

STATE OF WISCONSIN
BEFORE THE STATE BOARD OF PERSONNEL

Regine Kohl,)
 Appellant,)
vs.)
Wilbur J. Schmidt, Secretary)
Department of Health and)
Social Services,)
 Respondent.)

MEMORANDUM DECISION

This is an appeal taken to this Board by a state employe under s. 16.31(4) Wis. Stats. s.16.31 Wis. Stats. relates to hazardous employment and the continuance of salary for employes in such hazardous employment who are injured or contract disease in the course of employment.

Institution Aids by this statute are in hazardous employment.

s. 16.31 (3) (c) 6 reads:

"When disease is contracted as a result of exposure to such disease arising out of the care of inmates or patients"

S. 16.31 (1) provides that an included employe disabled from any of the stated causes shall during such period be paid his full salary while he is unable to work, without deduction for vacation, accumulated compensatory time or sick leave credits.

The Board presumes that in an appeal for the denial of such benefits, it must substitute its judgment for that of the employing department and the director, and not, as is the case, of ss. 16.05 and 16.24 appeals, merely consider whether or not the denying agency was in good faith when it issued the denial.

Mrs. Kohl is employed at Central Colony which is an institution for retarded children. She works in food service and has no direct contact

with the children. Her work includes removing dishes and eating utensils from the dining room after the children who are mobile have eaten.

Mrs. Kohl became ill on June 17, 1969, and was off work until August 25, 1969. Her illness was diagnosed by her physician as infectious hepatitis. From the documentation in the case, it appears that the department denied that her disease was infectious hepatitis, but rather was of the viris type of hepatitis. At the hearing, the department conceded that she had suffered from infectious hepatitis.

It seems that infectious hepatitis can be contracted only by contact with the feces or urine of another who has the disease.

The department contends that in the unit that Mrs. Kohl worked that there were no cases of infectious hepatitis among the children or staff and that if there were that she would not have had the requisite contact to have been infected.

On the other hand, Mrs. Kohl had no contact with, and, in fact, did not know the persons in the community who were known to have infectious hepatitis during the period when she could have become infected.

The board is placed in the difficult position of deciding where she contracted the disease. It is in the position of deciding whether it is more probable that she contracted the disease on the outside rather than while at work.

It is possible that she could have been infected on the outside. However, during all the period in question her family was fully healthy. She could have had an unknowing contact with someone who had the disease, but it is unlikely that she would have touched any articles that carried his feces or urine.

It is not denied by the department that the retarded children do have "accidents" at meals. While it is not their job, food service people do on occasion clean up the results of the "accident" and handle at times dishes and utensils that are dropped on the floor by the children. This is just done by a conscientious employe in the interests of a cooperative operation. It is most likely that an employe in food service could have contact with the feces or urine of the children.

The record, though, indicates no cases of infectious hepatitis among the children in the unit during the times that are pertinent. Among the secondary materials that we have read, there is some contention that infectious hepatitis is endemic in institutions that house the mentally deficient. The Board, though, is not yet ready to accept such a thesis.

Similar to many diseases, there may be "carriers" of infectious hepatitis that never develop the disease. This incident is probably no greater among the retarded children at the colony than among persons on the outside.

Infectious hepatitis is difficult to recognize unless the afflicted develops jaundice - and many do not. Otherwise, the disease is recognized by the symptoms the affected reports or by the decline in the performance of his tasks. Sickness among these unable to communicate and whose level of performance is always minimal is hard to detect.

The Board is inclined to believe that an undetected case of infectious hepatitis is more likely to exist in a mental retard than in a normal person.

The Board cannot say with certainty, or even reasonable certainty, that Mrs. Kohl contracted infectious hepatitis by exposure to an afflicted person at Central Colony.

The Board does believe that it is more probable that Mrs. Kohl contracted the disease due to exposure while at work than that she contracted it by exposure on the outside.

For that reason, the Board shall order that pursuant to s. 16.31 Wis. Stats. that Mrs. Kohl be paid her full monthly salary for the period June 17 to August 25, 1969, in the nature that her employment record indicates.

Dated _____, 1969.

STATE BOARD OF PERSONNEL

BY _____

