit R-8, pg. 2. The policy has been in place since 2000, long before Christiansen began working there. Nash and other employees credibly testified that the in/out board was meant to promote employees' safety in the event of a fire or other emergency.

It is uncontested that on six separate occasions in May 2022, Christiansen failed to use the office in/out board when he was working in-person in the Chase Avenue office. When Nash emailed Christiansen a reminder to use the in/out board, he threatened to call the police on her. *See* Exhibit R-7, pg. 48.

When a supervisor gives an employee a legitimate order or directive, an employee is expected 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, the Chase Avenue's office policy of requiring employees to use the in/out board when they are present in the building is legitimate, because it promotes employee safety. Christiansen's arguments that the in/out board is out of his way and that he does not get along with the coworkers that sit nearby are not legitimate reasons to refuse to comply with a long-standing office policy. His behavior is detrimental to the workplace environment and constitutes insubordination.

Christiansen also raised the issue that he should have received a reasonable accommodation not to use the in/out board, because using the board increased his COVID exposure. Christiansen had previously submitted three accommodation requests due to PTSD and an unspecified medical condition which increased his COVID-19 risk: a November 2020 request to work from home; a February 2021 extension of working from home; and an April 2022 request related to heating, garbage, and lighting. *See* Christiansen Accommodation Documentation. All of these were addressed by the Department. *Id.* However, Christiansen never made an accommodation request regarding the in/out board. He was clearly familiar with the process for requesting accommodation, having used it on three previous occasions. Although Christiansen claimed he made a request, he offered no evidence aside from his self-serving statements.

During the hearing, Christiansen raised an issue about whether the State had followed progressive discipline in giving him a three-day suspension. Specifically, Christiansen claimed that he received a second one-day suspension in May or June of 2022, and that this three-day suspension does not follow progressive discipline. However, there is only one suspension on file for Christiansen, which was given on October 13, 2021 and served on October 23, 2021. Payroll records clearly show that Christiansen was only suspended for three days in 2022: July 19, 20, and 21 – the three-day suspension that is the subject of this appeal. *See* Wisconsin Payable Register. Christiansen offered no evidence of the alleged May or June 2022 suspension other than his self-serving statements. Therefore, the Department has followed progressive discipline.

Christiansen was insubordinate when he failed to follow agency policy and use the Sign In/Out board on six occasions in May 2022. Further, Christiansen failed to make a reasonable accommodation request for an alternative to using the in/out board. The State followed progressive discipline, following his previous one-day suspension with this three-day suspension. There was just cause for the three-day suspension, and the suspension is therefore affirmed.

Issued at Madison, Wisconsin, this 28th day of November, 2022.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman