

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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CLARISSA RAMIREZ, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0624

Case Type: PA

DECISION NO. 40364

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**Appearances:**

Clarissa Ramirez, 1697 Amy Street, Green Bay, Wisconsin, appearing on her own behalf.

Nicole M. 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 February 25, 2024, Clarissa Ramirez 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 Zoom hearing was held on April 23, 2024, by Examiner Jaw. The parties made oral argument at the conclusion of the hearing. On April 24, 2024, Examiner Jaw issued a Proposed Decision and Order, affirming the discharge of Clarissa Ramirez by the DOC. The parties did not file any objections to the Proposed Decision by the given deadline of May 6, 2024.

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

**FINDINGS OF FACT**

1. Clarrisa Ramirez (Ramirez) was employed by the State of Wisconsin Department of Corrections (DOC), Division of Adult Institutions, as a Correctional Officer at Green Bay Correctional Institution (GBCI) and had permanent status in class at the time of her discharge.

2. The DOC is a state agency responsible for the operation of various corrections facilities including GBCI, a maximum-security facility located in Green Bay, Wisconsin.

3. On August 30, 2023, Ramirez was tardy for work for the sixth time in the 2023 calendar year.

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 did have just cause, within the meaning of § 230.34(1)(a), Stats., to discharge Clarrisa Ramirez.

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

### **ORDER**

The discharge of Clarrisa Ramirez is affirmed.

Issued at the City of Madison, Wisconsin, this 16<sup>th</sup> day of May 2024.

**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.

Ramirez 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 Ramirez 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).

It is undisputed that Ramirez was tardy for the sixth time in 2023 on August 30, 2023. Thus, misconduct has been established. The progressive discipline schedule set forth in Executive Directive #2 allows staff two tardies in a calendar year; the third tardy results in a Letter of Expectation (LOE); the fourth tardy results in formal discipline; and each additional tardy results in progressive formal discipline. The progression schedule for formal discipline specifies a one-day suspension, then a three-day suspension, then a five-day suspension. The appointing authority may repeat a five-day suspension one time for attendance violations. The final level of progression is discharge.

The record established that Ramirez was issued an LOE on March 21, 2023, for her third tardy in calendar year 2023. On August 18, 2023, Ramirez received a three-day suspension for serious work rule violations. Following progression, on August 21, 2023, Ramirez was issued a five-day suspension for her fourth tardy in the 2023 calendar year. On October 18, 2023, Ramirez received a repeat five-day suspension for her fifth tardy in the calendar year. After her sixth tardy in 2023, the DOC followed its progressive disciplinary schedule and discharged Ramirez on January 4, 2024. Such a disciplinary response does not offend a just cause standard.

Nevertheless, Ramirez argues that the discharge should be rejected because she arrived at the institution on time, but was caught at the security doors, which then resulted in her being tardy to her post. While the Commission is sympathetic, we do not find this argument to be a mitigating basis for rejecting the discipline. Staff are considered on time when they arrive at their assigned post at the scheduled start of their shift, and Ramirez was put on notice on multiple occasions of those clear expectations.

Ramirez next contends that she was suffering from migraines, and she was pursuing FMLA consideration. She testified that she was trying her best to be on time. She was actively seeking treatment and had a three-week span without being tardy. While the Commission understands that it may be difficult to always arrive at work on time, especially when you are experiencing health issues, the State has a valid operational interest in timely employee arrival. Additionally, Ramirez was given repeated opportunities to correct her behavior. Accordingly, we reject this argument.

Ramirez also asserts that her discipline should be reduced due to the allegation of disparate treatment in comparison to the lack of discipline issued for tardies at GBCI. Ramirez presented testimony that there are occasions when shift changes are not closely monitored by a supervisor. Thus, there inevitably are times where staff may be tardy, but are not recorded as tardy because supervisors are unaware. However, credible testimony established that if management are aware of the tardies, staff are held equally accountable. Therefore, the Commission does not find this argument to be a persuasive basis for rejecting the discipline.

The Commission has previously held that it remains a fundamental employee responsibility to arrive at work on time. Failure to do so negatively impacts the State's operational needs. Given the foregoing, we conclude that the discharge was not excessive. There was just cause for Ramirez's discharge and it is therefore affirmed.

Issued at the City of Madison, Wisconsin, this 16<sup>th</sup> day of May 2024.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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James J. Daley, Chairman