

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

LISA BLACK, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF HEALTH SERVICES, Respondent.

Case ID: 2.0151

Case Type: PA

DECISION NO. 40395-A

Appearances:

Lisa Black, 2921 North 39th Street, Milwaukee, Wisconsin, appearing on her 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 Health Services.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

On May 15, 2024, Lisa Black filed an appeal with the Wisconsin Employment Relations Commission asserting that she had been suspended for five days without just cause by the State of Wisconsin Department of Health Services (DHS). On May 30, 2024, DHS filed a motion to dismiss asserting that Black's Step 1 grievance was not timely filed. At the request of the Commission, both parties supplemented the evidence upon which the motion is to be decided and the record was closed July 15, 2024.

On July 24, 2024, the Commission issued an Order denying the motion to dismiss.

A zoom audio only hearing was held by Commission Examiner Peter G. Davis on August 26, 2024.

Pursuant to Wis. Stat. § 227.46(3)(a), Examiner Davis has been given final authority to issue the Commission's decision.

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

FINDINGS OF FACT

1. Lisa Black, herein Black, is employed by DHS and had permanent status in class at the time of her suspension.,

2. On March 20, 2024, Black was absent from work and did not call in before or after the start of her shift.

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 just cause to suspend Lisa Black for five days but did have just cause to suspend her for three days.

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

ORDER

The five-day suspension imposed on Lisa Black by the State of Wisconsin Department of Health Services is modified to a three-day suspension and Black shall be made whole for two days wages plus interest.¹

Issued at Madison, Wisconsin, this 29th day of August 2024.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Peter G. Davis
Hearing Examiner

¹ See Wis. Admin. Code ERC 94.07.

**MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSIONS OF LAW 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.

Lisa Black 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 Black 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).

DHS has work rules that require employees to call in if they will be absent or tardy. The need for such work rules is self-evident and acknowledged by Black. Black followed those work rules when she called in absent on March 19, 2024. However, Black was also absent on March 20, 2024, but unintentionally did not call. Thus, Black engaged in misconduct on March 20, 2024.

Turning to the question of whether there was just cause for a five-day suspension, the record reflects that Black had a one-day and a three-day suspension on her record in March 2024 and thus DHS was following the standard State disciplinary progression when it imposed a five-day suspension. Black argues among other matters that under a just cause standard, some consideration should be given to her 23 years of State service. The Commission agrees.² In consideration of Black's seniority, it is appropriate to reduce the five-day suspension to a three-day suspension and to make Black whole for the difference with interest.

Issued at Madison, Wisconsin, this 29th day of August 2024.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION



Peter G. Davis
Hearing Examiner

² See *Gomez v. DOC*, Dec. No. 39760 (WERC, 2/22)