

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

ALLEAH PYNENBERG, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0673

Case Type: PA

DECISION NO. 40715-A

Appearances:

Wayne Pankratz, The Winning Move, Inc., 2731 3rd Street South, Wisconsin Rapids, Wisconsin, appearing on behalf of Alleah Pynenberg.

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 16, 2024, Alleah Pynenberg filed an appeal with the Wisconsin Employment Relations Commission asserting she 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 December 6, 2024, by Examiner Lisiecki. The parties submitted written closing arguments on December 13, 2024. On December 19, 2024, Examiner Lisiecki issued a Proposed Decision and Order affirming the discharge of Alleah Pynenberg by the DOC.

Deadlines for objections to the Proposed Decision were set for December 26, 2024. Pynenberg submitted objections to the Proposed Decision in a timely manner, however WERC failed to properly recognize that objections were received. On January 9, 2025, WERC issued a Final Decision, specifically stating "The parties did not file objections to the Proposed Decision by the given deadline of December 26, 2024." On January 11, 2025, Pynenberg objected, stating that she had submitted timely objections, which was subsequently verified.

Given the administrative error committed by WERC, and the absence of the ability to consider the merits of the objections, the Commission advised the parties that it was treating the

January 11, 2025, communication as a Petition for Rehearing which allowed the Commission to definitively regain jurisdiction over the matter. DOC submitted a response to the objections on January 27, 2025.

Having reviewed the record in light of the objections filed, the Commission makes and issues the following:

FINDINGS OF FACT

1. Alleah Pynenberg (Pynenberg) was employed by the State of Wisconsin Department of Corrections (DOC), as a psychological associate at Redgranite Correctional Institution (RGCI). She had permanent status in class when she was discharged.

2. Pynenberg fraternized when she assisted inmates with legal work and met with inmates more frequently than required.

3. Pynenberg was grossly negligent when she fell two months behind in her casework, failed to properly document her work, and failed to log or follow up on inmate requests.

4. Following an investigation, the DOC discharged Pynenberg for fraternization 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 Alleah Pynenberg.

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

ORDER

The discharge of Alleah Pynenberg by the State of Wisconsin Department of Corrections is affirmed.

Issued at Madison, Wisconsin, this 6th day of February 2025

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.

Alleah Pynenberg had permanent status in class at the time of her discharge and her appeal alleges that the discharge was not based on just cause.

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

Pynenberg was employed as a psychological associate at Redgranite Correctional Institution (RGCI). In 2023, Pynenberg told intern Keelee Emmanuel not to worry about a male inmate because the inmate was “all about her [Pynenberg].” Pynenberg added that all of the inmates in the dog handling program had feelings for her (Pynenberg), but that was normal due to transference. Pynenberg told Emmanuel that an inmate wrote her a love letter, and that she wished the inmate had just talked about it during his session, since a letter “had to be” investigated. Pynenberg also told Emmanuel that she (Pynenberg) was helping some men in the dog-handling program with their legal work by pulling relevant case law. Emmanuel, concerned about fraternization, reported these comments and an investigation was initiated.

Pynenberg was found to have assisted inmates with legal work. Pynenberg’s colleague, psychologist Anastasia Kydonieous, testified that after Pynenberg was placed on leave, multiple inmates approached her inquiring about the status of legal work that Pynenberg was assisting them with, or asking when Pynenberg would return so she could finish psychological evaluations for court. Kydonieous explained that these evaluations are usually done by independent contractors, not DOC employees. Pynenberg had inmates’ legal paperwork in her office. She was found to have contacted the Department of Justice on behalf of an inmate and had at least one inmate sign a release allowing her to discuss his information with DOJ attorneys. Pynenberg argues that inmates had requested that she attend their meetings with the DOJ to support them. However, Redgranite warden Michael Gierach testified that these actions were outside the scope of Pynenberg’s professional duties at RGCI and demonstrated favoritism towards particular inmates.

Pynenberg was meeting with several inmates far more frequently than necessary. The inmates in question were MH-0, a code indicating that the inmate has no current mental health need and does not need to see a psychiatrist. These inmates should not have been attending frequent

therapy sessions. Kydonieous testified that Pynenberg should not have had frequent contact with these inmates without a request to be seen, a change in diagnosis, or, at the least, a provisional diagnosis pending verification.

Pynenberg was very behind on her casework. The Division of Adult Institutions' policies require psychological staff to complete documentation of routine patient contacts within five working days of the contact. Kydonieous and psychologist Brittany Nelson, who took over Pynenberg's cases after she was placed on leave, testified that Pynenberg was at least two months behind on her casework. Pynenberg was placed on leave in early October, and her casework was overdue from July. Pynenberg argues that she was behind in her casework and failed to log or respond to kites, because the institution was understaffed and she was overworked. However, Pynenberg's supervisor, Lauren Rotondi-Dickey testified that Pynenberg had a typical caseload of two units. Further, Kydonieous testified that psychologists were expected to only be a few weeks behind on documentation, or a month at most.

Pynenberg's documentation was also inadequate. Kydonieous testified that Pynenberg's notes were extremely brief, containing little to no substantive information. This made it challenging for Kydonieous to take over Pynenberg's caseload after Pynenberg was placed on leave. Nelson likewise testified that Pynenberg's lack of documentation meant that she (Nelson) had to start from scratch with Pynenberg's former patients. The American Psychological Association's ethics code requires psychologists to meet requirements about record-keeping, including maintaining records to facilitate the provision of services by other professionals. Pynenberg argues that her supervisor reviewed her documentation, and that she never received a negative performance review during her tenure at RGCI. However, both Kydonieous and Nelson testified that Pynenberg's notes made it difficult for them to care for her former patients, violating professional standards and jeopardizing inmate well-being.

Pynenberg further failed to log or follow up on inmate requests to psychological services staff, known as "kites." The psychological staff track these requests in an Excel database, triage them, assign them to staff, and track responses. It is against institution policy to fail to log or follow up on inmate requests. After Pynenberg was placed on leave, staff discovered a number of requests in Pynenberg's office which Pynenberg had failed to log or respond to. Rotondi-Dickey testified that she was surprised by the number of requests that Pynenberg had failed to answer.

Pynenberg argues that she has retaliated against for reporting that illegal substances were being brought into RGCI and for advocating for better food for the inmates. She claims that Warden Gierach retaliated by initiating an investigation. However, Pynenberg offers no evidence to substantiate either her claims or her report. All available testimony indicates an investigation was initiated as a result of her inappropriate comments to intern Emmanuel.

In light of the foregoing, the Commission concludes Pynenberg engaged in workplace misconduct. She fraternized when she assisted inmates with legal work and met with inmates more frequently than their diagnoses required. Warden Gierach testified that Pynenberg's fraternization could have jeopardized the institution's safety and the safety of inmates. Furthermore, Pynenberg

was grossly negligent when she fell months behind on her casework, failed to properly document her work, and failed to log or follow up on inmate requests.

Turning to the issue of whether the misconduct created just cause for discharge, Pynenberg argues that she was subject to disparate treatment, because Emmanuel discussed Pynenberg's comments with her roommate but received no discipline. An employee who raises a disparate treatment claim has the burden of proving that contention. The Commission has long recognized that disparities in discipline may, under certain circumstances, affirmatively defend against discipline despite the existence of misconduct. Underlying that position is the notion that if an employer treats one employee significantly more harshly than a similarly situated coworker for similar misconduct, inherent unfairness exists. *See Morris v. DOC*, Dec. No. 35682-A (WERC, 7/15). Pynenberg provided no evidence that Emmanuel sharing her conversation constituted a work rule violation, and even if it had, it would pale in comparison to Pynenberg's serious violations of work rules as outlined above.

The record reflects that the DOC skipped three steps in its standard disciplinary progression by discharging Pynenberg instead of giving her a one-day suspension. While issues involving Pynenberg's timeliness and work performance are classic examples of why progressive disciplinary steps exist (namely to allow employees to confront deficiencies and improve), that is not the issue that gives the Commission the most concern. The act of fraternization is serious misconduct, and as demonstrated by the evidence in the record went far beyond what is acceptable in the relationship between a DOC employee and a PIOC. This act alone warrants the skip of progressive discipline to the level of discharge.

Having considered the matter, the Commission has affirmed the discharge.

Issued at the City of Madison, Wisconsin this 6th day of February 2025.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman