

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

MELISSIA TEMPSKI, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0689

Case Type: PA

DECISION NO. 40724

Appearances:

Cricket Beeson, Attorney, Hurley Burish, S.C., 33 E. Main Street, Suite 400, Madison, Wisconsin, appearing on behalf of Melissa Tempski.

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 Corrections.

DECISION AND ORDER

On October 22, 2024, Melissa Tempski filed an appeal with the Wisconsin Employment Relations Commission asserting she had been suspended for one day 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 16, 2024, by Examiner Lisiecki. The parties made oral closing arguments at the end of the hearing. On January 9, 2025, Examiner Lisiecki issued a Proposed Decision and Order affirming the one-day suspension of Melissa Tempski by the DOC. Tempski filed objections to the Proposed Decision on January 15, 2025. The DOC did not file a response to the objections by the given deadline of January 21, 2025.

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

FINDINGS OF FACT

1. Melissa Tempski (Tempski) is employed by the State of Wisconsin Department of Corrections (DOC), as a correctional sergeant at Flambeau Correctional Center (FCC). She had permanent status in class when she was suspended.

2. In February 2024, Tempski was temporarily assigned to Waupun Correctional Institution (WCI) due to a staffing shortage.

3. On February 16, 2024, inmate D.M. asked Tempski for water three times.

4. Tempski did not notify a range officer or unit sergeant that D.M. had requested water.

3. Following an investigation, the DOC suspended Tempski for one day for 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 suspend Melissia Tempski for one day.

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

ORDER

The one-day suspension of Melissia Tempski by the State of Wisconsin Department of Corrections is affirmed.

Issued at Madison, Wisconsin, this 4th 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.

Melissia Tempski had permanent status in class at the time of her suspension and her appeal alleges that the suspension was not based on just cause.

The State bears the burden of proof to establish that Tempski 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).

Tempski was employed as a correctional sergeant at Flambeau Correctional Center (FCC). In February 2024, due to staffing shortages, Tempski was stationed at Waupun Correctional Institution (WCI). On February 16, 2024, Tempski was working as a first shift observation checker in the Restricted Housing Unit (RHU). On three occasions that morning – at 6:23 a.m., 10:18 a.m., and 10:46 a.m. – inmate D.M. asked Tempski for water. Their interactions were recorded by Tempski's body camera.

On the first occasion, Tempski gave D.M. sanitary wipes. D.M. said, "I don't need that. I need drinking water. I don't need that [inaudible] to drink water." Tempski replied, "I'll still give it [the sanitary wipes] to you, because you're allowed to have it." Tempski testified that D.M. was standing in water when he made his request.

On the second occasion, Tempski asked D.M. his clothing size, and D.M. replied, "Cold water is all I need." Tempski replied "Okay" and walked away.

On the third occasion, Tempski told D.M. that she was trying to get him clothing. D.M. replied "I need water!"

The water in D.M.'s cell had been shut off, but this had not been properly logged, and Tempski was unaware of this fact.

Tempski testified that she told Sergeant Jeramie Chalker about D.M.'s repeated requests to water, but there is no evidence of this aside from her self-serving assertion. Chalker did not

testify at the hearing and did not report that Tempski told him about D.M.'s requests in his investigatory interview. Tempski also claims that she reported D.M.'s requests for water to Range Officer Maria Gomez Sena, but the body camera footage shows that Tempski only made a mocking observation about D.M. acting strangely. Tempski failed to convey D.M.'s repeated requests to water to her supervisors in a clear or timely manner.

Tempski argues that, as an observation checker, she was not responsible for providing inmates with things they requested. Tempski was only given a radio and a body camera – not OC (pepper) spray – and was therefore prohibited from opening the trap to give inmates items. However, Tempski was disciplined not for failing to provide D.M. with water, but for failing to report D.M.'s repeated requests to a supervisor.

Tempski argues that she was not aware that D.M.'s water had been shut off, and that she did not find D.M.'s requests for water credible because he had been standing in water at the time. D.M. also frequently exhibited unstable and hostile behavior. However, Sarah Cooper, the administrator of the DOC's Division of Adult Institutions, testified that, as an observation checker, Tempski was responsible for frequently checking in on inmates – such as D.M. – who needed elevated monitoring to ensure their well-being. Instead of assuming that D.M. had access to water in his cell, Tempski should have asked follow-up questions. When he repeatedly asked for water, she should have reported those requests to a supervisor.

Tempski argues that her supervisors at WCI were ineffective and unsupportive of her duties. She argues that she was never given clear orders at WCI, that there was little communication among staff, and that she was given no support if she reported an issue. However, all DOC staff are responsible for ensuring the health and wellbeing of inmates. Reporting an inmate's requests for drinking water fell squarely within Tempski's responsibilities as an observation checker. Tempski was responsible for conveying D.M.'s repeated requests for water to those who could address his need, regardless of whether she expected her supervisors to take appropriate action.

Tempski was negligent when she failed to notify a range officer or unit sergeant about D.M.'s repeated requests for water on February 16, 2024. The State followed progressive discipline by issuing this one-day suspension. There was just cause for the one-day suspension, and the suspension is therefore affirmed.

Issued at the City of Madison, Wisconsin, this 4th day of February 2025.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman