

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

KATHERINE KRUMM, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0591

Case Type: PA

DECISION NO. 39966

Appearances:

Sean Daley, Business Agent, AFSCME Council 32, AFL-CIO, N600 Rusk Road, Watertown, Wisconsin, appearing on behalf of Katherine Krumm.

David G. Makovec, Attorney, Department of Administration, 201 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 June 29, 2023, Katherine Krumm filed an appeal with the Wisconsin Employment Relations Commission asserting she had been suspended for three days without just cause by the State of Wisconsin Department of Corrections (DOC). The appeal was assigned to Commission Examiner Anfin Jaw.

A telephone hearing was held on September 8, 2023, by Examiner Jaw. The parties submitted written closing arguments on September 21, 2023. Neither party filed a response by the given deadline of September 22, 2023.

On September 29, 2023, Examiner Jaw issued a Proposed Decision and Order, finding DOC did not have just cause to suspend Krumm for three-days, modified the three-day suspension of Krumm to a Letter of Expectation and ordered Krumm be made whole with interest. DOC filed objections to the Proposed Decision on October 4, 2023, and Krumm filed a response to the objections on October 5, 2023.

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

FINDINGS OF FACT

1. Katherine 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 correctional facility located in Stanley, Wisconsin operated by DOC, a state agency of the State of Wisconsin.

3. On January 14, 2023, Krumm instructed a correctional officer to turn off water to an inmate's cell as a reaction to the inmate trying to flood his cell with his toilet.

4. Krumm did not complete an Incident Report or DOC-2837 form, as required by DOC's Policy on Control of Water Supply to Inmate Housing.

5. Krumm did not document that the water had been turned off in the logbook and did not inform the staff working the next shift.

6. DOC suspended Krumm for three days for Findings 4 and 5; failing to follow policies and procedures related to water control in inmate housing cells.

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 Katherine Krumm for three days.

Based on the above and foregoing Findings of Fact and Proposed Conclusions of Law, the Commission makes and issues the following:

ORDER

The three-day suspension of Katherine Krumm shall be modified to a Letter of Expectation and Krumm shall be made whole with interest.¹

¹ See Wis. Admin. Code § ERC 94.07.

Issued at Madison, Wisconsin, this 11th day of October 2023.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman

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.

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).

On January 14, 2023, in response to an inmate attempting to flood his cell with his toilet, Krumm directed Correctional Officer Gudis to turn the toilet water off to the cell. Officer Gudis turned the toilet water off and successfully prevented a flooded cell. Krumm did not complete an Incident Report or a DOC-2837 form to document the water shutoff, as required by DOC's Policy on Control of Water Supply to Inmate Housing. Krumm also did not complete a logbook entry for the water shutoff or brief the staff working the next shift. It was reported about six hours later that the inmate did not have access to water because his toilet and sink water were turned off. It is unknown who turned the sink water off or when it was turned off.

DOC contended that Krumm failed to follow the water control policy because she failed to complete an incident report or notify a supervisor of the water shutoff. Additionally, she failed to complete a logbook entry and inform the next shift of the water shutoff. DOC claims that Krumm's actions resulted in the inmate being without water access for about six hours. However, the record does not support that contention.

A preponderance of the credible evidence established that Krumm generally followed accepted practices related to controlling the water supply to inmate housing. When staff observe inmates attempting to flood their cells by stuffing linens in their toilet or repeatedly flushing the toilet, they routinely respond, without supervisory approval, by shutting the toilet water off. Krumm acted accordingly by directing Officer Gudis to shut the toilet water off. Credible testimony and evidence established that an incident report or DOC-2837 form is only completed when the toilet and sink water are shut off. Since Krumm was only aware that the toilet water was shut off, there was no need to complete an incident report. Krumm believed the inmate still had access to sink water.

DOC witnesses testified that it was Krumm's responsibility as the sergeant to complete the logbook entry of the water shutoff, as well as notify the incoming shift. Krumm claims she informed her relief that there was an attempted flooding, but it was resolved. While it's unclear whether there's a requirement to complete a logbook entry of the toilet water shutoff, as a veteran sergeant, she probably should have done so. Krumm should have communicated or documented the status of her shift specifically for the next shift. As far as the inmate's access to water, no evidence was presented about when or even if the sink water was shut off. Thus, Krumm cannot be found at fault for the lack of water access.

Under the circumstances, the Commission concludes that DOC did not have just cause for a three-day suspension but that a Letter of Expectation is appropriate for Krumm's lack of communication regarding the toilet water shutoff.

Given the foregoing, it is concluded that the three-day suspension be modified to a Letter of Expectation and that Krumm be made whole in all other regards.

Issued at Madison, Wisconsin, this 11th day of October 2023.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman