

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

LAMIN SANNEH, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF HEALTH SERVICES, Respondent.

Case ID: 2.0148

Case Type: PA

DECISION NO. 40384

Appearances:

Shunette Campbell Hunter, Attorney, P.O. Box 14687, Madison, Wisconsin, appearing on behalf of Lamin Sanneh.

David G. Makovec, Attorney, Department of Administration, 101 East Wilson Street, 10th Floor, P.O. Box 7864, Madison, Wisconsin, appearing on behalf of the State of Wisconsin Department of Health Services.

DECISION AND ORDER

On March 6, 2024, Lamin Sanneh (Sanneh) 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 Health Services (DHS). The matter was assigned to Commission Examiner Anfin Jaw.

An in-person hearing was held on May 6, 2024, and a continued Zoom hearing on May 13, 2024, by Examiner Jaw. The parties submitted written closing arguments on May 30, 2024. On June 14, 2024, Examiner Jaw issued a Proposed Decision and Order modifying the five-day suspension to a three-day suspension.

On June 20, 2024, Sanneh filed objections to the Proposed Decision and Order and requested oral argument. On June 24, 2024, the DHS filed a response to Sanneh's objections. The request for oral argument was denied.

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

FINDINGS OF FACT

1. Lamin Sanneh (Sanneh) is employed by the State of Wisconsin Department of Health Services (DHS) as a Psychiatric Care Technician-Advanced (PCT-A) at Mendota Mental Health Institute (MMHI), and he had permanent status in class at the time of his suspension.

2. MMHI is a psychiatric hospital located in Madison, Wisconsin, operated by DHS, a state agency of the State of Wisconsin.

3. On September 24, 2023, Sanneh failed to comply with MMHI's Intervention Options Continuum (IOC) Policy when he chose to approach and swing a patient's room door wide open, contributing to the escalation of the situation from a verbal interaction to a physical takedown.

4. Sanneh decentralized the patient with an unapproved choke hold maneuver by wrapping his right arm around the patient's neck.

5. Sanneh did not violate State of Wisconsin work rule #1.

6. Sanneh did not violate State of Wisconsin work rule #13.

7. Sanneh did not violate State of Wisconsin work rule #14.

8. DHS suspended Sanneh for five days for the conduct referenced in Finding of Fact 3 and 4, as well as a violation of State of Wisconsin work rules #1, #2, #13, and #14.

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 Health Services did not have just cause within the meaning of Wis. Stat. § 230.34(1)(a) to suspend Lamin Sanneh for five days but did have just cause to suspend him 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 of Lamin Sanneh by the State of Wisconsin Department of Health Services shall be modified to a three-day suspension, and he shall be made whole for the difference with interest.¹

Issued at Madison, Wisconsin, this 2nd day of July 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., states in pertinent part:

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.

Sanneh 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 Sanneh 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).

On September 24, 2023, Sanneh and his coworker, Malang Njie (Njie), escorted an agitated patient to a “chill out” room after the patient became disruptive and profane around other patients and staff members. After walking down the hall, the patient enters his room and closes the door behind him, but then cracks the door open a few inches to reach out and flip on his light switch, located just outside his door. Sanneh places his hand onto the outside handle of the door and holds on for safety reasons and instructs the patient that his room time would be extended each time he opens the door. As Sanneh and the patient are talking, the door slowly inches closer to being closed, with only the patient’s arm slicking out, and one hand on the light switch. The patient then fully retracts his arm and hand, as he is now completely inside the room.

Throughout this interaction between Sanneh and the patient, his coworker Njie is standing about eight feet away from them, observing. The moment the patient is completely inside his room, with the door cracked open an inch or two, Njie approaches the door within a foot, while Sanneh swings the door wide open. Njie reaches forward with an upward motion with his left hand toward the patient’s face. The patient reacts by leaning back as Njie reaches for him, then appears stunned for a second. Njie steps back a foot. At this point, both Sanneh and Njie are about two feet away from the patient. The patient appears to say something as Sanneh moves towards him within a foot. As Sanneh gets closer, the patient makes a fist with his right hand and swings straight at Sanneh. The patient misses Sanneh, but then moves forward towards Njie and takes a few swings at Njie. Sanneh immediately wraps his right arm around the patient’s neck and decentralizes the patient to the ground. Sanneh and Njie restrain the patient, joined by other staff. A spit mask was then placed on the patient.

Sanneh and Njie completed incident reports immediately after the incident. Both report that the patient was spitting at them during the interaction at the patient's door.

About a week or so later, Sanneh files a worker's compensation claim for an injury he suffered to his knee during the September 24 incident. DHS then initiated an investigation, including reviewing video of the incident. It is important to note that the video footage of the incident does not contain audio. Additionally, the video can be viewed frame by frame within a few hundredths of a second. The investigation concluded that both Sanneh and Njie had violated multiple work rules, including State of Wisconsin work rules:

- #1: Falsification of records, knowingly giving false information or knowingly permitting, encouraging or directing others to do so. Failing to provide truthful, accurate and complete information when required.
- #2: Failure to comply with written agency policies or procedures. Specifically:
 - MMHI Caregiver Policy #1D.17: Mendota Mental Health Institute is committed to provide a safe, humane, and therapeutic environment for every individual receiving services. Employees and all other persons with whom patients come into contact shall treat them with courtesy, respect, recognition or their dignity and individuality and shall provide them considerate care and treatment. The abuse or neglect of a patient or the misappropriation of his/her property is incompatible with these goals and is expressly prohibited.
 - MMHI Intervention Options Continuum (IOC) Policy #2D.09: Safety is promoted by using the least amount of force necessary to maintain a safe environment. The emphasis is on verbal interventions, encouraging patients to make positive choices...Every staff member is accountable for his/her actions. Holds and techniques shall be consistent with MMHI training, policies and procedures. Staff shall use only the amount of force necessary to safely contain a situation...All MMHI staff trained in IOC are expected to employ verbal techniques to diffuse potentially dangerous situations.
- #13: Threatening or attempting to inflict or inflicting bodily harm or mental anguish to another person.
- #14: Intimidating, interfering with, harassing, demeaning, treating discourteously, or bullying; or using profane or abusive language in dealing with others.

In its investigation, DHS concluded that the patient was not spitting at either Sanneh or Njie. Consequently, DHS argues that Sanneh provided false information to excuse his behavior by stating that the patient was spitting at him and his coworker, Njie. A meticulous review of the video footage does not confirm that the patient was not spitting. Along with Sanneh's credible testimony and documented incident report that the patient was spitting, and the undisputed fact

that a spit mask was placed on the patient, the Commission concludes that the patient was spitting during the September 24 incident. Therefore, we find that Sanneh did not violate State of Wisconsin work rule #1.

DHS next contends that Sanneh used an unapproved choke hold when he decentralized the patient to the ground. Credible testimony from MMHI's Security Director, Janet Borucki, established that putting your arm around someone's neck is a choke hold. Choke holds are not a trained or approved technique because they are dangerous and can be potentially fatal. While the Commission does not believe Sanneh's choke hold was intended to inflict harm on the patient, it is a clear violation of IOC policies and procedures for managing physical altercations. No other evidence was presented that Sanneh violated State of Wisconsin work rules #13 and #14. Thus, the record failed to establish a violation of those work rules.

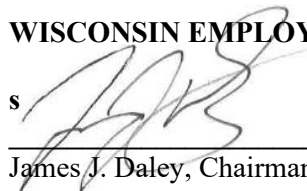
Credible testimony and evidence from DHS established that the expectation for both Sanneh and Njie was to attempt to deescalate the situation. Once the patient was completely in his room, the situation was under control. At that point, Sanneh or Njie could have shut the patient's door and secured it from opening. The video evidence shows that that peaceful option was available to both Sanneh and Njie to safely contain the situation. Sanneh's conduct, by swinging open the patient's door and approaching him quickly, escalated the situation. Sanneh swinging open the door, along with Njie's movement forward, were the catalyst that turned the verbal interaction into a physical takedown. Instead of diffusing the situation, Sanneh and Njie exacerbated it. Thus, the Commission is persuaded that Sanneh violated State of Wisconsin work rule #2, specifically MMHI's IOC Policy, when he failed to verbally diffuse a potentially dangerous situation with an agitated patient, and instead chose to swing the patient's door wide open, unnecessarily escalating and provoking the patient. This action, along with the unapproved choke hold afterwards, establishes misconduct.

Turning now to a just cause consideration of the level of discipline Sanneh received, the record reflects that the five-day suspension was imposed as a two-level skip in the normal disciplinary progression based on DHS's conclusion that Sanneh engaged in egregious misconduct in violation of State of Wisconsin work rules #1, #2, #13, and #14. Having rejected the alleged misconduct except for that referenced in Finding of Fact 3 and 4, the Commission concludes that there is no just cause basis for a two-level skip in progression. However, the misconduct referenced in Finding of Fact 4 and in particular, Finding of Fact 3's escalation of conflict, do provide just cause for imposition of a one-level skip in the disciplinary progression applicable to Sanneh. The escalation of the conflict engaged in by Sanneh independently would warrant the skip in progressive discipline herein imposed. Therefore, the five-day suspension shall be modified to a three-day suspension and Sanneh shall be made whole for the difference with interest.

Issued at Madison, Wisconsin, this 2nd day of July 2024.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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James J. Daley, Chairman