

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

VICTOR CRUZ, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0845

Case Type: PA

DECISION NO. 41305

Appearances:

Victor Cruz, 2541 W. Waukau Avenue, Oshkosh, Wisconsin, appearing on his own behalf.

Nicole M. Porter, 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 November 5, 2025, Victor Cruz (Cruz) 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 January 8 and 27, 2026, by Examiner Wise. The parties made oral argument at the conclusion of the hearing. On February 12, 2026, Examiner Wise issued a Proposed Decision and Order, affirming the discharge of Cruz by the DOC.

On February 16, 2026, Cruz filed objections to the Proposed Decision. On February 17, 2026, the DOC filed a response to Cruz's objections, and the matter became ripe for Commission consideration.

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

FINDINGS OF FACT

1. Victor Cruz (Cruz) was employed by the State of Wisconsin Department of Corrections (DOC) as a Supervising Officer 1 (Lieutenant) at Taycheedah Correctional Institution (TCI) 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 TCI, a medium and maximum-security institution located in Fond du Lac, Wisconsin.

3. Throughout 2024, Cruz fraternized with inmate K.P. by engaging in lengthy, one-on-one conversations with her, even after being made aware in April 2024 of the excessive amount of time and how other inmates and staff members may perceive the interactions with K.P.

4. The DOC discharged Cruz from employment on August 20, 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 Victor Cruz.

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

ORDER

The discharge of Victor Cruz 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.

Victor Cruz 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 Cruz 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).

Cruz was a Supervising Officer 1 or Lieutenant at Taycheedah Correctional Institution (TCI) at the time of his discharge. Prior to his promotion to Lieutenant, Cruz was a Sergeant at TCI assigned to a dorm unit. TCI is a correctional facility housing female inmates sentenced to adult custody. As a Lieutenant, Cruz supervised and directed the activities of lower level shift officers and was responsible for the security, custody, control, and rehabilitation of the female inmates at TCI.

In September 2024, DOC initiated a formal investigation after staff reported continued concerns about the amount of time Cruz was spending with inmate K.P. On multiple occasions, Cruz was seen talking to K.P. for extended periods of time. Cruz was also seen with K.P. outside of the dorm unit for over forty minutes and outside the treatment building for at least ten minutes on numerous occasions. Other inmates also expressed concerns about the amount of time Cruz was spending with K.P.

These concerns were initially reported to management in April 2024. At that time, Captain Alex Miller had a conversation with Cruz about staff's perception of the frequency and duration of time that Cruz was spending with inmate K.P. After this conversation, Cruz should have corrected his behavior by being mindful of the time he was spending with K.P. As a supervisor, Cruz should have been aware of the perception of favoritism or special treatment by setting up immediate boundaries with the inmate. That did not happen.

The record established that prior to his promotion, Cruz was the Sergeant assigned to inmate K.P.'s dorm unit. During that time, Cruz and K.P. had a close professional relationship

where K.P. relied on Cruz to talk about problems she was facing. After his promotion to Lieutenant, Cruz was no longer assigned to the dorm unit. However, credible testimony established that Cruz was often seen, almost daily, having his coffee, talking and spending twenty to thirty minutes with inmate K.P. in the mornings outside of the unit. Cruz was also specifically going to places to meet up with K.P. When K.P. had a hair care appointment, Cruz was there. When K.P. went to the exercise building, Cruz was there. K.P. was the inmate worker/janitor on the Restrictive Housing Unit (RHU). On at least one occasion, Cruz was seen spending ten to fifteen minutes with K.P. in the janitor's closet in RHU. This behavior drew the attention of multiple veteran correctional officers, as the behavior went on for more than six months.

Warden Michael Gierach testified that DOC's fraternization policy is a guide to staff on appropriate relationships with inmates. The fraternization policy prohibits certain relationships and conduct between employees and inmates. The policy is designed to eliminate any potential conflict of interest or impairment of the supervision and rehabilitation provided to inmates by DOC employees. Maintaining professional boundaries within the institution is important for the safe and secure operation of the facility.

In *Vale v. DOC*, Dec. No. 40254-A (WERC, 4/24), the Commission held that officers are responsible for drawing appropriate lines and ending a conversation if initiated by an inmate. "Long, one-on-one conversations can create an impression of favoritism and fraternization, even when the subject is innocuous." This is the case even more so for a supervisor. As a Lieutenant, Cruz was responsible for being a role model to subordinate staff and inmates. When there is a failure to create boundaries, it fosters a level of distrust among the staff, as well as inmates, putting the safety and security of the institution at risk. Thus, Cruz fraternized with K.P. by having long, one-on-one conversations with her and spending excessive amounts of time with her. This fraternization constitutes serious misconduct and warrants serious discipline.

Nevertheless, Cruz denied any wrongdoing and maintained that his discharge was excessive. While he did not testify at the hearing, Cruz argued that communicating with everyone was part of his normal everyday duties. He was a good communicator and gained rapport with inmates through communication. He contended that talking to inmates for a long time is normal. While the Commission understands that gaining rapport with inmates through communication is part of the job, spending time and talking to one particular inmate on a daily basis, to the point where other inmates and staff notice, is the problem. Additionally, no evidence was presented that Cruz had a job-related reason to spend so much time with inmate K.P.

In his closing argument, Cruz claimed that the Department has issued inconsistent levels of discipline to other employees for similar misconduct. An employee who raises a disparate treatment claim has the burden of proving that contention. 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).

Cruz cited *Hermesen v. DOC*, Dec. No. 40235-A (WERC 3/24) and *Hawkinson v DOC*, Dec. No. 38803 (WERC, 2/21) as examples of disparate treatment. Hermesen was a Recreational Leader who was issued a three-day suspension for failing to follow a work directive, displaying favoritism, and spending an extended amount of time conversing with an inmate. DOC explained that in Hermesen's case, she participated in two instances of long conversations with an inmate. This was clearly not to the extent and repetitiveness of Cruz's conversations with inmate K.P. Additionally, Hermesen was not a supervisor. Thus, we are not persuaded that Hermesen and Cruz were similarly situated.

Hawkinson was a Sergeant who was issued a one-day suspension for five separate acts of misconduct involving one-on-one contact with an inmate on two occasions, engaging in horseplay, being disrespectful and using profanity towards a coworker, and harassing and confronting two coworkers because of the testimony they provided during DOC's investigation into her conduct. While the Commission is surprised that Hawkinson only received a one-day suspension, there was insufficient evidence presented that Hawkinson and Cruz were similarly situated or that they engaged in similar misconduct. Therefore, we reject Cruz's claim of disparate treatment.

Turning now to a just cause consideration of the level of discipline Cruz received. The Commission has previously found that the act of fraternization is serious misconduct, and that fraternization alone warrants the skip of progressive discipline to the level of discharge. *See Love v. DOC*, Decision No. 40715-A (WERC, 2/25). Given Cruz's supervisory position, the seriousness of his misconduct, and the failure to correct his behavior after being warned about the perception that he was spending too much time with K.P., we are persuaded that here, discharge was not excessive and therefore consistent with just cause principles.

Given the foregoing, the Commission finds that there was just cause for Cruz's discharge, and it is therefore 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