

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

MARCO STEPHENSON, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0675

Case Type: PA

DECISION NO. 40721

Appearances:

Kayla Pompey, 7277 W. Marine Drive, Milwaukee, Wisconsin, appearing on behalf of Marco Stephenson.

Attorney David Makovec, 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 18, 2024, Marco Stephenson 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).

A zoom hearing was held on December 3, 2024, by Commission Examiner Peter G. Davis. The parties made oral closing arguments at the end of the hearing and a supplemental exhibit was filed December 6, 2024. On January 7, 2025, Examiner Davis issued a Proposed Decision and Order, affirming the discharge of Marco Stephenson by the DOC. On January 13, 2025, Stephenson filed objections to the Proposed Decision.

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

FINDINGS OF FACT

1. Marco Stephenson, herein Stephenson, was employed by the State of Wisconsin Department of Corrections as a Correctional Officer at the Waupun Correctional Institution. He had permanent status in class at the time of his discharge.

2. Stephenson and another employee found an inmate on the shower floor. Neither employee filed an incident report nor reported the incident to health services. Stephenson also failed to have his body worn camera on for a short period of time while he and the other employee were in the process of providing assistance to the inmate. The inmate in question died four days later.
3. Stephenson and the other employee were both discharged.

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 have just cause within the meaning of Wis. Stat. § 230.34(1)(a) to discharge Marco Stephenson.

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

ORDER

The discharge of Marco Stephenson by the State of Wisconsin Department of Corrections is affirmed.

Issued at Madison, Wisconsin, this 16th day of January 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.

Stephenson 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 Stephenson 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).

Stephenson admits that he forgot to have his body worn camera on for a short period of time.

Stephenson admits that he did not file an incident report but claims that it was the other employee's responsibility to do so. The evidence as a whole persuades the Commission that both employees had a responsibility to file an incident report.

As to Stephenson's claim that he reported the incident to health services, no witness was presented to corroborate Stephenson's claim and no written record of any such contact exists. Indeed, when interviewed as part of the investigation, Stephenson did not recall whether he did or did not contact health services. Given the foregoing, the Commission concludes that Stephenson did not report the shower incident to health services.

Given the foregoing, the Commission concludes that the State has met its burden to prove that Stephenson engaged in misconduct. While it seems clear in retrospect that the failure to report the shower incident did not contribute to the inmate's subsequent death, at the time of the failure the risk of any such impact existed.

Turning to the issue of whether there was just cause for discharge, Stephenson was at a one-day suspension level of discipline prior to being discharged. Had his only misconduct been the failure to have his camera on, it is clear he would only have received a three-day suspension. Thus, the propriety of his discharge turns on his failure to report the shower incident. Because of the risk to an inmate's health that the failure to report (either verbally or by incident report) created,

the Commission is satisfied that there is just cause for the skip in progression to the level of discharge.

Stephenson attacks the level of discipline with a claim that another current DOC employee received no discipline when he failed to prepare an incident report as to a fall by the same inmate who died two days later. That DOC employee testified that the inmate did not fall but rather “took a knee” in front of another inmate’s cell door and thus there was no need for an incident report. The former DOC employee (subsequently discharged for failing to make required cell observations and failure to activate his camera) who was also accompanying the inmate two days before his death testified that the inmate stumbled but that his stumble was contemporaneously reported to health services. Given the foregoing, it is apparent that either there was no need for an incident report or the inmate’s well-being was protected by a report to health services. Thus, Stephenson’s attack on the level of discipline fails. He did not file an incident report or verbally report the shower incident.

Therefore, the discharge of Stephenson is affirmed.

Issued at Madison, Wisconsin, this 16th day of January 2025.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman