

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

TAMEKIA JOHNSON, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF HEALTH SERVICES, Respondent.

Case ID: 2.0153

Case Type: PA

DECISION NO. 40681

Appearances:

Maureen Beyer, 1208 W. Bent Ave., Oshkosh, Wisconsin, appearing on behalf of Tamekia Johnson.

Nicole Porter, 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.

DECISION AND ORDER

On June 24, 2024, Tamekia Johnson filed an appeal with the Wisconsin Employment Relations Commission asserting that she had been discharged without just cause by the State of Wisconsin Department of Health Services. The appeal was assigned to Commission Examiner Katherine Scott Lisiecki.

A telephone hearing was held on September 5, 2024, by Examiner Lisiecki. The parties submitted written closing arguments on October 10, 2024.

On October 11, 2024, Examiner Lisiecki issued a Proposed Decision and Order, affirming the discharge of Tamekia Johnson by the DHS. Johnson filed objections to the Proposed Decision on October 16, 2024, and the DHS filed a response on October 18, 2024.

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

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

FINDINGS OF FACT

1. Tamekia Johnson (Johnson) was employed by the State of Wisconsin Department of Health Services (DHS), as a Psychiatric Care Technician-Advanced at Winnebago Mental Health Institute. She had permanent status in class when she was discharged.

2. On February 27, 2024, Johnson yelled at a patient who was refusing to get out of bed and used improper restraint techniques to carry the patient out of her room.

3. During this interaction, Johnson told the patient that she was difficult.

4. Johnson failed to get supervisor approval to use restraint on a patient and failed to report her use of restraint to a nurse after the incident.

5. Following an investigation, DHS discharged Johnson for insubordination, attempting to inflict or inflicting bodily harm on another person, intimidating or bullying, and failure to comply with WMHI's Seclusion and Restraint 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 over this appeal pursuant to Wis. Stat. § 230.44 (1)(c).

2. The State of Wisconsin Department of Health Services had just cause within the meaning of Wis. Stat. § 230.34(1)(a) to discharge Tamekia Johnson.

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

ORDER

The discharge of Tamekia Johnson by the State of Wisconsin Department of Health Services is affirmed.

Issued at Madison, Wisconsin, this 22nd day of October 2024.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Katherine B. Scott Lisiecki
Hearing Examiner

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.

Tamekia Johnson 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 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).

Johnson was employed as a Psychiatric Care Technician-Advanced (PCT-A) at Winnebago Mental Health Institute (WMHI). On February 27, 2024, a young female patient, J.F., refused to get out of bed to get ready for the day. Certified Nursing Assistant (CNA) Annalise Shaw testified that Johnson entered J.F.'s room, turned on the light, and started yelling at J.F. PCT-A Jillene Milos testified that she also heard Johnson yelling at J.F. Shaw testified that Johnson pulled J.F.'s blanket off of her, pulled her legs, and then grabbed her wrist. Shaw testified that she (Shaw) then restrained J.F.'s other arm, following WMHI protocol, to ensure that the situation did not get out of control. Johnson and Shaw carried J.F. out of her room and into the hallway. During this interaction, Shaw testified that Johnson told J.F. that she was "the worst patient ever." Johnson admits that she told J.F. that she was difficult. After Johnson and Shaw had removed J.F. from the room, the patient stood up and walked to get changed. Shaw reported the situation to her supervisor a few days later.

Johnson claims that it was Shaw's idea to move J.F., and that they communicated before restraining the patient. However, this account is belied by Johnson yelling at J.F., making a hurtful comment, and later, at the hearing, expressing disgust toward J.F. for "whining." Johnson instigated this situation, and her use of force was motivated at least in part by antipathy toward the patient.

Jessica Lewis, a quality management nursing supervisor at WMHI, testified that the institution has specific procedures for physically restraining, or going "hands on" with, patients. Lewis testified that a patient "playing possum," or refusing to get out of bed, does not warrant going "hands on." If a patient refuses to get out of bed, staff should monitor them, notify a staff

manager, and try to negotiate a resolution. If staff has to move a patient, they need to ask a supervisor first, and then they must use proper technique. If staff has to use restraint in an emergency situation, such as a patient threatening their safety or the safety of others, staff must use proper technique, and then inform a nurse after the patient is safely restrained so the nurse can evaluate the patient.

It is uncontested that Johnson did not speak to a supervisor to get proper authorization before restraining J.F. Johnson admits that she failed to use proper technique to restrain J.F. Johnson further admits that she failed to report the incident to a supervisor afterwards.

However, Johnson argues that she did not harm J.F. because she (J.F.) was not bruised, crying, or in distress after the incident. However, Johnson clearly violated the WMHI Seclusion and Restraint Policy by failing to get permission to use restraint, having no justification to use restraint, using improper techniques to restrain J.F., and failing to notify a nurse afterwards. Johnson further abused and mistreated J.F. by yelling at and belittling her. WMHI employees are expected to treat patients in a “courteous, productive and respectful manner.” Even if Johnson did not injure J.F. or elicit a negative emotional reaction, Johnson still mistreated the patient and violated her rights.

Johnson further argues that she was subject to disparate treatment. An employee who raises a disparate treatment claim has the burden of proving that contention. The Commission has long recognized that disparities in discipline may, under certain circumstances, affirmatively defend against discipline despite the existence of misconduct. Underlying that position is the notion that if an employer treats one employee significantly more harshly than a similarly situated coworker for similar misconduct, inherent unfairness exists. *See Morris v. DOC*, Dec. No. 35682-A (WERC, 7/15).

Johnson first argues that Annalise Shaw also placed hands on J.F. but did not receive any discipline. However, Shaw did not commit similar misconduct, because she did not initiate the restraint, yell at J.F., or make bullying comments to her. Shaw credibly testified that she only restrained J.F. because Johnson was already “hands on” and protocol required two staff members to restrain a patient for their safety. Shaw also reported the incident to her supervisor, which Johnson failed to do.

Johnson argues that WMHI employee Brian Markee only received a one-day suspension for improperly restraining a patient without prior approval from a supervisor. However, the use of force may have been justified, and there is also no evidence that Markee yelled at or belittled the patient or failed to report the restraint. Further, Markee was later terminated from employment at WMHI for conduct similar to Johnson’s.

Johnson argues that WMHI employee Eric Wright only received one- and three-day suspensions for using his foot to remove a cord from a patient’s hand and making an inappropriate comment during a restraint, respectively. The first incident is clearly distinguishable: although Wright was belittling, like Johnson, he did not restrain a patient. The second incident is likewise

distinguishable: there is no evidence that the restraint was unjustified or unapproved, that Wright improperly restrained the patient, or that he failed to report it afterwards.

Lastly, Johnson argues that WMHI employee Gerald Van Ryken received a one-day suspension for using improper restraint technique. However, there is no evidence that the restraint was unjustified, and Van Ryken also did not yell at or belittle the patient.

Johnson also alleges racial discrimination, because these employees are White while she is Black. Although Johnson is a member of a protected class, she has failed to prove a prima facie case by providing an example of a White employee who was not discharged for similar or worse conduct.

Johnson failed to comply with WMHI's Seclusion and Restraint Policy when she restrained a patient on February 27, 2024. The circumstances – a patient's refusal to get out of bed – did not justify the use of restraint. Johnson also failed to get prior approval before using a physical restraint on a patient and failed to notify a nurse after the incident. Further, Johnson was intimidating and bullying when she yelled at the patient and told the patient that she was difficult. Johnson's behavior jeopardized the patient's safety and well-being and constituted a serious act of misconduct. There was just cause for the discharge, and the discharge is therefore affirmed.

Issued at the City of Madison, Wisconsin, this 22nd day of October 2024.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Katherine B. Scott Lisiecki
Hearing Examiner