

STATE OF WISCONSIN : IN CIRCUIT COURT : DANE COUNTY

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#89-CV-5343

BRUCE FINN,

Petitioner,

MEMORANDUM

**RECEIVED**

vs.

DECISION

MAR 26 1990

WISCONSIN PERSONNEL COMMISSION,

Respondent.

Personnel  
Commission

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This is a review of a decision by the Wisconsin Personnel Commission. The facts stipulated to by both parties are as follows:

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 backseat so there was clear seating room for someone in the backseat. In so doing, he injured his back.

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.

During the trip from Necedah to LaCrosse, Special Agent Finn felt a tightness and a dull pain in his back. Upon arriving in LaCrosse it was difficult and very painful for him to get out of his vehicle.

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.

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 LaCrosse 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.

Later that morning, Lt. Schliefer of the LaCrosse P.D. 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.

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

Agent Finn asserted that he was covered by the hazardous pay provision of §230.36 Stats. The Wisconsin Personnel Commission, in a decision dated August 24, 1989 (Decision), found that petitioner was not covered by the hazardous pay provision of §230.36 Stats. because he was not performing hazardous duty when he was injured. Petitioner contends the Commission decision should be reversed as an erroneous interpretation of the law. The Commission's decision is under review in the instant action.

## Analysis

This dispute centers on the proper statutory interpretation of §230.36 which reads in material 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 employee caused by accident or disease.

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

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(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.

Petitioner argues the statute is covered by the plain meaning rule of statutory interpretations and that he is plainly covered under §230.36(3)(b)(1) Stats. Respondent argues that the statute is ambiguous and was correctly interpreted by the Commission to deny petitioner Finn's claim.

Petitioner's argument is that the phrase "... in the process of making an arrest or investigating any violation or suspected violation of the law..." in §230.36(3)(b)(1) is clear and unambiguous. If the meaning of a statute is clear and unambiguous, then further resort to statutory rules of construction is inappropriate. State ex rel Smith v. City of Oak Creek, 139 Wis.2d 788, 798, 407 N.W.2d 901, 905 (1987). The term "process" implies an ongoing series of events which must have some beginning and end. It is unclear when "the process of ... investigating" begins and ends. Such a phrase requires lines to be drawn to mark the beginning and end of the "process." Such line-drawing requires an interpretation of the phrase "the process of ... investigating." The Court finds that §230.36(3)(b)(1) is ambiguous and requires interpretation.

The Commission resorted to statutory interpretation in an attempt to give effect to the legislature's intent. Decision, pp. 4-6. The Commission looked to the statute in its entirety and found a legislative attempt throughout 230.36 Stats. to limit the benefits to situations in which employees were engaged

in hazardous duty. Decision, p. 5. Throughout the statute the legislature enumerates specific duties which when performed by certain state employees acquire an added level of protection in terms of benefits received when injury results from such performances. §230.36 Stats. It is clear that the enumerated duties are such that they may place the employee in danger. It is clear that the primary purpose of §230.36 Stats. is to provide an extra level of protection to employees performing hazardous duties. The Commission correctly interpreted the legislative intent of §230.36 Stats.

The Commission found that petitioner was not "in the process of ... investigating" on the two occasions on which he was injured. Decision, pp. 6-7. This Court must give great weight to the Commission's statutory construction of §230.36(3)(b)(1), Stats., especially given its ambiguous language.

[T]he construction and interpretation of a statute by the administrative agency which must apply the law is entitled to great weight and if several rules or applications of rules are equally consistent with the purpose of the statute, the court should defer to the agency's interpretation. In general, the reviewing court should not upset an administrative agency's interpretation of a statute if there exists a rational basis for that conclusion. Environmental Decade v. ILHR Dept., 104 Wis.2d 640, 644, 312 N.W.2d 749 (1981).

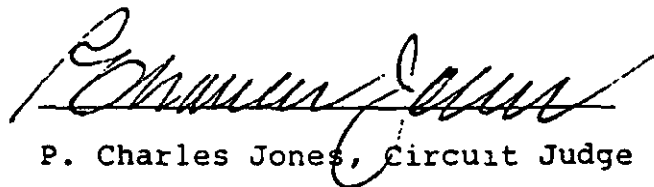
The Court finds that the Commission's ruling is consistent with the purpose of §230.36 Stats. "The process of ... investigating" is an ambiguous phrase which does not necessarily include travel to and from the site of an investigation. There is no particular danger related to the investigatory process inherent in such travel to require a contrary interpretation. Given the legislature's obvious intent to cover hazardous duty, the Commission had sufficient grounds to interpret §230.36 in a manner that excludes petitioner from its benefits. That petitioner was not in "the process of ... investigating" when his injuries occurred is a reasonable interpretation of the statute.

I find that the Commission acted within its power when it interpreted §230.36(3)(b)(1) Stats. in a manner which denies petitioner the benefits of the statute.

So ordered.

Dated: March 27, 1990.

BY THE COURT:

  
P. Charles Jones, Circuit Judge