

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

MICHAEL MAITLAND, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0665

Case Type: PA

DECISION NO. 40688

Appearances:

Michael Maitland, 835 Heritage Trail, Oshkosh, 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 August 12, 2024, Michael Maitland filed an appeal with the Wisconsin Employment Relations Commission asserting he had been discharged 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 15, 2024, by Examiner Lisiecki. The parties made oral closing arguments at the end of the hearing. On October 31, 2024, Examiner Lisiecki issued a Proposed Decision and Order affirming the discharge of Michael Maitland by the DOC. Maitland filed objections to the Proposed Decision on November 5, 2024. The DOC filed a response to the objections on November 11, 2024.

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

FINDINGS OF FACT

1. Michael Maitland (Maitland) was employed by the State of Wisconsin Department of Corrections (DOC), as a correctional officer at Waupun Correctional Institution (WCI). He had permanent status in class when he was discharged.

2. On August 15, 2023, Maitland was helping escort an inmate to restrictive housing. Maitland directed profanity at the inmate, escalating the situation.

3. Maitland's supervisor Jacob Gripentrog ordered Maitland to step out of the escort multiple times, but Maitland did not comply.

4. During a wall stabilization, Maitland yelled that the inmate was going to spit and placed his hand over the inmate's mouth. The inmate attempted to bite him.

5. Maitland swung his hand at the inmate. Another officer pulled Maitland away from the inmate.

6. Following an investigation, the DOC discharged Maitland for insubordination, harassing, using profane or abusive language, gross negligence, and failure to follow written agency policies and procedures.

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 discharge Michael Maitland.

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

ORDER

The discharge of Michael Maitland by the State of Wisconsin Department of Corrections is affirmed.

Issued at Madison, Wisconsin, this 21st 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.

Michael Maitland had permanent status in class at the time of his discharge and his appeal alleges that the discharge was not based on just cause.

The State has the burden of proof to establish that Maitland 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).

Maitland was employed as a correctional officer at Waupun Correctional Institution (WCI). On August 15, 2023, Maitland was helping escort an inmate to restrictive housing. After the initial stabilization, the inmate was handcuffed and the escort continued. The inmate tried to kick Maitland. Maitland replied using profanity, which escalated the situation. The inmate resisted again and was placed in leg restraints. Maitland's supervisor, correctional sergeant Jacob Gripentrog, testified that he ordered Maitland to disengage and step out of the escort (or "sub out") three times, but Maitland did not comply. There were ten to fifteen correctional officers surrounding the escort, enough to allow Maitland to safely disengage. Maitland did not do so.

During a wall stabilization, Maitland yelled that the inmate was going to spit and placed his hand over the inmate's mouth. The inmate attempted to bite him. Maitland then swung a closed fist at the inmate. It is unclear whether Maitland made contact with the inmate. Correctional sergeant Andrew Colin pulled Maitland away from the inmate.

Maitland argues that Gripentrog only gave him (Maitland) one directive, and didn't say who was going to relieve him. However, both Gripentrog and correctional officer Jason Schmidt testified that Gripentrog gave Maitland multiple directives to sub out. Failure to follow even one directive from a supervisor constitutes insubordination.

Maitland argues that accounts were inconsistent, and that the video of the incident is unclear. Maitland further argues that he was not trying to hit the inmate, but instead, his hand was flung forward when his coworker pulled him away. Although the videos are unclear, multiple

witnesses – Schmidt, correctional sergeant Jacob Schroeder, and correctional sergeant Andrew Arzenhofer – all testified that Maitland swung at the inmate with a closed fist.

Maitland argues that the inmate was attempting to bite and spit on staff. However, this is not justification for Maitland's use of force. The inmate's hands and legs were already restrained, and he did not pose a serious threat to himself or others. Although spitting is offensive, and carries health risks, it does not justify using an improper restraint that could cause injury or asphyxiation. The inmate only had an opportunity to bite Maitland because he used an improper restraint technique. Further, Maitland's swing at the inmate was clearly retaliatory. Warden Brad Mlodzik testified that staff are expected to de-escalate situations like this, rather than respond to violence with violence.

Lastly, Maitland argues that the police should have been called after the incident but were not. However, it is unclear how this is relevant to whether or not Maitland committed misconduct.

Maitland was harassing, insubordinate, and negligent when he directed profanity at an inmate, refused to obey his supervisor's orders to step out of the escort, and used improper restraint techniques on an inmate. Further, Maitland committed an act of serious misconduct by attempting to strike an inmate. Maitland escalated a tense situation, thereby endangering inmate and staff safety. Warden Mlodzik testified that officers are expected to de-escalate and disengage in situations where the use of force is needed. Failure to do so erodes trust with the inmates and the public, disrupts the safe and orderly operation of the institution, and can lead to litigation and criminal investigations.

Turning to question of whether there is just cause for a discharge, the record reflects that Maitland had no previous discipline. Thus, in this instance, the DOC skipped three steps in its standard disciplinary progression by discharging Maitland instead of imposing a suspension. The Commission is satisfied that Maitland's misconduct was sufficiently serious to establish just cause for the skips in progression to discharge. Therefore, the discharge is affirmed.

Issued at the City of Madison, Wisconsin, this 21st day of November 2024.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman