

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

SHANNON SMITH, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0713

Case Type: PA

DECISION NO. 40752

Appearances:

Shannon O. Smith, 9037 Settlers Road, Madison, Wisconsin, appearing on her own behalf.

David Makovec, Attorney, Department of Administration, 101 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, Shannon Smith filed an appeal with the Wisconsin Employment Relations Commission asserting she had been suspended for five 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. Dr. 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 modifying the five-day suspension of Smith by the DOC to a three-day suspension, and ordering she be made whole for the difference with interest. No objections were filed by the parties and the matter became ripe for Commission consideration on February 25, 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 had permanent status in class at the time of her five-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 brought several magazines into OCI, including Time magazine and National Geographic, intended to be donated to the institution's health services unit waiting room for inmates.

4. Smith did not complete the donation form or receive approval for donating the magazines to the institution or bringing in the unauthorized items.

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 to review 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 five days, but did have just cause to suspend her 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 five-day suspension of Shannon Smith by the State of Wisconsin Department of Corrections shall be modified to a three-day suspension, and she shall be made whole for the difference 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., 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.

Shannon 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).

It is undisputed that Smith brought several magazines into OCI on March 12, 2024, including Time magazine and National Geographic, intended to be donated to the institution's health services unit waiting room for inmates. Smith did not complete the donation form as required or receive approval for donating the magazines to the institution or bringing in the unauthorized items. Thus, misconduct has been established.

However, Smith argues she was unaware that she needed approval for each individual magazine edition intended for donation. Smith asserts that she had received prior approval from OCI's former warden that she could bring and donate magazines in September 2022, specifically Men's Health, Esquire, National Geographic History, National Geographic, Time, and Time Life Magazine 2019 on World War II. Smith mistakenly believed she had blanket approval moving forward to donate those title magazines. We reject Smith's defense. Any unauthorized item intended for inmates creates a potential risk to the safety and security of any correctional facility, its staff, and other inmates. One of the purposes of DOC's policy on donations is intended to ensure that unauthorized items, including contraband, do not make it into the hands of inmates. Common sense will tell you that any item entering a correctional facility intended for inmate access needs prior approval. Accordingly, the Commission finds that Smith can be held accountable for her misconduct.

Turning now to the level of discipline imposed here, the Commission finds that Smith's misconduct does provide just cause for the imposition of a three-day suspension.² Therefore, the five-day suspension shall be modified to a three-day suspension and Smith shall be made whole for the difference with interest.

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

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman

² The record established that Smith previously received a one-day suspension on January 5, 2024. Thus, the three-day suspension is following progressive discipline.