

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

ERIC ANDERSON, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF EMPLOYEE TRUST FUNDS, Respondent.

Case ID: 615.0002

Case Type: PA

DECISION NO. 39932

Appearances:

Eric Anderson, 601 Blue Ridge Parkway, Madison, Wisconsin, appearing on his own behalf.

David 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 Employee Trust Funds.

DECISION AND ORDER

On April 18, 2023, Eric Anderson 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 Employee Trust Funds (ETF). The matter was assigned to Hearing Examiner Peter Davis.

A telephone hearing was held on July 21, 2023, by Examiner Davis. The parties filed written argument on July 25, 2023. On July 26, 2023, Examiner Davis issued a Proposed Decision and Order rejecting the three-day suspension by the State of Wisconsin Department of Employee Trust Funds, and ordering Anderson be made whole with interest. On July 31, 2023, the State filed objections to the Proposed Decision. On August 7, 2023, Anderson filed a response to the State's objections.

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

FINDINGS OF FACT

1. At the time of his suspension, Eric Anderson, herein Anderson, was employed by the State of Wisconsin Department of Employee Trust Funds (ETF) and had permanent status in class.

2. Acting contrary to ETF policy but in good faith given the absence of a specific personal prohibition, Anderson prepared for ETF client interactions on his own time.

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 Employee Trust Funds did not have just cause within the meaning of Wis. Stat. § 230.34 (1)(a) to suspend Eric Anderson 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 Eric Anderson by the State of Wisconsin Department of Employee Trust Funds is rejected, and Anderson shall be made whole.¹

Issued at the City of Madison, Wisconsin, this 11th day of August, 2023.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman

¹ See Wis. Admin. Code ERC 94.07.

MEMORANDUM ACCOMPANYING DECISION AND ORDER

Wisconsin Stat. § 230.34(1)(a) states in pertinent part that “An employee with permanent status in class ... may be removed, suspended without pay, discharged, reduced in base pay or demoted only for just cause.”

Wisconsin Stat. § 230.44(1)(c) 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.”

Anderson had permanent status in class at the time of his suspension and his appeal alleges that the State did not have just cause to suspend him.

The State has the burden of proof to establish that Anderson was guilty of the alleged misconduct and whether the misconduct constitutes just cause for the decision imposed. *Reinke v. Personnel Bd.*, 53 Wis.2d 123 (1971); *Safransky v. Personnel Bd.*, 62 Wis.2d 464 (1974).

Anderson was suspended for three days for failing to follow ETF policy which restricted preparation for client interactions to 15 minutes during the workday.

Prior to the commencement of the investigation that led to his suspension, Anderson would prepare for potential ETF client interactions the night before the day of the interaction. Anderson knew ETF had a policy which restricted preparation for client interactions to 15 minutes during the workday. Anderson also knew that ETF was aware of and did not approve of his using personal time for preparation. However, Anderson persuasively argues that prior to his suspension, ETF’s expressed disapproval never became an expressed prohibition against him from preparing on his own time. Once advised pre-workday preparation was prohibited, Anderson ended such preparation.

Given the evidence presented, the Commission concludes that Anderson had a good faith belief that he was not prohibited from engaging in preparation the night before potential client interactions. In light of that good faith belief, the Commission concludes that Anderson did not engage in misconduct. Therefore, the suspension is rejected, and Anderson shall be made whole.

Issued at the City of Madison, Wisconsin, this 11th day of August 2023.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman