

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

HEATHER KRUEGER, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0640

Case Type: PA

DECISION NO. 40374-A

Appearances:

Anthony Gunderson, 830 Wilcox Street, Waupun, Wisconsin, appearing on behalf of Heather Krueger.

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 April 25, 2024, Heather Krueger filed an appeal with the Wisconsin Employment Relations Commission asserting she had been suspended for three days without just cause by the State of Wisconsin Department of Corrections (DOC). The appeal was assigned to Commission Examiner Katherine Scott Lisiecki.

Examiner Lisiecki held the hearing in Waupun on June 28, 2024. Additional testimony was taken via telephone on June 27, 2024. The parties submitted written closing arguments on July 8, 2024.

On July 18, 2024, Examiner Lisiecki issued a Proposed Decision and Order, affirming the three-day suspension of Heather Krueger by the DOC. No objections to the Proposed Decision were filed by the parties by the given deadline of July 23, 2024.

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

FINDINGS OF FACT

1. Heather Krueger (Krueger) is employed by the State of Wisconsin Department of Corrections (DOC), as a correctional officer at Waupun Correctional Institution (WCI). She had permanent status in class when she was suspended.
2. On multiple dates between August and September 2023, while on temporary assignment to Dodge Correctional Institution (DCI), Krueger made negative comments about a coworker.
3. Following an investigation, DOC suspended Krueger for three days for harassing, demeaning, treating discourteously, bullying 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 Corrections had just cause within the meaning of Wis. Stat. § 230.34(1)(a) to suspend Heather Krueger 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 three-day suspension of Heather Krueger by the State of Wisconsin Department of Corrections is affirmed.

Issued at Madison, Wisconsin, this 22nd day of August 2024.

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.

Heather Krueger had permanent status in class at the time of her suspension and her appeal alleges that the suspension was not based on just cause.

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

Krueger was employed as a correctional officer at Waupun Correctional Institution (WCI) and was temporarily assigned to Dodge Correctional Institution (DCI). Krueger worked on a unit next to a female coworker, K.A. On multiple dates between August and September 2023, Krueger made negative comments about and glared at K.A. Sergeant Noah Bentz testified that Krueger made “sly comments” about K.A. talking with inmates for too long. He testified that her glaring was witnessed by inmates. Officer Jennifer Barczak testified that Krueger told her (Barczak) that if K.A. “had been that way over at WCI [Waupun Correctional Institution], she would have been taken away in a body bag.” Sergeant David Zieroth further testified that Krueger made a “snarly” comment about K.A. fraternizing.

Krueger argues that accounts differ as to the exact phrasing that she used about K.A. However, it is normal for eyewitnesses to have difficulty recalling the exact wording of an interaction heard days or even weeks prior. Although accounts vary as to the exact phrasing used, they all agree that Krueger’s tone was inappropriate and hostile, and that she directed this hostility towards K.A.

Krueger argues that K.A. had yelled at her on two previous occasions, and that at one point K.A. was careless with security measures in a way that could have jeopardized Krueger’s safety. These are serious concerns. However, the appropriate reaction to being bullied by a coworker is not to make snide comments or to behave unpleasantly in return, but to report the coworker’s misbehavior, especially if there are safety concerns.

Krueger further argues that her comment to Barczak (“taken away in a body bag”) did not have malicious intent. However, Krueger’s clear dislike of K.A. and continual insinuations that

K.A. was fraternizing with inmates means that her remarks could plausibly be interpreted as malicious or, worse, threatening.

Krueger argues that K.A. was terminated for wrongdoing but offers no evidence of this beyond self-serving hearsay. Further, K.A.'s actions are irrelevant to this proceeding. It is not the veracity of Krueger's statements but the appropriateness that is at issue here. If Krueger had serious concerns with K.A.'s behavior, Krueger should have elevated those concerns through the proper channels by making a report to her supervisor, not by making insinuations and snide remarks.

Krueger argues that she was never notified that her actions were in violation of DOC policy and wasn't given an opportunity to correct her behavior. Krueger says her training was shortened from the normal seven weeks to four weeks due to the pandemic, and that her supervisors rushed her through signing the policy acknowledgments. However, investigator Rachel Conway testified that employees receive annual harassment "refresher" trainings.

Krueger was harassing, demeaning, and bullying when she glared at K.A. and made comments insinuating that K.A. was fraternizing with inmates. Krueger was previously disciplined for similar behavior – accusing a coworker of being "dirty" – at WCI. In January 2024, she received a one-day suspension for calling a sergeant "dirty" and calling their integrity into question. Assistant Administrator Paul Kemper testified about how important it is that employees are treated respectfully, because negative comments can make an employee feel targeted, leading to overtime issues or withdrawal. Krueger's behavior could have jeopardized the institution's safety by giving inmates an opportunity to pit employees against each other ("staff splitting"). Further, Krueger failed to model respectful and appropriate behavior for inmates, undermining the DOC's rehabilitative mission. The State followed progressive discipline, following Krueger's previous one-day suspension for similar conduct with this three-day suspension. There was just cause for the three-day suspension, and the suspension is therefore affirmed.

Issued at the City of Madison, Wisconsin, this 22nd day of August 2024.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman