

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

RYAN MCCLAIN, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0918

Case Type: PA

DECISION NO. 41531

Appearances:

Ryan McClain, N142W21825 Marquette Road, Richfield, Wisconsin, appearing on behalf of himself.

Karen Heineman, Attorney, Department of Corrections, 3099 East Washington Avenue, P.O. Box 7925, Madison, Wisconsin, appearing on behalf of the State of Wisconsin Department of Corrections.

DECISION AND ORDER

On April 17, 2026, Ryan McClain filed an appeal with the Wisconsin Employment Relations Commission asserting he had been suspended for one day without just cause by the State of Wisconsin Department of Corrections. The appeal was assigned to Commission Examiner Cara Larson.

A Zoom hearing was held on July 14, 2026, by Examiner Larson. The parties made oral arguments at the conclusion of the hearing. On February 5, 2026, pursuant to Wis. Stat. § 227.46(3)(a), Examiner Larson was granted final authority to issue the Commission's decision.

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

FINDINGS OF FACT

1. Ryan McClain (McClain) is employed by the State of Wisconsin Department of Corrections (DOC) as a Supervising Officer II at Taycheedah Correctional Institution (TCI) and had permanent status in class at the time of his suspension.

2. The DOC is a state agency responsible for the operation of various corrections facilities including TCI, located in Fond du Lac, Wisconsin.

3. McClain engaged in inappropriate conduct and harassed and demeaned another DOC employee.

4. After an investigation, the DOC suspended McClain for one day due to his conduct as referenced in Finding of Fact 3.

Based on the above and foregoing Proposed 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 suspend Ryan McClain for one day.

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

ORDER

The one-day suspension of Ryan McClain by the State of Wisconsin Department of Corrections is affirmed.

Issued at Madison, Wisconsin, this 4th day of August 2026.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Electronically signed by: Cara J. Larson

Cara J. Larson, Hearing Examiner

MEMORANDUM ACCOMPANYING DECISION AND ORDER

Section 230.34(1)(a), Stats., provides in pertinent part:

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.

Ryan McClain 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 McClain 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).

The central facts are not really disputed. McClain admitted that while at a hotel bar after attending a department conference he called another DOC employee a “fag.” Although McClain argues the comment was intended as friendly banter and not as harassment, intent does not erase the effect of the conduct. That employee credibly testified that he repeatedly asked McClain to stop, but McClain continued and called him a “fag” numerous times. He also testified that the conduct affected his working relationship with McClain and caused him to avoid serving on committees with him.

McClain’s primary defense is that the conduct occurred after work hours at a hotel bar and therefore fell outside the Department’s work rules. The argument is not persuasive. McClain attended the conference as a Department employee. The Department paid for his attendance, lodging, and meals, and employees were expected to conduct themselves professionally throughout the conference. The fact that the misconduct occurred after the day’s formal sessions ended does not insulate it from discipline. The Department reasonably expected its employees, and particularly its supervisors, to treat coworkers professionally during a work sponsored conference.

McClain also argues that other employees engaged in misconduct without being disciplined. An employee who raises a disparate treatment claim has the burden of proving that contention. A disparate treatment defense requires evidence that similarly situated employees committed comparable misconduct but received different discipline. McClain offered only speculation, hearsay, and rumors. That is not enough to meet his burden. Furthermore, his allegation that the employee he used the derogatory term towards tore his shirt, likewise misses the point. Even accepting McClain’s version of events, it does not excuse or justify repeatedly directing a homophobic slur at a coworker after being asked to stop.

The Department reasonably concluded that McClain violated its work rules and Executive Directive 5 by repeatedly directing a homophobic slur at a fellow employee during a department conference. Given the seriousness of the misconduct, McClain's supervisory position, and the progressive nature of the discipline, a one-day suspension was not excessive.

Accordingly, the Department had just cause to impose the one-day suspension and it is affirmed.

Issued at Madison, Wisconsin, this 4th day of August 2026.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Electronically signed by: Cara J. Larson

Cara J. Larson, Hearing Examiner