

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

MARCUS R. KING, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0934

Case Type: PA

DECISION NO. 41544

Appearances:

Elizabeth M. Pierson, Attorney, Pines Bach LLP, 2 East Mifflin Street, Suite 600, Madison, Wisconsin, appearing on behalf of Marcus R. King.

David G. Makovec, Attorney, 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 May 20, 2026, Marcus King filed an appeal with the Wisconsin Employment Relations Commission asserting he had been suspended for five days without just cause by the State of Wisconsin Department of Corrections (DOC). The matter was assigned to Commission Examiner Anfin J. Wise.

A Zoom hearing was held on August 5 and 7, 2026, by Examiner Wise. The parties made oral argument at the conclusion of the hearing.

On August 18, 2026, Examiner Wise issued a Proposed Decision and Order modifying the suspension to a Letter of Expectation and ordering that King be made whole.

On August 24, 2026, DOC filed objections to the Proposed Decision and Order and that same day King filed a motion for fees and costs. On August 31, 2026, King filed a response to the DOC objections.

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

FINDINGS OF FACT

1. Marcus R. King (King) was employed by the State of Wisconsin Department of Corrections (DOC) as a Supervising Officer 1 (Lieutenant) at Green Bay Correctional Institution (GBCI), and he had permanent status in class at the time of his suspension.

2. GBCI is a maximum-security correctional facility located in Green Bay, Wisconsin operated by DOC, a state agency of the State of Wisconsin.

3. On November 13, 2025, King was scheduled to work at 2:00 PM, but expected to arrive at 1:30 PM for pre-shift preparation. Prior to 1:30 PM, King called and told a Captain that he would not be arriving at work by 1:30 PM. The Captain approved his late arrival and King arrived at 1:44PM.

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 Corrections did not have just cause within the meaning of Wis. Stat. § 230.34(1)(a) to suspend Marcus King for five days.

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

ORDER

The five-day suspension of Marcus King is rejected and he shall be made whole with interest.¹

Issued at Madison, Wisconsin, this 11th day of September 2026.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Electronically signed by Peter G. Davis

Peter G. Davis, Chairman

¹ See Wis. Admin. Code ERC 94.07.

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.

Marcus King 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 King 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 evidence establishes that King had received supervisory approval for his arrival at work after 1:30PM on November 13, 2026. Thus, he did not engage in misconduct and the five-day suspension must be rejected.²

If the Warden wants to end the practice of employees routinely arriving late for shift preparation, he can advise all impacted employees that the practice is over and then must fairly and consistently impose any discipline on those who continue to arrive late.

Given the foregoing, it is concluded that the five-day suspension is rejected and King shall be made whole with interest.

Issued at Madison, Wisconsin, this 11th day of September 2026.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Electronically signed by Peter G. Davis

Peter G. Davis, Chairman

² On August 30, 2026, King filed a motion for fees and costs pursuant to Wis. Stat. § 227.485. DOC has not yet responded to the motion and the statutory deadline for a response is September 22, 2026. Following receipt of any DOC response, the Commission will rule on the motion.