

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

KELSEY BATES, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0660

Case Type: PA

DECISION NO. 40683

Appearances:

Allen Reynolds, 88 Junction St., Camp Douglas, Wisconsin, appearing on behalf of Kelsey Bates.

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 24, 2024, Kelsey Bates 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 Katherine Scott Lisiecki.

A telephone hearing was held on October 10, 2024, by Examiner Lisiecki. The parties made oral closing arguments at the end of the hearing. On October 22, 2024, Examiner Lisiecki issued a Proposed Decision and Order affirming the one-day suspension of Kelsey Bates by the DOC. The parties did not file objections to the Proposed Decision, by the given deadline of October 29, 2024.

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

FINDINGS OF FACT

1. Kelsey Bates (Bates) is employed by the State of Wisconsin Department of Corrections (DOC), as a correctional sergeant at New Lisbon Correctional Institution (NLCI). She had permanent status in class when she was suspended.

2. On March 11, 2024, Bates entered a cell by herself while inmates were present in the cell.

3. Following an investigation, the DOC suspended Bates for one day for insubordination, negligence, and failure to provide complete information when required.

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 Kelsey Bates 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 Kelsey Bates by the State of Wisconsin Department of Corrections is affirmed.

Issued at Madison, Wisconsin, this 7th day of November 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.

Kelsey Bates 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 Bates 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).

Bates was employed as a correctional sergeant at New Lisbon Correctional Institution (NLCI). On March 11, 2024, Bates entered a cell by herself while inmates were present in the cell. Inmate John Lulich, who was in the cell, testified that his cell mate, inmate Mark Bringe, complained to Bates about something Lulich was doing. Bates followed Bringe back to the cell. While talking to Bringe, Bringe threw toilet paper, and Bates entered the cell to grab it. Lulich testified that Bates's entire body was inside the cell. Correctional officer Justin Feltz also testified that he saw Bates inside the cell while there were inmates in the cell. Likewise, inmate Eddie Cannon testified that he saw Bates enter the cell, although he was unable to see what she did in the cell. Lulich and Bates both testify that there were no other staff with Bates during her interaction with Lulich and Bringe. Cannon filed a staff misconduct claim about Bates entering the cell.

Bates testified that she never entered the cell. Instead, she said that she stood outside the cell, in the path of the door, while speaking with Lulich and Bringe. She states that the door was open the entire time. Bates also cites the testimony of Bringe, who says that the incident never occurred and that he never had an officer in his cell. However, Bringe suffers from mental health issues, and he was rambling and incoherent during his testimony. Therefore, Bringe's testimony was neither credible nor his recollection considered reliable.

Bates further argues that she was retaliated against by Cannon and Feltz and their testimony should thus be unreliable. There is insufficient proof in the record to establish any motive for Cannon and Feltz to have conspired to falsely accuse Bates of her behavior. Especially in the case of Feltz, who did not initially report Bates behavior and was given a verbal warning as a result.

Bates further argues that Feltz was not disciplined. However, they are not similarly situated, since one violated agency policy and the other merely failed to report it. Since they did not commit similar acts of misconduct, it is fitting that they received different disciplines: Bates received a one-day suspension and Feltz a verbal warning.

Bates was negligent when she entered a cell by herself while inmates were present in the cell. Inmate Eddie Cannon testified that Bates's actions jeopardized her safety, and inmates would have been blamed for her failure to follow institutional policy. The State followed progressive discipline in issuing this one-day suspension. There was just cause for the one-day suspension, and the suspension is therefore affirmed.

Issued at the City of Madison, Wisconsin, this 7th day of November 2024.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman