

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

---

DOREEN GRAHN, Appellant,

vs.

DEPARTMENT OF CORRECTIONS, Respondent.

Case 269  
No. 73207  
PA(haz)-18

DECISION NO. 35047-A

---

**Appearances:**

Doreen Grahn, W10227 Hickory Court, Waupun, Wisconsin, appearing on behalf of herself.

Amesia N. Xiong, Office of State Employment Relations, 101 East Wilson Street, 4th Floor, P.O. Box 7855, Madison, Wisconsin, appearing on behalf of Respondent Department of Corrections.

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

Appellant Doreen Grahn is employed as a Correctional Sergeant at the Respondent Department of Correction's penal institution in Waupun, Wisconsin. On February 13, 2014, Grahn was injured at work while on the job in the course of her employment. Grahn sought and was denied benefits under § 230.36, Stats. She filed a timely grievance and pursued that matter through the grievance procedure. Grahn filed a timely appeal to the Wisconsin Employment Relations Commission on June 18, 2014. The matter was assigned to Examiner Stuart Levitan. Subsequently, the parties reached a stipulation of facts and waived the right to hearing. The Commission has assumed responsibility for deciding the matter. The parties have submitted written argument and the Commission makes and issues the following:

**FINDINGS OF FACT**

1. At all times material Appellant Doreen Grahn was employed as a state employee.

2. Respondent Department of Corrections is a state agency and operates a penal institution identified as the Dodge Correctional Institution and located in the City of Waupun, Wisconsin.

3. On February 13, 2014, Grahn was employed as a Correctional Sergeant at the Dodge Correctional Institution.

4. While working as a guard within the meaning of § 230.36(2m)20, Stats., Grahn suffered an injury within the meaning of § 230.36(1m)(a), Stats.

5. The injury to Grahn's left knee required surgery and she was on a medical leave of absence from February 13, 2014 through July 15, 2014.

6. The injury occurred while Grahn was engaged in a mandatory training exercise on the principles of subject control.

7. No inmates were involved in the training exercise which resulted in Grahn's injury.

8. At the time of Grahn's injury, she was not engaged in any of the activities set forth in § 230.36(1m)(b)3a-f, Stats.

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(4), Stats.
2. At all times material Grahn was employed as a state employee.
3. Grahn is not eligible for benefits under § 230.36, Stats.

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

### **ORDER**

That the appeal of Doreen Grahn is rejected and dismissed.

Signed at the City of Madison, Wisconsin, this 5th day of May 2015.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

---

James R. Scott, Chairman

---

Rodney G. Pasch, Commissioner

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

Certain state employees may be entitled to income continuation if they are injured while performing particular enumerated tasks while on duty. The law in question, § 230.36, Stats., sets qualifying standards based upon the job the employee holds and a second set of qualifiers based on the work the employee was performing when injured.

If the employee qualifies under both standards they receive their full pay with no reduction in benefits and they continue to accrue sick leave and vacation credit. Employees who are injured on the job and who do not qualify under § 230.36, Stats., receive worker's compensation benefits but do not necessarily remain on the payroll accruing benefits.

The eligible positions are divided into five categories and each category has four to six generalized tasks which might qualify the employee for benefits if they are injured while performing the tasks.<sup>1</sup>

All of this creates some level of confusion for state employees and those charged with administering the benefits. This case is illustrative. If you are in category 1 (those charged with firefighting activities) or category 2 (those generally involved in law enforcement), you will receive the income continuation benefits if you are injured while engaged in training exercises. If, however, you are in category 3 (guards in penal institutions, aides at mental institutions or probation officers), category 4 (driver's license examiners), or category 5 (engineering aides or building superintendents), you do not qualify if injured during training exercises. Grahn understandably questions why forest rangers, police officers, security guards and tax agents among others receive the benefit if they are injured during training exercises and she, who works in a dangerous position as a prison guard, does not.

The distinction may not be rational but it is not our task to alter it. Grahn can take some solace in the fact that the benefit is modest. She received \$19,029.34 in worker's compensation benefits to compensate her for lost wages of \$23,390.20, and those worker's compensation benefits are tax free.

As the state correctly notes the Legislature made a conscious choice not to extend this benefit to prison guards and others in category 3. That leaves us no choice but to reject the appeal.

---

<sup>1</sup> The one exception is driver's license examiners who qualify only if they are injured while examining drivers conducting road tests or checking motor vehicles. See § 230.36(1m)(b)4, Stats.

Signed at the City of Madison, Wisconsin, this 5th day of May 2015.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

---

James R. Scott, Chairman

---

Rodney G. Pasch, Commissioner