

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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MATTHEW MIGALA, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0709

Case Type: PA

DECISION NO. 40779

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Appearances:

Matthew Kaczmarek, W8894 Center Road, Thorp, Wisconsin, appearing on behalf of Matthew Migala.

David Makovec, 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 December 26, 2024, Matthew Migala filed an appeal with the Wisconsin Employment Relations Commission asserting he had been suspended for three days without just cause by the State of Wisconsin Department of Corrections. The appeal was assigned to Commission Examiner Katherine Scott Lisiecki.

A telephone hearing was held on February 18, 2025, by Examiner Lisiecki. The parties made oral closing arguments at the end of the hearing. On March 19, 2025, Examiner Lisiecki issued a Proposed Decision affirming the three-day suspension of Migala by the DOC. The parties did not file objections to the Proposed Decision and the matter became ripe for Commission consideration on March 25, 2025.

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

**FINDINGS OF FACT**

1. Matthew Migala (Migala) is employed by the State of Wisconsin Department of Corrections (DOC), as a correctional sergeant at Stanley Correctional Institution (SCI). He had permanent status in class when he was suspended.

2. On September 7, 2024, Migala was working in the Health Service Unit (HSU). He failed to complete required security rounds. He also failed to escort an inmate worker.

3. Following an investigation, the DOC suspended Migala for three days for inattentiveness, negligence, and failure to comply with agency policies.

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 Matthew Migala 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 Matthew Migala by the State of Wisconsin Department of Corrections is affirmed.

Issued at Madison, Wisconsin, this 17<sup>th</sup> day of April 2025.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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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.

Matthew Migala 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 Migala 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).

Migala is employed as a correctional sergeant at Stanley Correctional Institution (SCI). On September 7, 2024, Migala was stationed in the Health Service Unit (HSU) for an eight-hour shift. The HSU had its Post Orders on display in the officer's station, directing security staff working in the HSU to complete security rounds "at least hourly." *See* Exhibit R-7, pg. 16-17. Additionally, SCI Warden Chris Buesgen sent out a memo on August 29, 2024, reminding all staff to complete their rounds at least hourly in general population units. *See* Exhibit R-7, pg. 13. Migala did not leave the officer's station to conduct any rounds during his entire eight-hour shift.

Migala also failed to escort an inmate worker in the HSU. The HSU Post Orders state that:

"THE HSU OFFICER WILL REMAIN IN THE HSU BUILDING WHENEVER INMATES ARE PRESENT. DO NOT LEAVE INMATES ALONE WITH NON-UNIFORM STAFF AT ANY TIME. Additionally, the HSU Officer will escort the inmate worker anytime s/he is cleaning in HSU where the Officer is not able to view inmate while at Officer Station. This includes Physical Therapy, Dental area, Staff Bathrooms, X-Ray, Optical, Staff Breakrooms."

*See* Exhibit R-8, pg. 3.

Migala argues that there was no need for him to complete rounds because he could see everything happening in the HSU from his officer's station. He also argues that the HSU was not very busy that day. However, the Post Orders require officers to account for all inmates, check on inmate wellbeing (which includes checking for breathing, evidence of medical distress, or potential substance abuse), and check for hazards in cells – regardless of how busy a unit is on a particular

day. Observing the HSU from the officers' station was not an adequate substitute for completing security rounds as directed by the Post Orders.

Migala argues that he had no time to complete rounds because he had to complete diabetic checks and help pass out medication, and because there were no other employees to help him complete rounds. However, these are only two tasks during an eight-hour shift. Migala had plenty of time to complete rounds.

Migala argues that for years, staff did not have to escort inmate workers. Migala argues that the requirement to escort an inmate worker was in the Post Orders but was not in the August 29 memo. However, this is irrelevant. Migala was clearly responsible for reading and following the Post Orders. His job description clearly outlines that, as a correctional sergeant, he is required to "Follow all DOC Policies and Procedures, Executive Directives and area Post Orders related to employee responsibilities." *See* Exhibit R-2, pg. 2. The Post Orders instructed Migala to escort inmate workers, and he failed to do so.

Migala argues that he was subject to disparate treatment, because other staffers did not complete security rounds while stationed in the HSU. An employee who raises a disparate treatment claim has the burden of proving that contention. The Commission has long recognized that disparities in discipline may, under certain circumstances, affirmatively defend against discipline despite the existence of misconduct. Underlying that position is the notion that if an employer treats one employee significantly more harshly than a similarly situated coworker for similar misconduct, inherent unfairness exists. *See Morris v. DOC*, Dec. No. 35682-A (WERC, 7/15). Here, Migala submitted log books from the HSU purporting to show that other staffers were not completing security rounds as directed by the Post Orders. *See* Exhibit A-1, pgs. 1-9. Although some employees appear not to have completed as many rounds as required by Post Orders, there is not enough information to determine whether they are similarly situated to Migala.

Lastly, Migala argues that he cannot be disciplined because he already received a job instruction, in the form of a September 7 email from his supervisor, Captain Charles Vlasak, telling Migala that he failed to complete rounds and should do so going forward. *See* Exhibit R-6. However, an email from a supervisor is not formal discipline and does not negate the possibility of formal discipline.

Migala was inattentive and negligent when he failed to complete rounds or escort an inmate worker on September 7, 2024. Warden Buesgen testified about how important it is that post officers complete their rounds, because lack of rounds has led to inmate deaths. Migala's inattentiveness could have jeopardized the institution's safety and the safety of inmates. Although Migala has no previous discipline, the seriousness of his negligence in failing to complete rounds justifies a skip in progression. There was just cause for the three-day suspension, and the suspension is therefore affirmed.

Issued at the City of Madison, Wisconsin, this 17<sup>th</sup> day of April 2025.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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James J. Daley, Chairman