

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

CHRISTOPHER TERSTRIEP, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0795

Case Type: PA

DECISION NO. 41248

Appearances:

Tamara B. Packard, Attorney, Pines Bach LLP, 122 W. Washington Avenue, Suite 900, Madison, Wisconsin, appearing on behalf of Christopher Terstriep.

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 15, 2025, Christopher Terstriep 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 discharge him.

On September 22, 2025, Commission Chairman Peter G. Davis conducted a zoom hearing in the matter. The parties made closing arguments at the end of the hearing.

On September 23, 2025, Terstriep filed a motion for fees and costs. DOC provided a response opposing the motion on November 11, 2025

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

FINDINGS OF FACT

1. Christopher Terstriep was employed by the State of Wisconsin Department of Corrections (DOC) as a Correctional Sergeant at the Oakhill Correctional Institution (OCI). He had permanent status in class when he was discharged.

2. Terstriep failed to complete a security round.
3. Terstriep wrongly believed he had completed the round and incorrectly documented that he had completed the round.
4. Terstriep had a letter of reprimand in lieu of a one-day suspension on his record at the time DOC was determining what level of discipline was appropriate for the misconduct described in Findings of Fact 2 and 3. The OCI Warden recommended that Terstriep receive a five day suspension. DOC decided to discharge Terstriep.

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 discharge Christopher Terstriep but did have just cause to suspend him for five days.
3. Terstriep is a prevailing party within the meaning of Wis. Stats. § 227.485(3).
4. The position of the State of Wisconsin Department of Corrections as to the discharge of Christopher Terstriep was substantially justified within the meaning of Wis. Stat. § 227.485(2)(f).

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

ORDER

The discharge of Christopher Terstriep by the State of Wisconsin Department of Corrections is modified to a five day suspension and he shall be made whole with interest¹ for lost wages and for medical expenses incurred as a result of his discharge.

Christopher Terstriep's motion for fees and costs is denied.

¹ See Wis. Admin. Code § ERC 94.07.

Issued at Madison, Wisconsin, this 12th day of November 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.

Terstriep had permanent status in class at the time of his discharge and his appeal alleges that the discharge was not based on just cause.

The State has the burden of proof to establish that Terstriep 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 Terstriep engaged in the misconduct described in Findings of Fact 2 and 3. Thus, the Commission turns to the question of whether there was just cause for discharge.

The OCI Warden provided compelling testimony as to why a missed security round can be a matter of life or death for an inmate—particularly for the inmate population housed at OCI. Additional risks are created if an employee even inadvertently records a round he did not conduct. Therefore, there can be no doubt that Terstriep's conduct met the just cause standard for significant discipline. However, the Commission concludes discharge is too severe a penalty. Rather, the five-day suspension, the one level skip in discipline recommended by the OCI Warden, meets the just cause standard.

Therefore, Terstriep shall be reinstated and made whole for lost wages with interest and for medical expenses he and his family incurred that would not have been incurred had he not been discharged.²

² By denying Terstriep the option of COBRA insurance, DOC potentially increased the amount it may be obligated to reimburse to Terstriep.

DECISION ON FEES AND COSTS

The State has the burden to establish that its position was “substantially justified,” and to meet this burden the State must show (1) a reasonable basis in truth for the facts alleged; (2) a reasonable basis in law for the theory propounded; and (3) a reasonable connection between the facts alleged and the legal theory advanced. *Board of Regents v. Personnel Commission*, 254 Wis.2d 148, 175 (2002). Losing a case does not raise the presumption that the agency was not substantially justified nor does advancing a novel but credible extension or interpretation of the law. *Sheely v. DHSS*, 150 Wis.2d 320, 338 (1989).

In *Behnke v. DHSS*, 146 Wis.2d 178 (1988), the Court of Appeals adopted an “arguable merit” test for determining whether a governmental action had a reasonable basis in law and fact. It defined a position which has “arguable merit” as “one which lends itself to legitimate legal debate and difference of opinion viewed from the standpoint of reasonable advocacy.” In *Sheely*, the Supreme Court commented on the “arguable merit” test as follows:

Although we disagree with the court of appeals’ assessment of a reasonable basis in law and fact as being equivalent to “arguable merit,” we do note that its definition of “arguable merit” is substantially similar to our comment here that a “novel but credible extension or interpretation of the law” is not grounds for finding a position lacks substantial justification.

Id. at 340.

DOC did have a reasonable basis in truth for the facts it relied upon when disciplining Terstriep because Terstriep does not contest the facts.

As to the “reasonable basis in law for the theory propounded” portion of the DOC’s burden, the Commission is satisfied that DOC had a reasonable basis for its decision to discipline Terstriep under a just cause standard. The fact that the Commission concluded a different level of discipline was appropriate does not negate the credibility of DOC’s legal theory.

Lastly, given the foregoing, the Commission concludes there was a reasonable connection between the facts alleged and the legal theory advanced.

Therefore, the petition for fees and costs is denied.

Issued at Madison, Wisconsin, this 12th day of November 2025.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Peter G. Davis, Chairman