

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

YAJHAIRA DOMINICI, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF HEALTH SERVICES, Respondent.

Case ID: 2.0180

Case Type: PA

DECISION NO. 40949-B

Appearances:

Colin B. Good, Hawks Quindel, S.C., 409 E. Main St., P.O. Box 2155, Madison, Wisconsin, appearing on behalf of Yajhaira Dominici.

David 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 Health Services.

DECISION AND ORDER ON REHEARING

On May 19, 2025, Yajhaira Dominici 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 Health Services (DHS). The matter was assigned to Commission Examiner Katherine Scott Lisiecki.

A Zoom hearing was held on August 7, 2025, by Examiner Lisiecki. The parties made oral closing arguments at the end of the hearing. On July 11, 2025, pursuant to Wis. Stat. § 227.46(3)(a), Examiner Lisiecki was given final authority to issue the Commission's decision.

On September 29, 2025, the DHS filed a petition for rehearing. Dominici filed a reply on October 9, 2025. On October 28, 2025, Examiner Lisiecki granted the petition for rehearing.

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

FINDINGS OF FACT

1. Yajhaira Dominici (Dominici) is employed by the State of Wisconsin Department of Health Services (DHS) at Mendota Mental Health Institute as a psychiatric care technician. At the time of her suspension, she had permanent status in class.

2. On October 16, 2024, Dominici inaccurately reported a coworker for leaving work before the end of his shift.

3. On November 16, 2024, Dominici falsely reported coworkers for making threatening and racist comments.

4. Following an investigation, the DHS suspended Dominici for making false, inaccurate, or malicious statements about another person and failure to comply with the agency's Respectful Workplace Policy.

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 Health Services did not have just cause within the meaning of Wis. Stat. § 230.34 (1)(a) to suspend Yajhaira Dominci for five days but did have just cause to suspend her for three days.

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 Yajhaira Dominici by the State of Wisconsin Department of Health Services is modified to a three-day suspension and she shall be made whole with interest.¹

Issued at Madison, Wisconsin this 30th day of October 2025.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Katherine Scott Lisiecki, Hearing Examiner

¹ See Wis. Admin. Code § ERC 94.07.

MEMORANDUM ACCOMPANYING DECISION AND ORDER ON REHEARING

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.

Dominici 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 Dominici 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).

Dominici is employed by the State of Wisconsin Department of Health Services (DHS) at Mendota Mental Health Institute as a psychiatric care technician.

On October 16, 2024, Dominici emailed her supervisor, Ashley Huempfnier, to report that a coworker, J.B., left work the previous week before the end of his shift. Dominici told Huempfnier that J.B.'s friends and supervisor conspired to help J.B. conceal his early departure. However, charting and surveillance footage show that J.B. did not leave early.

On November 16, 2024, Dominici emailed Huempfnier reporting coworkers for making threatening and racist comments. Specifically, she claimed that her coworker J.B. said "Arrogance is part of the Hispanic community," to which coworker S.R. replied, "Yes, they have too much ego." Dominici also reported that her coworker G.S. said that a patient "should be beaten to become humble, not here, in jail." Ashlynn Arce, a psychiatric care technician working that day, testified that she heard someone use the word "humble," but it wasn't in reference to anyone being beaten, and was not used in the way that Dominici reported. No one else who was present that morning could corroborate these comments.

Work Rule 17 prohibits employees from making "false, inaccurate, or malicious statements about another person or the employer." However, in certain situations, employees may need to report coworkers for perceived misconduct; following an investigation, those reports may turn out to be inaccurate. Dominici believed she saw J.B. leaving work early and reported her concern directly to her supervisor. She did not spread rumors or make inappropriate comments to coworkers. Although Dominici's report about J.B. leaving work early was ultimately proven to be

inaccurate, she was reporting perceived misconduct to her supervisor, and her report was not knowingly false or malicious. Therefore, this report did not violate Work Rule 17.

However, Dominici's report of coworkers making threatening or racist comments did not have any basis in fact. Six coworkers stated in their investigatory interviews that they did not hear G.S. say anything about a patient being "beaten to be humble." Arce said the word "humble" was used, but she credibly testified that it was not used in the way that Dominici reported. Likewise, four coworkers stated in their investigatory interviews that neither J.B. nor S.R. made comments about Hispanics having "too much ego." Therefore, Dominici's email about G.S., J.B., and S.R. making threatening or racist comments was false and violated Work Rule 17.

Dominici argues that she was subject to unwarranted scrutiny and investigation after accusing Huempfnr of unfair treatment. However, both incidents were initiated by Dominici, who emailed Huempfnr to report her coworkers. Addressing the concerns that Dominici proactively raised does not constitute unwarranted scrutiny.

Dominici further argues that she was subject to disparate treatment, because she was treated less favorably than G.S., who allegedly made a report without verifying authenticity, and less favorably than S.R., who allegedly accused someone of being a racist. 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). An employee who raises a disparate treatment claim has the burden of proving that contention. Here, Dominici did not provide sufficient evidence to show that G.S. and S.R. were similarly situated.

Dominici made a false statement when she reported coworkers for making racist and threatening comments. Gregory van Rybroek, the director of Mendota Mental Health Institute, testified that these accusations created disruptions among staff. Dominici has previously received a written reprimand in lieu of a 3-day suspension. Although Dominici committed misconduct by making a false statement, the misconduct is not serious enough to warrant a progression in discipline from a three-day suspension to a five-day suspension. Although there was not just cause for the five-day suspension, there is just cause for another three-day suspension. Therefore, the five-day suspension is modified to a three-day suspension.

Issued at Madison, Wisconsin this 30th day of October 2025.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Katherine Scott Lisiecki, Hearing Examiner