

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

CHRISTOPHER FOLEY Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0700

Case Type: PA

DECISION NO. 40755

Appearances:

Christopher Foley, 225 N. Adams Street, Apt. 205, Lancaster, Wisconsin, appearing on his own behalf with assistance from Adam Fritz.

Attorney Nicole Porter, 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 December 3, 2024, Christopher Foley (Foley) 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 January 21, 2025, by Commission Examiner Peter G. Davis. The parties filed written arguments by February 11, 2025. On February 27, 2025, Examiner Davis issued a Proposed Decision and Order affirming the discharge of Foley by the DOC. No objections to the Proposed Decision were filed by the parties, and the matter became ripe for commission consideration on March 5, 2025.

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

FINDINGS OF FACT

1. Christopher Foley (herein Foley) was employed by the State of Wisconsin Department of Corrections (DOC) as a Correctional Officer at the Prairie du Chien Correctional Institution, and he had permanent status in class at the time of his discharge.

2. Foley threatened a fellow DOC employee with reporting alleged misconduct by that employee unless she recanted allegations made against another employee. He did so after being advised by other DOC employees not to make such a threat.

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 Christopher Foley.

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

ORDER

The discharge of Christopher Foley by the State of Wisconsin Department of Corrections is affirmed.

Issued at Madison, Wisconsin, this 18th 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.

Foley 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 Foley 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).

The State has met its burden to establish that Foley threatened a fellow DOC employee with reporting alleged misconduct by that employee unless she recanted allegations made against another employee. The recipient of the threat provided credible testimony as to the content of the conversation. Further, based on the credible testimony of two co-workers, the State has established that he made the threat after being advised by other DOC employees not to do so.

Foley asserts that he can't remember what happened as he was suffering from low blood sugar at the time. That assertion is not credible. He was not exhibiting his standard low blood sugar physical or behavioral manifestations either during his interaction with the co-worker or during the earlier conversation with the two co-workers who tried to warn him off. Further, he did not make the low blood sugar claim until well after the incident. Lastly, his inability to recall is curiously limited to the time of his conversation with the co-worker.

Even if Foley does not know what he said, that hardly means the threat did not occur or serves to excuse the threat. This is particularly true where, as here, the threat was premeditated. The Commission acknowledges that Foley denies that the premeditation conversation occurred. However, Foley does not present any credible evidence as to why the two co-workers would lie. It is apparent that he has a self-interest in doing so.

Having established that misconduct occurred, the Commission turns to the issue of whether there is just cause for discharge. Foley had no discipline on his record and thus discharge is a major skip in progression. Foley argues that discipline up to a five-day suspension might be appropriate if the Commission concludes he engaged in misconduct.

The Commission is persuaded that there is just cause for discharge. Foley attempted to interfere with a disciplinary investigation – a fundamental breach of his obligation as a correctional officer and of the trust co-workers need to share to safely perform their duties. Absent the pre-meditated nature of the threat, it might be tempting to conclude that this singularly stupid conduct could be excused as a momentary lapse in judgment that only warrants a hefty suspension. But those are not the facts before the Commission.

When deciding that there is just cause for discharge, the Commission has considered and rejected Foley's disparate treatment claim. In this regard, he points to a one-day suspension received by an employee who was found to have put his hands on another employee and used profanity. Foley correctly argues that the one-day suspension employee was found to have engaged in "serious misconduct" and then asserts that his "serious misconduct" should receive the same disciplinary response. Clearly there is a range in the levels of misconduct that fit within the "serious" category and DOC has no just cause obligation to treat all "serious misconduct" the same. Furthermore, the Commission has generally held that a successful disparate treatment argument requires a comparison of the same acts of misconduct by similarly situated employees. Here, the acts of misconduct were not the same.

Given all of the foregoing, the Commission affirms the discharge of Christopher Foley.

Issued at Madison, Wisconsin, this 18th day of March 2025.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman