

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

LORI SCHULTZ, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF HEALTH SERVICES, Respondent.

Case ID: 2.0207

Case Type: PA

DECISION NO. 41538

Appearances:

Cindy Irwin, 475 Courtland Avenue, Oshkosh, Wisconsin, appearing on behalf of Lori Schultz.

David G. 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 May 8, 2026, Lori Schultz filed an appeal with the Wisconsin Employment Relations Commission asserting she had been discharged without just cause by the State of Wisconsin Department of Health Services.

A zoom hearing was held on July 9, 2026, by Commission Chairman Peter G. Davis. The parties made oral arguments at the conclusion 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. Lori Schultz was employed by the State of Wisconsin Department of Health Services (DHS) as a Psychiatric Care Technician. She had permanent status in class at the time of her discharge.

2. On February 20, 2026, Schultz was tardy for the fourth time in the calendar year. DHS work rules provide that the fourth such tardy triggers discipline. On that date, she also violated a work rule that required her to call in at least 90 minutes prior to the start of her shift to indicate she would be late.

3. On July 17, 2025, and November 4, 2025, Schultz had received five-day suspensions.

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 Lori Schultz, but did have just cause to suspend her without pay for the period of time between her discharge and the date she 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 Lori Schultz by the State of Wisconsin Department of Health Services is modified to reinstatement without back pay, with no loss of seniority and with a “Last Chance” proviso.

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., states 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.

Lori Schultz had permanent status in class at the time of her discharge, and her appeal alleges that the discharge was not based on just cause.

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

As reflected in the following portion of the Schultz discharge letter, it is not clear whether DHS viewed her February 20, 2026, tardiness as potentially covered by her Family and Medical Leave Act (FMLA) request:

In response, the mitigation presented was that the FMLA request that was submitted the same day as your fourth tardy should cover the tardy that is under investigation as well as any prior tardies this year. You also noted that you should have been engaged in the interactive process through the Americans with Disabilities Act. While it is documented that you have a serious health condition that prevents you from arriving to work in a timely manner, you are held to the WRC Employing Unit Memo which requires PCT-As to report 90 minutes in advance if they are unable to report as scheduled. Additionally, you did not attribute the disciplines prior to this latest infraction to your serious health condition for which you have FMLA.

What is clear from the letter and the testimony presented during the hearing is that DHS, contrary to Schultz, does not believe FMLA can cover Schultz's failure to call in 90 minutes before her shift. The Commission concludes that the DHS view of the FMLA law is correct. The section of the United States Department of Labor website quoted below confirms that conclusion:

Q) Is an employee required to follow an employer's normal call-in procedures when taking FMLA leave?

A) Yes. Under the regulations, an employee must comply with an employer's call-in procedures unless unusual circumstances prevent the employee from doing so

(in which case the employee must provide notice as soon as he or she can practicably do so). The regulations make clear that, if the employee fails to provide timely notice, he or she may have the FMLA leave request delayed or denied and may be subject to whatever discipline the employer's rules provide.

Example:

Sam has a medical certification on file with his employer for his chronic serious health condition, migraine headaches. He is unable to report to work at the start of his shift due to a migraine and needs to take unforeseeable FMLA leave. He follows his employer's absence call-in procedure to timely notify his employer about his need for leave. Sam has provided his employer with appropriate notice.

Thus, Schultz's failure to meet the 90 minute call-in requirement constitutes misconduct. Because she had two five-day suspensions on her record at the time in question, there normally would be just cause for discharge. However, Schultz's more than 20 years of State service warrants granting her a limited amount of grace beyond that already accorded her by DHS via the second five-day suspension. Thus, she is reinstated without back pay, but with no loss of seniority. However, with reinstatement comes the "Last Chance" requirement that she not violate the 90-minute call-in requirement during the year following her reinstatement. Should she do so, DHS will have just cause to discharge her employment and any appeal to the Commission will be unsuccessful.

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

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Electronically signed by Peter G. Davis

Peter G. Davis, Chairman