

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

CORY SMITH, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0630

Case Type: PA

DECISION NO. 40385

Appearances:

Cory Smith, 1200 River Rd., Lot 20, Sparta, Wisconsin, appearing on his own behalf.

David Makovec, 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 March 28, 2024, Cory Smith filed an appeal with the Wisconsin Employment Relations Commission asserting he had been discharged without just cause by the State of Wisconsin Department of Corrections (DOC). The appeal was assigned to Commission Examiner Katherine Scott Lisiecki.

A telephone hearing was held on June 7, 2024, by Examiner Lisiecki. The parties made oral closing arguments at the end of the hearing. On June 17, Examiner Lisiecki issued a Proposed Decision and Order affirming the discharge of Cory Smith by the DOC. The parties did not file objections to the Proposed Decision by the given deadline of June 24, 2024.

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

FINDINGS OF FACT

1. Cory Smith (Smith) was employed by the State of Wisconsin Department of Corrections (DOC), as a correctional officer at Jackson Correctional Institution (JCI). He had permanent status in class when he was discharged.

2. On November 27, 2023, Smith engaged in an argument with an inmate, used a loud and aggressive tone, and directed profanity at the inmate.

3. Following an investigation, DOC discharged Smith for harassing, demeaning, treating discourteously, or using profane or abusive language, 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 discharge Cory Smith.

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

ORDER

The discharge of Cory Smith by the State of Wisconsin Department of Corrections is affirmed.

Issued at Madison, Wisconsin, this 5th day of July 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.

Cory Smith had permanent status in class at the time of his discharge and his appeal alleges that the discharge was not based on just cause.

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

Smith was employed as a correctional officer at Jackson Correctional Institution (JCI). On November 27, 2023, Smith was on duty when an inmate entered the building for a psychological evaluation. The inmate, B.N., was wearing a hat; Smith told him to take the hat off. This demand quickly turned into a loud argument between Smith and B.N. Multiple employees testified that Smith's tone was loud and aggressive, that he directed profanity at B.N., and that his tone and words escalated the situation rather than de-escalating it. Smith's behavior was also observed by nearby inmates.

Smith argues that accounts differ as to the exact profane language he directed at B.N., and therefore are not reliable. 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 Smith's tone was loud and aggressive, and that he directed profanity at B.N. Further, Warden Lizzie Tegels testified that, at Smith's disciplinary hearing, Smith said "What, am I being fired for swearing at an inmate?" Tegels interpreted this as an admission. In the hearing, Smith testified that he used the word "hell" in his interaction with B.N.

Smith argues that he was trying to engage in "verbal judo" with inmate B.N., to de-escalate the situation. *See Peterson v. DOC*, Dec. No. 39411 (WERC, 4/22). However, no situation existed before Smith began haranguing B.N. for a minor rule infraction. Smith's loud tone and aggressive attitude incited an incident rather than resolving one. Warden Tegels explained that staff occasionally need to raise their voice in emergency situations, or in loud areas like the recreation area, but there is no need to use profanity or a raised voice – especially toward an inmate seeking

a psychiatric evaluation. Although wearing a hat is a rule violation, it is not a security issue, and Tegels testified that it could have been dealt with by issuing a warning or a conduct report.

Smith has a long history of discipline for similar behavior. In September 2021, March 2021, and June 2020, he received suspensions for violating Work Rule 14, “intimidating, interfering with, harassing, demeaning, treating discourteously, or using profane or abusive language in dealing with others.” Smith argues that his previous Work Rule 14 violations were for behavior towards his coworkers, not towards inmates. This is a distinction without a difference. The position description for correctional officers explains that they are required to “[m]aintain professional interactions with staff, PIOC’s, and the public,” “[c]ommunicate professionally with all staff, PIOC’s, visitors, and members of the public through the use of appropriate and respectful language and interactions,” and “[m]aintain professional demeanor during difficult and stressful situations.” *See Exhibit R-2, pg. 3.* Further, Smith’s argument is simply untrue: Smith previously received a three-day suspension on March 29, 2021, for telling an inmate to “Shut the fuck up.” Smith has consistently failed to communicate professionally and maintain a professional demeanor with those he encounters in the workplace.

Lastly, Smith argues that by discharging him, Warden Tegels was retaliating against him for an altercation he (Smith) had with Tegels’s husband twenty years ago. Smith offered no evidence to support this claim besides his own self-serving contention. His claim is further undercut by his pattern of progressive discipline for inappropriate behavior in the workplace, which has culminated in this discharge.

Smith was harassing, demeaning, and discourteous – and used profane or abusive language – in his November 27, 2023, altercation with inmate B.N. Warden Tegels testified about how important it is that correctional officers are respectful towards inmates, model appropriate behavior, and avoid escalating situations. Smith’s behavior undermined the DOC’s rehabilitative mission and could have jeopardized the institution’s safety and the safety of inmates. The State followed progressive discipline, following Smith’s previous five-day suspensions with this discharge. There was just cause for the discharge, and the discharge is therefore affirmed.

Issued at the City of Madison, Wisconsin, this 5th day of July 2024.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman