

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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SHARI VANDER GALIEN, Appellant,

vs.

STATE OF WISCONSIN, DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0042

Case Type: PA

DECISION NO. 36408

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**Appearances:**

Shari Vander Galien, W6945 Chicago Avenue, Wautoma, Wisconsin, appearing on her own behalf.

William H. Ramsey, Department of Administration, 101 E. Wilson Street, 10th Floor, P.O. Box 7864, Madison, Wisconsin, appearing on behalf of the State of Wisconsin, Department of Corrections.

**DECISION AND ORDER**

Appellant Shari Vander Galien was employed as a correctional sergeant at the Respondent State of Wisconsin, Department of Corrections' penal institution in Redgranite, Wisconsin. On December 16, 2011, Vander Galien was injured while in the course of performing her work duties. Following her return to work, she sought additional benefits which were denied. Vander Galien filed a timely grievance of the denial and pursued that matter through the grievance procedure. On February 19, 2015, Vander Galien filed a timely appeal to the Wisconsin Employment Relations Commission. The matter was assigned to Examiner Lauri A. Millot. Subsequently, the parties reached a stipulation as to facts, waived the right to hearing, and filed written arguments by December 15, 2015. The Commission has assumed responsibility for deciding this matter and, being fully advised in the premises, makes and issues the following:

**FINDINGS OF FACT**

1. Appellant Shari Vander Galien was employed by the State of Wisconsin, Department of Corrections from October 1998 until her separation on April 17, 2015.

2. At all times material, Vander Galien was employed as a “guard” within the meaning of § 230.36(2m)(20), Stats.

3. On December 16, 2011, Vander Galien was injured when an inmate collided with her while both were walking in the kitchen area of the Redgranite Correctional Institution.

4. Vander Galien felt pain in her neck, shoulder, and hip area. She was not knocked down.

5. Vander Galien was off work December 16, 2011 through December 27, 2011, and thereafter worked reduced hours with some light duty restrictions. She was released to return to work without restrictions on April 4, 2012, and did return to work.

6. Vander Galien received hazardous duty pay for missing hours of work for the period from the date of her injury through April 4, 2012.

7. From April 4, 2012 through November 15, 2014, Vander Galien used 271.25 hours of sick leave for various medical appointments or other absences.

8. The medical appointments and absences were not directly related to the work injury Vander Galien suffered.

9. On November 17, 2014, Vander Galien notified DOC that she was no longer able to work and stopped working.

10. On April 17, 2015, DOC medically separated Vander Galien from her employment.

11. Vander Galien was physically able to perform the duties of correctional sergeant from November of 2014 through her termination of employment in April of 2015.

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

### **CONCLUSIONS OF LAW**

1. The Wisconsin Employment Relations Commission has jurisdiction over this matter pursuant to §§ 230.36(4) and 230.45(1)(d), Stats.

2. During the period from April 4, 2012 through April 17, 2015, Vander Galien was ineligible for hazardous duty payments 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**

The appeal of Shari Vander Galien is rejected and her claim is dismissed.

Dated in Madison, Wisconsin, on the 22nd day of August 2016.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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James R. Scott, Chairman

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Rodney G. Pasch, Commissioner

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James J. Daley, Commissioner

## MEMORANDUM ACCOMPANYING DECISION AND ORDER

This appeal involves the claim of Shari Vander Galien for hazardous duty pay under § 230.36, Stats. It is one part of an ongoing dispute between Vander Galien and her former State agency employer. Vander Galien has also sought various additional worker's compensation benefits under ch. 102, Stats., as well as duty disability benefits under § 40.65, Stats.

### Initial Injury

There is no dispute that Vander Galien at least suffered some physical injury when she collided with an inmate while working at the Redgranite Correctional Institution facility. We do know the collision was likely accidental and no one was knocked to the ground. There was little evidence of any significant physical injury. Dr. John Wolfe reported that the MRI disclosed "longstanding degenerative change" in the cervical spine in January of 2012. Dr. Xian Gu reported degenerative arthritis in the spinal area in his report in mid-January of 2012. He also noted a past history of anxiety disorder. In February of 2012, Vander Galien was examined by Dr. Richard Sturm who was somewhat puzzled as to why she was not able to return to work.

A review of the various medical reports and related documents suggests that, at least in Vander Galien's perception, what started as an accidental collision in a hallway was escalating into something more intentional. Days after the collision, she began describing it as intentional. Later, Vander Galien described it as being "struck forcibly by an inmate." To Dr. Sturm she indicated it was a "body slam." Dr. Gu, relying on Vander Galien's description, characterized it as an "attack."

In May of 2012, at the request of the attorney handling her worker's compensation claim, Vander Galien was seen by Dr. Brad Grunert, a psychologist. His report characterized her injury as occurring when she was "assaulted by an inmate." The description of the "assault" was provided by her attorney.

### October 2014

After almost two years from her previous visit, Vander Galien returned to see Dr. Grunert. She had been working in her position as a correctional officer since her return to work in 2012. He observed in his notes that Vander Galien "continues to have a diagnosis of post-traumatic stress disorder and panic disorder w/o agoraphobia." None of his previous reports ever made reference to those diagnoses. His only previous diagnosis was generalized anxiety disorder. Dr. Grunert and Vander Galien discussed her interest in retiring and the possibility of applying for duty disability. His duty disability report characterized her mental problem as arising from an "assault at work by an inmate." Dr. Grunert further described her

circumstance as having been “assaulted by an inmate and no one came to her aid: This is an extraordinary stressor for a prison environment.”

Vander Galien also had a duty disability medical report from Dr. Victoria Passov, who opined that she had post-traumatic stress disorder, major depressive disorder, and panic attacks. Those conditions were said to have arisen from being “attacked by an inmate.” The statement is repeated four times in the two-page report.

A second psychiatrist, Dr. Douglas Hendricks, also submitted a duty disability report. He noted that while Vander Galien had “no official restrictions” she was retiring because of “unrelenting pain” and that she was “violently assaulted by an inmate.”

Ultimately, Vander Galien’s requests for duty disability were denied. Additionally, her worker’s compensation claims beyond the initial temporary disability in 2011 were denied.

Vander Galien left her employment with DOC in November of 2014 relying on the psychiatric reports from the three persons supporting her duty disability claim. In April of 2015, her records were reviewed by Dr. Calvin Langmade, who, in a detailed report, concluded that Vander Galien was capable of working as she had done for the previous two years.

#### Eligibility for Hazardous Duty Pay November 2014 through April 2015

State employees who hold various job classifications and who are injured while performing certain specified tasks are entitled to receive “hazardous duty pay” if they otherwise qualify for the benefit. § 230.36, Stats. The benefit is the receipt of the employee’s normal compensation without reduction in benefits including sick leave benefits. The pay continues while the employee is unable to return to work up until the employee is terminated if unable to return to work. § 230.36(2m)(b), Stats. The employee avoids using accumulated sick leave which may be used for other purposes upon departure from state service.

DOC has conceded that Vander Galien was eligible for hazardous duty payments from the date of injury through March 7, 2012, when the restrictions were lifted. DOC has represented that those benefits were paid.

For the period from March 7, 2012 until November of 2014, Vander Galien utilized sick leave benefits to cover absences related to a variety of medical reasons. The evidence of record as to the medical purpose is scant and there is no evidence that the medical treatment was directly related to the collision with the inmate. In fact, the medical reports from the period shortly after the injury indicate that Vander Galien had a variety of pre-existing conditions which could very well cause back pain and neck pain. Degenerative cervical spine changes do not come from collisions in the hallway. The MRI also disclosed some

degenerative change in the mid-cervical spine. Again, this type of condition does not come from bumping into persons.<sup>1</sup>

The burden of proof is on Vander Galien to establish that the post return-to-work absences were directly caused by the “physical injury.” We conclude that she has failed to meet her burden. Our conclusion is further supported by the independent medical examination performed by Dr. Nicholas Ketchum. He concluded that all of the post April 4, 2012 medical treatment was “not directly related to the incident in question.”<sup>2</sup>

Vander Galien also seeks hazardous duty pay for the period from November 17, 2014, when she asserted she was unable to do her job, until her medical separation on April 17, 2015. In our view, there is a substantial question as to whether a disabling mental condition meets the definition of “injury” under § 230.36(1m)(a), Stats. A qualifying “injury” is defined as “physical harm to an employee caused by accident or disease.” *Id.* Neither side has developed the argument, and we conclude that its resolution is unnecessary in this case.

Clearly, the psychologist’s and the two psychiatrists’ proffering opinions rendered their opinions based upon incorrect factual information. Vander Galien was not assaulted by an inmate. She was walking or standing next to a colleague when the inmate, rounding a corner, collided with her. She remained on her feet and inquired as to whether the inmate was hurt. Vander Galien remained at work on the day in question and completed her shift. This was not a “traumatic” event. There is no evidence that anyone ignored her and in fact the contrary is true. The supervising captain offered medical assistance which Vander Galien declined.

The doctor’s duty disability reports are premised upon the characterization of violent assaultive behavior being directed at Vander Galien when in fact she suffered at most an awkward collision. In our view, the report from Dr. Langmade accurately evaluates Vander Galien’s mental state and correctly concludes that she was capable of performing her duties during the period of time in question. Accordingly, we see no basis for awarding hazardous duty pay benefits for the absence from November of 2014 through Vander Galien’s medical separation from employment.

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<sup>1</sup> Resp.Ex.118, p.1. The MRI report describes Vander Galien’s back issues as “longstanding degenerative change.”

<sup>2</sup> Dr. Ketchum found that:

Subsequent treatment including psychological evaluation, chiropractic treatment, MRI of the lumbar spine, greater trochanter injections, lumbar facet joint injections, sacroiliac joint injections and trigger point injections are not directly related to the incident in question and, instead, related to a personal medical condition.

Dated in Madison, Wisconsin, on the 22nd day of August 2016.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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James R. Scott, Chairman

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Rodney G. Pasch, Commissioner

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James J. Daley, Commissioner