BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

SCOTT J. SLOAN, Claimant, v. PAYETTE COUNTY, Employer, and STATE INSURANCE FUND, Surety, Defendants.	**IC 2011-025673** **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER** FILED JAN 3 1 2014 INDUSTRIAL COMMISSION

INTRODUCTION

On November 19, 2012, Claimant, Scott Sloan, filed a Complaint for benefits under the Peace Officer and Detention Officer Temporary Disability Act (Idaho Code § 72-1011, *et seq*) seeking full salary benefits during his period of recovery from injuries sustained in a motor vehicle accident occurring on October 18, 2011.

On April 12, 2013, Employer, Payette County, filed its Answer to Claimant's Complaint, denying it owed any further benefits to Claimant and stated: Any benefits due, are due to the employer as claimant was fully compensated by the county as well as Worker's Compensation during claimant's "Dates Covered by Reimbursement Request."

The Idaho Industrial Commission assigned this matter to Referee Michael E. Powers. On April 19, 2013, a Notice of Hearing was filed setting a hearing for May 16,

2013. Claimant was represented by Joseph P. Filicetti of Boise. Deputy Payette County Prosecuting Attorney, Joshua Dolton, represented Employer, Payette County. In lieu of a hearing, the parties filed a Stipulation of Facts and the hearing was vacated. No briefs were requested or submitted by the parties.

The stipulated facts raised concerns which prompted the issuance of an Order Granting an Additional Opportunity for Hearing of Briefing and a telephone conference. The telephone conference was held and the parties stated they did not wish to submit additional evidence or briefing, but at the request of the Commission the parties completed a form issued by the Commission on September 27, 2013.

This case has been reassigned to the Commissioners. The matter is now under advisement.

ISSUES

As set forth in the Order Granting an Additional Opportunity for Hearing or Briefing and as discussed in the telephone conference, the issues are as follows:

1. Whether Payette County qualifies for reimbursement from the Peace Officer and Detention Officer Temporary Disability Act;

2. Whether Employer remains eligible for reimbursement from the Peace Officer and Detention Officer Temporary Disability Act when Claimant is no longer employed by Employer; and,

3. Whether and to what extent Employer is entitled to reimbursement by Claimant of workers' compensation income benefits received during his employment with Employer.

FINDINGS OF FACT

The parties submitted stipulated facts. The following facts are drawn from the stipulation, the additional form submitted by the parties, and the Commission's information on the payment of income benefits which is attached to the decision for reference.

1. Employer, Payette County, employed Claimant, Scott J. Sloan, from February 1, 2007, to February 15, 2012 as a peace officer.

2. On October 18, 2011, Claimant was responding to a 911 call (intruder in residence) when he was involved in a vehicle crash while on duty, and while driving a Payette County Sheriff's vehicle with his emergency lights and siren activated. Claimant sustained injuries as a result of the vehicle crash.

3. Claimant received workers' compensation income benefits from October 19, 2011 through November 27, 2011, and again from December 29, 2011 through February 14, 2012 and beyond. Claimant did not receive income benefits during the gap from November 28, 2011 through December 28, 2011.

4. Claimant's employment with Employer ended on February 15, 2012.

5. Between the date of the injury and the end of Claimant's employment with Payette County (10/18/2011 – 2/15/2012), Claimant received $5,606.23 in wage loss benefits from the State Insurance Fund.

6. Claimant's base salary at the time of injury was $2,884.27 per month. (Answer to Complaint filed April 11, 2013).

DISCUSSION

7. Idaho Code § 72-1101 declares that the purpose of the Peace Officer and Detention Officer Temporary Disability Act (the Act) is to provide a full salary to employees in certain dangerous occupations who have been injured on the job.

8. On October 18, 2011, Claimant was "responding to an emergency" as defined in Idaho Code § 72-1104 when he was involved in a vehicle crash while on duty,

and driving a Payette County Sheriff's vehicle with his emergency lights and siren activated to respond to a 911 call (intruder in residence).

9. The Commission concludes that Claimant, a peace officer in the performance of his duties, was responding to an emergency when he was injured. He was temporarily incapacitated from performing his duties and qualified for workers' compensation wage loss benefits.

10. The main issue between the parties is not whether Claimant's situation qualifies Employer for reimbursement from the Peace Officer and Detention Officer Temporary Disability Act fund, but rather what funds are owed and who is responsible to pay those funds.

11. Idaho Code § 72-1105 provides that the Industrial Commission shall administer the Act for the purpose of providing a full rate of salary to a qualified employee who is injured and temporarily incapacitated from performing his or her job duties.

12. Idaho Code § 72-1104(2) provides that:

> [d]uring the period for which the salary for temporary incapacity shall be paid by the employer, any worker's compensation received or collected by the employee shall be remitted to the state or to the respective city or county as applicable, and paid into the treasury thereof. In addition, the employer shall be reimbursed for any remaining amount of salary not covered by such worker's compensation by application to the peace officer and detention officer temporary disability fund, as established in section 72-1105, Idaho Code, pursuant to rules adopted by the industrial commission; provided however, that any such reimbursement from the fund shall continue only during such period as the employee qualifies for worker's compensation wage loss benefits under title 72, Idaho Code.

To summarize, a claimant first receives full salary from an employer <u>and</u> workers' compensation income benefits. At first a claimant receives what appears to be double payment, but that is corrected by the next requirement. The claimant then gives the

eligible employer any workers' compensation income benefits received during that time period, and the employer receives checks from the Peace Officer and Detention Officer Temporary Disability Act. After the passing of checks is complete, a claimant has received his salary from employer, and employer has received the workers' compensation income benefits as well as payment from the Act. The Act does not make payments to claimants. Further, because it is only the employer who pays the claimant's full salary, a claimant is not entitled to his full salary when he is no longer employed by a qualifying employer.

13. In this case, Claimant received workers' compensation income benefit payments from Surety while also receiving his salary from Employer. Per the statute, Claimant is required to remit to Payette County the compensation paid to him while he was receiving his salary from Employer. Claimant received income benefits from October 19, 2011 to November 27, 2011, totalling $2,548.29. Claimant was released to full duty and did not receive income benefits from November 28, 2011 through December 28, 2011. Claimant again began receiving income benefits on December 29, 2011 through February 15, 2012, totalling $3,057.94. Claimant's income benefits received beyond the date of his resignation from Payette County are not necessary for this analysis. In summary, from the date of injury through the end of Claimant's employment with Payette County he received $5,606.23 ($2,548.29 + $3,057.94) in income benefits. Claimant shall remit to Payette County the compensation paid to him while he was receiving his salary from Employer - $5,606.23.

14. Further, Payette County is entitled to be reimbursed for any remaining amount of salary not covered by Claimant's worker's compensation income benefits by the Peace Officer and Detention Officer Temporary Disability Act fund. That amount is found

by subtracting the amount of income benefits received from the salary received during the same time period. As detailed below that amount is $2,761.31 ($8,367.54 - $5,606.23).

15. The chart below breaks down the payment by date range. The time begins when Clamant was injured and entitled to income benefits and ends when his employment with Payette County ended. There is a break in the middle from November 28, 2011 through December 28, 2011, when Claimant was released to full duty. During that time no income benefits were paid and no Peace Officer and Detention Officer Temporary Disability Act fund benefits can be reimbursed.

Date Range	Weeks and days	TTD Rate	TTD benefits (income benefits)	Salary[1]	Peace Officer Fund Benefits
10/19/2011 - 11/27/2011	5 weeks 5 days	$445.95	$2,548.29	$3,803.43	$1,255.14
11/28/2011 – 12/28/2011	4 weeks 3 days	$445.95	----	----	----
12/29/2011 – 2/14/2012	6 weeks 6 days	$445.95	$3,057.94	$4,564.11	$1,506.17
Total			**$5,606.23**	**$8,367.54**	**$2,761.31**

16. The Peace Officer and Detention Officer Temporary Disability Act fund shall reimburse Payette County $2,761.31 for any remaining amount of salary not covered by the workers' compensation wage loss benefits if a complete application is submitted. To receive the reimbursement, Payette County must submit an application which must include, among other things, a statement that it has adjusted Claimant's payroll to return any vacation or personal time used during these periods and a copy of Claimant's resignation letter.

[1] Claimant's monthly salary was $2,884.27 which is broken down, in order to calculate the salary for the necessary time periods, to $665.60 per week and $16.64 per hour.

17. This matter came before the Commission in an odd fashion with the application being filed by the Claimant. Employer is the proper party to file an application with the Peace Officer and Detention Officer Temporary Disability Act.

18. The Commission also notes that there is no requirement for Employer to submit an application and seek reimbursement from the Act. Payette County may choose to not complete the requirements of the application process. As set forth above, a complete application will include returning to Claimant's payroll any vacation or personal time paid out to him during the time periods Employer is seeking reimbursement from the Act. If Payette County does not file an application it is not required to complete any of the steps set forth above and Payette County will not receive payment from the Peace Officer and Detention Officer Temporary Disability Act fund.

CONCLUSIONS OF LAW

1. Claimant, a peace officer in the performance of his duties, was responding to an emergency when he was injured. He was temporarily incapacitated from performing his duties and qualified for workers' compensation wage loss benefits.

2. Claimant shall remit to Payette County $5,606.23, which is the amount of workers' compensation wage loss benefits received during the periods that Claimant was working for Payette County.

3. The Peace Officer and Detention Officer Temporary Disability Act Fund shall reimburse Payette County $2,761.31 for any remaining amount of salary not covered by the workers' compensation wage loss benefits if a complete application is submitted.

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ORDER

1. Claimant, a peace officer in the performance of his duties, was responding to an emergency when he was injured. He was temporarily incapacitated from performing his duties and qualified for workers' compensation wage loss benefits.

2. Claimant shall remit to Payette County $5,606.23, which is the amount of workers' compensation wage loss benefits received during the periods that Claimant was working for Payette County.

3. The Peace Officer and Detention Officer Temporary Disability Act Fund shall reimburse Payette County $2,761.31 for any remaining amount of salary not covered by the workers' compensation wage loss benefits if a complete application is submitted.

4. Pursuant to IDAPA 17.02.04.004.04, this is a decision regarding eligibility for reimbursement from which there is no appeal.

DATED this 31st day of January, 2014.

INDUSTRIAL COMMISSION

Thomas P. Baskin, Chairman

R.D. Maynard, Commissioner

Recused
Thomas E. Limbaugh, Commissioner

ATTEST:

Kenna Andrews
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 31st day of January, 2014, a true and correct copy of the foregoing **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER** was served by regular United States Mail upon each of the following:

JOSEPH P FILICETTI
PO BOX 449
BOISE ID 83701

JOSHUA DOLTON DEPUTY PA
1130 3RD AVE N #105
PAYETTE ID 83661

Kenna Andrus

5310212013029

IDAHO STATE INSURANCE FUND
Paid Cost Summary
as of
10/17/2013

Claim Information

Claim #	Accident Date	Claimant	Policy #	Insured
201111071	10/18/2011	Sloan, Scott J	16690	Payette County

Indemnity Payments

Benefit Type	Benefit Rate	Paid From	Paid Through	Days	Payment Amount	Payment Issued	Check #	Payee
Temporary Total Disability - First 52 Weeks	445.95	10/19/2011	10/23/2011	5	318.54	11/08/2011	1775071	Sloan, Scott J
Temporary Total Disability - First 52 Weeks	445.95	10/24/2011	10/25/2011	2	127.41	10/25/2011	1772706	Sloan, Scott J
Temporary Total Disability - First 52 Weeks	445.95	10/26/2011	11/08/2011	14	891.90	11/08/2011	1775071	Sloan, Scott J
Temporary Total Disability - First 52 Weeks	445.95	11/09/2011	11/22/2011	14	891.90	11/22/2011	1777954	Sloan, Scott J
Temporary Total Disability - First 52 Weeks	445.95	11/23/2011	11/27/2011	5	318.54	12/06/2011	1780032	Sloan, Scott J
Temporary Total Disability - First 52 Weeks	445.95	12/29/2011	12/31/2011	3	191.12	01/17/2012	1797501	Sloan, Scott J
Temporary Total Disability - First 52 Weeks	445.95	01/01/2012	01/17/2012	17	1,083.02	01/17/2012	1797501	Sloan, Scott J
Temporary Total Disability - First 52 Weeks	445.95	01/18/2012	01/31/2012	14	891.90	01/31/2012	1800498	Sloan, Scott J
Temporary Total Disability - First 52 Weeks	445.95	02/01/2012	02/14/2012	14	891.90	02/14/2012	1802753	Sloan, Scott J
Temporary Total Disability - First 52 Weeks	445.95	02/15/2012	02/28/2012	14	891.90	02/28/2012	1805196	Sloan, Scott J
Temporary Total Disability - First 52 Weeks	445.95	02/29/2012	03/13/2012	14	891.90	03/13/2012	1807308	Sloan, Scott J
Temporary Total Disability - First 52 Weeks	445.95	03/14/2012	03/27/2012	14	891.90	03/27/2012	1810033	Sloan, Scott J
Temporary Total Disability - First 52 Weeks	445.95	03/28/2012	04/10/2012	14	891.90	04/10/2012	1812562	Sloan, Scott J
Temporary Total Disability - First 52 Weeks	445.95	04/11/2012	04/24/2012	14	891.90	04/24/2012	1814888	Sloan, Scott J
Temporary Total Disability - First 52 Weeks	445.95	04/25/2012	05/08/2012	14	891.90	05/08/2012	1817534	Sloan, Scott J
Temporary Total Disability - First 52 Weeks	445.95	05/09/2012	05/22/2012	14	891.90	05/22/2012	1819811	Sloan, Scott J
Temporary Total Disability - First 52 Weeks	445.95	05/23/2012	06/05/2012	14	891.90	06/06/2012	1822432	Sloan, Scott J
Temporary Total Disability - First 52 Weeks	445.95	06/06/2012	06/19/2012	14	891.90	06/19/2012	1824698	Sloan, Scott J
Temporary Total Disability - First 52 Weeks	445.95	06/20/2012	07/03/2012	14	891.90	07/03/2012	1827832	Sloan, Scott J
Temporary Total Disability - First 52 Weeks	445.95	07/04/2012	07/17/2012	14	891.90	07/17/2012	1830049	Sloan, Scott J
Temporary Total Disability - First 52 Weeks	445.95	07/18/2012	07/31/2012	14	891.90	07/31/2012	1832875	Sloan, Scott J