

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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HEATHER KRUEGER, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0715

Case Type: PA

DECISION NO. 40882

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Appearances:

Colin B. Good, Attorney, Hawks Quindel, S.C., 409 E. Main Street, Madison, Wisconsin, appearing on behalf of Heather Krueger.

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 January 29, 2025, Heather Krueger (Krueger) filed an appeal with the Wisconsin Employment Relations Commission asserting she had been discharged without just cause by the State of Wisconsin Department of Corrections (DOC). The appeal was assigned to Commission Examiner Katherine Scott Lisiecki.

A hearing was held in Madison on March 20, 2025, by Examiner Lisiecki. The parties submitted written closing arguments on April 1, 2025. On May 2, 2024, Examiner Lisiecki issued a Proposed Decision and Order affirming the discharge of Krueger by the DOC. On May 7, 2025, Krueger filed objections to the Proposed Decision. The DOC did not file a response to the objections, and the matter became ripe for Commission consideration on May 13, 2025.

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

**FINDINGS OF FACT**

1. Heather Krueger (Krueger) was employed by the State of Wisconsin Department of Corrections (DOC), as a correctional officer at Dodge Correctional Institution (DCI). She had permanent status in class when she was discharged.

2. On or after June 16, 2024, Krueger replied to a Facebook post with confidential, sensitive, and non-public information about inmates.

3. Krueger accessed the Wisconsin Integrated Corrections System (WICS) records of three deceased inmates who had been housed at a different institution without a business reason to access these records.

4. Following an investigation, the DOC discharged Krueger for unauthorized access or disclosure of information or records that could be reasonably considered confidential, misuse or abuse of agency property, and failure to comply with written agency policies or procedures.

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 discharge Heather Krueger.

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

### **ORDER**

The discharge of Heather Krueger by the State of Wisconsin Department of Corrections is affirmed.

Issued at Madison, Wisconsin, this 27<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., 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.

Heather Kreuger had permanent status in class at the time of her discharge and her appeal alleges that the suspension was not based on just cause.

The State has the burden of proof to establish that Krueger 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).

Krueger was employed as a correctional officer at Dodge Correctional Institution (DCI). On or after June 16, 2024, Krueger replied to a friend's Facebook post with a comment that read:

"...As far as the [redacted] If there was, I know for a fact they would have been addressed. He was [redacted] to assault staff 3 days before passing [redacted]. I can also verify that the whole time he was in our prison system, his mother nor anyone else came to visit him, even BEFORE they ended in person visits due to modified movement. They also did not throw [redacted] into solitary confinement. He was temporarily locked up due to his refusing to follow orders. He told the Lt. that he wanted to be placed in Restrictive housing. He also [redacted] in county. You can't take everything that is said by these families as God's to honest truth. Yes, there are a few bad apples that work(ed) there, but I can tell you that there are by far many more there that do the job with integrity and that they do care! There are definitely several that are being accused of abusing inmates that did not! The CO'S there bust their butts daily while being attacked and assaulted. What happened to [redacted] was wrong and the CO that felt the need to [redacted] should be held accountable, but he is an anomaly! 99% of the CO's there are good people and would not go out of their way to hurt inmates! Ask me how I know? I worked there for 4 years until I was moved due to a credible death threat made against me by an inmate. Why would they make such threats? Because I did my job and held the inmates accountable for their actions. TRUST

me, if it was safe for me to go back I would! You can't go believing a very one

sided version of these stories!”

An unidentified person reported Krueger’s comment to the Dodge County Sherriff, who notified DOC Secretary Jared Hoy. Hoy referred the matter to the DOC’s Office of Legal Counsel and the Internal Affairs Office, which launched an investigation.

During the investigation, Krueger admitted that the Facebook profile “Heather Renee” belonged to her. The profile identified her as a correctional officer with the DOC. Krueger also admitted that she had accessed the Wisconsin Integrated Corrections System (WICS) records of three deceased inmates housed at Waupun Correctional Institution (WCI) while working at DCI. A review of Krueger’s WICS usage revealed that, in June 2024, Krueger accessed the incident reports and conduct reports of an inmate who had died in October 2023. From June through October 2024, Krueger accessed the conduct reports, bed assignments, and risk assessments of an inmate who died in June 2023. From February through August 2024, Krueger accessed the medical reports, conduct reports, and incident reports of an inmate who died in February 2024.

The first issue is whether Krueger violated Executive Directive # 50 by reviewing incident reports, conduct reports, bed assignments, risk assessments, and medical classifications for deceased inmates at other institutions. Executive Directive # 50 governs the appropriate use of the DOC’s technology and systems. It allows employees to use DOC systems for business purposes and prohibits use outside the original intent of the systems without authorization. Employees are permitted limited personal use of DOC networks, devices, and computer systems, which must be infrequent and incidental.

Krueger argues Executive Directive # 50 does not define “business purposes” or “original intent.” She further argues that she did not violate Executive Directive # 50, because her use of WICS was covered under the policy’s “personal use” exception. However, “business use” clearly means that the use is required in the course of the employee’s job duties and responsibilities. Krueger’s use was not necessary to perform her job duties or responsibilities, because these inmates were not housed at the institution where she worked, and they were deceased. Further, Warden Dan Cromwell testified that limited personal use is intended only for systems such as phones and email, which have multiple intended uses. WICS does not have multiple intended uses: it is used solely for tracking inmate information.

Krueger argues that she was accessing these reports to write better incident reports. However, in her investigatory interview, Krueger admitted that she was curious about the inmates and about whether her work friends were involved in the incidents that led to their deaths. Krueger’s argument that she was using WICS to write incident reports is clearly pretextual, since she has worked for the DOC for five years, and was clearly, primarily motivated by personal curiosity, unrelated to and unnecessary for the completion of her job duties.

Krueger argues that she received limited training due to the pandemic, and the training she received told her she could use WICS the way she did. Limited training is not an excuse: if Krueger was unsure of whether she should access WICS for personal reasons, she should have asked a supervisor. Further, the facts do not support her argument that she was trained to use WICS for

personal use. DOC employee Scott Kinnard testified that he “probably” trained Krueger on WICS. He said he had been told to look at other conduct reports in order to write his correctly. However, Kinnard also testified that he never looked up other incident reports out of curiosity because he didn’t want to get in trouble. Therefore, although he trained Krueger to use WICS to write conduct reports, it is unlikely that he trained Krueger to use WICS for personal use.

Krueger further argues that most employees engage in personal use of WICS. She further argues that other employees have accessed information about these deceased inmates in WICS and have not been punished. 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, Scott Kinnard testified that there is a pattern of DOC employees using WICS to look at reports from other institutions. He represented another employee who was written up for doing so. Former DOC employee Michael Maitland testified that employees were encouraged to use WICS to look up inmate histories to build rapport or discover safety risks, even at other facilities. Maitland also testified that staff would rate inmates on their appearances and try to find family members. However, Maitland also testified that he reported this to his supervisor and that “quite a few of them no longer work for DOC.” However, there is not enough information about the examples of personal WICS use – the employee Scott Kinnard represented, who was written up, and the employees Maitland reported, who no longer work for the DOC – to determine whether they were similarly situated to Krueger. There is likewise not enough information to prove that there was a culture of personal use of WICS that management was aware of and tolerated. Therefore, Krueger has not borne her disparate treatment claim.

The second issue is whether the information Krueger shared on social media was confidential, sensitive, private, or non-public information. Executive Directive # 87 prohibits employees from posting “confidential, sensitive, private or non-public information” about the DOC, its employees, or adults and youth in its care. It requires employees to maintain confidentiality and not disclose private or confidential information, including protected health information or personally identifiable information. Krueger argues that the information she posted was not sensitive or confidential, since it had already been published in the press. Although some of her statements in the Facebook post had been published by the Milwaukee Journal Sentinel or the Wisconsin Examiner, this does not make the information any less confidential or sensitive. Krueger still did not have authorization to disclose these facts, especially when the inmates’ deaths were the subject of internal investigations, criminal investigations, and public scrutiny. Therefore, Krueger violated Executive Directive # 87 by sharing this information on social media without authorization.

Krueger violated Executive Directive # 50 when she used WICS to view information about deceased inmates at other institutions. Further, Krueger violated Executive Directive # 87 when she posted confidential, sensitive, and non-public information on social media. Her actions showed

a serious lack of judgment, and posting sensitive information on social media erodes trust from inmates and coworkers. Krueger has a previous three-day suspension, and the seriousness of her misconduct justifies a skip in progression from a five-day suspension to discharge. There was just cause for the discharge, and the discharge is therefore affirmed.

Issued at the City of Madison, Wisconsin, this 27<sup>th</sup> day of May 2025.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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James J. Daley, Chairman