

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

JAMES SHROCK Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF MILITARY AFFAIRS, Respondent.

Case ID: 265.0010

Case Type: PA

DECISION NO. 40712-A

Appearances:

James Shrock, N6757 Arbutus Road, Elkhorn, 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 Military Affairs.

DECISION AND ORDER

On November 19, 2024, James Shrock (Shrock) filed an appeal with the Wisconsin Employment Relations Commission asserting he had been suspended for five days without just cause by the State of Wisconsin Department of Military Affairs (DMA).

A hearing was held in Milwaukee, Wisconsin on February 13, 2025, by Commission Examiner Peter G. Davis. The parties filed written arguments until March 3, 2025.

On March 6, 2025, Examiner Davis issued a Proposed Decision and Order, affirming the five-day suspension of Shrock by the DMA. On March 7, 2025, Shrock filed objections to the Proposed Decision. On March 12, 2025, the DMA filed a response to the objections, and the matter became ripe for Commission consideration.

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

FINDINGS OF FACT

1. James Shrock (herein Shrock) is a white male employed by the State of Wisconsin Department of Military Affairs (DMA) as a Military Affairs Security Officer-Senior at the 128th Air

Refueling Wing, Mitchell Field, Milwaukee, Wisconsin and he had permanent status in class at the time of his suspension.

2. While on duty, a visibly upset and armed Shrock profanely confronted an armed co-worker and berated him for several minutes for allegedly making it appear Shrock was shirking his duties. Another armed co-worker insured the confrontation did not become physical by separating Shrock and the co-worker. That confrontation occurred roughly 15 minutes after Shrock had called the same co-worker and berated him for allegedly making it appear Shrock was shirking his duties.

3. While on duty, Shrock mimicked to a female co-worker by imitating what he believed the female co-worker's vagina would sound like if it was her boyfriend speaking.

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 Military Affairs did have just cause within the meaning of Wis. Stat. § 230.34(1)(a) to suspend James Shrock for five days.

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

ORDER

The five-day suspension of James Shrock by the State of Wisconsin Department of Military Affairs is affirmed.

Issued at Madison, Wisconsin, this 17th day of March 2025.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman

MEMORANDUM ACCOMPANYING DECISION AND ORDER

Section 230.34(1)(a), Stats., states in pertinent part:

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.

Shrock 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 Shrock 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).

Shrock received a five-day suspension for (1) confronting a co-worker on two occasions; (2) mimicking what he believed a female co-worker's vagina would sound like if it were speaking; and (3) making racial insensitive remarks. As evidenced by Findings of Fact 2 and 3, the Commission concludes that the State met its burden of proof as to allegations (1) and (2) above. As to allegation (3), the Commission concludes the State did not. As evidenced by Conclusion of Law 2, the Commission has determined that proven misconduct provides just cause for a five-day suspension.

Shrock generally denies all three allegations. He asserts that these allegations are retaliation by the accusers and supporting witnesses for his holding accountable for poor job performance. On balance, the Commission concludes there is simply far more credible evidence of misconduct than of retaliation.

Shrock also generally points out that the accusing employees or witnesses failed to immediately or formally report the incidents in question and therefore argues that either the incidents did not occur or must not have been that bad. The State persuasively responds by noting that it is not uncommon for employees to wait before reporting. In further response, employee witnesses persuasively spoke about a desire not to undermine needed camaraderie among co-workers and doubts about whether there would be any action taken in response to reports of misconduct.

Looking at the first of the three specific allegations, Shrock admits he was upset by what he perceived to be an effort by co-workers to "throw him under the bus" as to a job assignment. But he denies making a phone call about the issue or using profanity in the follow-up confrontation about the matter or that a co-worker needed to potentially separate him from a co-worker. The credible testimony of multiple witnesses persuades the Commission that Shrock first made an angry phone call to a co-worker about the issue and then was still so upset that he profanely confronted the same co-worker 15 minutes later in such a heated manner that another co-worker with law enforcement experience felt

compelled to physically intervene and step between the two. Had Air Force supervisory personnel contemporaneously learned of the confrontation, Shrock would have been immediately disarmed and evaluated to see if he was fit for further duty.

Given the foregoing, it is clear Shrock engaged in significant misconduct in this two-part episode.

As to the second allegation, Shrock admits being in a conversation with a co-worker where a female co-worker's relationship with a former co-worker was being discussed. He denies using the vagina voice as part of that conversation. The other party to the conversation testified that Shrock did speak in that manner for a lengthy period. The Commission finds the testimony of the other party to be credible. Among other considerations, the Commission notes that the conduct in question is unusual and thus not something a witness would fabricate as a way to frame Shrock. While the witness was unwilling to come forward to report Shrock's conduct until pressured by other co-workers, that unwillingness does not detract from the credibility of his testimony.

Needless to say, mocking a co-worker in such a demeaning manner is misconduct.

As to the third allegation, Shrock admits commenting to a black co-worker regarding his use of proper English when speaking. Shrock views the comment as a compliment while the co-worker testified that he viewed the comment as racially insensitive. That was the only specific allegation of misconduct presented in the witness's testimony and the Commission concludes the comment does not constitute conduct warranting a disciplinary response.

Turning to the question of whether the misconduct found establishes just cause for a five-day suspension, the Commission acknowledges that Shrock had no discipline on his record at the time of the suspension. But the Commission nonetheless has little trouble concluding that a skip in the standard disciplinary progression to a five-day suspension is warranted. In any workplace, Shrock's misconduct would be a persuasive basis for significant discipline. But particularly among armed co-workers who need to have each other's back in the event of an emergency, Shrock's conduct has the clear potential to erode the needed level of trust and thus takes on even greater significance.

Given the foregoing, the five-day suspension is affirmed.

Issued at Madison, Wisconsin, this 17th day of March 2025.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman