

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

BRADLEY LEWIN, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0677

Case Type: PA

DECISION NO. 40716

Appearances:

Bradley Lewin, 804 Seymour Street, Waupun, Wisconsin, appearing on his own behalf.

David G. Makovec, Attorney, Department of Administration, 201 East 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 18, 2024, Bradley Lewin filed an appeal with the Wisconsin Employment Relations Commission asserting 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 Anfin J. Wise.

A zoom hearing was held on December 6, 2024, by Examiner Wise. The parties made oral argument at the conclusion of the hearing. On December 19, 2024, Examiner Wise issued a Proposed Decision and Order modifying the three-day suspension of Bradley Lewin by the DOC to a Letter of Expectation and making Lewin whole with interest. No objections to the Proposed Decision were filed by the parties by the given deadline of December 26, 2024.

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

FINDINGS OF FACT

1. Bradley Lewin is employed by the State of Wisconsin Department of Corrections (DOC) as a Correctional Sergeant at Dodge Correctional Institution (DCI), and he had permanent status in class at the time of his suspension.

2. DCI is a correctional facility located in Waupun, Wisconsin operated by DOC, a state agency of the State of Wisconsin.

3. On February 17, 2024, after being notified by an inmate that he had not drank water all day, Lewin directed an officer to turn the inmate's water on.

4. Lewin did not follow DOC's Policy on Control of Water Supply to Inmate Housing.

5. Lewin did not keep updated on all DOC policies and procedures, as expected of all DOC employees.

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 did not have just cause within the meaning of Wis. Stat. § 230.34(1)(a) to suspend Bradley Lewin 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 Bradley Lewin shall be modified to a Letter of Expectation and Lewin shall be made whole with interest.¹

Issued at Madison, Wisconsin, this 15th day of January 2025.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman

¹ See Wis. Admin. Code § ERC 94.07.

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.

Lewin 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 Lewin 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).

On February 17, 2024, Lewin was working as the first and second shift supervising officer 1 (Lieutenant) at Waupun Correctional Institution (WCI) when he was notified by inmate D.M. that he had not drank water all day and had not showered. In response, Lewin directed an officer to turn D.M.'s water back on. Lewin was not aware that the inmate's water was being turned on and off. Lewin was also not aware of DOC's Policy on Control of Water Supply to Inmate Housing, which requires staff to document water shutoffs. It is unknown who turned the water off or when it was turned off. There was no documentation regarding any of the water shutoffs.

DOC's investigation determined that D.M.'s water supply was being turned on and off at various times between February 16 and 18, 2024. Staff also may have deprived the inmate of food and failed to address concerns about his well-being. On February 22, 2024, inmate D.M. died at WCI.

DOC contended that Lewin was grossly negligent by failing to document a change in D.M.'s access to water, as well as making any notifications about the water being turned on. DOC claims that it is the employee's responsibility, especially supervisors, to be familiar with all policies and procedures, and that access to all policies is available online at any time. DOC asserts that Lewin should have been aware of the Control of Water Supply to Inmate Housing policy, and that his failure to follow the policy constitutes serious misconduct. However, the record does not support that contention.

A preponderance of the credible evidence established that there are hundreds of DOC policies and procedures, some more applicable in one institution versus another. The record established that the Control of Water Supply to Inmate Housing policy was not followed at

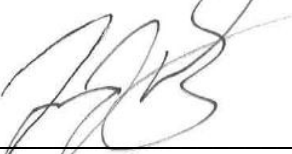
Waupun Correctional Institution. Lewin credibly testified that he was never trained on the policy, and that he had never seen the Control of Water Supply form until this investigation. He conceded that, as a new lieutenant, it was his responsibility to be aware of all policies. However, if you don't have guidance, you don't know what you don't know. This was an institutional failure. In fact, only after this incident, on March 12, 2024, Warden Randall Hepp sent a memo to all staff at WCI highlighting the importance of the Control of Water Supply to Inmate Housing policy.

Under the circumstances, the Commission concludes that DOC did not have just cause for a three-day suspension but that a Letter of Expectation is appropriate to remind Lewin of his responsibility to review DOC's policies and procedures and keep up to date on the newest versions of the policies.

Given the foregoing, it is concluded that the three-day suspension be modified to a Letter of Expectation and that Lewin be made whole in all other regards.

Issued at Madison, Wisconsin, this 15th day of January 2025.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION



James J. Daley, Chairman