

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

JOE ROBERSON, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0664

Case Type: PA

DECISION NO. 40697

Appearances:

Joe Roberson, 2019 Wisconsin Street, Sturtevant, Wisconsin appearing on his own behalf.

David Makovec, 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 8, 2024, Joe Roberson (Roberson) filed an appeal with the Wisconsin Employment Relations Commission asserting that he had been suspended for three days without just cause by the State of Wisconsin Department of Corrections (DOC). The appeal was assigned to Commission Examiner Peter G. Davis.

On October 2, 2024, a zoom hearing was held by Examiner Davis. The parties made oral argument at the conclusion of the hearing. At the Examiner's request, there were also additional post-hearing exchanges.

On November 14, 2024, Examiner Davis issued a Proposed Decision and Order affirming the three-day suspension of Roberson by the DOC. On November 14, 2024, Roberson filed objections to the Proposed Decision. The DOC did not file a response to the objections by the given deadline of November 19, 2024. Roberson filed additional argument until November 28, 2024.

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

FINDINGS OF FACT

1. Joe Roberson, herein Roberson, is a Correctional Officer employed by the State of Wisconsin, Department of Corrections at the Racine Correctional Institution. He had permanent status in class at the time of his three-day suspension and had recently received a one-day suspension
2. While on duty in the Institution, Roberson received an email on a device he was wearing.

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 Joe Roberson for three days.

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

ORDER

The three-day suspension of Joe Roberson by the State of Wisconsin Department of Corrections is affirmed.

Issued at Madison, Wisconsin, this 5th day of December 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.

Joe Roberson 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 Roberson 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).

Roberson was suspended because he allegedly received an email on a device he was wearing while on duty. It is clear that DOC policy appropriately prohibits employee receipt of emails and the wearing of any device where email capability has not been disabled. Roberson asserts that he did not receive an email and that the Fitbit he was wearing is not capable of email receipt.

Some of the critical facts are not in dispute. Roberson was told he had just been sent a work-related email. In the presence of two witnesses, the device Roberson was wearing made a noise and as he glanced at the device he said “Got it.” Roberson asserts that he was responding to a notice from his Fitbit telling him had just completed a certain number of steps. He correctly points out that neither of the witnesses saw what was on his device and he denies having subsequently admitted that the device had email capability. However, the timing and context of the “Got it” remark persuades the Commission that Roberson did receive an email on the device he was wearing. Roberson’s explanation is not credible.¹ Thus, Roberson engaged in misconduct by wearing a device that could and did receive an email.

Turning to the issue of whether there was just cause for a three-day suspension, Roberson had recently received a one-day suspension. Thus, the three-day suspension is the next step in the

¹ During the DOC investigation, Roberson did not provide DOC with the device he was wearing on the day in question. Subsequent to the zoom hearing in this matter, Roberson provided a picture of a Fitbit model that does not have email capability and a model that does. Thus, there is no conclusive evidence one way or the other as to whether the device Roberson was wearing was capable of receiving an email. Therefore, the Commission resolves the issue of email capability based on the remainder of the evidence presented.

standard DOC disciplinary progression. In that context, the Commission is persuaded that there is just cause for a three-day suspension.

Given all of the foregoing, the three-day suspension is affirmed.

Issued at Madison, Wisconsin, this 5th day of December 2024.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman