

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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LARRY GENTARO GRAVES, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF VETERANS AFFAIRS, Respondent.

Case ID: 39.0022

Case Type: PA

DECISION NO. 39900

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**Appearances:**

Larry Gentaro Graves, 2810 Hollyhock Street, Fitchburg, Wisconsin, appearing on his own behalf.

Nicole R. 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 Veterans Affairs.

**FINAL DECISION AND ORDER**

On February 10, 2023, Larry Gentaro Graves filed an appeal with the Wisconsin Employment Relations Commission asserting he had been suspended for one day without just cause by the State of Wisconsin Department of Veterans Affairs.

A telephone hearing was held on March 21, 2023, by Commission Examiner Katherine Scott. The parties made oral arguments at the end of the hearing. On April 3, 2023, Examiner Scott issued a Proposed Decision affirming the one-day suspension of Larry Gentaro Graves by the Wisconsin Department of Veterans Affairs. On April 10, 2023, Graves filed objections to the Proposed Decision. The Department did not file a response by the deadline given of April 15, 2023.

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

**FINDINGS OF FACT**

1. Larry Gentaro Graves (Graves) was employed by the State of Wisconsin Department of Veterans Affairs (DVA) as an education consultant. He had permanent status in class when he was suspended.

2. As part of his job duties, Graves was required to participate in the National Association of State Approving Agencies (NASAA) conference.
3. In September 2022, the DVA received a public records request for emails between Graves and a fellow NASAA participant.
4. When Graves was notified of the request, he informed two DVA employees, including records custodian Scott Sussman, that he had deleted those emails and text messages.
5. In interviews, Graves admitted that the emails were work-related.
6. Following an investigation, the DVA suspended Graves for violating agency records retention policies forbidding deleting work records and for misusing state property.

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 Veterans Affairs had just cause within the meaning of Wis. Stat. § 230.34(1)(a) to suspend Larry Gentaro Graves 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 Larry Gentaro Graves by the State of Wisconsin Department of Veterans Affairs is affirmed.

Issued at Madison, Wisconsin, this 27<sup>th</sup> day of April, 2023.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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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.

Larry Gentaro Graves 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 Graves 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).

Graves was employed as an education consultant by the Wisconsin Department of Veterans Affairs (DVA). As part of his job duties, he participated in the annual National Association of State Approving Agencies (NASAA) Conference. Respondent's Exhibit 2, pg. 3.

It is undisputed that Graves had exchanged several hundred emails and text messages with another NASAA conference participant, Michelle Hill, who worked for the Virginia Department of Veterans Affairs. Respondent's Exhibit 7, pg. 9. Graves deleted almost all of these emails and text messages from his work email and state-issued cell phone. Respondent's Exhibit 7, pg. 10. In his investigatory interviews, Graves admitted that the communications were work-related: he stated they concerned "an upcoming conference," "using the hospitality suite at the conference," and "who would potentially be running for president." Respondent's Exhibit 7, pgs. 8-9.

In September 2022, the Wisconsin DVA received a public records request for communications between Graves and Hill. In a meeting with Wisconsin DVA employee Mindy Allen and Wisconsin DVA records custodian Scott Sussman, Graves admitted that he had deleted the emails and text messages.

Graves argues that the emails and text messages were personal, not work-related, and that therefore they were "transitory" records under the State of Wisconsin's General Records Schedule for Administrative and Related Records, Records Disposition Authorization (RDA) Number ADMIN352, which he was not required to preserve. However, Graves repeatedly admitted in his interviews that the emails and messages were work-related. Further, the Wisconsin DVA defines a "record" which must be preserved, as "anything that deals with DVA business operations." Since these emails and text messages discussed the logistics of the NASAA conference, which Graves was required to attend as part of his job duties, and arose from his professional contacts with other

NASAA attendees, they dealt with DVA business operations. Therefore, the emails and text messages were records, which Graves was required by agency policy to preserve. Deleting them, and therefore violating agency policy, constituted a misuse of Graves's state email and state-issued cell phone.

Graves violated agency policies forbidding deleting work records in violation of records retention policies and misuse of state property. Given the foregoing, there was just cause for the one-day suspension, and the suspension is therefore affirmed.

Issued at Madison, Wisconsin, this 27<sup>th</sup> day of April, 2023.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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James J. Daley, Chairman