

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

KEMO JARJOU, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF HEALTH SERVICES, Respondent.

Case ID: 2.0204

Case Type: PA

DECISION NO. 41461-A

Appearances:

Will Kramer, Attorney, Pines Bach LLP, 122 W. Washington Ave., Suite 900, Madison, Wisconsin, appearing on behalf of Kemo Jarjou.

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 Health Services.

DECISION AND ORDER

On April 15, 2026, Kemo Jarjou filed an appeal with the Wisconsin Employment Relations Commission asserting he had been discharged without just cause by the State of Wisconsin Department of Health Services (DHS).

A zoom hearing was held on July 14, 2026, by Commission Chairman Peter G. Davis. The parties thereafter filed written arguments until August 7, 2026.

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

FINDINGS OF FACT

1. Kemo Jarjou (Jarjou) was employed by the State of Wisconsin Department of Health Services (DHS), as a Psychiatric Care Technician-Advanced at Mendota Mental Health and had permanent status in class at the time of his discharge.

2. On November 24, 2026, Jarjou was attacked by a youth patient and punched in the head. Jarjou responded with closed fist punches, one of which hit the patient. As the patient was

being taken to the floor by other employees, Jarjou kicked at the patient. Once the patient was on the floor, Jarjou assisted other employees who were restraining the patient. During his assist, Jarjou briefly put his knee on the patient's neck.

3. The punch Jarjou received from the patient gave him a concussion and as a result he was off from work for several months thereafter.

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 Health Services did not have just cause within the meaning of Wis. Stat. § 230.34(1)(a) to discharge Kemo Jarjou but did have just cause to suspend him from the date of his discharge to the date he is promptly reinstated.

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

ORDER

The discharge of Kemo Jarjou by the State of Wisconsin Department of Health Services is modified to reinstatement without back pay but with no loss of seniority.

Issued at Madison, Wisconsin, this 13th day of August 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.

Kemo Jarjou 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 Jarjou 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).

While performing his job as a Psychiatric Care Technician, Jarjou was attacked by a youth patient and punched in the head. Based on the Commission's review of the video recordings of what happened next, Jarjou responded as detailed in Finding of Fact 3. But for the impact of the punch he received from the patient, the combination of the punches, kick, and knee on the neck Jarjou administered would clearly establish just cause for discharge.

The Commission credits Jarjou's testimony that he has no memory of his conduct, but the inability to recall does not equate to proof of an inability to control one's behavior. Evidence was presented that the concussion caused by the punch could have triggered Jarjou to respond as he did – either thru a fight or flight response or as a consequence of an altered state. But that evidence is certainly not definitive.

So the Commission is confronted with significant misconduct that could have injured the patient, triggered by an attack on the employee for which he has no responsibility and as to which he may have been responding involuntarily. Applying a just cause standard to these conflicting realities, the Commission is persuaded that whatever Jarjou's mental state, there needs to be accountability for his conduct. However, the potential for an altered mental state and the fact that Jarjou had no control over the start of the incident warrant some leniency. Thus, Jarjou is reinstated but without back pay. Further, acknowledging the risk of a recurrence, the State has the right to transfer Jarjou to a different position within Mendota Mental Health that has less risk of future concussions, but must retain his rate of pay and applicable benefits if it does so.¹

¹ The Commission credits and acknowledges Jarjou's successful effort to find a decision from another jurisdiction with a similar fact pattern. However, the Commission notes that in that matter, the decisionmakers found the employee to have been "unconscious" during the attack by a patient-a finding not made here. Further, the employee in that matter believed he was fighting for his life whereas here Jarjou was clearly the aggressor after being punched.

Issued at the City of Madison, Wisconsin, this 13th day of August 2026.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Electronically signed by Peter G. Davis

Peter G. Davis, Chairman