

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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M.S., Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0721

Case Type: PA

DECISION NO. 40880

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Appearances:

M.S., c/o Racine Correctional Institution, 2019 Wisconsin Street, Sturtevant, Wisconsin, appearing on his own behalf.

Attorney David Makovec, 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 February 27, 2025, M.S. filed an appeal with the Wisconsin Employment Relations Commission asserting he had been suspended for five days without just cause by the State of Wisconsin Department of Corrections (DOC).

A zoom telephone hearing was on April 14, 2025, by Commission Examiner Peter G. Davis. The parties made oral arguments at the end of the hearing. On April 30, 2025, Examiner Davis issued a Proposed Decision affirming the five-day suspension of M.S. by the DOC. No objections to the Proposed Decision were filed by the parties and the matter became ripe for Commission consideration on May 6, 2025.

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

**FINDINGS OF FACT**

1. M.S. is employed by the State of Wisconsin Department of Corrections and had permanent status in class at the time of his five-day suspension. He had a three-day suspension on his record at the time of the suspension.

2. M.S. did not report to work for a scheduled shift and did not call in one and one-half hours before the shift.

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 suspend M.S. for five 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 M.S. by the State of Wisconsin Department of Corrections is affirmed.

Issued at Madison, Wisconsin, this 19<sup>th</sup> day of May 2025.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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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.

M.S. 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 M.S. 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).

M.S. does not dispute that he violated the Department of Corrections' policy. However, he credibly testified that he had every intention to report to work on the day in question but was unable to do so due to PTSD related circumstances stemming from an inmate assault. While the Commission is certainly sympathetic to M.S.' circumstances, the Department is nonetheless entitled to require that he adheres to call-in policies. Because M.S. had a three-day suspension on his record at the time of misconduct, there is just cause for the imposition of a five-day suspension as part of the standard Department disciplinary progression.

Issued at Madison, Wisconsin, this 19<sup>th</sup> day of May 2025.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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James J. Daley, Chairman