

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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NICOLE JOHNSON, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0645

Case Type: PA

DECISION NO. 40415

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Appearances:

Marcellus N. Parker, Attorney, Laster & Associates, LLC, 839 N. Jefferson Street, Suite 310, Milwaukee, Wisconsin, appearing on behalf of Nicole Johnson.

David 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 Corrections.

**DECISION AND ORDER**

On May 30, 2024, Nicole Johnson filed an appeal with the Wisconsin Employment Relations Commission asserting she had been suspended for one day without just cause by the State of Wisconsin Department of Corrections (DOC). The appeal was assigned to Commission Examiner Anfin Jaw Wise.

A zoom hearing was held on August 9, 2024, by Examiner Jaw Wise. The parties made oral argument at the conclusion of the hearing. On September 5, 2024, Examiner Wise issued a Proposed Decision and Order, affirming the one-day suspension of Nicole Johnson by the DOC. No objections were filed by the parties by the given deadline of September 10, 2024.

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

**FINDINGS OF FACT**

1. Nicole Johnson (Johnson) is employed by the State of Wisconsin Department of Corrections (DOC) as a Correctional Sergeant at Milwaukee Women's Correctional Center (MWCC) and had permanent status in class at the time of her one-day suspension.

2. The DOC is a state agency responsible for the operation of various corrections facilities including MWCC, a minimum-security center located in Milwaukee, Wisconsin.

3. On January 21, 2024, Johnson entered the correctional center after failing to successfully pass the metal detector, as required by policy.

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 to review 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 Nicole Johnson for one day.

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

### **ORDER**

The one-day suspension of Nicole Johnson by the State of Wisconsin Department of Corrections is affirmed.

Issued at Madison, Wisconsin, this 26<sup>th</sup> day of September 2024.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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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.

Nicole Johnson 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 Johnson 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).

It is undisputed that on January 21, 2024, Johnson failed to successfully pass the entrance metal detector three times at MWCC but entered the facility anyways. According to DOC's Entrance Procedures policy 306.00.36, effective 11/20/22, if an individual does not clear the metal detector after 3 attempts, a supervisor shall be contacted and report to the lobby. Since there was not an onsite supervisor that day at MWCC, an offsite supervisor at Robert E. Ellsworth Correctional Center (REECC) must be contacted to provide direction by phone.

The entry staff member on duty that day was Sergeant J.G., who did not contact a supervisor, per policy. When J.G. opened the security gate for another staff member, Johnson walked through and entered the facility.

DOC asserts that Johnson violated policy by knowingly entering the facility after failing to clear the metal detector. DOC concedes that Sergeant J.G. failed to follow policy that day, but J.G.'s failure does not relieve Johnson's duty to adhere to the safety and security protocol of the facility and her duty to follow policy. The Commission agrees. Thus, misconduct has been established.

Nonetheless, Johnson argues that her discipline should be rejected because of three main reasons. First, Johnson contends that J.G. failed to perform her duties as required and effectively "allowed" Johnson into the facility after failing to clear the metal detectors. As addressed above, J.G.'s failure to follow policy does not relieve Sergeant Johnson's duty to follow policy. Additionally, J.G. was issued progressive discipline for the policy violation and failure to perform her duties as required.

Second, Johnson claims that there is a lack of clarity in the entrance procedure policy. The policy, as written, states:

5. All individuals shall submit to inspection by walking through a device designed to detect metal or other unauthorized objects at any facility equipped with such a device.
  - a. If an individual does not clear the metal detector after 3 attempts, a supervisor shall be contacted and report to the lobby. With the supervisor present, the individual shall be given 2 more attempts to clear the metal detector. If after the two additional attempts the individual still does not clear the metal detector, the supervisor shall inform the individual they will not be allowed entrance into the facility. For employees, they will be considered unfit for duty for that scheduled shift. Employees shall report back to the institution for their next scheduled shift.
  - b. The Security Director/designee may allow for inspection by a hand-held metal detector ... for staff.
  - c. The Security Director/designee may authorize use of hand held metal detector [sic] in the absence of approved documentation if deemed necessary for institution operations.

Johnson argues that the policy, as written, cannot be followed by MWCC staff, because supervisors are frequently not on site, and as such, cannot be present to provide guidance per policy. The policy focuses on a supervisor being present, thus, Johnson maintains that the policy, as written, does not clarify what should happen in a situation like what happened on January 21, 2024. This argument is absurd, especially given the fact that Johnson admitted that, had she been working the entrance post, she would have contacted a supervisor at REECC if a staff member was not able to successfully pass the metal detector. Clearly, Johnson was aware of the policy and the basic requirement to contact a supervisor, whether onsite or offsite, when there's a failure to clear the metal detector.

Finally, Johnson explains that she showed a sincere willingness to comply with security protocols that day. After presuming that it was her boots that were setting off the metal detector, she offered to have J.G. use a handheld wand to check her, offered to take her boots off, offered to go home and come back, and also asked J.G. if there was anything else she wanted her to do. When J.G. responded no, and then opened the security gate for another staff member, Johnson assumed J.G. opened the door for both of them. At the hearing, Johnson testified that she was not trying to get away with anything, that she acted with integrity, and that she did everything in her power to comply. Johnson also claims that she was upset and immediately went to her post and asked a fellow sergeant to wand her to confirm it was her boots that were setting off the metal detectors. While Johnson may feel like she did everything in her power to comply with security protocols, we disagree. Johnson is a sergeant and should know better. The entrance procedures are clear and she knew she failed to clear the metal detectors. Under the circumstances, we do not find Johnson's arguments to be a mitigating basis for rejecting the discipline. Accordingly, the Commission finds that Johnson can be held accountable for her misconduct.

The safety and security at DOC institutions is of utmost importance. Entering the facility after knowingly failing to clear the metal detectors puts the facility, its staff, and those in DOC's care, at risk. Given the foregoing, it is concluded that there was just cause for Johnson's one-day suspension, and it is therefore affirmed.

Issued at Madison, Wisconsin, this 26<sup>th</sup> day of September 2024.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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James J. Daley, Chairman