

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

WILLIAM ROBINSON, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0669

Case Type: PA

DECISION NO. 40707

Appearances:

William Robinson, 6119 95th Avenue, Kenosha, 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 September 9, 2024, William Robinson (Robinson) 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 November 20, 2024, by Examiner Lisiecki. The parties made oral closing arguments at the end of the hearing. On December 2, 2024, Examiner Lisiecki issued a Proposed Decision and Order affirming the discharge of Robinson by the DOC. On December 9, 2024, Robinson filed objections to the Proposed Decision. The DOC did not file a response to the objections by the given deadline of December 16, 2024.

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

FINDINGS OF FACT

1. William Robinson (Robinson) was employed by the State of Wisconsin Department of Corrections (DOC), as a corrections field supervisor. He had permanent status in class when he was discharged.

2. From November 2, 2023, to December 18, 2023, Robinson arrived late to work almost daily, did not communicate his tardiness to his supervisor, and submitted inaccurate timecards.

3. Following an investigation, the DOC discharged Robinson for falsification of agency records, failure to comply with written agency policies, insubordination, and gross negligence.

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 William Robinson.

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

ORDER

The discharge of William Robinson by the State of Wisconsin Department of Corrections is affirmed.

Issued at Madison, Wisconsin, this 19th 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.

William Robinson 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 Robinson 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).

Robinson was employed as a corrections field supervisor with the DOC in Sturtevant, Wisconsin. Robinson's work schedule required him to be in the office from 7:45 a.m. to 4:30 p.m., and he was required to get permission from a supervisor to change this schedule. It is uncontested that Robinson's telecommuting privileges were rescinded in June 2023. *See* Exhibit R-7, pg. 94. On November 24, 2023, Robinson arrived at work around noon. Robinson's co-worker, Genoa Cole, was irked at his tardiness. She pulled Robinson's key fob data, which showed when he entered the building, and shared it with regional chief Lisa Yeates. The key fob data showed that from November 2, 2023, to December 18, 2023, Robinson arrived late to work almost daily, generally about two hours after his scheduled start time. *See* Exhibit R-7, pgs. 35 - 37. Assistant regional chief Terra Lindberg noted that as long as employees communicate that they will be late, there is a degree of flexibility, but she did not receive communications from Robinson about the dates that he was late to work. Likewise, there is no evidence that Robinson told his coworkers or the employees that reported to him that he would be late. Robinson also submitted timecards which inaccurately reported that he arrived at work at 7:45 a.m. *See* Exhibit R-7, pgs. 21 - 34.

Robinson argues that he had his work phone and laptop with him, and that he was reachable despite not being in the office. However, as mentioned previously, Robinson's telecommuting privileges had been rescinded several months earlier. Robinson was required to be in the office at the start of the scheduled workday.

Robinson further argues that the State failed to provide any evidence of how his behavior endangered staff safety or building safety. However, administrator Lance Wiersma testified that the DOC judges work rule violations regardless of the result. Wiersma further testified that

Robinson's tardiness left staff unsupervised, and that he would have been unable to direct his staff if issues, concerns, or emergencies arose at the field office. Further, Robinson's former coworker Amy Zenner testified that, occasionally, field staff have to take people into custody, a dangerous situation for which a supervisor should be present.

Robinson further argues that he is not the only employee who operates this way. However, Lindberg testified that she did not receive complaints about other employees. Further, she testified that the key fob data at Robinson's office showed that no other employees were as egregiously late as Robinson. Other employees had alternative work plans or informed their supervisors that they would be late.

Lastly, Robinson argues that the discipline imposed is excessive. However, Robinson arrived late to work almost daily for two months, failed to notify his supervisor, and falsified agency records by submitting inaccurate timesheets. Robinson has previously been disciplined for leaving work early. In 2023, Robinson received a one-day suspension for leaving a work conference early without permission. *See Exhibit R-6.* The standard DOC disciplinary progression would have yielded a three-day suspension. However, the DOC persuasively argues that the pervasiveness and egregiousness of Robinson's tardiness, as well as the two serious acts of misconduct – gross negligence and falsifying agency records – justifies a two-level skip in progression to discharge. Therefore, there was just cause for the discharge, and the discharge is therefore affirmed.

Issued at the City of Madison, Wisconsin, this 19th day of December 2024.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman