

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

KATHERINE KRUMM, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0577

Case Type: PA

DECISION NO. 39931

Appearances:

Mark A. Sweet, Attorney, Sweet and Associates, LLC, 2510 East Capitol Drive, Milwaukee, Wisconsin, appearing on behalf of Katherine Krumm.

David G. 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 March 23, 2023, Katherine Krumm 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). The matter was assigned to Hearing Examiner Anfin Jaw.

A telephone hearing was scheduled for May 4, 2023, which was postponed due to an advocate's unanticipated surgery and unavailability. A rescheduled telephone hearing was held on June 12, 2023, by Examiner Jaw. The parties submitted written arguments by June 30, 2023. Neither party filed a reply by the given deadline of July 6, 2023.

Pursuant to Wis. Stat. § 227.46(3)(a), Examiner Jaw has been given final authority to issue the Commission's decision.

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

FINDINGS OF FACT

1. Katherine Krumm (Krumm) is employed by the State of Wisconsin Department of Corrections (DOC) as a Correctional Sergeant at Stanley Correctional Institution (SCI), and she had permanent status in class at the time of her suspension.

2. SCI is a medium-security correctional facility located in Stanley, Wisconsin operated by DOC, a state agency of the State of Wisconsin.

3. On January 9, 2023, Krumm was discourteous and unprofessional to a coworker when she told him that he was not trustworthy and that he made horrible decisions.

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 Katherine Krumm 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 Katherine Krumm by the State of Wisconsin Department of Corrections is affirmed.

Issued at Madison, Wisconsin, this 20th day of July 2023.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Anfin Jaw, Examiner

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.

Katherine Krumm 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 Krumm 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).

Krumm has worked for the DOC since October 1998, and has been a Correctional Sergeant since 2003. As a Sergeant, Krumm is a lead worker, and therefore assists in on-the-job training for new Correctional Officers. Officer R.M. was a new and probationary Correctional Officer working at SCI. During his employment, Krumm tried to provide guidance and training for R.M. and reported her concerns to management when R.M. did not meet expectations. In January 2023, Krumm and R.M. were working on the same unit. It is undisputed that R.M. had performance issues and was eventually terminated from the DOC on February 10, 2023, for misconduct and failing to meet expectations as a Correctional Officer, including work rule violations related to negligence of job duties and being demeaning or treating inmates discourteously. Testimony and evidence established that R.M. was a subpar employee, who taunted inmates and created potential security risks to staff and inmates.

It is also undisputed that Krumm directed Officer R.M. to sit in the hallway on January 9, 2023, after telling him that he was not trustworthy and that he made horrible decisions. DOC initiated an investigation after R.M. filed a complaint and reported the incident, including that Krumm told him that “everyone was sick of his shit.” During the investigation and at the hearing, Krumm admitted to calling R.M. not trustworthy, and acknowledged telling R.M. that he made bad decisions, along with providing him examples of his bad decisions. Krumm explained that having R.M. sit in the hallway under video surveillance was the only way she could ensure his safety, as well as her safety, and the safety of the inmates and other coworkers.

The DOC asserted that Krumm was demeaning and discourteous when she scolded and shunned R.M. to the hallway. Additionally, Krumm was previously warned for similar behavior.

Krumm contended that her actions were heroic and for the mutual aid and protection of her coworkers and the Department. Krumm cited Wis. Stat. § 111.82¹ and R.M.'s ongoing and intolerable misconduct to justify her actions.²

While the Commission is persuaded that placing R.M. in the hallway may have been the responsible thing to do, we are troubled by how Krumm communicated her frustration with R.M. that day. It is not what she did, but how she did it. Clearly, Krumm was fed up with R.M.'s antics and misconduct. However, the employer has a reasonable expectation that communication and training are carried out in a professional manner, and that everyone be treated with dignity and respect. Verbally berating R.M. by calling him untrustworthy and admonishing him about his bad decisions, Krumm's communication was unprofessional, demeaning towards her coworker, and not protected by Wis. Stat. § 111.82. Accordingly, misconduct has been established.

Turning now to the level of discipline imposed here, the Commission finds that Krumm's misconduct does provide just cause for imposition of a one-day suspension, which is the first step in the standard disciplinary progression schedule. It is expressly noted that, just a few months prior, Krumm received a non-disciplinary Letter of Expectation related to professional communication for being rude while communicating with coworkers. Therefore, the one-day suspension is affirmed.

Issued at Madison, Wisconsin, this 20th day of July 2023.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Anfin Jaw, Examiner

¹ Krumm's specific conduct, i.e., being verbally demeaning and discourteous to her coworker, did not, and was not necessary or appropriate, to protect her and her coworkers from any threats R.M. potentially posed. Respectfully and kindly directing R.M. to wait in the hallway would have sufficed.

² Krumm also argued that she was being retaliated against by a supervising officer or the Programs Captain at SCI, however, there was no evidence that the Programs Captain was involved in the decision to issue discipline. Additionally, Krumm refers to an "abuse of discretion" in Wis. Stat. § 230.44(d), however, that statute relates to the hiring process in the classified service, and therefore does not apply to Krumm's one-day suspension.