

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

JASON PHILLIPS, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0656

Case Type: PA

DECISION NO. 40682

Appearances:

Jason Phillips, P.O. Box 53, Stockbridge, Wisconsin, appearing on his own behalf.

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 Corrections.

DECISION AND ORDER

On July 1, 2024, Jason Phillips filed an appeal with the Wisconsin Employment Relations Commission asserting he had been suspended for five days without just cause by the State of Wisconsin Department of Corrections (DOC). The appeal was assigned to Commission Examiner Katherine Scott Lisiecki.

A telephone hearing was held on October 3, 2024, by Examiner Lisiecki. The parties made oral closing arguments at the end of the hearing. On October 17, 2024, Examiner Lisiecki issued a Proposed Decision and Order affirming the five-day suspension of Jason Phillips by the DOC. No objections were filed by the parties by the given deadline of October 22, 2024.

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

FINDINGS OF FACT

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

2. On December 6, 2023, Phillips threw a broom from the janitor cart to the floor while an inmate was nearby, threw paper towels in the air, and threw a box of gloves at an inmate.

3. Following an investigation, DOC suspended Phillips for five days for insubordination, playing games, horseplay, or other disruptive or unsafe behavior.

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 had just cause within the meaning of Wis. Stat. § 230.34(1)(a) to suspend Jason Phillips for five days.

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

ORDER

The five-day suspension of Jason Phillips by the State of Wisconsin Department of Corrections is affirmed.

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

Jason Phillips 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 Phillips 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).

Phillips was employed as a correctional officer at Taycheedah Correctional Institution (TCI). On December 6, 2023, Phillips was working on the “Monarch,” or special-needs, unit. He attempted to engage in horseplay with the inmates by throwing a broom from the janitor cart to the floor while an inmate was nearby, throwing paper towels in the air, and throwing a box of gloves at an inmate. During the investigation, and during this hearing, Phillips admitted to engaging in this conduct. Video evidence also clearly shows Phillips engaging in this conduct.

Phillips argues that one of the incidents he’s accused of – horseplay with someone trying to open a closet in the laundry room – was not, in fact, horseplay. He credibly testified that that he was simply trying to encourage her to use the laundry closet, and video evidence supports his argument. However, Phillips still threw a broom down near an inmate, threw paper towels in the air, and threw gloves at an inmate.

Phillips argues that he was simply trying to build rapport with the inmates, rather than attempting to bully or intimidate them. He said he realizes now that pushing things over and throwing them was “a little extreme.” Although Phillips’ introspection is commendable, it does not change the fact that he did, in fact, engage in these behaviors. His actions are clearly inappropriate. Throwing gloves at an inmate could jeopardize inmate safety and well-being. Throwing down a broom and throwing paper towels in the air could easily be understood as threatening or intimidating behavior. There is a power imbalance between inmates and correctional officers that makes boundary-blurring behaviors like the ones committed here inherently inappropriate. TCI Warden Jon Noble testified that Phillips’ behavior was particularly inappropriate because many of the inmates at TCI have experienced trauma and therefore may

react badly to this kind of behavior. Noble testified that correctional officers such as Phillips have a responsibility to keep inmates and staff safe and model appropriate behavior.

Phillips further argued that, although horseplay is unprofessional, other employees have done it. However, Phillips admitted that, when he did see other employees engaging in horseplay, he did not report it to his supervisor. Phillips said he knew of an employee who received a one-day suspension for horseplay, but did not provide any evidence or testimony to prove that this employee was similarly situated. *See Morris v. DOC*, Dec. No. 35682-A (WERC, 7/15).

Turning to question of whether there is just cause for a five-day suspension, the record reflects that Phillips had recently received a one-day suspension for other misconduct. Thus, in this instance, DOC skipped a step in its standard disciplinary progression by imposing a five-day suspension instead of the standard three-day suspension. The Commission is satisfied that Phillips' misconduct in the instant matter is sufficiently serious to establish just cause for the skip in progression to the five-day level. Therefore, the suspension is affirmed.

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

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman