

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

BRIDGETT PROSPER, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0631

Case Type: PA

DECISION NO. 40396

Appearances:

Cindy Irwin, 475 Courtland Avenue, Oshkosh, Wisconsin, appearing on behalf of Bridgett Prosper.

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 April 2, 2024, Bridgett Prosper filed an appeal with the Wisconsin Employment Relations Commission alleging that she had been discharged without just cause by the State of Wisconsin Department of Corrections (DOC). The appeal was assigned to Commission attorney Peter G. Davis to serve as hearing examiner.

A zoom hearing was scheduled for June 5, 2024, but postponed to June 26 at Prosper's request. Due to an unavailable witness, an additional zoom hearing was held July 5, 2024. The parties thereafter filed written argument by July 16, 2024.

On July 17, 2024, Examiner Davis issued a Proposed Decision and Order affirming the discharge of Bridgett Prosper by the DOC. The parties did not file objections by the given deadline of July 22, 2024.

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

FINDINGS OF FACT

1. Bridgett Prosper, herein Prosper, was a Correctional Officer at the Waupun Correctional Institution when she was discharged on January 30, 2024. She had permanent status in class.

2. On January 23, 2023, Prosper left a shift early without permission and without completing a requested incident report.

3. On July 16, 2023, Prosper failed to turn on her body camera for a brief period.

4. At the time of her discharge, Prosper had received a one-day, a three-day and a five-day suspension.

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 did have just cause to discharge Bridgett Prosper.

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

ORDER

The discharge of Bridgett Prosper by the State of Wisconsin Department of Corrections is affirmed.

Issued at the City of Madison, Wisconsin, this 25th 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.

Bridgett Prosper 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 Prosper was guilty of the alleged misconduct and that 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).

Two different episodes of alleged misconduct are cited in Prosper's discharge letter. As she was already at the five-day suspension level, either episode of misconduct—if proven—would move her to the discharge step in the standard DOC disciplinary progression.

As to the first instance of alleged misconduct, it is undisputed that on January 23, 2023, Prosper was ordered by Captain G to complete an incident report that day. She did not complete the report and left work before the end of her shift. Captain G noted that the report had not been completed and, prior to the end of Prosper's shift, was able to contact Prosper on her cell phone. Prosper advised Captain G that she was already ten minutes away from work. Captain G then directed Prosper to complete the incident report the next day. Prosper did not complete the incident report the next day but did complete it the day after that.

Prosper contends that her failure to complete the incident report is not misconduct because another supervisor agreed she could leave the shift early. There are several reasons why this contention is not persuasive. First, the supervisor who allegedly gave her permission to leave early persuasively testified that that he did not do so. Second, there is no evidence that the second supervisor was aware of Prosper's obligation to prepare an incident report. Thus, the evidence establishes that Prosper not only failed to complete the incident report as directed but also left her shift early without permission.

Prosper next asserts that other unnamed employees leave a shift early without permission and are not disciplined. Prosper did not provide the names of any specific individuals who were allowed to do so. Further, there is no evidence that employees are not disciplined if they leave early without permission and while under order to complete a task before they leave.

Prosper next argues that another employee (her brother) refused to prepare an incident report over the same matter and was not disciplined. The evidence establishes that it was a different supervisor who ordered her brother to prepare the report and that, upon his refusal because he was toward the end of a 16-hour shift, the supervisor directed him to prepare the report the next day- which he did. In contrast to her brother, Prosper did not object to the directive to prepare a report, gave Captain G no reason to believe that the report would not be prepared, left the shift early without permission, and then failed to comply with Captain G's decision to allow her to complete the report the next day. Therefore, the evidence as to her brother does not provide a persuasive basis for excusing Prosper's misconduct based on a disparate treatment theory. *See Morris v. DOC*, Dec. No. 35682-A (WERC, 7/15).

In light of the foregoing, the Commission is persuaded that Prosper engaged in misconduct on January 23, 2023, and can be subjected to discipline under the statutory just cause standard.

Turning to the July 16, 2023, alleged misconduct, Prosper is accused of failing to have her body camera on for a short period of time when she was interacting with an inmate who had attacked her brother on an earlier shift. Prosper is also accused of improperly failing to provide that inmate with a meal. Prosper admits she failed to have her body camera activated for a short period but contends her refusal to provide the inmate with a meal was justified by the inmate's refusal to comply with restrictions on his cell movement. Perhaps because her body camera was off, the evidence is inconclusive as to whether Prosper improperly failed to provide the meal. But the failure to have the body camera on is admitted misconduct.

Prosper contends that other unnamed employees failed to have activated their body cameras on for long periods of time prior to July 2023 and were not disciplined until after she received discipline. Without evidence of the employees' names, the timing of the alleged misconduct, or the status of their investigations at the time of Prosper's misconduct, Prosper did not and cannot meet her burden to establish disparate treatment. Further, the testimony that these employees all received three-day suspensions (as opposed to Prosper's discharge) proves nothing as the Commission does not know where in the disciplinary progression those employees stood at the time. Lastly, the evidence does establish that Prosper's brother received a five-day suspension as part of the standard disciplinary progression for not having his body camera on for less than one minute. Therefore, the evidence in the record does not support a persuasive basis for excusing Prosper's misconduct based on a disparate treatment theory.

In light of the foregoing, the Commission is persuaded that Prosper engaged in misconduct on July 16, 2023, and can be subjected to discipline under the statutory just cause standard.

While the Commission is not bound by the DOC progressive disciplinary schedule when it determines the level of discipline appropriate under the just cause standard, the Commission is satisfied that there is just cause for Prosper's discharge. She was a short-term employee (slightly

more than three years) who engaged in multiple acts of misconduct. Therefore, her discharge has been affirmed.¹

Issued at Madison, Wisconsin, this 25th day of July 2024.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman

¹In reaching this conclusion, the Commission acknowledges her contentions that she has been the victim of sexual harassment by male DOC employees and has been treated differently than male counterparts as to past disciplinary matters. As to sexual harassment, there may be other forums she can utilize to address that claim. As to past disparate treatment as to prior disciplinary matters, the time to raise those concerns was at the time of those disciplines.

The Commission also acknowledges Prosper's claims that there is relevance as to whether Captain G engaged in misconduct regarding the content of an incident report or to the fact that the Waupun warden and others have been arrested. Any alleged misconduct by Captain G has no relevance as to Captain G's credibility. The facts as to Prosper's interaction with Captain G are undisputed. Similarly, whether the warden or others are ultimately found guilty of criminal conduct has no bearing on whether DOC has proven that Prosper engaged in misconduct in these specific matters.