STATE OF WISCONSIN CIRCUIT COURT DANE COUNTY

BARBARA DAANE,

Petitioner, Case No. 138-363

vs.

STATE OF WISCONSIN
(Personnel Board),

JUDGMENT

Respondent.

BEFORE: HON. GEORGE R. CURRIE, Reserve Circuit Judge

DEPT.JUSTICE-
5 JL 73 10:57

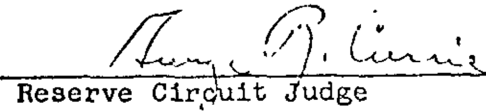
The above entitled review proceeding having been noticed for hearing before the Court on the 22nd day of June, 1973, and before this hearing Lawton and Cates, counsel for Petitioner, and Assistant Attorney General Robert J. Vergeront, counsel for the Respondent, having waived oral arguments and consented to submit the cause on the briefs they had previously filed; and the Court having filed its Memorandum Decision wherein Judgment is directed to be entered as herein provided, which Memorandum Decision is incorporated herein by reference;

It is Ordered and Adjudged that the decision entered by the respondent Board on January 12, 1973, entitled "Opinion and Order", in the matter of Barbara Daane, Appellant v. Wilbur J. Schmidt, Secretary, Department of Health and Social Services, and C. K. Wettengel, Director, State Bureau of Personnel, Respondents, be, and the same hereby is, reversed, and the

matter is remanded to Respondent Board for further proceedings not inconsistent with the Court's Memorandum Decision.

Dated this 2nd day of June, 1973.

By the Court:



Reserve Circuit Judge

STATE OF WISCONSIN CIRCUIT COURT DANE COUNTY

BARBARA DAANE,

Petitioner, Case No. 138-363

vs.

STATE OF WISCONSIN
(Personnel Board),

MEMORANDUM DECISION

Respondent.

BEFORE: HON. GEORGE R. CURRIE, Reserve Circuit Judge

This is a proceeding under Ch. 227, Stats., to review a decision of the respondent board entered January 12, 1973, denominated "Opinion and Order", This decision denied full pay to the petitioner under sec. 16.31, Stats., 1969, for a period of disability from work from September 3, 1971, through September 28, 1971, and sustained the action of the Department of Health and Social Services and the Bureau of Personnel in denying petitioner's application for such benefits.

Statement of Facts

On September 2, 1971, petitioner was employed as an institutional aid at Central Colony in the care of mental patients. About 8:30 that evening she and another employee were engaged in putting back to bed Christine, a patient who had been injured and had been given a sedative which had not worked. Christine's bed was in a dormitory which housed a number of female inmates aged 12 to 60 with beds arranged along the walls.

Patty, a Mongoloid, aged 13 years, about 4 and 1/2 feet tall, and weighing about 90 pounds, got out of her bed and came over and sat on the night stand beside the bed of Christine. This night stand was about 3 to 3 and 1/2 feet tall with a top about 2 feet by 2 feet, and sat on four legs. Petitioner told Patty she was supposed to go back to bed. Patty started to obey but in doing so accidentally tipped over the night stand which struck petitioner's foot thereby causing the period of disability for which petitioner applied for full pay under sec. 16.31, Stats., 1969.

During the course of the hearing before the respondent board this question was asked petitioner and she gave this answer (Tr. 19):

> "Q Isn't it a fact that neither Patty nor Christine attempted in any way to harm you?
>
> A That's true."

In its Findings of Fact portion of its decision the respondent found, among other things:

> "4. Appellant's injury did not occur while she was in the performance of duties as an institution aid in the process of quelling a riot or disturbance or other act of violence.
>
> 5. Appellant's injury did not occur in the process of restraining a patient.
>
> 6. Appellant's injury was not inflicted as a result of an assault or act of violence by a patient or other person at Central Wisconsin Colony."

Applicable Statute

The applicable statute is sec. 16.31, Stats., 1969, the material portions of which read as follows:

"(1) Whenever a conservation warden . . . or any other employe whose duties include . . . supervision and care of patients at a state mental institution . . . suffers injury while in the performance of his duties as defined in subs. (2) and (3) . . . he shall continue to be fully paid by his employing department upon the same basis as he was paid prior to the injury with no deductions from sick leave credits, compensatory time for overtime accumulations or vacation.

"(2) 'Injury' as used in this section is physical harm to an employee caused by accident or disease.

"(3) As used in this section 'performance of duties' means duties performed in line of duty by:

"* * *

"(c) A guard, institution aid, or other employe at the Wisconsin child center, university of Wisconsin hospitals or at state penal and mental institutions, including central state hospital, the state school for boys, the state school for girls and state probation and parole officers, at all times while:

"1. In the process of quelling a riot or disturbance or other act of violence;

"2. In the process of restrining patients, inmates, probationers or parolees and apprehending runaways or escapees, including probationers and parolees;

"3. When injury is inflicted as the result of an assault or act of violence by a patient, inmate, probationer or parolee; or

". . .." (Emphasis supplied.)

Effective April 30, 1972, Ch. 270, Laws of 1971, amends sub. (3)(c) 3, so that it now reads:

"When injury is occasioned as the result of an act by a patient, inmate, probationer or parolee; or . . ."

However, since this amendment was enacted after petitioner sustained her injury and ensuing period of disability, it is inapplicable to this review proceeding.

The Court's Decision

The Court is satisfied for the reasons hereafter stated that neither paragraph 1 nor paragraph 3 of sub. (3)(c) of sec. 16.31, Stats., 1969, is applicable to the facts of this case and respondent board properly so held.

In order to come within the purview of paragraph 1 the petitioner's injury would have had to occur while "in the process of quelling a riot or disturbance or other act of violence." (Emphasis added).

The statutory words "or other acts of violence" qualify the word "disturbance" and rule out some of the more peaceful meanings of that word included in the dictionary definitions of "disturbance". Also the word "quelling" implies the use of force. Webster's Third New International Dictionary gives us the first definition of "quell" the archaic meaning of "kill" or "slay". The second meaning given of "put down: over-power, suppress, extinguish" is the one which the Court deems to be the one most applicable to the construction of "quelling" as it appears in this statute.

On direct examination the petitioner testified Christine had earlier sustained some injury that required stitches, she thought in the cheek, had been given a sedative that was not working, became very upset, and came out in the play area adjacent to the dormitory. Petitioner and a Marlene McCaffery, another employee, then took Christine back to the dormitory and put her to bed. On cross-examination petitioner testified that Marlene and she did not have to push or carry Christine but the sedative had made her groggy and they had to help her

walk. Petitioner was then asked if Christine struggled in any way and petitioner answered, "Yes. She, I guess wanted to get back up and get out into the playroom." Petitioner further stated that Christine did not physically come at her or assault her in any way.

Clearly, the respondent board could properly find on this evidence that when hurt the petitioner was not in the process of quelling a disturbance or other act of violence as those terms are used in par. 1 of sub. (3)(c) of sec. 16.31, Stats., 1969. This is because, as the fact finder, respondent could infer that whatever struggle Christine made when put to bed did not rise to an act of violence.

Paragraph 3 of sub. (3)(c) of sec. 16.31, Stats.,1969, is inapplicable because Patty engaged in no "assault or act of violence" on the part of Patty in the context of which such words are used in paragraph 3. Petitioner's brief emphasizes that her sitting on the stand violated a Colony rule and cited a definition of violence in Black's Law Dictionary (4th ed.) as "force unlawfully exercised." However, whatever physical effort Patty exercised in attempting to obey petitioner's command to go back to her bed in dislodging herself from the stand whereby she accidentally tipped it over was not "force unlawfully exercised."

The issue in the case which has caused the Court considerable difficulty is whether the respondent board's finding that petitioner's "injury did not occur in the process of restraining a patient" can be sustained; and whether paragraph 2

of sub. (3)(c) of sec. 16.31, Stats., 1969, is to be so construed as to implicitly require that there be a causal connection between the restraint of the patient and the act which causes the injury.

In its decision here under review the respondent board stated:

> "It cannot be seriously argued that appellant [the petitioner] was 'restraining a patient.' She was putting the patient to bed."

This ignores the undisputed testimony of petitioner given on cross-examination that Christine "struggled" and "wanted to get back up and get out into the playroom area" (Tr. 17-18). It is thus apparent that petitioner and her fellow employee were obliged to restrain Christine to keep her in bed. At no point in its decision did respondent indicate any disbelief in petitioner's testimony. Neither is there anything in plaintiff's testimony or in the exhibits written by her which would be sufficient to raise a legitimate doubt that any fact stated by her was untrue. The Court concludes that the finding of fact that the "injury did not occur in the process of restraining a patient" is unsupported by substantial evidence in view of the entire record within the meaning of sec. 227.20(1)(d), Stats.

There is a further question which has troubled the Court which has not been touched on in the briefs of counsel. This is whether there is implicit in the statute there be a requirement of a causal connection between the restraint of the patient or inmate and the injury sustained by the employee exercising the restraint. To bring the issue into sharper focus, suppose instead of Patty having tipped over the stand a piece of plaster had fallen from the ceiling striking petitioner in the

head so as to disable her from working for a period of time. Would paragraph 2 of sub. (3)(c) of sec. 16.31, Stats., 1969, have been applicable to that situation?

Keeping in mind the underlying purpose of the statute, it would not be an unreasonable interpretation of paragraph 1 of sub. (3)(c) that a causal connection must exist between the restraint being exercised with respect to a patient or inmate and the injury which occurs to the employee exercising the restraint before this paragraph would be applicable. The Court does not make this statement with any intent to influence respondent in making its own interpretation of the statute. However, if this were not a reasonable interpretation then it would be the duty of the Court to reverse and remand so as to require granting of petitioner's application.

The Wisconsin Supreme Court has many times held that it accords great weight to the interpretation placed upon a statute by the administrative agency charged with the duty of applying such statute. Chevrolet Division, G.M.C. v. Industrial Comm. (1966), 31 Wis. 2d 481, 488, 143 N.W. (2d) 532, and the cases cited in footnote 7 thereof. Here the respondent board is the administrative agency charged with administering the statute in question, and the Court is without the benefit of its interpretation on the question which is troubling the Court and which may be determinative of whether or not petitioner's injury and disability come within the purview of the statute. Therefore, the Court has decided to reverse because of the

material finding of fact which is not supported by the evidence, and to remand for further proceedings.

On the remand it will be incumbent upon the respondent board to make an interpretation of paragraph 2 of sub. (3)(c) of sec. 16.31, Stats., 1969, with respect to the question of whether a causal connection is required between the restraint exercised and the injury in order to make the statute applicable.

In addition the respondent should make such additional findings of fact which the respondent deems necessary to support its ultimate decision of whether or not petitioner's application for full pay under sec. 16.31, Stats., 1969, is to be granted.

The Court would recommend to respondent that on remand the respondent request counsel to submit further briefs on the issue of statutory interpretation and on the factual causation issue.

Let judgment be entered reversing the decision under review and remanding the matter for further proceedings not inconsistent with this decision.

Dated this 27th day of June, 1973.

By the Court:

[signature]

Reserve Circuit Judge