

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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JAMES TEACHOUT, Appellant

v.

DEPARTMENT OF CORRECTIONS, Respondent

Case 234  
No. 72697  
PA(haz)-15

DECISION NO. 34697-A

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**Appearances:**

Sean Daley, Field Representative, AFSCME Council 24, AFL-CIO, P.O. Box 19, Ashippun, Wisconsin 53003, appearing for the Appellant.

Michael Soehner, Labor Relations Specialist – Chief, Wisconsin Office of State Employment Relations, 101 East Wilson Street, 4th Floor, P.O. Box 7855, Madison, Wisconsin 53707-7855, appearing for the Respondent.

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**

Sergeant James D. Teachout appeals the Department of Correction's denial of his grievance over its rejection of Teachout's request for a leave of absence with pay, pursuant to § 230.36, Stats., for an injury he suffered on duty at the Dodge Correctional Institution on October 27, 2012. Teachout submitted a timely grievance on July 15, 2013, and a timely appeal to the Wisconsin Employment Relations Commission on October 1, 2013. The parties stipulated to the record and submitted written arguments, the last of which was received on January 17, 2014. On the basis of the record and the arguments of the parties, the Commission issues the following

**FINDINGS OF FACT**

1. Respondent Department of Corrections ("DOC") is an agency of the State of Wisconsin and operates the Dodge Correctional Institution ("DCI"), a state penal institution.

2. James D. Teachout is a Sergeant at DCI, whose duties include the supervision and discipline of inmates.

3. On October 27, 2012, Teachout was injured while restraining combative inmates. Teachout notified his supervisor of the injury to his left foot, timely submitted a detailed injury report, and cooperated in DOC's investigation.

4. From October 30, 2012 to May 24, 2013, Teachout followed a treatment regimen which did not require him to miss any work.

5. On May 24, 2013, Teachout's attending physician informed him that in order to address his continuing pain he would need surgery, which would require at least two weeks loss of work time and a period of light duty.

6. On May 28, 2013, Teachout requested and submitted a completed "Request for Leave of Absence With Pay Due to Injury" form, seeking hazardous duty pay benefits under § 230.36, Stats.

7. On June 14, 2013, DCI Warden Jim Schwochert recommended approval of Teachout's request for hazardous duty pay benefits.

8. On or about July 3, 2013, DOC Employment Relations Specialist Amanda Horn denied Teachout's request as being untimely under Wis. Admin. Code § ER 28.01(1), due to its submission being more than fourteen (14) days from the date of his injury.

9. The failure to waive the 14-day time limit in this situation was an abuse of discretion by the director or his assignee given the extenuating circumstances.

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

### CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to §§ 230.36 and 230.45(1), Stats.

2. Appellant James D. Teachout submitted a valid request for benefits under § 230.36, Stats.

3. The Respondent Department of Corrections violated § 230.36, Stats., when it denied Teachout hazardous duty benefits for the injury suffered on October 27, 2012.

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

**ORDER**

The Department of Corrections shall approve James Teachout's request for a leave of absence with pay due to injury as submitted on May 28, 2013, and provide the hazardous duty pay as authorized by § 230.36, Stats.

Dated at Madison, Wisconsin, this 26th day of March 2014.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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James R. Scott, Chairman

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Rodney G. Pasch, Commissioner

**MEMORANDUM ACCOMPANYING PROPOSED  
FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**

Under Wisconsin law, certain state employees, including correctional officers at state penal institutions, who are injured while in the performance of their duties, “shall continue to be fully paid by the employing agency upon the same basis as paid prior to the injury, with no reduction in sick leave credits.” § 230.36(2m)(a), Stats.

Wisconsin Administrative Code § ER 28.04(1), provides that an application for hazardous duty benefits under § 230.36, Stats.:

... shall be made by the employee or the employee’s representative to the appointing authority within 14 calendar days from the day of injury, on forms prescribed by the director. In extenuating circumstances, at the discretion of the director, the time limit for application of benefits may be waived. When medical verification is required for final approval of the claim, failure by a physician to provide verification within the 14 days shall not be the basis for denial. The application shall contain sufficient factual information to indicate the nature and extent of the injury or illness, the circumstances surrounding its occurrence and the qualifying duties on which the application is based.

Wis. Admin. Code § ER 28.04(1). There is no dispute as to Teachout’s eligibility for the benefit other than the question of whether his application is timely under the administrative rule provision.

The examiner concluded that the 14-day rule was in the nature of a statute of limitations, and applying other authority viewed this dispute as a question of when the 14 days begins to run. Using that approach, he concluded that the 14 days begins to run when the employee knew or should have known that his injury would require time off. We do not believe that such an exhaustive analysis is necessary.

First of all, the statute contains no time limit on an application for the benefit. Assuming, without deciding, that the Office of State Employment Relations has the authority to impose a time limit, we do not believe this time limit is in fact a statute of limitations. By its very nature, it is a guideline subject to being waived by the director in “extenuating circumstances.”

Here, Teachout did everything possible to avoid having to take time off to address the medical problems arising out of his work-related injury. When the only recourse was surgery, Teachout should not be penalized for trying other remedies that did not require time off work.

We are somewhat dismayed that common sense was not applied in this case and that the matter had to proceed to hearing. For the benefit of those charged with responsibility for applying the 14-day guideline, the Commission will always view a circumstance like this as extenuating.

Dated at Madison, Wisconsin, this 26th day of March 2014.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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James R. Scott, Chairman

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Rodney G. Pasch, Commissioner