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BRUCE FINN,

Appellant,

v.

DEPARTMENT OF JUSTICE,

Respondent.

Case No. 88-0125-PC

* * * * *

ORDER

The Commission, having reviewed the Proposed Decision and Order and the objections and arguments of the parties relating thereto, and having consulted with the hearing examiner, adopts the Proposed Decision and Order with the following modifications:

1. The final sentence of the paragraph which begins on page 5 and continues onto page 6 is deleted.
2. The following language is substituted for the sentence deleted in 1., above:

It is particularly noteworthy, in view of the facts of the instant case, that §230.36(3)(b)3., Stats., specifically describes those travel situations which the Legislature considers hazardous duty for a DOJ special criminal investigation agent within the meaning of §230.36, Stats. as follows:


"Driving or riding in a vehicle, aircraft or boat under circumstances which require hazardous maneuvering or speed in excess of the normal or posted limits in the performance of law enforcement duties:..."

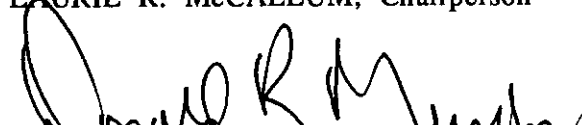
It is undisputed that appellant's vehicle was not even moving when the subject injury occurred, much less speeding or

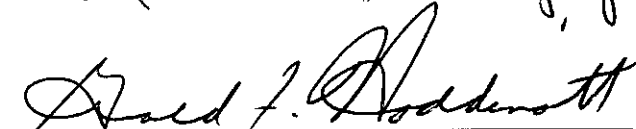
maneuvering in a hazardous manner. It is a well-accepted principle of statutory construction that the specific overrules the general. Under the facts of this case, the specificity of the language of §230.36(3)(b)3., Stats., relating to automobile travel leads to the Commission to conclude that legislative intent would be better served by a decision that appellant was not performing a hazardous duty within the meaning of §230.36, Stats., when he suffered the subject injury.

Dated: August 24, 1989

STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson


DONALD R. MURPHY, Commissioner


GERALD F. HODDINOTT, Commissioner

LRM/lrm

Parties:

Bruce Finn
W13551 Hwy. 60
Lodi, WI 53555

Donald J. Hanaway
Attorney General
DOJ
P.O. Box 7857
Madison, WI 53707

STATE OF WISCONSIN

PERSONNEL COMMISSION

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BRUCE FINN,

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PROPOSED
DECISION
AND
ORDER

Nature of the Case

Appellant filed this appeal with the Commission on October 26, 1988. The issue agreed to by the parties to this appeal is:

Was appellant improperly denied benefits by respondent under §230.36, Stats., in relation to the injuries sustained by him on December 2, 1987, and January 7, 1988?

The parties agreed to waive their right to an evidentiary hearing and to submit the above issue to the Commission under the following facts as stipulated by the parties pursuant to an agreement executed on January 9, 1989:

Findings of Fact

1. On Wednesday, December 2, 1987, Special Agent Bruce Finn, who works Narcotics and Dangerous Drugs, was enroute from Madison to Finley, WI, to work undercover in a bar in a backup role of a drug purchase. Two other special agents were involved and they all met at Necedah where they decided to leave two of the three cars to save expense. Special Agent Bruce Finn, while seated in the driver's seat, reached over the back of the front seat and

attempted to clear briefcase, suitcase, and some papers off the back seat so there was clear seating room for someone in the back seat. In so doing, he injured his back.

2. Special Agent Finn drove to Finley, where they performed their assignment, and Special Agent Finn drove back to Necedah so that Special Agents Kelly and Melick could pick up their respective vehicles, and then they continued to LaCrosse.

3. Special Agents Kelly, Melick, Banuelos and Finn went to supper and after supper Special Agent Finn advised Special Agents Kelly, Melick, and Banuelos that he would not be able to finish or assist them with the evening's investigative activities because of severe back pain. Special Agent Finn then took some aspirin and retired to bed.

4. On Thursday morning, December 4, 1987, Special Agent Finn called Regional Supervisor Thomas Steingraeber, and advised him that Special Agent Finn had injured his back while on duty and that Special Agent Finn probably would have to consult a physician in La Crosse before returning to his home station as he had been advised to do so by his own doctor in Prairie du Sac who Special Agent Finn had called earlier.

5. Later that morning, Lt. Schliefer of the La Crosse police department picked Special Agent Finn up at the motel and drove him to the Emergency Room at Lutheran Hospital where he was referred to Gunderson Clinic. There Special Agent Finn saw a Dr. Weeks who prescribed some medication and he was advised that he could attempt to drive home if the medication did not make him too drowsy. Dr. Weeks further stated that if Special Agent Finn's back pain had not subsided by December 7, 1987, that he should seek further medical advice from his personal physician at home.

6. Subsequently, five weeks from the first reported injury, Special Agent Finn, after conducting a criminal investigation which consisted of interviews in La Crosse, was enroute to Madison when his vehicle (state vehicle) was struck in the rear by another vehicle.

Conclusions of Law

1. This matter is properly before the Commission pursuant to §230.45(1)(d), Stats.
2. Appellant has the burden to prove that he was improperly denied benefits under §230.36, Stats., in relation to the injuries sustained by him on December 2, 1987, and January 7, 1988.
3. Appellant has failed to sustain this burden.

Decision

Section 230.36 Stats., states, in pertinent part:

230.36 Hazardous employment, injuries, pay continued.
(1) If a . . . special criminal investigation agent employed by the department of justice . . . suffers injury while in the performance of his or her duties as defined in subs. (2) and (3); . . . the employee shall continue to be fully paid by the employing agency upon the same basis as paid prior to the injury with no deduction from sick leave credits, compensatory time for overtime accumulations or vacation. . . .

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

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

* * * * *

(b) A . . . special criminal investigation agent employed by the department of justice at all times while:

1. In the process of making an arrest or investigating any violation or suspected violation of the law or the quelling of a riot or any other violence;
2. Engaged in an effort to save lives, recover dead bodies or protect public or private property;

3. Driving or riding in a vehicle, aircraft or boat under circumstances which require hazardous maneuvering or speed in excess of the normal or posted limits in the performance of law enforcement duties; or

4. Engaged in public demonstration or training exercises provided such demonstration or training exercises are authorized by the appointing authority.

It is undisputed by the parties that, in order to prevail in this matter, appellant must show that his injuries resulted from his performance of one of the duties specified in §230.36(3)(b), Stats., and that the duties specified in §230.36(3)(b)2., 3., and 4. are not applicable to the facts of this case. The Commission agrees with the parties in this regard.

The question then becomes one of determining whether appellant was "in the process of . . . investigating any violation or suspected violation of the law. . . ." within the meaning of §230.36(3)(b)1. when he was injured on December 2, 1987, because he was clearly not in the process of making an arrest or quelling a riot or any other violence within the meaning of this statutory section when he was injured.

The Commission must decide when the "process of investigating" starts. This should not be done in isolation but instead in the context of the totality of §230.36, Stats., according to the rule of statutory construction known as noscitur a sociis. This rule states that the meaning of a doubtful word may be ascertained by reference to the meaning of the words associated with it. Estate of Nottingham, 46 Wis. 2d 580, 175 N. W. 2d 640 (1970). In determining whether to adopt a broad or more restrictive meaning of this term, an effort will be made to harmonize the language under consideration with the intent of the entire statute. State ex rel Neelen v. Lucas, 24 Wis. 2d 262, 128 N.W.2d 425 (1964).

Appellant asserts that the "process of investigating" in relation to the December 2, 1987, injury started at least as early as the point at which the agents transferred cars in Necedah and should include any time that they were on duty as special agents involved in the subject investigation. In support of this assertion, appellant states in his brief on page 3 that "They were performing their investigative duties as soon as they put on undercover clothing and proceeded to make the buy. At any time they were on duty as special agents involved in this investigation, their lives were in jeopardy. If the drug pushers had known who they were when they set out from Madison in their undercover investigation, who knows what danger may have befallen them."

If the Legislature had intended that the state employees enumerated in §230.36, Stats., were to be considered to be engaged in the performance of hazardous duties at all times they were on duty and assigned to an investigation, the Legislature would not have so carefully specified the types of duties which they considered to be hazardous. The Commission rejects this aspect of appellant's argument.

Appellant also argues that appellant was in danger and, by implication, engaged in the performance of hazardous duties at the time he set out from Madison because the targets of the investigation, if they had known about the appellant's role in the investigation, may have tried to harm him at that time. However, to adopt appellant's argument would mean that the operative element in this inquiry would be appellant's status as a special criminal investigation agent assigned to an investigation because it would be such status that places him in danger, not the nature of the duties he is performing at any particular time. In other words, it is possible that the targets of any investigations that appellant is assigned to could try to harm him at any time. If appellant's view

were carried to its logical extreme, appellant would be considered to be performing hazardous duties any time that he may be harmed as a result of his participation in an investigation and, since this is all the time or at least all the time that he is assigned to an investigation, any injury that he sustained while on work status and while assigned to an investigation would qualify under §230.36, Stats., regardless of the nature of the specific duties he was performing at the time of the injury. This was clearly not the intent of the Legislature in enacting §230.36, Stats. The Legislature was very careful to try to anticipate and enumerate those duties which were considered by it to be especially dangerous and to limit the scope of "hazardous employment" to the performance of those especially dangerous duties. The act of clearing appellant's belongings out of a back seat of a car in order to seat appellant's co-investigators there while driving to the site of an undercover operation is not equivalent for purposes of §230.36, Stats., to quelling a riot or riding in a speeding car or making an arrest or those other duties specified by the Legislature to be "hazardous" and deserving of special recognition and treatment pursuant to §230.36, Stats.

The Commission concludes on this basis that appellant's December 2, 1987, injury was not sustained while he was performing duties within the scope of §230.36, Stats.

In regard to the injuries sustained by appellant on January 7, 1988, the record in this appeal indicates that such injuries were sustained by appellant "after conducting a criminal investigation which consisted of interviews in La Crosse" when he was "enroute to Madison." (Stipulated Finding of Fact 6, above) Appellant apparently concedes that the injuries were sustained while appellant was no longer in the "process of investigating." Moreover, there is nothing in the record upon which to base a conclusion that appellant was

engaged in "hazardous employment" or the performance of especially dangerous duties when he was injured and, as a result, appellant has failed to sustain his burden in this regard.

Order

Respondent's action in this regard is affirmed and this appeal is dismissed.

Dated: _____, 1989

STATE PERSONNEL COMMISSION

LAURIE R. McCALLUM, Chairperson

DONALD R. MURPHY, Commissioner

GERALD F. HODDINOTT, Commissioner

LRM/lrm

Parties:

Bruce Finn
W13551 Hwy. 60
Lodi, WI 53555

Donald J. Hanaway
Attorney General
DOJ
P.O. Box 7857
Madison, WI 53707