

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

T.I., Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF HEALTH SERVICES, Respondent.

Case ID: 2.0168

Case Type: PA

DECISION NO. 40767

Appearances:

Tammy Kettenhoven and Joshua Warren, Winnebago Mental Health Institute, P.O. Box 9, Winnebago, Wisconsin, appearing on behalf T.I.

David G. 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 Health Services.

DECISION AND ORDER

On December 10, 2024, T.I. filed an appeal with the Wisconsin Employment Relations Commission asserting he had been discharged without just cause by the State of Wisconsin Department of Health Services (DHS). The appeal was assigned to Commission Examiner Anfin J. Wise.

A zoom hearing was held on March 5, 2025, by Examiner Wise. The Respondent made oral argument at the conclusion of the hearing. Mr. T.I. submitted a written closing argument later that same day. On March 6, 2025, Examiner Wise issued a Proposed Decision and Order, rejecting the discharge of T.I. by the DHS, and ordering reinstatement without backpay.

On March 12, 2025, the DHS filed objections to the Proposed Decision one date late. On March 13, 2025, T.I.'s representatives filed a response to the objections and the matter became ripe for Commission consideration.

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

FINDINGS OF FACT

1. T.I. was employed by the State of Wisconsin Department of Health Services (DHS) as a Psychiatric Care Technician-Advanced (PCT-A) at Winnebago Mental Health Institute (WMHI). He had permanent status in class at the time of his discharge.

2. WMHI is a behavioral health service provider located in Oshkosh, Wisconsin, operated by DHS, a state agency of the State of Wisconsin.

3. On September 24, 2024, T.I. called in sick, indicating that he needed to take a mental health day.

4. T.I. did not specify “FMLA” when he called in sick. At the time, T.I. had approved intermittent FMLA for mental illness.

5. T.I. did not have enough leave time to cover the absence, which resulted in approximately three hours of unauthorized leave without pay.

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 Health Services did not have just cause within the meaning of Wis. Stat. § 230.34 (1)(a), to discharge T.I.

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

ORDER

The discharge of T.I. by the State of Wisconsin Department of Health Services is modified to reinstatement without backpay.

Issued at Madison, Wisconsin, this 25th 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.

T.I. had permanent status in class at the time of his suspension and his appeal alleges that the suspension was not based on just cause.

The State has the burden of proof to establish that T.I. 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 September 24, 2024, T.I. called in sick, indicating that he needed to take a mental health day. At the time, T.I. had approved intermittent FMLA for his mental illness, but failed to specify “FMLA” when he called in his absence. As such, the absence was not approved under FMLA. Additionally, T.I. did not have enough leave time to cover the absence; he was short about three hours. DHS considered the three hours as unauthorized leave without pay. DHS policy requires that leave without pay be preapproved. Thus, misconduct has been established.

However, T.I. argues that he was not in the right state of mind because he was experiencing a mental health crisis. He admits that he made the mistake by not specifying “FMLA” when he called in sick. Had he done so, the absence would have been excused.

Here, the Commission is persuaded that T.I.’s mental health crisis is sufficient to mitigate his misconduct. We therefore conclude that his discipline should be reduced under the just cause standard. Thus, T.I. shall be reinstated without backpay.

Issued at Madison, Wisconsin, this 25th day of March 2025.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman