

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

ALLISON DAW, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF TRANSPORTATION, Respondent.

Case ID: 446.0043

Case Type: PA

DECISION NO. 40929

Appearances:

Allison Daw, 116 Lamplighter Drive #5, Kaukauna Wisconsin, appearing on her own behalf.

William Ramsey, Deputy Chief Legal Counsel, 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 Transportation.

DECISION AND ORDER

On May 27, 2025, Allison Daw filed an appeal with the Wisconsin Employment Relations Commission asserting that she had been suspended for five days without just cause by the State of Wisconsin Department of Transportation. The appeal was assigned to Commission Examiner Peter G. Davis. On July 11, 2025, Examiner Davis was given final authority to issue the Commission's decision pursuant to Wis Stats 227. 46(3)(a).

A hearing was held on July 25, 2025, by Examiner Davis. Daw filed written argument on July 30, 2025, and the State elected not to file a reply by the deadline of August 6, 2025.

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

FINDINGS OF FACT

1. Allison Daw was employed by the State of Wisconsin Department of Transportation (DOT), as a Law Enforcement Dispatcher. She had permanent status in class when she was suspended.

2. Daw used a confidential DOT data base for personal purposes.

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 Transportation did not have just cause within the meaning of Wis. Stat. § 230.34(1)(a) to suspend Allison Daw for five days but did have just cause to suspend her 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 five-day suspension of Allison Daw by the State of Wisconsin Department of Transportation is modified to a one-day suspension and she shall be made whole with interest.¹

Issued at Madison, Wisconsin, this 18th day of August 2025.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Peter G. Davis, Hearing Examiner

¹ See Wis. Admin. Code ERC 94.07

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.

Allison Daw 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 Daw 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).

The suspension letter Daw received described her conduct as follows:

Looking up the ages, addresses or vehicle information of coworkers, friends and other individuals who are not related to a sworn investigation are not work approved reasons to access these systems. Additionally, using work databases to look up information on a person you have a personal conflict with is not an authorized reason for confidential database access.

The suspension letter did not address why the conduct in question warranted a five day suspension. The person who made the decision as to the level of discipline did not testify. The record reflects that Daw did not have any formal discipline on her record at the time she was suspended.

Daw admits she engaged in the conduct in question. To the extent she argues that her conduct should be excused because she was never trained that the confidential data base could not be used for personal purposes, her argument is flatly rejected. It goes without saying that employee access to a confidential data base so they can perform their work does not also entitle employees to use that data base for personal purposes. However, Daw also contends that the occasional employee use of the confidential data base for personal purposes was common, was known to supervisors, and was even done at the request of a supervisor. There is credible and un rebutted evidence in the record to support those contentions. To the extent the State has recently tightened up matters regarding personal use, there is no specific evidence that this tightening was timely communicated to Daw. Thus, this portion of the rationale for discipline is rejected.

Turning to Daw's use of the data base in the context of her fear of another individual, the record establishes that the proper course of action was to discuss the matter with a supervisor before any further action was taken. Daw's claim that she was never "trained" that she was required to contact a supervisor is rejected. Contacting a supervisor in the circumstances she described is a matter of common sense. Therefore, Daw engaged in misconduct by failing to do so.

As to the level of discipline that Daw should receive under the just cause standard, a "double skip" from no discipline to a five-day suspension is clearly excessive for the one instance of misconduct for which Daw has been found to be culpable. Rather, a one-day suspension is the appropriate just cause level of discipline. Therefore, the five-day suspension has been modified to a one-day suspension and Daw shall be made whole with interest.

Issued at Madison, Wisconsin, this 18th day of August 2025.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Peter G. Davis, Hearing Examiner