

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

OLGA MARLEY, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF HEALTH SERVICES, Respondent.

Case ID: 2.0199

Case Type: PA

DECISION NO. 41465

Appearances:

Richard Herrmann, 2314 Vinland St., Oshkosh, Wisconsin, appearing on behalf of Olga Marley.

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 Health Services.

DECISION AND ORDER

On February 2, 2026, Olga Marley filed an appeal with the Wisconsin Employment Relations Commission asserting that she had been suspended for one-day without just cause by the State of Wisconsin Department of Health Services. The appeal was assigned to Commission Examiner Katherine Scott Lisiecki.

On September 16, 2025, pursuant to Wis. Stat. § 227.46(3)(a), Examiner Lisiecki was given final authority to issue the Commission's decision.

A hearing was held via Zoom on March 30, 2026, by Examiner Lisiecki. The parties made oral closing arguments at the end of the hearing.

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

FINDINGS OF FACT

1. Olga Marley (Marley) is employed by the State of Wisconsin Department of Health Services (DHS), as a Nurse Clinician II at the Wisconsin Resource Center (WRC). She had permanent status in class when she was suspended.

2. On July 19, 2025, Marley recorded that she had completed a narcotics count at 10:20 p.m. when she had not. Further, the count was incorrect.

3. Following an investigation, the DHS suspended Marley for one day for falsification of records 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 Health Services had just cause within the meaning of Wis. Stat. § 230.34(1)(a) to suspend Olga Marley for one day.

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

ORDER

The suspension of Olga Marley by the State of Wisconsin Department of Health Services is affirmed.

Issued at Madison, Wisconsin, this 22nd day of May 2026.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Electronically signed by Katherine Scott Lisiecki

Katherine Scott Lisiecki, Hearing Examiner

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.

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

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

Olga Marley (Marley) is employed as a Nurse Clinician II at the Wisconsin Resource Center (WRC). Per Policy 4.5.45, during each shift change, off-going and on-coming nurses are required to count narcotic substances together and to report the count along with the date, the time, and their initials. *See* Exhibit R-10. On July 19, 2025, Marley documented that she conducted a narcotics count at 10:20 p.m. However, a later video review showed that Marley didn't conduct the count at 10:20 p.m. Further, the count was incorrect.

Marley argues that there was no loss of narcotics, and adjustments to the count were made as a normal part of reconciliation. She further argues that she had no intent to falsify the count. However, it doesn't matter that the count was later fixed. By recording that she had conducted the count when she had not, Marley falsified an agency document. The Commission has previously held that falsifying agency records does not require that the conduct be done intentionally. *See Andersen v. DOC*, Dec. No. 41245 (WERC, 11/25).

Marley argues that recording the approximate time for narcotics counts was a common practice by nurses. Indeed, two of her coworkers testified that recording approximate narc count times was common practice at the WRC. However, the testimony consistently showed that WRC supervisors were unaware of this practice.

Marley argues that she was subject to disparate treatment, because the other nurse required to conduct a count that evening only received a letter of expectation, whereas Marley received a one-day suspension. 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). An employee who raises a disparate treatment claim has the burden of proving that contention. Here, Marley had been previously investigated in May 2025 for a similar incident of failing to properly document the narcotics count and was given re-training on how to properly do so. *See* Exhibit R-4, pg. 6, Exhibit A-104. WRC Director Sue DeHaan credibly testified that this recent retraining was why Marley was given a one-day suspension rather than a letter of expectation. Because Marley was not similarly situated to the other nurse, she was not subject to disparate treatment.

Marley has no previous discipline, and this one-day suspension represents progressive discipline. Marley committed misconduct by falsifying an agency document, and the DHS had just cause to issue her a one-day suspension. Therefore, Marley's one-day suspension is affirmed.

Issued at the City of Madison, Wisconsin, this 22nd day of May 2026.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Electronically signed by Katherine Scott Lisiecki

Katherine Scott Lisiecki, Hearing Examiner