

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

BRIAN PASSIG, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0769

Case Type: PA

DECISION NO. 40947

Appearances:

Brian Passig, c/o Waupun Correctional Institution, 200 South Madison Street, Waupun, Wisconsin, appearing on his own behalf.

Nicole M. Porter, 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 May 19, 2025, Brian Passig filed an appeal with the Wisconsin Employment Relations Commission asserting he 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. On July 11, 2025, pursuant to Wis. Stat. § 227.46(3)(a), Examiner Wise was given final authority to issue the Commission's decision.

A Zoom hearing was held on August 19, 2025, by Examiner Wise. The parties made oral argument at the conclusion of the hearing.

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

FINDINGS OF FACT

1. Brian Passig (Passig) is employed by the State of Wisconsin Department of Corrections (DOC) as a Correctional Sergeant at Waupun Correctional Institution (WCI), and he had permanent status in class at the time of his suspension.

2. WCI is a maximum-security correctional facility located in Waupun, Wisconsin operated by DOC, a state agency of the State of Wisconsin.

3. On December 19, 2024, while assigned to the Lobby Sergeant post, Passig permitted a contractor to enter the institution without a physical ID, but only after verifying the contractor's identity with the Buildings & Grounds Supervisor.

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 not have just cause within the meaning of Wis. Stat. § 230.34(1)(a) to suspend Brian Passig 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 Brian Passig shall be modified to a Letter of Expectation and Passig shall be made whole with interest.¹

Issued at Madison, Wisconsin, this 10th day of September 2025.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Anfin J. Wise, Hearing Examiner

¹ See Wis. Admin. Code ERC 94.07.

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.

Brian Passig 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 Passig 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).

The facts are not in dispute. On December 19, 2024, Passig was assigned as the Lobby Sergeant, which is an entry/exit post, at WCI. Around 10:00am, contractors arrived at WCI to perform work. One contractor left his ID in his car. Because he was an older gentleman, as well as the stormy weather conditions that day, Passig did not require him to retrieve his physical ID from his car. However, Passig asked the Buildings & Ground Supervisor, to verify the contractor, who then positively identified the man. Passig then permitted the contractor to enter the institution.

DOC's policy on Entrance Procedures (306.00.36) state, in relevant part:

I. Designated Facility Entrance/Exit

A. ID

1. Facilities shall designate entrance/exit points and the posts assigned to complete verification.
2. Staff assigned to entrance/exit posts shall be responsible for the proper ID of all individuals entering/exiting the facility.
3. All individuals entering/exiting the facility shall be identified in accordance with *DAI Policy 309.06.01 and Executive Directive 63*.
4. Individuals who cannot be positively identified by *staff*, are not authorized to enter/exit until ID can be verified.

Emphasis added.

The DOC contends that Passig violated the Entrance Procedures policy when he permitted the contractor to enter the institution without a physical ID. The DOC claims that proper ID means a state-issued ID, a photo ID, a state ID card, or a driver's license. However, Policy 306.00.36 does not define proper ID as a physical ID. Further, DOC failed to present DAI Policy 309.06.01 and Executive Directive 63. Presumably, 309.06.01 and Executive Directive 63 defines what the Department considers "proper ID." Here, a preponderance of the credible evidence established that the contractor was properly identified by a staff supervisor, per 306.00.36 I.A.4.

The Department further argues that the Buildings & Grounds Supervisor is not security staff and therefore does not have the authority to verify visitors or permit individuals into the institution. Yet, Policy 306.00.36 does not specify that the staff person must be security staff. Passig credibly testified that the contractor's identity was verified by the Buildings & Grounds Supervisor when he positively identified him in the lobby. It is not unreasonable for Passig to believe that a supervisor, such as the Buildings & Grounds Supervisor, has the authority to allow individuals into the institution after verification. Thus, the Commission finds that Passig met the purpose of the entrance policy and therefore did not violate Policy 306.00.36.

Under the circumstances, the Commission concludes that DOC did not have just cause for a one-day suspension, but that a Letter of Expectation is appropriate to remind Passig that, going forward, he is required to verify a physical ID from all individuals entering the institution.

Given the foregoing, it is concluded that the one-day suspension be modified to a Letter of Expectation and that Passig be made whole in all other regards.

Issued at Madison, Wisconsin, this 10th day of September 2025.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Anfin J. Wise, Hearing Examiner