

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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DUSTIN POIRIER, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0806

Case Type: PA

DECISION NO. 41255

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Appearances:

Sean P. Daley, Business Agent, AFSCME Council 32, AFL-CIO, N1463 Second Street Road, Watertown, Wisconsin, appearing on behalf of Dustin Poirier.

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 August 6, 2025, Dustin Poirier filed an appeal with the Wisconsin Employment Relations Commission asserting he had been suspended for five days without just cause by the State of Wisconsin Department of Corrections (DOC). The matter was assigned to Commission Examiner Anfin J. Wise.

A Zoom hearing was held on November 6, 2025, by Examiner Wise. The parties made oral argument at the conclusion of the hearing. On November 12, 2025, Examiner Wise issued a Proposed Decision and Order, affirming the five-day suspension of Dustin Poirier by the DOC. No objections to the Proposed Decision were filed by the parties and the matter became ripe for Commission consideration on November 18, 2025.

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

**FINDINGS OF FACT**

1. Dustin Poirier (Poirier) is employed by the State of Wisconsin Department of Corrections (DOC) as a Correctional Officer at Stanley Correctional Institution (SCI), and he had permanent status in class at the time of his suspension.

2. The DOC is a state agency responsible for the operation of various corrections facilities including SCI, a medium-security facility located in Stanley, Wisconsin.

3. On March 7, 2025, Poirier told a coworker, W.B., to “shut the fuck up, just shut the fuck up,” in response to W.B. saying, “they played you” (referencing an inmate or inmates doing laundry on the unit) to Poirier. This interaction occurred in front of other staff and inmates.

4. On March 9, 2025, using his state email, Poirier sent W.B. an unprofessional and demeaning communication which included the following statements, “...but you want to be all butt hurt,” and “...if your [sic] gonna be all butthurt about something...”.

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 had just cause within the meaning of Wis. Stat. § 230.34(1)(a) to suspend Dustin Poirier for five 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 Dustin Poirer by the State of Wisconsin Department of Corrections is affirmed.

Issued at Madison, Wisconsin, this 21<sup>st</sup> day of November 2025.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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Peter G. Davis, Chairman

**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.

Dustin Poirier 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 Poirier 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).

Department Work Rule #14 prohibits intimidating, interfering with, harassing, demeaning, treating discourteously, or bullying; or using profane or abusive language in dealing with others.

On March 7, 2025, while working on a housing unit at SCI, W.B said to Poirier, “they played you,” in reference to an inmate washing his laundry on the unit. In response, Poirier told W.B. to “B. (last name) shut the fuck up, just shut the fuck up.” W.B. then disengaged from the interaction. The next day, W.B. sent an email to Poirier, with the subject, “Disrespect,” stating in relevant part, “You will never tell me to shut the fuck up in front of staff or inmates ever again. This is your final warning...you never have to speak to me again and I will do the same. This was unacceptable.”

Poirier responded to W.B.’s email stating, “I honestly don’t remember dropping the F-Bomb in there but I do apologize for telling you to shut up.” W.B. then responded, “Staff and inmates heard it. And the [sic] they commented on it. I appreciate if you don’t play me like I’m stupid please.” W.B. then followed up with another email stating, “Since we don’t want to admit we will have a conversation Monday or Tuesday with Kolecheck (management).” In a colorful response, Poirier sent the following email to W.B.:

Dude, what’s disrespectful is the fact you can’t come talk to me like a man and you have to email me at 2am and 3am about an issue that should be just talked about. Plus you had all day yesterday to reply to my email but decided to wait til 3am to message me? Grow up, that is disrespectful! If you can’t take a joke and if you didn’t hear me say, you’re crazy at the end of telling you to shut up, (cuz you said something out of line) in a joking manner, then

that's on you my guy. My 1st email, I apologize [sic] for telling you to shut up, it should be over then but you want to be all butt hurt. Just remember you dish it out to everyone the same exact way, but you can't take a little talk back when you dish it out. A little hypocritical there don't ya think?

So fine, if you want to take this to Kolecheck, ok then, let's set a meeting up but just remember every was in violation of work rule 14, (I would know cuz of the things I just had with Sgt. Johnson) all 6-7 of us that were in there. So if your [sic] gonna be all butthurt about something, you mine [sic] as well report the whole conversation you, me, big haupt, martin, winters and the social worker were all having that whole time!

I apologize [sic] in my 1st email, I'm sorry that's not good enough for the mighty B. (last name), but you dish it out just as much and as heavy as anyone else. If that apology wasn't good enough for ya, well then I'm sorry Boss but that's as far as I will go. I ain't apologizing again.

On a side note, if you would like to discuss this man to man, let me know but do not email me again that early in the morning. You and I both work 1st shift, email or discuss can be between work hours. This is your final warning

The series of emails were all conducted using their state email and subsequently forwarded to institution management. After an investigation, DOC suspended Poirier for five days for telling W.B. to shut the fuck up and for his unprofessional communication in the email exchange.

Here, the Commission has no trouble finding that Poirier's behavior on March 7 was discourteous and profane. Additionally, Poirier's email communication on March 9 was sarcastic, demeaning, and unprofessional. Thus, workplace misconduct has been established.

Nonetheless, Poirier argues that his discipline should be rejected for a few reasons. First, Poirier contends that context and his intent should matter. Poirier explained that the group was having a lighthearted conversation, everyone was joking around, and that he did not intend to demean or intimidate W.B. In fact, Poirier argues that W.B. goaded him and he then responded with shared banter, as they have shared in the past. While we agree that context and intent matter, we are not convinced that W.B.'s "they played you" warrants a "shut the fuck up" response, even if it were a joke. Further, in a prison setting, telling a coworker to "shut the fuck up" in front of other coworkers and inmates could potentially lead to a safety and climate issue. And even though he may not have intended to offend W.B., he clearly did. Therefore, we are not persuaded that Poirier should not be held accountable for his behavior.

Second, Poirier argues that other participants in the conversation were not investigated or disciplined, and therefore his discipline is disproportionate. However, the record established that there were no other reports to management about other staff being discourteous or disrespectful

that day. If management is not aware of a potential work rule violation, they are unable to address it. Thus, we reject this argument.

Third, Poirier asserts that he immediately apologized to W.B. after W.B. raised the issue in email. Poirier believes he took accountability and therefore should get credit for that. Here, we disagree that Poirier’s “apology” mitigates his behavior. The testimony and evidence established that initially, Poirier only partially apologized for telling W.B. to shut up. Then, after W.B. essentially asked for a full apology, Poirier doubled down on his discourteous behavior and sent W.B. a snide and unapologetic response, further cementing his misconduct.

Finally, Poirier points to previous decisions issued by the Commission related to the use of profanity in a correctional setting, including *Hafermann v. DOC*, Dec. No. 39780 (WERC, 1/23), *Peterson v. DOC*, Dec. No. 39411 (WERC, 4/22), *Sawall v. DOC*, Dec. No. 34019-D (WERC, 5/15), *Johnson v. DOC*, Dec. No. 32784-A (WERC, 2/11), and *Nowak v. DOC*, Dec. No. (WERC, 6/19), and comparatively, those decisions demonstrate that Poirier’s five-day suspension should be reduced. However, all of these cases are distinguishable from the present case.

In *Hafermann*, the employee received a five-day suspension for using profanity around inmates on two separate occasions. Hafermann also had an extensive history of discipline for using profanity in the workplace. Poirier argues that Hafermann’s conduct was much more aggravated. However, we disagree and find that Poirier’s misconduct is not comparable to Hafermann’s. While Poirier also used profanity, his unprofessional email exchange using his state email is also an aggravating factor to consider.

In *Peterson*, the employee was communicating with a juvenile inmate, but he was using a “verbal judo” communication method to develop a rapport with the juvenile offenders at that correctional facility. In this context, during a team meeting where a youth’s chatty enthusiasm became disruptive, Peterson asked the youth, “Can you shut the fuck up please?” These circumstances are completely different than telling a coworker to “shut the fuck up, just shut the fuck up.”

In *Sawall*, the profanity was used to describe a third party; it was not directed at the other employee. In *Johnson* and *Nowak*, the Commission acknowledged that the use of profanity among staff in correctional environments is commonplace and such language does not typically lead to discipline. However, Poirier’s misconduct is not solely based on his use of profanity. As previously stated, Poirier can be held accountable for his discourteous and demeaning email exchange.

Turning now to a just cause consideration of the level of discipline Poirier received. The Commission finds that Poirier’s misconduct does provide just cause for imposition of formal progressive discipline. If Poirier did not have any prior discipline, a one-day suspension would be appropriate. However, Poirier previously received a one-day suspension on January 28, 2025, for similar misconduct and violation of work rule #14. and a written reprimand in lieu of a three-day suspension on March 3, 2025, for an attendance related issue. A five-day suspension is the next step in the progressive disciplinary schedule. Therefore, the five-day suspension is affirmed.

Issued at Madison, Wisconsin, this 21<sup>st</sup> day of November 2025.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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Peter G. Davis, Chairman