

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

JEANETTE DUPLAYEE, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0816

Case Type: PA

DECISION NO. 41260

Appearances:

Sean Daley, Business Agent, AFSCME Council 32, AFL-CIO, N1463 Second St. Rd., Watertown, Wisconsin, appearing on behalf of Jeanette Duplayee.

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 August 26, 2025, Jeanette Duplayee (Duplayee) filed an appeal with the Wisconsin Employment Relations Commission asserting she had been discharged without just cause by the State of Wisconsin Department of Corrections (DOC). The appeal was assigned to Commission Examiner Katherine Scott Lisiecki.

A hearing was held in Madison, Wisconsin on November 11, 2025, by Examiner Lisiecki. The parties made oral closing arguments at the end of the hearing. On November 25, 2025, Examiner Lisiecki issued a Proposed Decision and Order, rejecting the discharge of Duplayee by the DOC, and to make whole with back pay and interest. DOC filed objections to the Proposed Decision on December 1, 2025. Duplayee filed a response to the objections on December 2, 2025, and the matter became ripe for Commission consideration.

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

FINDINGS OF FACT

1. Jeanette Duplayee (Duplayee) was employed by the State of Wisconsin Department of Corrections (DOC), as a Youth Counselor Advanced at Copper Lake/ Lincoln Hills School. She had permanent status in class when she was discharged.

2. On February 25, 2025, Duplayee's coworker failed to correctly count the youths in their unit before escorting them to school. As a result, a youth was left behind in the living unit.

3. Following an investigation, the DOC discharged Duplayee for gross negligence and failure to comply with written agency policies or procedures.

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 Jeanette Duplayee.

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

ORDER

The discharge of Jeanette Duplayee by the State of Wisconsin Department of Corrections is rejected. She shall be reinstated with backpay including interest¹, and made whole in all regards.

Issued at Madison, Wisconsin, this 8th day of December 2025.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Peter G. Davis, Chairman

¹ See Wis. Admin. Code § ERC 94.07.

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.

Jeanette Duplayee had permanent status in class at the time of her discharge and her appeal alleges that the suspension was not based on just cause.

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

Jeanette Duplayee (Duplayee) was employed by the State of Wisconsin Department of Corrections (DOC), as a Youth Counselor Advanced at Copper Lake/Lincoln Hills School. She and her coworker, Youth Counselor Alexis Steffen, were responsible for the youths in a living unit. On February 25, 2025, Duplayee's supervisor told her to conduct a room search just as the youths in her unit were lining up to go to school. While Duplayee conducted the room search, Steffen counted the youths and scanned them with the Guardian scanner before they left. When Duplayee completed the room search, she joined Steffen and the youths as they headed toward the school. She asked Steffen if all the youths were accounted for, and Steffen said they were. After Duplayee and Steffen arrived at the school with the youths, an emergency count was conducted and they became aware that a youth was missing. The youth was found unharmed, sleeping in his room.

The State argues that Duplayee failed to account for the youth in the unit, resulting in one youth being left behind alone in the living unit. The State also argues that Duplayee was a lead worker and therefore bears full responsibility for the missing youth. However, Steffen was responsible for conducting the count while Duplayee was completing another task. Steffen did so incorrectly and then gave Duplayee incorrect information. Even though Duplayee was the lead worker, Steffen bears the responsibility for this incident.

The State further argues that Duplayee should have walked the living unit before leaving. However, at the time of the incident, there were no post orders or supervisory directives requiring such a sweep.

Duplayee argues that she was subject to disparate treatment, because in August 2025, two youth counselors left a youth behind in a living unit and were not disciplined. 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). Here, Isabelle Sexton, a youth counselor, testified that on August 11, 2025, she and youth counselor Rebecca Cleveland left a youth in a living unit. Sexton testified that although she and Cleveland were pulled off of the living unit and ordered to conduct perimeter checks for a few days, they were never given letters of expectation or otherwise disciplined. Because Duplayee was discharged for behavior that other employees were not disciplined for, this constitutes disparate treatment.

Duplayee had no prior discipline in her eleven years with the DOC. *See Exhibit R-1*, pg. 1. Because Duplayee's coworker was primarily responsible for a missing youth, and because Duplayee was subject to disparate treatment, there was not just cause for the discharge. Therefore, Duplayee's discharge is rejected, and she shall be reinstated with back pay including interest and made whole in all regards.

Issued at the City of Madison, Wisconsin, this 8th day of December 2025.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Peter G. Davis, Chairman