

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

RODNEY REYNOLDS, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0583

Case Type: PA

DECISION NO. 39945

Appearances:

Jacob C. Aronson, 200 S. Madison Street, Waupun, Wisconsin, appearing on behalf of Rodney Reynolds.

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 May 1, 2023, Rodney Reynolds 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 Corrections (DOC). The matter was assigned to Commission Examiner Anfin Jaw.

A telephone hearing was held on June 20, 2023, by Examiner Jaw. The parties submitted written closing arguments on June 30, 2023. Neither party filed a response to the closing arguments by the given deadline of July 5, 2023. On August 8, 2023, Examiner Jaw issued a Proposed Decision and Order, modifying the one-day suspension of Rodney Reynolds by the DOC to a Letter of Expectation and ordering Reynolds be made whole with interest. Neither party filed objections to the Proposed Decision by the given deadline of August 14, 2023.

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

FINDINGS OF FACT

1. Rodney Reynolds (Reynolds) is employed by the State of Wisconsin Department of Corrections (DOC) as a Correctional Sergeant at Waupun Correctional Institution (WCI), and he had permanent status in class at the time of his suspension.

2. WCI is a correctional facility located in Waupun, Wisconsin operated by DOC, a state agency of the State of Wisconsin.

3. On September 29, 2022, Reynolds deployed OC spray at an inmate who was actively engaging in self-harm by tying a noose around his neck.

4. Reynolds did not complete an incident report in a timely manner, as required, following the use of force incident.

5. DOC suspended Reynolds for one day for failing follow its Use of Force policy, and for failing to complete the incident report in a timely manner.

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 Rodney Reynolds 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 Rodney Reynolds shall be modified to a Letter of Expectation and Reynolds shall be made whole with interest.¹

Issued at Madison, Wisconsin, this 23rd 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

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.

Reynolds 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 Reynolds 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).

It is undisputed that on September 29, 2022, Reynolds deployed OC spray at an inmate who was actively engaging in self-harm by tying a noose around his neck. The DOC initiated an investigation after concerns were raised about the incident to the office of the Deputy Warden. The Department performed a search of incident reports related to J.B. and September 29, 2022, but none were found. Camera footage, as well as body camera footage were then reviewed, which confirmed the use of force incident involving Reynolds and inmate J.B. on September 29, 2022.

Testimony and evidence established that it is not uncommon for staff to use OC spray on inmates engaging in self-harm or to stop destructive behavior. Whether a reactionary or unplanned use of force with OC spray is deemed justified or not justified, appears to be based on a reasonable perception of the threat. In cases of self-harming behavior, one must evaluate the inmate's intent and then the inmate's ability to carry out what they say they are going to do.

DOC contends that there was just cause for a one-day suspension because Reynolds failed to engage J.B. in dialogue or gain compliance through verbal interaction. However, the record does not support that contention. Additionally, DOC argues that the use of force by Reynolds on September 29, 2022, was not justified, but failed to present the use of force review or any other testimony or evidence from the use of force reviewer or committee who completed the review.

A preponderance of the credible evidence establishes that Reynolds had the discretion to act as he did. Two other officers were trying to gain J.B.'s compliance unsuccessfully when Reynolds arrived to assist. Officer Jason Hill testified that Reynolds gave directives to J.B. to take the noose off his neck, but J.B. refused to do so. Reynolds credibly testified that, based on his training and experience, his actions were justified. He perceived the threat and believed the OC

spray was immediately necessary to prevent the inmate from hanging himself. He is trained to identify and stop self-harming behavior, and has been involved in more than 30 use of force incidents over the course of his career with the DOC. He has deployed OC spray on numerous occasions and has never been investigated or found at fault. Reynolds took immediate action with inmate J.B., due to the inmate's history of self-harming behavior and the perceived danger he posed to himself. Based on the totality of the circumstances, the Commission is persuaded that Reynolds' actions were not unreasonable.

As to the alleged failure to timely complete an incident report, as required, Warden Hepp acknowledged that a failure to document or complete an incident report timely, in itself, would not have resulted in formal discipline, but rather a non-disciplinary Letter of Expectation.

Given the foregoing, it is concluded that Reynolds did not engage in any misconduct on September 29, 2022, and there was no just cause for the one-day suspension. Therefore, the one-day suspension shall be modified to a Letter of Expectation and Reynolds shall be made whole with interest.

Issued at Madison, Wisconsin, this 23rd day of August 2023.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman