

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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WILLIAM ROBINSON, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0592

Case Type: PA

DECISION NO. 40215

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**Appearances:**

William Robinson, 6119 95<sup>th</sup> Ave., Kenosha, Wisconsin, appearing on his own behalf.

Nicole 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 Corrections.

**DECISION AND ORDER**

On July 20, 2023, William Robinson 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 Katherine Scott.

A telephone hearing was held on September 28, 2023, by Examiner Scott. The parties submitted written arguments on October 6, 2023. On October 25, 2023, Examiner Scott issued a Proposed Decision and Order affirming the one-day suspension of William Robinson by the DOC. The parties did not file objections by the given deadline of October 30, 2023.

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

**FINDINGS OF FACT**

1. William Robinson (Robinson) is employed by the State of Wisconsin Department of Corrections (DOC) as a Corrections Field Supervisor for the Division of Community Corrections (DCC). He had permanent status in class when he was suspended.

2. On March 7 and March 8, 2023, Robinson was scheduled to attend a Leadership Conference.
3. On March 7, 2023, Robinson failed to return to the conference after the lunch break. He did not request supervisor approval to use leave.
4. On March 8, 2023, Robinson again failed to return to the conference after the lunch break. He did not request supervisor approval to use leave.
5. Following an investigation, DOC suspended Robinson for one day for disobedience and for leaving the place of duty before the quitting time without proper authorization.

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 William Robinson 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 William Robinson by the State of Wisconsin Department of Corrections is affirmed.

Issued at Madison, Wisconsin, this 14<sup>th</sup> day of November 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.

Willaim Robinson 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 Robinson 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).

Robinson is employed as a Corrections Field Supervisor at the Division of Community Corrections (DCC). As part of his job duties, he is sometimes required to attend conferences. On March 7 and March 8, 2023, Robinson attended a two-day Leadership Conference in Green Bay. The conference began at 8:15 a.m. each day; it ended at about 4 p.m. on March 7 and about 2 p.m. on March 8. There was a daily lunch break from 12 p.m. to 12:45 p.m.

It is uncontested that, on both days, Robinson did not return to the conference after the lunch break. Robinson's supervisor Terra Lindberg testified that if an employee needs to leave early, they can contact their supervisor in person, via email, or via text to the supervisor's work or personal phones. It is uncontested that Robinson did not ask his supervisor for permission to be absent or request to use leave on either day.

On March 7, Robinson admitted in an investigatory interview that he returned to his hotel room during the lunch break, fell asleep, and did not return to the conference (Robinson had received permission to be excused at 2 p.m. that day, but still missed approximately an hour and fifteen minutes after the end of the lunch break).

On March 8, when Robinson did not return after the lunch break, Robinson's supervisor Terra Lindberg texted him to ask if he was still at the conference. Robinson replied: "Yeah, my daughter is sick and I got a call from school so my mother i law [sic] went to get her and Laura is also at a training and couldn't leave. I didn't get a chance to talk to you before I left." Robinson later submitted a time sheet that incorrectly indicated that he worked the hours after the lunch break.

In light of the foregoing, the Commission concludes that Robinson engaged in misconduct.

Turning to the issue of whether there was just cause for the disciplinary penalty received, Robinson alleges that he has experienced disparate treatment, citing nine DOC employees who exhibited similar absenteeism but received less or no discipline. An employee who raises a disparate treatment claim has the burden of proving that contention. The Commission has long recognized that disparities in discipline may, under certain circumstances, affirmatively defend against discipline despite the existence of misconduct. Underlying that position is the notion that if an employer treats one employee significantly more harshly than a similarly situated coworker for similar misconduct, inherent unfairness exists. *See Morris v. DOC*, Dec. No. 35682-A (WERC, 7/15). Here, however, several of Robinson's examples – Agent Christin Sturbaum, Agent Ammie Roberson, CFS Jennifer Arndt, Agent Sara Krueger, and John Smith – committed different acts of misconduct, and are therefore not similarly situated to Robinson. Several other examples – Agent Shebraska Contreras and Agent Jackie Jones – committed a similar act of misconduct, but they were not investigated or disciplined because they resigned shortly after their misconduct was brought to light. Robinson did not submit evidence or elicit testimony at the hearing to support his contention that there are two other employees – CFS Jackie Jones and CFS Jon Schubert – who are similarly situated and committed similar acts of misconduct.

Robinson also appeals because, in addition to the one-day suspension, he received a Work Directive reducing his option to telecommute from two days a week to one day a week. He says his supervisors, Lisa Yeates and Terra Lindberg, stated that this is because they no longer trust Robinson due to his behavior at the leadership conference. The Commission concludes that this Work Directive does not violate the just cause standard applicable to Robinson's misconduct.

Robinson argues that, since he has received no prior discipline during his sixteen years with the DOC, he should have been given a letter of expectation instead of a one-day suspension. However, lack of prior discipline does not give an employee carte blanche to break work rules. Robinson clearly committed misconduct by leaving the leadership conference after the lunch break on two successive days. He failed to provide either an explanation or a notification of his absences. His conspicuous absences clearly violated work rules 3 and 5 and wasted State resources spent on this leadership conference. The State followed progressive discipline by issuing this one-day suspension.

Given the foregoing, the Commission concludes there was just cause for the one-day suspension, and the suspension is therefore affirmed.

Issued at Madison, Wisconsin, this 14<sup>th</sup> day of November 2023.

## **WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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James J. Daley, Chairman