

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

BONNIE M. DELFOSSE, Appellant,

vs.

DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0063

Case Type: PA

DECISION NO. 35766

Appearances:

Kim Roberts, Representative, 7772 County Road H, Fremont, Wisconsin, appearing on behalf of Appellant Bonnie M. Delfosse.

Amesia N. Xiong, Department of Administration, Division of Personnel Management, 101 East Wilson Street, 4th Floor, P.O. Box 7855, Madison, Wisconsin, appearing on behalf of Respondent Department of Corrections.

Appellant Bonnie Delfosse, an employee of the Wisconsin Department of Corrections alleges that she suffered an injury during a training exercise at the Oshkosh Correctional Institute entitling her to benefits under § 230.36, Stats. At all times material, Delfosse was employed as a correctional sergeant. The DOC has filed a motion for summary judgment arguing that there are no material facts in dispute and that as a matter of law Delfosse is not entitled to recover hazardous duty benefits under the referenced statute. Both sides submitted written argument by July 13, 2015, and after reviewing same we issue the following:

DECISION AND ORDER GRANTING MOTION FOR SUMMARY JUDGMENT

The facts here are undisputed and for all intents and purposes are identical to those facts set forth in *Grahn v. Department of Corrections* (Dec. No. 35047-A, 5/15). The decision in *Grahn* is dispositive of the matter and in our judgment an evidentiary hearing would serve no purpose.

Delfosse was injured while engaged in a training exercise.¹ She was employed as a guard at the Oshkosh Correctional Institution. The training involved was an exercise in the “principles of subject control.” No inmates were involved and one of the training personnel played the role of “inmate.”

As we noted in *Grahn* in order to qualify for hazardous duty benefits an employee must not only hold one of the enumerated jobs they must also be performing one of the enumerated duties. Persons performing the job of guard at a state penal institution and performing one of the enumerated tasks set forth in § 230.36(b)(3)a-f, Stats., are entitled to hazardous duty compensation. Prison guards or other state employees identified in subsection (b)(3) are not entitled to hazardous duty pay for work-related injuries that are not set forth in subsections (b)(3)a-f. The Legislature clearly intended to exclude injuries incurred during training exercises for this category as they specifically included training exercises for employees in groups (b)(1) and (b)(2).

Delfosse relies on a 1980 Personnel Commission decision *Loeffler v. Department of Health Social Services*, Case No. 80-367-PC. That reliance is misplaced as the employee in that case was employed in the (b)(2) category of security officer. Employees in that group are entitled to hazardous duty pay if they are injured while engaged in training exercises. The issue in *Loeffler* was whether an individual holding a supervisor of security officers position qualified as a security officer. The Personnel Commission, *in dicta*, suggests that the goal of the Legislature was to provide hazardous duty pay to any state employee performing hazardous duties. We disagree. The statute carefully limits the benefit to certain state employees performing a very narrow list of specific duties. Had the Legislature intended a more expansive view of eligibility it clearly could have done so.

While the distinction may not seem rationale we are obliged to adhere to it and, accordingly, enter the following:

ORDER

The motion for summary judgment is granted and the claim of hazardous duty pay of Bonnie Delfosse is denied.

¹ There is apparently a dispute as to whether Delfosse suffered a compensable injury under Ch. 102, Stats. We do not address that issue but assume for purposes of resolving the § 230.36, Stats., dispute that she was injured in the course of the performance of her duties.

Dated at Madison, Wisconsin, this 29th day of July 2015.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott, Chairman

Rodney G. Pasch, Commissioner

James J. Daley, Commissioner