

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

CHAD SCHROEDER, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF HEALTH SERVICES, Respondent.

Case ID: 2.0134

Case Type: PA

DECISION NO. 40222

Appearances:

Chad Schroeder, 1320 W. Linwood Ave., Oshkosh, 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 Health Services.

DECISION AND ORDER

On August 22, 2023, Chad Schroeder (Schroeder) 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 Health Services (DHS). The matter was assigned to Commission Examiner Katherine Scott.

A telephone hearing was held on October 12, 2023, by Examiner Scott. The parties submitted written closing arguments on October 19, 2023. On November 13, 2023, Examiner Scott issued a Proposed Decision and Order, affirming the one-day suspension of Schroeder by the DHS. On November 14, 2023, Schroeder filed objections to the Proposed Decision. The DHS did not file a response to the objections by the given deadline of November 20, 2023.

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

FINDINGS OF FACT

1. Chad Schroeder (Schroeder) is employed by the State of Wisconsin Department of Health Services (DHS), as a Psychiatric Care Technician-Advanced at the Wisconsin Resource Center (WRC). He had permanent status in class when he was suspended.

2. On two successive days in May 2023, Schroeder was observed sleeping while on duty.
3. Following an investigation, DHS suspended Schroeder for one day for inattentiveness and failure to comply with agency policies.

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 Health Services had just cause within the meaning of Wis. Stat. § 230.34(1)(a), to suspend Chad Schroeder for one day.

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

ORDER

The one-day suspension of Chad Schroeder by the State of Wisconsin Department of Health Services is affirmed.

Issued at Madison, Wisconsin, this 24th day of November 2023.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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.

Chad Schroeder 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 Schroeder 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).

Schroeder was employed as a Psychiatric Care Technician-Advanced at the Wisconsin Resource Center (WRC). On May 24 and May 25, 2023, several other employees – including Tera Lang, Susan Cysiewski, and Amanda Fernandez – observed Schroeder asleep, while on duty. Schroeder was also observed reading while on duty. Following an investigation, Schroeder was suspended for one day.

Schroeder argues that he has received disparate treatment because the psychiatric care technicians are allowed to read or do crosswords during their down time, and that other employees – including Tera Lang – were also reading on duty. 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, Lang was not similarly situated because, unlike Schroeder, she was not sleeping while on duty. Sleeping on duty is a far more serious form of inattention, especially at a secure facility like WRC. Therefore, it is entirely appropriate that Schroeder was disciplined more harshly than Lang.

Schroeder was inattentive when he slept on duty, and thus the Commission finds he was guilty of misconduct. The Commission further concludes that this misconduct establishes just cause for the one-day suspension. The suspension is therefore affirmed.

Issued at Madison, Wisconsin, this 24th day of November 2023.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman