

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

JOSHUA POVLIICH, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0848

Case Type: PA

DECISION NO. 41268-A

Appearances:

Joshua Povlich, 500 Menomonee Ave., Apt. 9, South Milwaukee, Wisconsin, appearing on his own behalf.

Nicole Porter, 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 November 11, 2025, Joshua Povlich filed an appeal with the Wisconsin Employment Relations Commission asserting that he had been suspended for five-days 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 via Zoom on February 3, 2026, by Examiner Lisiecki. The DOC made oral closing arguments at the end of the hearing, and Povlich submitted a written closing argument on February 4, 2026.

On February 18, 2026, Examiner Lisiecki issued a Proposed Decision and Order, affirming the five-day suspension of Joshua Povlich by the DOC. No objections to the proposed decision were received by the parties, and the matter became ripe for Commission consideration on February 24, 2026.

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

FINDINGS OF FACT

1. Joshua Povlich (Povlich) is employed by the State of Wisconsin Department of Corrections (DOC), as a correctional sergeant at Racine Youthful Offender Correctional Facility (RYOCF). He had permanent status in class when he was suspended.
2. On May 9, 2025, Povlich allowed an unidentified civilian to enter the institution through the loading dock sallyport gate.
3. Following an investigation, the DOC suspended Povlich for five days for gross negligence.

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 Joshua Povlich 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 Joshua Povlich by the State of Wisconsin Department of Corrections is affirmed.

Issued at Madison, Wisconsin, this 2nd day of March 2026.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Electronically signed by: Peter G. Davis

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.

Joshua Povlich 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 Povlich 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).

Joshua Povlich (Povlich) is employed by the State of Wisconsin Department of Corrections (DOC), as a correctional sergeant at Racine Youthful Offender Correctional Facility (RYOCF). On May 9, 2025, Povlich allowed an unidentified civilian to enter the institution through the loading dock sallyport gate. The civilian entered the inner portion of the institution and was escorted out by a kitchen worker.

Povlich testified that he believed the civilian resembled a kitchen worker. However, Povlich also testified that he couldn't see the civilian clearly because the civilian was wearing a hood. Povlich further testified that he couldn't understand what the civilian was saying but did not ask the civilian to repeat himself. Post orders require the Support Building Sergeant to be "vigilant in authorizing PIOC, staff, and visitor movement, as they are responsible for positively identifying all person(s) who enter and exit the facility." *See* Exhibit R-7, pg. 27. RYOCF Warden Je'Leslie Taylor testified that employees working at the gate must check and verify everyone entering the institution. Taylor and Captain Daniel Miles testified that if there is a question about someone at the gate, or if an employee is having difficulty identifying an individual using the cameras, the employee should call an escort or control for assistance.

Povlich argues that he believed that the civilian was a kitchen worker with a speech impairment, and that he didn't want to ask the civilian to repeat himself. However, correctly identifying individuals entering the institution is far more important than being perceived as rude. It is not, as Povlich argues, a violation of the Americans with Disabilities Act to ask someone with a speech impediment to repeat themselves.

Povlich argues that the incident occurred because of operational changes at RYOFC. Correctional Sergeant Matthew Goetsch testified that the cameras on the loading dock are low quality, and that the security director approved allowing all sliding doors to open at the same time. However, these logistical challenges do not mitigate Povlich's negligence in failing to identify a civilian entering the loading dock sallyport gate. In fact, these known logistical challenges mean that employees must be more diligent in affirmatively identifying those who enter the loading dock, not less.

Povlich further argues that there was no risk to safety and security, and that civilian delivery drivers regularly enter the institution just as this civilian did. However, the Commission has consistently held that an employee's behavior is negligent if it creates a substantial risk to inmates, employees, or institutional safety. *See Goehl v. DOC*, Dec. No. 40227 (WERC, 12/23); *Vix v. DOC*, Dec. No. 40928-A (WERC, 9/25); *Martinez v. DOC*, Dec. No. 40946 (9/25). An adverse outcome is not required to hold an employee responsible for his or her negligence. Here, an unidentified civilian with an unknown purpose is clearly distinguishable from a delivery driver. Allowing an unidentified civilian into an institution for youthful offenders created an obvious and substantial risk to inmates, employees, and institutional safety.

As to the issue of whether there is just cause for a five-day suspension, allowing a civilian into an institution is a major security breach. Povlich failed to fulfill his basic responsibility to identify an individual entering the institution, and this gross negligence justifies a serious level of discipline. Therefore, Povlich's five-day suspension is affirmed.

Issued at the City of Madison, Wisconsin, this 2nd day of March 2026.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Electronically signed by: Peter G. Davis

Peter G. Davis, Chairman