

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

CHRISTINE FRITSCHÉ, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0604

Case Type: PA

DECISION NO. 40249

Appearances:

Nicholas Fairweather, Attorney, Hawks Quindel S.C., 409 East Main Street, P.O. Box 2155, Madison, Wisconsin, appearing on behalf of Christine Fritsche.

David Makovec, Attorney, Department of Administration, 101 East Wilson Street, P.O. Box 7864, Madison, Wisconsin, appearing on behalf of the State of Wisconsin Department of Corrections.

DECISION AND ORDER

On November 1, 2023, Christine Fritsche filed an appeal with the Wisconsin Employment Relations Commission asserting she had been suspended without just cause for five days by the State of Wisconsin Department of Corrections (DOC). The matter was assigned to Commission Hearing Examiner Peter G. Davis.

A telephone hearing was held on January 11, 2024, and the parties thereafter filed written argument by January 31, 2024. On February 6, 2024, Examiner Davis issued a Proposed Decision and Order, finding that the DOC did not have just cause to suspend Christine Fritsche for five days, but did have just cause to suspend her for three days. The DOC filed objections to the Proposed Decision on February 12, 2024. Fritsche filed a response to the objections on February 19, 2024.

Having considered the matter, the Commission makes and issues the following:

FINDINGS OF FACT

1. Christine Fritsche, herein Fritsche, is employed as a Nurse Clinician 2 by the State of Wisconsin Department of Corrections at the Prairie Du Chien Correctional Institution. At the time of her September 6, 2023, suspension, she had permanent status in class.

2. On May 2, 2023, Fritsche engaged in misconduct when she failed to speak to a patient. Her misconduct did not cause the patient to be in serious risk of harm.

3. On May 5, 2023, Fritsche did not engage in misconduct as to a patient.

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 to suspend Christine Fritsche for five days but did have just cause to suspend her for three days.

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

ORDER

The five-day suspension received by Christine Fritsche from the State of Wisconsin Department of Corrections is modified to the three-day suspension and Fritsche shall be made whole for the difference with interest.¹

Issued at Madison, Wisconsin, this 27th day of February 2024.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman

¹ See Wis. Admin. Code § ERC 94.07.

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.

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

Christine Fritsche had permanent status in class at the time of her suspension and her appeal alleges that the suspension was not based on just cause. Fritsche is accused of having engaged in misconduct in two separate patient interactions.

On May 2, 2023, Fritsche was the on-call nurse. She received a telephone call from the Institution reporting that a patient was not feeling well and had a blood sugar level of 468. Fritsche knew that the patient's doctor had ordered that he receive a call if the patient's blood sugar level was over 450. Fritsche heard the number 408 instead of 468. Thus, she did not call the doctor. She saw the patient the next morning.

Applicable DOC policy (DOC Policy 500.00.04 (IV) D), specifies that Fritsche should have called the Institution and talked to the patient. Fritsche did not do so as she was familiar with the patient and presumed that he was not feeling well because of the high blood sugar. However, at a minimum, the disparity between what was reported to her (as verified by a contemporaneous Incident Report and related email) and what she reports she heard supports the wisdom and necessity of at least speaking to the patient. She could also have potentially verified that the patient's not feeling well was related only to his high blood sugar reading. Her failure to do so was misconduct. However, because the patient was being physically monitored at least every 15 minutes by Institution staff, the patient's health was not at serious risk.

On May 5, 2023, Fritsche received a report of patient health concerns from Institution staff. Fritsche had seen that patient shortly before receiving the report and had properly assessed his concerns. Fritsche also knew that later that day, the patient would be seen by a doctor. Fritsche had a chance encounter with the patient upon his return and she observed the patient had redness on his arm. The next day, the patient presented with hives as a result to an adverse reaction to

medication and was treated. The Commission finds no misconduct by Fritsche as to this interaction.

Even with no misconduct on May 5, 2023, DOC argues that a skip in progression from Fritsche's existing one day suspension to a five-day suspension is warranted under a just cause standard because the patient's health was at serious risk. Because the patient was being closely monitored by Institution staff, the Commission concludes otherwise and that the standard progression to a three-day suspension is appropriate. Fritsche is to be made whole for the difference in lost wages with interest.

Issued at the City of Madison, Wisconsin, this 27th day of February 2024.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman