

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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SHANE HEISLER, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0666

Case Type: PA

DECISION NO. 40692-C

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Appearances:

Colin B. Good, Attorney, Hawks Quindel S.C., P.O. Box 2155, Madison, Wisconsin, appearing on behalf of Shane Heisler.

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 20, 2024, Shane Heisler 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 Anfin J. Wise

A hearing was held on November 7, 2024, by Examiner Wise. The parties submitted written closing arguments on November 18, 2024; Appellant requested reimbursement for attorney's fees. Neither party filed a response by the given deadline of November 19, 2024.

On November 26, 2024, Examiner Wise issued a proposed decision and order affirming the discharge of Shane Heisler by the DOC. No objections to the proposed decision were filed by the given deadline of December 2, 2024.

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

**FINDINGS OF FACT**

1. Shane Heisler (Heisler) was employed by the State of Wisconsin Department of Corrections (DOC), as a Correctional Sergeant at Waupun Correctional Institution (WCI) and had permanent status in class when he was discharged.

2. The DOC is a state agency responsible for the operation of various corrections facilities including WCI, a maximum-security facility located in Waupun, Wisconsin.

3. On October 29 through 30, 2023, Heisler was grossly negligent in his duties as a Correctional Sergeant when he performed his rounds on the Restrictive Housing Unit, A-Range, and failed to verify signs of life from every inmate housed in each cell on the unit.

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 Shane Heisler.

3. Shane Heisler is not a prevailing party within the meaning of Wis. Stat. § 227.485(3).

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

### **ORDER**

1. The discharge of Shane Heisler by the State of Wisconsin Department of Corrections is affirmed.

2. Shane Heisler's motion for attorney's fees is denied.

Issued at Madison, Wisconsin, this 17<sup>th</sup> day of December 2024.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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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.

Shane Heisler 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 Heisler 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).

Heisler was a Correctional Sergeant at Waupun Correctional Institution (WCI). In that capacity, his primary duties included the security, custody, control, and rehabilitation of inmates. Additionally, as a Sergeant, he was a lead worker responsible for directing and providing guidance to other officers and staff, as well as assisting in training new officers.

On October 30, 2023, at 10:32AM, staff at WCI found inmate C.W. unresponsive in cell A215 in the A-Range of the Restrictive Housing Unit (RHU). After being removed from his cell, lifesaving efforts were attempted, but ultimately C.W. was pronounced deceased. As a standard practice after an inmate death, the State of Wisconsin Department of Corrections (DOC) completed a review of the circumstances surrounding C.W.'s death, including identifying any deficiencies in staff performance.

The death review revealed numerous performance deficiencies and resulted in a variety of disciplinary actions issued to staff, including the discharge of thirteen staff members for their serious misconduct related to C.W.'s death.

The DOC investigation and review showed that on October 29, 2023, Heisler was assigned as the 3<sup>rd</sup> shift Segregation Extra officer in the RHU. This post assignment is responsible for conducting clinical observation checks of inmates in the RHU, along with performing any additional duties assigned by the RHU Sergeant, Unit Manager, or any Security Supervisor. During his shift on October 29 through October 30, 2023, Heisler was assigned to conduct rounds on A-Range in RHU at midnight, 12:30AM, 2:00AM, and 2:30AM. Video footage showed that Heisler did not complete the rounds as required. When staff conduct rounds throughout the institution, the

expectation is that they verify signs of life, make sure that inmates are not engaging in self-harm or rule violations, and that they are safe and secure in their cells. The video evidence showed that Heisler failed to look into each cell or verify signs of life from every inmate housed on the unit during all four of his rounds that night.

During the investigation, Heisler admitted that he understood the purpose of a round is to make sure that inmates are ok, breathing, and alive. He further admitted that the manner in which he was conducting his rounds on the night of October 29, 2023, would not have been sufficient for him to fully see into C.W.'s cell. Additionally, Heisler acknowledged that based on the position of C.W.'s body in the images shown during the investigation, his rounds would not have been sufficient enough to see C.W. lying on the floor in the cell.

The DOC concluded that a "skip" to termination was warranted due to the serious nature of Heisler's misconduct, specifically that he was grossly negligent by failing to ensure signs of life for each individual in his care. The DOC further contended that Heisler failed to have his body worn camera (BWC) activated throughout his shift while on range in RHU, as required by policy.

Given Heisler's admissions, as well as the video evidence, the Commission has no trouble finding that Heisler's failure to verify signs of life for every inmate while conducting his rounds in the early morning hours of October 30, 2023, constituted serious misconduct and gross negligence. This gross negligence created a substantial risk to the safety and security of the institution, staff, and the inmates in his care. It was identified during the investigation that C.W. was lying on a mattress on the floor of his cell, with his body torqued to the left side in an abnormal position, with his head and upper body obscured by the toilet from at least 5:27PM on October 29, 2023, until approximately 10:32AM on October 30, 2023. The failure of Heisler and other staff to do quality rounds during that period of time resulted in C.W. clearly remaining in the same position for many hours, and ultimately lying deceased in his cell for an extended period of time. Accordingly, we find that the DOC had just cause to discipline Heisler for his serious misconduct.

With respect to the failure to have his BWC activated during his shift, the record is insufficient to make a finding that Heisler is guilty of this allegation. The only evidence the DOC presented to establish that Heisler did not have his BWC activated was that the DOC was unable to locate available camera footage from Heisler's BWC on the night of October 29 through 30, 2023. The record established that BWCs are distributed to staff at the beginning of their shift, and then collected at the end of their shift. It is unknown how or if the DOC tracks whether a specific camera is assigned to a specific staff member on any given night. It is also completely unknown how the DOC downloads or saves the footage after the camera is collected, or how long the videos are preserved. While the DOC presented a "Use of Body Cameras" policy, there was no testimony or evidence presented regarding whether there is a set procedure or whether the record retention part of the policy was followed.

We now address Heisler's defenses.

First, Heisler argued during hearing that there is no written policy on how to properly conduct rounds, and that the manner in which he conducted his rounds was consistent with the

practices at WCI and his training on how to conduct rounds. While the DOC concedes that there was no written agency policy on how to conduct rounds or exact metrics on how to approach a cell, Heisler's own admissions during the investigation contradict this defense. Furthermore, the DOC correctly points out that not every expectation of staff requires a written step-by-step manual on how to properly perform a task at hand. In fact, it would be nearly impossible for the DOC to document and articulate every different scenario that staff could encounter when completing rounds in the institution. The entire basis for conducting rounds is to ensure the safety and security of the institution, staff, and inmates. Not only did Heisler acknowledge that he understood the purpose of rounds, but it is also well understood that the expectation is for staff to verify signs of life for every inmate. Again, Heisler admitted that the manner in which he was conducting his rounds on the night of October 29, 2023, would not have been sufficient for him to fully see into C.W.'s cell. Therefore, we reject this argument.

Second, Heisler contends that he had worked six double-shifts in a row and that he was sleep deprived. Additionally, he suffers from severe anxiety and PTSD. While we understand that Heisler's physical and mental state may have affected his ability to properly perform his duties on the night of October 29 through 30, 2023, we conclude that his physical and mental state do not mitigate his gross negligence and serious misconduct. He had an obligation during his rounds to verify signs of life for every inmate in every cell on A-Range in RHU.

Turning now to the level of discipline imposed here. When an employee commits serious misconduct, as Heisler did, it logically follows that his discipline can likewise be serious. The DOC routinely discharges employees who engage in serious misconduct. In fact, regarding the circumstances surrounding C.W.'s death, the DOC discharged every employee who failed to properly perform quality rounds on the night of October 29 through 30, 2023, on A-Range in RHU. Consequently, the Commission finds that Heisler's discharge was not excessive under the circumstances.

It is concluded that there was just cause for Heisler's discharge, and it is therefore affirmed.

Issued at the City of Madison, Wisconsin, this 17<sup>th</sup> day of December 2024.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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James J. Daley, Chairman