

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

GILBERTO REYES, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0658

Case Type: PA

DECISION NO. 40433

Appearances:

Gilberto Reyes, 6820 24th Avenue, Kenosha, 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 July 10, 2024, Gilberto Reyes filed an appeal with the Wisconsin Employment Relations Commission asserting he had been suspended for one day without just cause by the State of Wisconsin Department of Corrections. The appeal was assigned to Commission Examiner Katherine Scott Lisiecki.

A Zoom hearing was held on September 10, 2024, by Examiner Lisiecki. The parties made oral arguments at the end of the hearing. On October 7, 2024, Examiner Lisiecki issued a Proposed Decision and Order rejecting the one-day suspension of Reyes by the DOC. The DOC filed objections to the Proposed Decision on October 14, 2024; Reyes did not file a response by the deadline given of October 21, 2024.

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

FINDINGS OF FACT

1. Gilberto Reyes (Reyes) is employed by the State of Wisconsin Department of Corrections (DOC), as a correctional officer at Racine Correctional Institution (RCI). He had permanent status in class when he was suspended.

2. On December 12, 2023, Reyes had to strip search an inmate. To protect the inmate's right to privacy, he closed the door to the room they were in.

3. Officer Keith Christiansen wanted the door open for his convenience. When Reyes closed the door, Christiansen came out of his office and made threatening gestures and rude comments to Reyes.

4. Reyes did not engage in the altercation until, after constant personal beratement and escalation of such by Christiansen, Reyes made a comment, which was either "Your Mama," "Your Father," or "Your Grandmother."

5. Following an investigation, DOC suspended Reyes for one day for using profane or abusive language, threatening to inflict bodily harm, 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 did not have just cause within the meaning of Wis. Stat. § 230.34(1)(a) to suspend Gilberto Reyes 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 Gilberto Reyes by the State of Wisconsin Department of Corrections is rejected. Reyes shall be made whole with interest.¹

Issued at Madison, Wisconsin, this 29th day of October 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., 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.

Gilberto Reyes 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 Reyes 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).

Reyes was employed as a correctional officer at Racine Correctional Institution (RCI). On December 12, 2023, Reyes was tasked with strip searching an inmate and was concerned over PREA (Prison Rape Elimination Act) compliance. He took the inmate into a private room and closed a door in order to ensure that the strip search was private. Interim-Warden Taylor testified that leaving the door open while conducting a strip search would violate the privacy of the Person in Our Care (PIOC) being searched and that privacy should be a priority in conducting the search to avoid violating the inmate's rights relating to privacy and dignity. At the same time, Officer Keith Christiansen was delivering mail and wanted to leave the door open.

This matter essentially boils down to a he-said/he-said instance with the Commission left to determine the credibility of the parties.² Reyes credibly testified that Christiansen came out of his office irritated and making remarks. Reyes told Christiansen that he was conducting a strip search and needed the door closed. Christiansen made a threatening gesture, called Reyes a "pussy," and told Reyes to meet him outside. Reyes tried to remain calm and professional, but ultimately replied with a benign and generic comment about either Christiansen's mother, father, or grandparent. While testimony was unclear and conflicting, it appeared to be something akin to "Yo Mama" or a derivative of such. His comment was not a threat, but simply a retort, and an especially weak one at that. After the altercation, Reyes promptly reported it to relating to his bullying of other staff, as well as some unreported conduct of similar behavior, and as such felt obligated to report the altercation.

² DOC did have a report that included testimony from a single PIOC that was supportive of Christiansen's version of events; however, given problematic elements as to the ability of that testimony to be accurate and the PIOC not being called as a witness, the WERC will instead focus on the two primary actors and their accounts of what occurred.

Christiansen's credibility is lacking. Tellingly, Christiansen's testimony stated that the altercation was "no big deal" but then, somewhat suspiciously, after seeing Reyes reporting the incident, Christiansen decided to go to the supervisor's office and give his story and file a subsequent report. Given Christiansen's past disciplinary history, this suggests the potential that Christiansen's report was defensive and an attempt to pre-emptively negate Reyes' version of events.

Christiansen instigated and escalated this encounter, and his behavior placed both inmates and staff at risk. He has been in altercations with RCI staff twice before, which have resulted in disciplines. In contrast, Reyes was zealous in his defense of an inmate's right to privacy. He remained reasonably calm and professional in response to Christiansen's inappropriate behavior. Reyes' single benign reply to Christiansen does not justify discipline.

Given the foregoing, there is no just cause for the suspension of Reyes by the State of Wisconsin Department of Corrections. Reyes shall be made whole with interest.

Issued at the City of Madison, Wisconsin, this 29th day of October 2024.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman