

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

MARTHA BREEN-SMITH, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0729

Case Type: PA

DECISION NO. 40893

Appearances:

Wayne E. Pankratz, Sr., 2731 3rd Street South, Wisconsin Rapids, Wisconsin, appearing on behalf of Martha Breen-Smith.

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 Corrections.

DECISION AND ORDER

On March 17, 2025, Martha Breen-Smith (Breen-Smith) filed an appeal with the Wisconsin Employment Relations Commission asserting she had been suspended for one day without just cause by the State of Wisconsin Department of Corrections (DOC). The matter was assigned to Commission Examiner Anfin J. Wise.

A zoom hearing was held on June 5, 2025, by Examiner Wise. The Respondent made oral argument at the conclusion of the hearing. Breen-Smith filed a closing argument on June 10, 2025. On June 13, 2025, Examiner Wise issued a Proposed Decision and Order, affirming the one-day suspension of Breen-Smith by the DOC. No objections to the Proposed Decision were filed by the parties, and the matter became ripe for Commission consideration on June 19, 2025.

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

FINDINGS OF FACT

1. Martha Breen-Smith (Breen-Smith) is employed by the State of Wisconsin Department of Corrections (DOC) as a Psychologist at Green Bay Correctional Institution (GBCI), and she had permanent status in class at the time of her suspension.

2. The DOC is a state agency responsible for the operation of various corrections facilities including GBCI, a maximum-security facility located in Green Bay, Wisconsin.

3. On October 3, 2024, Breen-Smith engaged in discourteous and unprofessional behavior towards an inmate when she told him, “I don’t give a shit” after he threatened to call the Department of Justice on her.

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 Martha Breen-Smith for one day.

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

ORDER

The one-day suspension of Martha Breen-Smith by the State of Wisconsin Department of Corrections is affirmed.

Issued at Madison, Wisconsin, this 7th day of July 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.

Martha Breen-Smith had permanent status in class at the time of her suspension and her appeal alleges that the suspension was not based on just cause.

The State has the burden of proof to establish that Breen-Smith 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).

Department Work Rule #14 prohibits intimidating, interfering with, harassing, demeaning, treating discourteously, or bullying; or using profane or abusive language in dealing with others.

On October 3, 2024, Breen-Smith conducted a cell-front safety check on an inmate. As she was discussing his health, the inmate wanted to talk about a recent conduct report he had received. After confirming that the inmate was safe, Breen-Smith told the inmate that she was unable to help him resolve his conduct report complaint, as she is not a part of conduct report hearings. The inmate became angry and threatened to call the Department of Justice on her. As she walked away from his cell, she responded with, “I don’t give a shit.” This dismissive statement immediately garnered a response and climate issue on the unit, as multiple inmates became disruptive in their cells. During the investigation, Breen-Smith admitted that her response to the inmate was not professional. Without a doubt, Breen-Smith’s statement of “I don’t give a shit” to an inmate is discourteous, profane, unprofessional, and a violation of work rule 14. Thus, misconduct has been established.

Nonetheless, Breen-Smith argues that her discipline should be rejected for three main reasons. First, Breen-Smith contends that she should be protected by “Double Jeopardy.” Breen-Smith was issued a one-day suspension; a standard 8-hour day. However, she claims that she was punished for more than one day because she is a 75% employee, where one day means six hours. While an interesting argument, the progression schedule for formal discipline operates under standard 8-hour days. Additionally, the legal principle of double jeopardy applies to criminal matters by protecting a defendant from multiple prosecutions of the same crime. Double jeopardy protections do not apply to civil cases and certainly do not apply to the current civil service appeal. Therefore, we reject this argument.

Second, Breen-Smith argues that the inmate was disrespectful, called her a bitch, and made threats to hurt her and her loved ones. Even if that were true, Breen-Smith is a licensed psychologist and a professional. It is not unreasonable for the employer to expect her to maintain her professionalism under these types of stressful circumstances. Therefore, we find that the inmate's behavior does not mitigate Breen-Smith's behavior.

Third, Breen-Smith points to her 20-year work history with the state without any prior disciplinary issues. While commendable, as Warden Stevens testified, all employees are held to the same professional standard. Her violation of work rule 14 warrants formal progressive discipline. Breen-Smith was issued the lowest level of discipline, a one-day suspension. As the Commission has previously held, it is not WERC's role to act as a super Human Resources department for the entire State, and to second guess every level of discipline offered. Here, misconduct was found, and we find that Breen-Smith can be held accountable for her misconduct.

Turning now to a just cause consideration of the level of discipline Breen-Smith received. The Commission finds that Breen-Smith's misconduct does provide just cause for progressive discipline and the imposition of a one-day suspension. It is expressly noted that a one-day is the first step in the progressive disciplinary schedule. Therefore, the one-day suspension is affirmed.

Issued at Madison, Wisconsin, this 7th day of July 2025.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman