

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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CINDY L. OSTROWSKI, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0597

Case Type: PA

DECISION NO. 40225

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Appearances:

Wayne E. Pankratz, 2731 3<sup>rd</sup> Street South, Wisconsin Rapids, Wisconsin, appearing on behalf of Cindy L. Ostrowski.

Nicole Porter, Attorney, Department of Administration, 101 E. 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 August 25, 2023, Cindy Ostrowski filed an appeal with the Wisconsin Employment Relations Commission asserting she had been discharged 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 October 25, 2023, by Examiner Jaw. The parties submitted written closing arguments on November 6, 2023. The parties filed written responses on November 8, 2023. On November 16, 2023, Examiner Jaw issued a Proposed Decision and Order affirming the discharge of Ostrowski by the DOC. The Appellant filed objections to the Proposed Decision on November 21, 2023, and the Respondent filed a response to the objections on November 24, 2023.

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

**FINDINGS OF FACT**

1. Cindy L. Ostrowski (Ostrowski) was employed by the State of Wisconsin Department of Corrections (DOC), as a Correctional Sergeant at Oshkosh Correctional Institution (OSCI) and had permanent status in class when she was discharged.

2. The DOC is a state agency responsible for the operation of various corrections facilities including OSCI, a facility located in Oshkosh, Wisconsin.

3. In July 2022, while on duty, Ostrowski accessed an inmate's personal health information (PHI) without a legitimate business purpose on the DOC's electronic records database.

4. After accessing the inmate's health records on the Department's network, Ostrowski used her work email to send screenshots of the records to her personal email address, and then disclosed those confidential records with others outside of the DOC without authorization.

5. Ostrowski disclosed the inmate's confidential records for her own personal reasons.

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 discharge Cindy Ostrowski.

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

### **ORDER**

The discharge of Cindy Ostrowski by the State of Wisconsin Department of Corrections is affirmed.

Issued at Madison, Wisconsin, this 21<sup>st</sup> day of December 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.

Cindy Ostrowski had permanent status in class at the time of her discharge and her appeal alleges that the discharge was not based on just cause.

The State has the burden of proof to establish that Ostrowski 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).

The facts are not in dispute. Ostrowski was a Correctional Sergeant at OSCI. In that capacity, she was responsible for the security, custody, control, and rehabilitation of inmates. In October 2022, the Department became aware that Ostrowski may have accessed its electronic records database “WICS” to view records pertaining to various inmates, and had then disclosed an inmate’s personal health information (PHI) to an outside party. DOC initiated an investigation into the matter and ultimately concluded that Ostrowski’s conduct violated multiple work rules. During the investigation, Ostrowski admitted to accessing the Department’s electronic records database in July 2022 to view inmate records, including PHI, using the Department’s network. She also admitted to using her work email to send screenshots of the confidential records, which included DOB, State Identification Numbers, location, conduct reports, and health related information, to her personal email address so she could retain a copy of the records. She later filed an Equal Rights discrimination complaint against the DOC and disclosed the records and PHI to the complaint investigator. Ostrowski did not have a legitimate business purpose, authorization, or the need to perform a specific job duty to access or send the records. She acknowledged that by sending the information to her personal email and others outside of the DOC, she may have violated some policies.

The Department has specific policies and procedures that govern access, use, and disclosures of confidential and medical information of inmates. Executive Directive (ED) #50, Guidelines for Appropriate Use of Department of Corrections Information Technology (IT), establishes that the DOC Administrative Network, which includes Wisconsin State email services and DOC-specific applications such as WICS, is intended for business purposes and to facilitate access to information and communication. The policy states that “[u]sers shall not use any application, of any type, which was provided based on their specific job duties, for any purpose other than the original intent without prior explicit permission from the Division Administrator or Deputy Secretary.” ED #50 establishes a list of activities that employees are prohibited from engaging in. Employees are explicitly prohibited

from “[d]isclosing confidential information regarding persons in our care or employees, unless the sharing of confidential information is required to perform an assigned job duty.”

Executive Directive #75, Protection of Confidential Information, establishes the overall policy for the Department that employees shall not disclose confidential information unless otherwise permitted or required by law. While ED #75 provides high level expectations, it also specifically directs staff to ED #35 for the use of Protected Health Information (PHI). ED #35, Confidentiality of Offender Health Information, establishes that employees “shall only request, use or disclose offender PHI in compliance with Wisconsin and federal law, and DOC policies.” DOC Employees who are not health providers shall request and use only the minimum necessary PHI to perform a specific job duty. Disclosure is further defined to include divulging in any manner information outside the entity holding the information. ED #35 also includes a list of all policies that fall under this directive and provides specific guidance.

Minimum Necessary and Duty to Mitigate HIPAA Standards, DAI Policy 500.50.01, is one policy referenced in ED #35. This policy establishes that the minimum necessary standard is the least amount of information reasonably necessary to accomplish the purpose of the access, use, request, or disclosure of the PHI, and that a need to know must be based on access necessary to perform job duties. The minimum necessary standard applies to all requests for, access to, and use and disclosure of the PHI in any format and an employee “shall be able to explain why he or she cannot perform an assigned job duty without the PHI.” This policy recognizes that although there are technical capabilities to access broad information, staff are required “to limit their access to information for which the workforce member needs to carry out appropriate operational or administrative duties within the individual’s job description.” Ostrowski was aware of and acknowledged receipt of ED #35, ED #50, and ED #75, and her responsibility to read, understand and abide by all DOC policies and procedures.

The information contained within WICS regarding inmates is meant to be used for business purposes and remains the property of the Department. DOC’s Privacy and HIPAA Compliance Officer, Linda Eggert, credibly testified that the information accessed and shared by Ostrowski was considered confidential. The Department is responsible for protecting personally identifiable information that could lead to identity theft, including full date of birth. Further, the State Identification Number for inmates is something that is protected as a unique identifier. The health information contained within the special handling page shared by Ostrowski had been entered by nursing staff in the health services unit of OSCI, and related to the past, present, or future physical condition of an individual and the provision of health care for that person. Even though a determination was clearly made by health care employees that this information needed to be available to staff providing supervision to the individual, the information is still considered protected health information and is prohibited from disclosure outside of the Department.

Given her admitted misuse of agency property and its IT, violation of DOC policies and procedures and work rules, as well as her unauthorized access and disclosure of confidential information or records, the Commission concludes that Ostrowski committed misconduct. Accordingly, the Commission finds that DOC had just cause to discipline Ostrowski for her misconduct.

The focus now turns to the level of discipline imposed here. DOC concluded that a “skip” to termination was warranted due to the serious nature of Ostrowski’s misconduct. Ostrowski had

previously received a one-day and a three-day suspension within the preceding 12-months. If following progressive discipline, DOC could have issued a five-day suspension.

Ostrowski conceded that a five-day suspension would have been appropriate. She admitted that what she did was wrong but argued that she was concerned about safety hazards at the institution, as well as institution management putting inmates' health and safety at risk. In order to protect the inmate, she believed she needed to preserve his health records, in case it was deleted, or she could no longer access the database. While the Commission understands Ostrowski's concerns, by then sharing and disclosing the confidential records without authorization, for her own personal discrimination complaint, her actions were no longer for the purpose of protecting the inmate. It was for her own personal benefit in pursuing a lawsuit against the DOC.

Additionally, the DOC acknowledged that employees may have a reason to request access to confidential or protected health information for personal reasons and have the same rights to the information as the public, absent specific authorization from the inmate. These requests would be processed by the Department and confidential and protected information would be appropriately redacted to protect the privacy interests of the individuals and the liabilities of the Department. The desire to pursue an individual claim against the Department does not give someone an unfettered right to access all inmate information or right to share that information outside of the Department without clear authorization. Here, Ostrowski made no such request and had no documentation of approval or authorization before the access and disclosure occurred.

Given the foregoing, the Commission concludes that Ostrowski engaged in serious misconduct when she accessed an inmate's confidential records without a legitimate business purpose, and subsequently shared that information to an outside party. In doing so, she violated Department policies and may have violated federal laws governing patients' health records. Her actions violated patients' privacy rights and could have resulted in a fine, audit, or investigation of her employer by the federal Office of Civil Rights. The Commission has previously upheld a skip in progressive discipline where an employee had accessed PHI without a job-related reason and shared PHI with persons outside the DOC without clear legal authorization. See *Salinas v. DOC*, Dec. No. 39752 (WERC, 11/22). Similarly, we find that Ostrowski's serious misconduct warrants a skip in progressive discipline. Having previously received a one-day and three-day suspension, there was just cause for Ostrowski's discharge and it is therefore affirmed.<sup>1</sup>

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<sup>1</sup> The Commission has reviewed the objections of Ostrowski to the Proposed Decision. While the Commission is respectful of Mr. Pankratz's long history with the Commission, the objections seem largely based on ad hominem attacks against the hearing examiner and relitigating the arguments provided at hearing. It is noted specifically that the errors contained in the email of March 2023 regarding skipping steps in progressive discipline in no way affected the underlying rationale for doing so. Additionally, as pointed out by Respondent, the records retrieved by Ostrowski did contain sensitive and personally identifying information that is protected. Finally, as the Proposed Decision indicated, the information Ostrowski retrieved could have been obtained by going through proper channels and having the concerning portions of the documents redacted. After review of the record, considering the objections of Ostrowski, and reviewing the Respondent's response to the objections, the Commission is satisfied that affirmation of the discharge is the proper outcome in this matter.

Issued at the City of Madison, Wisconsin, this 21<sup>st</sup> day of December 2023.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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James J. Daley, Chairman