

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

JON CHRISTIANSEN, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0598

Case Type: PA

DECISION NO. 40231

Appearances:

Jon Christiansen, 6361 South 27th Street, Lot 91, Franklin, Wisconsin, appearing on his own behalf.

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 September 5, 2023, Jon Christiansen filed an appeal with the Wisconsin Employment Relations Commission, asserting he had been suspended for five days without just cause by the State of Wisconsin Department of Corrections (DOC). The appeal was assigned to Commission Examiner Peter G. Davis.

A hearing was held in Milwaukee, Wisconsin on October 27, 2023. The parties thereafter provided supplemental exhibits and written argument-the last of which was received December 4, 2023. On December 13, 2023, Examiner Davis issued a Proposed Decision and Order affirming the five-day suspension of Christiansen by the DOC. The parties did not file objections by the given deadline of December 18, 2023.

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

FINDINGS OF FACT

1. At the time of his suspension, Jon Christiansen was employed by the State of Wisconsin Department of Corrections, Division of Community Corrections (DOC) as an Office Operations Associate, aka Status Keeper. He had permanent status in class.

2. On August 8, 2023, Christiansen was suspended by DOC for five days for refusing to use the office “in and out board” on three separate days in July 2022.

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 § 230.44(1)(c), Stats.

2. The State of Wisconsin Department of Corrections had just cause, within the meaning of Wis. Stat. § 230.34(1)(a) to suspend Jon Christiansen for five days.

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

ORDER

The five-day suspension of Jon Christiansen by the State of Wisconsin Department of Corrections is affirmed.

Issued at the City of Madison, Wisconsin, this 28th day of December 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.

Jon Christiansen 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 Christiansen 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).

Christiansen admits he refused to use the “in and out” board but contends there nonetheless is no just cause for the suspension because: (1) the suspension is retaliation related to an ongoing dispute with his immediate supervisor; (2) other employees do not use the board; (3) his appeal of a prior three day suspension for the same conduct was still pending; and (4) use of the board placed his life at risk due to COVID related health concerns.

As to the retaliation defense, the Commission finds no persuasive support in the record. While Christiansen does have conflicts with his supervisor, it is clear that the suspension was based on his ongoing refusal to use the board.

As to the claim that others do not use the board from time to time and are not disciplined, Christiansen did not provide specifics as to when that conduct occurred. More importantly, there is a substantial distinction between occasional failure to use the board and Christiansen’s outright refusal. Thus, this disparate treatment defense is rejected.

Turning to Christiansen’s belief that he was insulated from further discipline because he had appealed a three-day suspension for the same conduct, the Commission does not doubt that Christiansen believed this to be true. However, there is no support in the law for his assumption. It is noteworthy that at the time of the July 2022 misconduct, he had not yet filed an appeal. Thus, his refusal could not have been informed by this belief. It is also noted that his three-day suspension was affirmed by the Commission in August 2022-prior to the August 2023 imposition of the instant five-day suspension.

Lastly, there is the contention that Christiansen had no obligation to comply with the DOC directive because use of the board unnecessarily exposed him to others and placed his health at risk. As noted in the Commission's August 2022 decision, there is a procedure available to Christiansen whereby he can request a reasonable accommodation for his health concerns. Then as now, Christiansen has not utilized that procedure. While a reasonable accommodation (such as use of Outlook) may well be available, it is incumbent on Christiansen to use that procedure. In the absence of a granted accommodation request, Christiansen was obligated to obey the DOC directive to use the board and his refusal to do so was misconduct.

As to the issue of whether his misconduct warranted a five-day suspension under a just cause standard, Christiansen had already received a three-day suspension for the same misconduct. Thus, receipt of a progressive five-day suspension clearly meets the just cause standard. Therefore, the Commission affirms the suspension.

Issued at the City of Madison, Wisconsin, this 28th day of December 2023.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman