

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

JASON J. MOORE, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0739

Case Type: PA

DECISION NO. 40886-A

Appearances:

Martin Kuhn, Attorney, Kuhn Law, LLC, 9575 Brenwood Park Drive, Franklin, Wisconsin, appearing on behalf of Jason Moore.

Nicole Porter, 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 April 10, 2025, Jason Moore filed an appeal with the Wisconsin Employment Relations Commission asserting that he had been discharged 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 June 16, 2025, by Examiner Lisiecki. The parties submitted written closing arguments on June 27, 2025. On July 11, 2025, pursuant to Wis. Stat. § 227.46(3)(a), Examiner Lisiecki was given final authority to issue the Commission's decision.

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

FINDINGS OF FACT

1. Jason Moore (Moore) was employed by the State of Wisconsin Department of Corrections (DOC), as a correctional sergeant at Racine Correctional Institution (RCI). He had permanent status in class when he was discharged.

2. On April 24, 2024, the RCI Deputy Warden sent out a directive that Green Unit's doors should remain secure at all times unless staff are present and monitoring movement. There was also signage on the Green Unit doors echoing this directive.

3. On July 13, 2024, Moore was working as the Green Unit sergeant. The Green Unit doors were unsecured, allowing an inmate to escape.

4. Following an investigation, the DOC discharged Moore for inattentiveness, refusal to carry out written or verbal instructions, and gross negligence.

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 Jason Moore.

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

ORDER

The discharge of Jason Moore by the State of Wisconsin Department of Corrections is affirmed.

Issued at Madison, Wisconsin, this 31st day of July 2025.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Katherine Scott Lisiecki, Hearing Examiner

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.

Jason Moore 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 Moore 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).

Moore was employed as a correctional sergeant at Racine Correctional Institution (RCI). As a sergeant, he was responsible for ensuring inmate security and for directing correctional officers assigned to his unit. Exhibit R-2, pg. 2.

RCI has a housing unit, Green Unit, which is set away from RCI's other housing units and less visible to security personnel. An inmate previously attempted to escape from Green Unit in 2022. On April 24, 2024, RCI Deputy Warden Patrick Melman sent out an email to all RCI staff stating that the Green Unit's doors should remain secure at all times unless staff are present and monitoring movement. Exhibit R-8, pg. 18. The Green Unit doors also had a bright orange sign stating: "This door **MUST** remain closed. Please secure it upon entering or leaving the unit. Thank you. NOTICE KEEP THIS DOOR CLOSED." Exhibit R-8, pg. 19.

On July 13, 2024, Moore was working as the Green Unit sergeant. At 8:39 a.m., the Green Unit doors were open and unsecured. Exhibit R-8, pg. 9. At that time, an inmate escaped through Green Unit's unsecured doors. *Id.* The inmate was ultimately able to escape RCI into the surrounding community.

Moore argues that, in order to have committed gross negligence, he must have knowingly and intentionally violated RCI's policies. Due to the April 24 email directive and the door signage, Moore was on notice that RCI policy prohibited leaving the Green Unit doors unlocked and unmonitored. The State does not need to prove that Moore "intentionally" failed to secure the doors or direct others to do so in order to prove that Moore was negligent.

Moore argues that his actions were not the sole or primary reason for the inmate's escape. Moore argues that RCI failed to implement recommended changes to Green Unit after the 2022 inmate escape, including changing the type of inmate housed there. The record suggests that Moore's negligence in failing to secure the Green Unit doors, and failing to direct staff to do so, directly resulted in the inmate's escape. However, even if this were not the case, the Commission has previously found that although other security failures contribute to an inmate's escape, those failures do not detract from the seriousness of an employee's misconduct. See *Kratz v. DOC*, Dec. No. 38804 (WERC, 02/2021). Moore's negligence in failing to secure the Green Unit doors, and failing to direct one of his officers to do so, contributed to the inmate's successful escape.

Moore argues that Green Unit presents unique challenges and poses a higher security risk for escapes. However, Green Unit's secluded nature doesn't diminish officers' responsibility: it means officers must be more careful about monitoring inmate movement and keeping the facility secure.

Moore argues that the post orders were never updated and conflicted with the Deputy Warden's directive and the sign on the door. The post orders allow staff to open the unit's entry doors after institution count clearance. Exhibit A-16 at pg. 8. However, the post orders state that sergeants must "ensure that all doors on unit are closed and secured when not in use." *Id.* at pg. 7. Further, the post orders for the Green Unit Sergeant also state that it is the sergeant's responsibility to ensure that the post orders are up to date, and that if the sergeant believes post orders should be changed, they should address that with their post supervisor. Moore admitted in the hearing that he did not speak to his supervisors about the post orders. Further, Secretary Hoy testified that post orders aren't meant to encompass every instruction that staff must follow, and that sometimes staff are given directives, such as the April 24 email, that don't align exactly with post orders, which staff are still expected to follow. There is no requirement that RCI hold trainings or meetings about a directive to keep doors closed in order for that directive to be followed.

Moore further argues he is subject to disparate treatment, because no employees were discharged after the 2022 escape attempt. 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). However, Moore is not similarly situated to these employees. The Deputy Warden's directive and the door signs were posted in response to the 2022 escape. The 2022 employees were not given explicit instructions to keep the doors secure, and therefore were not on notice as Moore was that the doors were to remain secure and inmate movement closely monitored. Given the previous escape attempt, Moore ought to have closely followed the directive and signage in order to ensure that another escape attempt did not occur.

Moore was grossly negligent when, on July 13, 2024, he failed to ensure that the Green Unit doors were secure and failed to direct staff to ensure that Green Unit doors were secure, in keeping with the Deputy Warden's April 24 directive and the signage on the doors.

Secretary Hoy testified about how Moore's failure to follow instructions resulted in an officer forced to discharge their weapon at an escaping inmate and an inmate escaping into a residential neighborhood. Moore's gross negligence clearly jeopardized the institution's safety, the safety of inmates, and the safety of the public. Serious Act of Misconduct 5 prohibits gross negligence by an employee which causes a substantial risk to the safety and security of facilities, staff, or inmates. Although Moore had no previous discipline, and in fact has a strong work history, the seriousness of Moore's misconduct – which resulted in an inmate's escape – justified the State's decision to skip to discharge. There was just cause for the discharge, and the discharge is therefore affirmed.

Issued at the City of Madison, Wisconsin, this 31st day of July 2025.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Katherine Scott Lisiecki, Hearing Examiner