

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

KAYLA POMPEY, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0800

Case Type: PA

DECISION NO. 41235

Appearances:

Kayla Pompey, 1015 N. 10th St., Milwaukee, Wisconsin, appearing on her own behalf.

David Makovec, 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 July 28 2025, Kayla Pompey filed an appeal with the Wisconsin Employment Relations Commission asserting that the State of Wisconsin Department of Corrections (DOC) did not have just cause to discipline her with a written reprimand in lieu of a one-day suspension.

On August 18, 2025, DOC file a motion to dismiss. On September 16, the Commission denied the motion.

A hearing was held in Madison Wisconsin on October 13, 2025, by Commission Chairman Peter G. Davis. Both 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. Kayla Pompey is employed by the State of Wisconsin Department of Corrections (DOC) as a Correctional Sergeant at Milwaukee Secure Detention Facility. She had permanent status in class when she was disciplined.

2. Pompey was absent from work due to illness and did not have sufficient leave to cover her absence.

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 have just cause within the meaning of Wis. Stat. § 230.34(1)(a) to issue a written reprimand in lieu of a one-day suspension to Kayla Pompey.

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

ORDER

The written reprimand in lieu of a one-day suspension issued to Kayla Pompey by the State of Wisconsin Department of Corrections is affirmed.

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

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Peter G. Davis, Chairman

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.

Pompey had permanent status in class at the time of her discipline and her appeal alleges that the discipline was not based on just cause.

The State has the burden of proof to establish that Pompey 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).

It is undisputed that Pompey was ill, missed work, but did not have enough accrued sick leave to cover her absence.

Pompey contends DOC should have paid her the respect of more efficiently processing and approving her request for leave without pay in a timely manner. The record establishes that discretion did exist for DOC to approve Pompey's request but the record also establishes that DOC had no obligation to do so. Therefore, Pompey's contention does not insulate her from discipline.

Given the foregoing, the Commission concludes that Pompey engaged in misconduct and that a written reprimand in lieu of a one-day suspension is an appropriate level of just cause discipline. Therefore, the "in lieu of" suspension is affirmed.

The Commission acknowledges that it has previously concluded that it did not have jurisdiction over "in lieu of" suspensions. *Schallock v. DOC*, Dec. No. 36326 (WERC, 4/16) That conclusion was a departure from years of a contrary view which viewed the statutory word "suspension" more broadly in acknowledgment of the real world impact "in lieu of" discipline has on employees in the context of a disciplinary progression. *Rogers v. DOC*, 98-0094-PC (1/99); *Winslow-Stanley v. DOC*, Dec. No. 33213-A (WERC, 11/11). In this decision, the Commission returns to the view that an "in lieu of" suspension is a constructive suspension as to which the Commission has jurisdiction.

Given the foregoing, the Commission affirms the suspension.

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

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Peter G. Davis, Chairman