

STATE OF WISCONSIN

BOARD OF PERSONNEL

BARBARA DAANE,

Appellant,

v.

WILBUR J. SCHMIDT, Secretary,
Department of Health and
Social Services and C.K.
WETTENGEL, Director, State
Bureau of Personnel,

#534

Respondents.

OPINION

AND

ORDER

BEFORE: AHRENS, CHAIRMAN, AND BRECHER^{1/}

AHRENS, Chairman. This is an appeal from a decision of the respondents denying appellant's request for the payment of benefits authorized by Section 16.31, Wis. Stats. 1969.

FINDINGS OF FACT

We find the following facts:^{2/}

1. On September 2, 1971, appellant, Ms. Barbara (Fuhremann) Daane, was an employee of Central Wisconsin Colony, a state institution, holding the position of Institutional Aid I, and earning Five Hundred Seventy-Five (\$575.00) Dollars gross salary per month.

^{1/} The parties have stipulated that this appeal could be heard and decided by fewer than three members of the Board. See Transcript, p. 2.

^{2/} Sec. 227.13, Wis. Stats,

2. On the evening of September 2, 1971, during the course of her work at Central Wisconsin Colony appellant was injured when a nightstand tipped over and fell on her foot while putting a patient to bed.

3. The nightstand tipped over and fell when another patient who had been sitting on the nightstand slid off the nightstand causing it to fall on appellant's foot.

4. Appellant's injury did not occur while she was in the performance of duties as an institution aid in the process of quelling a riot or disturbance or other act of violence.

5. Appellant's injury did not occur in the process of restraining a patient.

6. Appellant's injury was not inflicted as a result of an assault or act of violence by a patient or other person at Central Wisconsin Colony.

7. Appellant's injury was not a disease contracted as a result of exposure to a disease arising out of the care of patients.

8. As a result of the injury referred to above, appellant was off work from September 3, 1971, through September 28, 1971, and returned to work on September 29, 1971.

9. Appellant applied for full pay under the provisions of Section 16.31, Wis. Stats 1969, by an application filed on September 13, 1971.

10. Appellant's application was denied by the Department of Health and Social Services on September 28, 1971, and this denial was concurred in by the Bureau of Personnel on October 14, 1971.

11. Appellant timely appealed this denial of full pay to the Wisconsin Personnel Board.

DECISION

Jurisdiction is present to decide the merits of this case.

The precise issue for our determination here is whether the facts and attending circumstances surrounding appellant's injury are covered by any of the provisions of Section 16.31(3)(c)^{3/} so as to require the payment of the benefits conferred by that section.

While we are of the opinion that Central Wisconsin Colony is a mental institution within the meaning of Section 16.31(c), Wis. Stats., on this record we are also of the opinion that appellant is not entitled to full pay under Section 16.31, Wis. Stats. Appellant has not demonstrated that she falls within the confines of the applicable statute. Appellant was not injured in the process of quelling a disturbance, quelling an act of violence or restraining a patient. Her injury was not the result of an assault by a patient or an act of violence of a patient. It cannot be seriously argued that appellant was "restraining a patient." She was putting the patient to bed.

^{3/} Sec. 16.31(3)(c), Wis. Stats.: "(c) A guard, institution aid, or other employe at the Wisconsin child center, university of Wisconsin hospitals or at state penal and mental institutions, including central state hospital, the state school for boys, the state school for girls and state probation and parole officers, at all times while:

"1. In the process of quelling a riot or disturbance or other act of violence;

"2. In the process of restraining patients, inmates, probationers or parolees and apprehending runaways or escapees, including probationers and parolees;

"3. When injury is inflicted as the result of an assault or act of violence by a patient, inmate, probationer or parolee; or

"4. In the process of making an arrest or investigating any violation or suspected violation of law pursuant to police powers authorized by s. 46.05(2) and rules adopted pursuant thereto.

"5. Going to or returning from a fire, engaging in the suppression of a fire, evacuating patients or inmates because of a fire or engaging in fire drills.

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

This case is unlike Adler v. Department of Public Welfare, Case No. 139, Nov. 6, 1963. Digest of Decisions State Personnel Board, p. 57. There, an aide at Central Colony was violently embraced by a patient, thrown to the floor, and sustained an injury. Here there was no violence of any kind.

We, therefore, sustain the actions of the respondents in denying appellant's request for the payment of benefits authorized by Section 16.31, Wis. Stats.

CONCLUSIONS OF LAW

We conclude that:

1. We have jurisdiction to decide the merits of this case.
2. Appellant is not entitled to the payment of benefits authorized by Section 16.31, Wis. Stats.
3. The actions of respondents in denying appellant's application for benefits under Section 16.31, Wis. Stats., should be sustained.

ORDER

Accordingly, on the basis of the Findings of Fact and Conclusions of Law recited above as well as the entire record in this case,

IT IS ORDERED that appellant's application for full pay under Section 16.31 be and it hereby is denied.

IT IS FURTHER ORDERED that the action of respondents is hereby sustained.

Entered at Madison, Wisconsin, this 12 day of January 1973.

By the STATE BOARD OF PERSONNEL


William Ahrens, Chairman

Board members JULIAN, SERPE, and STEININGER took no part in this decision.