

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

---

JEFFREY DERKSEN, Appellant,

vs.

DEPARTMENT OF CORRECTIONS, Respondent.

Case 253  
No. 72865  
PA(haz)-17

DECISION NO. 35019-A

---

**Appearances:**

Anthony Gunderson, 1 West Lincoln Street, Waupun, Wisconsin 53963, appearing on behalf of the Appellant.

Michael Soehner, Wisconsin Office of State Employment Relations, 101 East Wilson Street, 4th Floor, P.O. Box 7855, Madison, Wisconsin 53707-7855, appearing on behalf of the Respondent.

**DECISION AND ORDER**

Correctional Officer 2 Jeffrey Derksen appeals the Department of Correction's denial of his grievance over its denial of his request for leave of absence with pay due to injury, pursuant to § 230.36, Stats., for an injury he suffered on duty at the Dodge Correctional Institution on December 3, 2103. Derksen submitted a timely grievance and a timely appeal to the Commission. The parties stipulated to the record and submitted written arguments, the last of which was received on April 9, 2014.

On May 21, 2014, Provisional Proposed Findings of Fact, Conclusions of Law and Order were issued. No request for fees or costs was received by the June 20, 2014 deadline for such a filing.

On the basis of the record and the arguments of the parties, the Commission now issues the following

**FINDINGS OF FACT**

1. The Wisconsin Department of Corrections is the Wisconsin state agency which, among other duties and responsibilities, owns and manages the Dodge Correctional Institution (hereinafter "DCI") in Waupun, Wisconsin.

2. Jeffrey Derksen is a Correctional Officer 2 at DCI.

3. On December 3, 2013, Derksen was on duty in Unit 18, a segregation unit housing inmates who have violated rules of DCI and are considered particularly disruptive.

4. As Unit 18 Officer #1, first shift, Derksen was a primary responder for both fire and other medical emergencies.

5. At about 8:00 a.m. on December 3, 2013, Dr. Dawn Lander, a psychologist working in Unit 18, had a medical episode which caused her to lose consciousness.

6. Derksen and others responded to the medical emergency, which occurred in plain view of inmates housed in Unit 18.

7. Dr. Lander was in urgent need of CPR and the use of an Automated External Defibrillator (AED).

8. To properly utilize an AED, a patient's clothing around the thoracic cavity must be removed.

9. In order to prevent inmates from seeing Dr. Lander, unconscious, with her blouse removed, DCI first shift Lt. R. Burdick ordered that the security window sliders in Unit 18 be closed.

10. In following Lt. Burdick's order, Derksen accidentally smashed the window slider against his hand, breaking the middle finger of his right hand.

11. When he suffered his injury on December 3, 2013, Derksen was effectively engaged in restraining inmates of a state penal institution from viewing Dr. Lander, unconscious, with her blouse off.

On the basis of 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 Jeffrey Derksen submitted a valid request for benefits under § 230.36, Stats.

3. The Respondent Department of Corrections violated § 230.36, Stats., when it denied Derksen hazardous duty benefits for the injury suffered on December 3, 2013.

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 Jeffrey Derksen's request for a leave of absence with pay due to injury as submitted on December 3, 2013, and provide the hazardous duty pay as authorized by § 230.36, Stats.

Signed at Madison, Wisconsin, this 3rd day of September 2014.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

---

James R. Scott, Chairman

---

Rodney G. Pasch, Commissioner

**MEMORANDUM DECISION**

We agree with the examiner's interpretation and decision in this matter. We write to explain our view in hopes it will assist state agencies in applying the provisions of § 230.36, Stats. The so-called hazardous duty statute enumerates five categories of state employees who, if injured while in the performance of various duties, receive no reduction in any benefits they are entitled to as a result of their employment status. Each of the five categories has specific duties which, if they result in a loss time injury in the course of employment, will qualify the employee for this enhanced benefit. The injured employee does not have to utilize accrued sick leave, compensatory time or vacation to make up the difference between worker's compensation benefits and the employee's regular pay. Some but not all state employees performing hazardous duties are covered while engaging in some but not all hazardous activities. This creates a difficult situation for state agencies in interpreting and applying this rather unusual statute.

In our view this is remedial legislation which should be broadly construed to effectuate its purpose. *See, e.g., Garcia v. Mazda Motor of America*, 2004 WI 93, ¶8, 273 Wis.2d 612, 682 N.W.2d 365. Clearly, the purpose is to insure that state employees performing inherently hazardous duties who are injured should not suffer any loss of wages or benefits.

This case illustrates employer action applying the most restrictive approach to determining eligibility for the benefit. Derksen while working in the segregation unit was directed to close a sliding window in order to restrain inmates from viewing the partial disrobing of a female staffer. In the course of doing so, he broke his finger resulting in a loss time injury. Applying the mandated liberal construction, taking action to block inmates' view is an act of "restraining inmates" under § 230.36(1m)(b)(3)b, Stats. It would also likely qualify under § 230.36(1m)(b)(3)c, Stats., as an injury "occasioned as the result of an act" by an inmate. In this case, the act being an attempt by the inmate to view a staffer in a compromising situation.

The monetary amount at issue is a pittance and far more money has been spent "resolving" this dispute. Hopefully, this discussion of our view of these matters will in the future hasten resolution short of the full hearing process.

Dated at Madison, Wisconsin, this 3rd day of September 2014.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

---

James R. Scott, Chairman

---

Rodney G. Pasch, Commissioner