

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

TODD ZWIRSCHITZ, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0830

Case Type: PA

DECISION NO. 41276

Appearances:

Ben Hitchcock Cross, Attorney, Cross Law Firm, S.C., 845 N. 11th Street, Milwaukee, Wisconsin, appearing on behalf of Todd Zwirschitz.

William H. Ramsey, Deputy Chief Legal Counsel, 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 September 22, 2025, Todd Zwirschitz (Zwirschitz) filed an appeal with the Wisconsin Employment Relations Commission asserting he had been discharged without just cause by the State of Wisconsin Department of Corrections (DOC). The appeal was assigned to Commission Examiner Anfin J. Wise.

A Zoom hearing was held on December 17, 2025, by Examiner Wise. The parties made oral argument at the conclusion of the hearing. On December 29, 2025, Zwirschitz filed written supplemental argument. DOC did not file a response by the given deadline of January 5, 2026.

On January 6, 2026, Examiner Wise issued a Proposed Decision and Order affirming the discharge of Zwirschitz by the DOC. No objections to the Proposed Decision were filed by the parties and the matter became ripe for Commission consideration on January 13, 2026

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

FINDINGS OF FACT

1. Todd Zwirschitz (Zwirschitz) was employed by the State of Wisconsin Department of Corrections (DOC) as a Food Service Administrator at Oshkosh Correctional Institution (OSCI) and had permanent status in class at the time of his discharge.

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

3. Zwirschitz engaged in inappropriate conduct and harassed and demeaned multiple coworkers at Oshkosh Correctional Institution.

4. The DOC discharged Zwirschitz from employment on August 12, 2025, for the misconduct referenced in Finding of Fact 3.

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 to review 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 discharge Todd Zwirschitz.

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

ORDER

The discharge of Todd Zwirschitz by the State of Wisconsin Department of Corrections is affirmed.

Issued at Madison, Wisconsin, this 20th day of January 2026.

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.

Todd Zwirschitz 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 Zwirschitz 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).

At the time of his discharge, Zwirschitz had been employed by the Department of Corrections (DOC) for approximately seven years. He initially worked as a correctional officer for about one year and then served as a Food Services Administrator. In the Food Service Administrator role, Zwirschitz supervised approximately eleven DOC employees, fifty to sixty inmate workers assigned to the Food Services Program at OSCI, and coordinated with two correctional officers responsible for kitchen security. As a manager, Zwirschitz was expected to model professional behavior and ensure a respectful and harassment-free workplace.

The record establishes that Ms. Reagan Dutschek, an entry-level Financial Specialist, credibly testified that Zwirschitz made repeated inappropriate and sexually suggestive comments toward her. Ms. Dutschek described how initially routine workplace interactions escalated into uncomfortable conversations. She testified that Zwirschitz repeatedly invited her to his home under the guise of helping him “tie his bobber onto his rod;” asked whether her boyfriend would be jealous if she came over; questioned whether her boyfriend was the jealous type; and made recurring remarks about her relationship status. These comments reasonably constitute sexually suggestive innuendo and were unwelcome.

Ms. Dutschek further testified that Zwirschitz commented on her appearance, including remarks about her hair and an incident in which he fanned himself and said “oooh” when he saw her. She explained that these interactions made her uncomfortable and that she did not report them earlier because she felt intimidated and feared the consequences of coming forward.

Ms. Lauren Radke, a Financial Specialist Senior who worked in the same office as Ms. Dutschek, credibly corroborated most of Ms. Dutschek's testimony. Ms. Radke personally overheard Zwirschitz ask Ms. Dutschek to come to his house and inquire whether her boyfriend would be jealous. Ms. Radke testified that the conduct was inappropriate and made both women uncomfortable. The testimony of Ms. Dutschek and Ms. Radke was consistent, mutually reinforcing, and offered without any apparent motive to fabricate.

Zwirschitz denied making these comments or inviting Ms. Dutschek to his home. However, his denial was less persuasive than the detailed and consistent testimony provided by Ms. Dutschek and Ms. Radke. Zwirschitz had a significant personal interest in the outcome of the proceeding, whereas the testimony of Ms. Dutschek and Ms. Radke was credible, specific, and supported by their consistency.

The record also establishes that Zwirschitz engaged in repeated unprofessional conduct and used a derogatory slur toward Mr. Eric Tittle, a maintenance worker employed by the Bureau of Correctional Enterprises. Mr. Tittle credibly testified that Zwirschitz made ongoing comments about his appearance, specifically his beard. Mr. Tittle explained that over a period of time, Zwirschitz repeatedly commented that his beard was white, scraggly, and long and that he should shave it. Mr. Tittle testified that these comments occurred multiple times, "probably a few dozen times", and followed a repetitive pattern in which Zwirschitz would tell him to shave his beard, Mr. Tittle would respond "no," and Zwirschitz would repeat the comment. Mr. Tittle described this behavior as constant and repetitive.

In addition to these ongoing remarks, Mr. Tittle credibly testified regarding a specific incident in the main kitchen area. He stated that while he was speaking with Ms. Amy Jacobson about a piece of equipment, Zwirschitz approached, interjected himself into the conversation, and commented on how Mr. Tittle kept his beard straight. After Mr. Tittle explained that he used a comb, a hair dryer, or his wife's hair straightener, Zwirschitz looked directly at him and stated, "you're a fucking fag." Immediately after the comment, both Zwirschitz and Ms. Jacobson left the area.

Mr. Tittle testified that he did not confront Zwirschitz about these comments because Zwirschitz was a supervisor and he did not feel comfortable doing so. He said that he reported the incident to a supervisor the same day, but he was not interviewed about it until recently. This explanation is reasonable given the power imbalance inherent in their working relationship. Mr. Tittle's testimony was detailed, consistent, and credible, and he had no apparent motive to fabricate these allegations.

Ms. Amy Jacobson testified that she did not recall hearing Zwirschitz use the slur. However, Ms. Jacobson's lack of recollection does not undermine Mr. Tittle's credible and specific testimony regarding both the repeated comments about his appearance and the use of a derogatory slur. Zwirschitz denied making the statement and testified that the allegation made him "sick to his stomach." However, Zwirschitz's denial is weighed against Mr. Tittle's detailed account of repeated conduct and a specific incident, which the record supports as he had no apparent motivation to fabricate such a serious allegation.

Additional testimony from Ms. Rachel Wolf further supports a pattern of inappropriate and unprofessional conduct by Zwirschitz. Ms. Wolf credibly testified that while Zwirschitz was her supervisor, he made comments and sent text messages that made her uncomfortable. Ms. Wolf testified that on one occasion, when she informed Zwirschitz that she needed to call in sick, he responded by stating, “Ok, you owe me,” and included a winking emoji. Ms. Wolf testified that this message made her uncomfortable because she did not know what Zwirschitz meant by the comment and did not believe that she owed him anything. She further testified that the message caused her to feel uneasy and uncertain about his intentions as it could be taken sexually given the winking emoji, but that she did not ask him to clarify what he meant.

Ms. Wolf also testified that Zwirschitz later texted her that he hoped she would fail a required physical examination. She stated that this message made her feel demeaned and upset. Ms. Wolf further testified that Zwirschitz also made comments about her appearance, including stating that she was a good-looking woman and warning her to watch herself around inmates. She testified that these comments were unwelcome and contributed to her discomfort working under his supervision. Ms. Wolf explained that she did not file a formal complaint at the time because she was new to the position, feared retaliation, and was unsure how to report the conduct. Her testimony was credible, internally consistent, and supported by documentary evidence.

Ms. Kimberly Kremer similarly testified that Zwirschitz engaged in flirtatious behavior toward female staff, asked about relationship status, commented on appearance, and made sexual innuendos that made her uncomfortable. Although some of these incidents occurred earlier in time, her testimony further supports a pattern of conduct.

Here, the Commission has no trouble finding that Zwirschitz’s conduct violated DOC work rules and policies prohibiting harassment, discriminatory language, and unprofessional conduct. The use of a derogatory and homophobic slur such as “faggot” in the workplace constitutes serious misconduct. Standing alone, such conduct is sufficiently egregious to warrant discharge, particularly when committed by a supervisor in management.

Additionally, Zwirschitz’s sexually suggestive comments toward Ms. Dutschek further support the Department’s decision to discharge him. These comments were unwelcome, inappropriate, and made by a manager to a younger and newer employee. Such conduct undermines the Department’s obligation to maintain a respectful and harassment-free workplace.

Finally, Zwirschitz had a prior disciplinary history. He previously received a one-day suspension for unprofessional conduct after calling a coworker “bitchy” or a “bitch” during a phone conversation. That discipline placed him on notice that disrespectful and inappropriate language was unacceptable and subject to progressive discipline. Despite this warning, Zwirschitz engaged in more serious misconduct.

Given Zwirschitz’s supervisory management position, the seriousness of the misconduct, the impact on multiple employees, and his prior discipline, the Commission finds that there was just cause for Zwirschitz’s discharge, and it is therefore affirmed.

Issued at Madison, Wisconsin, this 20th day of January 2026.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Peter G. Davis, Chairman