

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

SHANNON SMITH, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0691

Case Type: PA

DECISION NO. 40751

Appearances:

Shannon O. Smith, 9037 Settlers Road, Madison, Wisconsin, appearing on her 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 November 15, 2024, Dr. Shannon Smith (Smith) filed an appeal with the Wisconsin Employment Relations Commission asserting she 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 hearing was held on February 6, 2025, by Examiner Wise. The DOC made oral argument at the conclusion of the hearing. Smith submitted written closing argument on February 10, 2025. The DOC was asked if they wished to file a written response to Smith's closing argument, but did not respond to the Commission's request.

On February 18, 2025, Examiner Wise issued a Proposed Decision and Order rejecting the three-day suspension of Smith by the DOC, ordering she be made whole with interest. The DOC did not file objections to the Proposed Decision by the given deadline of February 24, 2025.

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

FINDINGS OF FACT

1. Dr. Shannon Smith (Smith) is employed by the State of Wisconsin Department of Corrections (DOC) as a Physician at Oakhill Correctional Institution (OCI), and she had permanent status in class at the time of her three-day suspension.

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

3. On March 12, 2024, Smith attempted to have a discussion with her friend and Nursing Supervisor, Rachel Snow, about a previous disciplinary investigation.

4. After the discussion, Smith provided a copy of a summary of the investigation, mitigation factors, and a personal speech from the previous investigation to Ms. Snow and another Nursing Supervisor.

5. DOC suspended Smith for three days for Findings 3 and 4; failure to comply with the written agency policy on harassment and retaliation, and violation of the work rule that prohibits intimidating or harassing behavior.

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 Shannon Smith 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 Shannon Smith is rejected and Smith shall be made whole with interest.¹

¹ See Wis. Admin. Code § ERC 94.07.

Issued at Madison, Wisconsin, this 4th 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.

Smith 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 has the burden of proof to establish that Smith 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 March 12, 2024, after returning from administrative leave, Smith attempted to have a discussion with her friend and Nursing Supervisor, Rachel Snow, about a previous disciplinary investigation. Smith believed Snow had initiated the investigation but wanted to explain her perspective related to the allegations against her. Because Smith and Snow were close friends at work and outside of work, Smith also wanted to clear the air and return to work without any tension between them. Snow was uncomfortable and did not want to talk about the investigation. The conversation ended and Smith subsequently slid a copy of the summary of the investigation, mitigation factors, and a personal speech, under Snow's office door. Smith also provided a copy to another Nursing Supervisor.

DOC's Executive Directive #5 is their policy on Employee Harassment and Discrimination. The policy prohibits discrimination, harassment, and retaliation. The policy defines harassment as unwelcome verbal, physical, or visual conduct that is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive. The policy also defines retaliation as an adverse action taken or a threat to take an adverse action against anyone who, in good faith, reports, assists another individual with reporting, or participates in fact-finding or investigation of suspected violations of this policy.

DOC's work rule #14 prohibits intimidating, interfering with, harassing, demeaning, treating discourteously, or bullying others.

DOC contended that Smith failed to comply with its Executive Directive #5 and work rule #14, when she tried to have a conversation about an investigation with her friend, Snow, and then

followed up the conversation by providing Snow a copy of the summary, mitigation factors, and a personal speech. However, the record does not support that contention.

A preponderance of the credible evidence established that Smith tried to have a conversation with Snow because they were such good friends. Smith's intention was to explain her side of the story and clarify that she did not hold anything against Snow. When Snow declined to discuss the investigation further, the conversation ended. While Snow may have felt uncomfortable in the situation, in no way does the conversation or the act of providing a copy of the information under Snow's door amount to harassment or retaliation. Smith's conduct was not severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive. Smith did not take adverse action against Snow or threaten to take adverse action against Snow.

Under the circumstances, the Commission concludes that DOC did not have just cause for a three-day suspension. Given the foregoing, the three-day suspension is rejected and Smith shall be made whole in all other regards.

Issued at Madison, Wisconsin, this 4th day of March 2025.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman