

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

RICHARD BASS,

Claimant,

v.

DEPARTMENT OF HEALTH & WELFARE,

Employer,

and

IDAHO STATE INSURANCE FUND,

Surety,

Defendants.

IC 2014-034327

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

Filed August 16, 2016

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee Brian Harper, who conducted a hearing in Nampa, Idaho, on July 19, 2016. Claimant represented himself *pro se*. Neil McFeeley, of Boise, represented Idaho Department of Health & Welfare (“Employer”), and Idaho State Insurance Fund (“Surety”), Defendants. Oral and documentary evidence was admitted. The parties waived post-hearing briefs, and instead made oral arguments at the hearing. The matter came under advisement on July 26, 2016. The undersigned Commissioners have chosen not to adopt the Referee’s recommendation and hereby issue their own findings of fact, conclusions of law and order.

ISSUES

By agreement of the parties, the issue to be decided is:

Whether Claimant was a covered employee under the Worker's Compensation Act and/or is precluded from benefits pursuant to Idaho Code § 20-412.

CONTENTIONS OF THE PARTIES

Claimant, an inmate at the Nampa Community Reentry Center, was injured in a fall while working on the Health & Welfare (H&W) grounds as part of an arrangement between the Idaho Department of Correction and H&W. While his medical expenses have been paid to date, Claimant asserts his injured shoulder needs additional medical care, and he is also entitled to worker's compensation benefits which have been denied him.

Defendants argue Claimant is not eligible for any worker's compensation benefits because H&W was not his employer, and by statute Claimant is precluded from receiving such benefits regardless of who is his employer.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. Claimant's testimony, taken at hearing;
2. The hearing testimony of witnesses Lorie Vega and Bruce Wells-Moore;
3. Defendants' Exhibits (DE) A through C, admitted at hearing;
4. Commission's Exhibit 1, admitted at hearing¹;
5. The oral arguments of the parties, presented at hearing.

FINDINGS OF FACT

1. The Idaho Department of Health & Welfare (H&W) owns property

¹ At Claimant's request, the Commission admitted, without objection, a copy of the lease between the DOC and H&W.

in Nampa, Idaho on which is located the Southwest Idaho Treatment Center (the hospital). H&W's property also includes the ground on which the Idaho Department of Correction's (DOC) Nampa Community Reentry Center (work center) is situated. DOC leases this real property from H&W. As part of the lease agreement, DOC agreed to provide at least 2100 hours per month of workforce services to H&W in lieu of cash rental payment. The workforce provided by DOC is comprised of inmates from the work center. The inmate workers are assigned to various tasks in housekeeping and building/grounds maintenance.

2. Claimant is a DOC inmate. In March 2013, Claimant was transferred to the Nampa work center. Soon thereafter, he was directed to work on the hospital grounds. After his first day, Claimant was assigned to the grounds crew where he worked for approximately a year and a half before his injury.

3. On October 23, 2014, Claimant was knocked from his ladder by a falling limb on a tree he was trimming. He injured his shoulder in the fall. Claimant also claims resulting back and left eye injury. DOC provided medical care for Claimant's injuries. Claimant may need additional surgery for his shoulder, but he is waiting to obtain a second opinion before deciding how to proceed.

4. Claimant filed a claim for benefits, listing H&W as his employer.

5. Surety denied Claimant's injury claim on two grounds. First, H&W is not Claimant's employer, and second, by statute Claimant is not allowed benefits when providing inmate labor on state projects.

6. Lieutenant Bruce Wells-Moore, the work center correctional manager, testified that Claimant was an inmate worker under the custody of DOC. Claimant was not

a community service worker nor a Correctional Industries (CI) worker, both defined by statute. Instead, Claimant was an Idaho Code § 20-413 worker, as will be discussed below. Lt. Wells-Moore also testified that Claimant was not employed by H&W, but remained under the jurisdiction of DOC while working at the hospital. Claimant was paid three dollars per day for his services, with payment coming from DOC.

7. Witness Lorie Vega, an administrative assistant at the hospital, likewise testified that Claimant was not an employee of H&W, received no payment for wages or work done at the hospital, was given no W-2 or 1099 form, received no state benefits or insurance from H&W, and was not selected for hire by them.

DISCUSSION AND FURTHER FINDINGS

8. Claimant has the burden of proving, by a preponderance of the evidence, all facts essential to recovery on his claims. In this case, it is up to Claimant to prove he is entitled to worker's compensation benefits in the present situation.

H&W as Claimant's Employer

9. Claimant admitted at hearing he was not an employee of H&W in the traditional sense of being hired after an interview process. (Transcript 8/19-10/6) However, Claimant argued he provided a benefit to H&W and therefore they should have provided him worker's compensation benefits. (Transcript 40/3-21)

10. For Claimant to be eligible for workers compensation benefits, he must first demonstrate that an employment relationship existed between himself and H&W at the time of the accident giving rise to the claim. *Seward v. State*, 75 Idaho 467, 274 P.2d 993 (1954). Pursuant to Idaho Code § 72-102(12), an "employee" means any person "who has entered into the employment of, or who works under contract of service or apprenticeship with an,

employer.” Pursuant to Idaho Code § 72-102(13)(a), an “employer” is one who “expressly or impliedly hired or contracted the services of another.” There being no evidence of an express contract of hire between Claimant and H&W, an employment relationship can only be established by demonstrating the existence of a contract of employment implied in fact. A contract implied in fact is a true contract whose existence and terms are inferred from the conduct of the parties. Such an agreement is grounded in the parties’ agreement and tacit understanding. *Kennedy v. Forrest*, 129 Idaho 584, 930 P.2d 1026 (1997). Again, the evidence fails to establish the existence of a contract of employment between H&W and Claimant from the conduct of the parties. In addition to the lack of documentation of the incidents of employment, the record is bereft of any evidence that H&W assumed the right to direct and control the activities of Claimant as to time when and the place where he conducted his work. Claimant argues that he should be treated as an employee of H&W because he provided services which H&W accepted and from which it derived a benefit. However, while this might be one factor which supports the existence of an employment relationship based on a contract implied in law, it would not support the establishment of an implied-in-fact contract. (See *Kennedy v. Forrest*, 129 Idaho 584, 930 P.2d 1026 (1997)). For purposes of establishing an employment relationship that will entitle the injured worker to workers compensation benefits, an implied contract must be one implied in fact.

11. Based on the foregoing, we conclude that Claimant has failed to meet his burden of establishing the existence of an employment relationship between he and H&W. Because Claimant was not an employee of H&W at the time of the accident giving rise to this claim, H&W is not liable for the payment of workers compensation benefits to Claimant.

Claimant's Statutory Entitlement to Benefits

12. While the ruling above is definitive on the issue of Claimant's entitlement to benefits from H&W, the issue framed by the parties was broader than simply whether Claimant can make a claim against this Defendant. Rather the issue was whether Claimant was entitled to worker's compensation benefits from *any* entity under the facts of this case. This issue will be explored below.

13. Several state statutes address inmates working in various capacities. In some capacities, inmates may receive worker's compensation benefits, and in others, they are specifically excluded from such benefits. As an inmate, Claimant's right to recover worker's compensation benefits depends on which statute he was working under at the time of his injury.

14. Lt. Wells-Moore testified that at the time he was injured Claimant was working under the authority of Idaho Code § 20-413, which allows, in pertinent part, prison inmates to be assigned work duties for state agencies. Claimant does not dispute that testimony, and in reviewing the statute, it appears to apply squarely to Claimant's situation.

15. Claimant was governed by the provisions of Idaho Code § 20-413 when he was injured. He was not employed under the CI work program, found at Idaho Code § 20-412, at the time of his injury.

16. While Claimant acknowledges that the provisions of Idaho Code § 20-412 specifically disallow worker's compensation benefits to inmates working in the CI program, he argues that since he was not a CI worker, the prohibition against benefits under Idaho Code § 20-412 do not apply to him. He points out that

unlike Idaho Code § 20-412, Idaho Code § 20-413 does not address worker's compensation benefits within that statute.

17. Compounding the confusion, the year after Claimant's injury, Idaho Code § 20-412 was amended. At the time Claimant was injured, the statute began, "Each prisoner, who is engaged in productive work in the institution under the jurisdiction of the board of correction *as a part of the correctional industries work program....*" Subsequent to Claimant's injury, the opening statutory language was changed to read, "[e]ach prisoner, who is engaged in productive work *as authorized by this chapter....*" (Emphasis supplied in both quotes.)

18. Prior to the 2015 amendment, the provision of Idaho Code § 20-412 specifically dealing with worker's compensation benefits stated;

No inmate compensated under this act shall be considered an employee of the state or the board of correction, nor shall any inmate come within any of the provisions of the [worker's] compensation laws, or be entitled to any benefits thereunder whether on behalf of himself or any other person.

In 2015, the language was changed to read;

No inmate engaged in productive work as authorized by this chapter shall be entitled to worker's compensation benefits or unemployment compensation under chapter 4 or chapter 13, title 72, Idaho Code, whether on behalf of himself or any other person.

(Emphasis supplied in both quotes.)

19. Claimant argues the amendment proves that at the time of his accident, all the provisions of Idaho Code § 20-412, including the prohibition against worker's compensation benefits, applied *only* to CI workers; the language was broadened

the year after his accident. Since Claimant was not a CI worker, the prohibition against benefits did not apply to him, as he was injured prior to the 2015 amendment.

20. While it is easy for a lay person to read Idaho Code § 20-412 as just applying to CI workers, the provision dealing with worker's compensation, even before the amendment, prohibited any inmate worker compensated under "this act" from obtaining worker's compensation benefits. The term "this act" is broader than just Idaho Code § 20-412, and instead covers all the statutes in Chapter 4 of Title 20. While Chapter 4 is entitled "Correctional Industries Act", the act in its entirety encompasses inmate work situations beyond the CI program. The act includes inmate workers under Idaho Code § 20-413, since that statute is included under the act, as are all the provisions from § 20-401 through § 20-419.

21. Lt. Wells-Moore testified that the amendment to Idaho Code § 20-412 in 2015 was to simply make more clear that the prohibition against worker's compensation benefits applied to all workers under Chapter 4 of Title 20 of the Idaho Code. However, he noted that even before the amendment, the prohibition was set out in the statute, but perhaps not as straightforwardly as it could have been.

22. While the provisions of Idaho Code § 20-412 prior to the 2015 amendment were not set out as clearly as they now are, what is clear is that when the language dealing with worker's compensation benefits is read closely, it provides that no inmates working under any provision of Chapter 4, Title 20, would be eligible for worker's compensation benefits.

23. The interpretation of a statutory provision must begin with the literal words of the statute, giving the language its plain, obvious and rational meaning. *State v. Watts*,

131 Idaho 782, 963 P.2d 1219 (1998). Unless the result is palpably absurd, the Court assumes that the legislature meant what is stated in the statute. *Miller v. State*, 110 Idaho 298, 299, 715 P.2d 968, 969 (1986). Here, the language proscribing worker's compensation benefits for inmate labor under Chapter 4 of Title 20 is clear when closely examined. The term "this act" has to apply to the entire act, and the entire act encompasses all the statutes under Chapter 4 of Title 20.

24. The Idaho case of *Crawford v. Department of Corrections*, 133 Idaho 633, 991 P.2d 358 (1999) likewise ruled that an inmate injured while performing maintenance duties at her DOC work center was not entitled to benefits, as she did not fall within a definition of the type of workers who are allowed worker's compensation benefits, *e.g.* a community service worker. Claimant herein was not a community service worker under Idaho Code § 20-245. Because he was performing work pursuant to Idaho Code § 20-413, he is not entitled to worker's compensation benefits from any entity.

26. Finally, in the recent case of *In Re: Idaho Correctional Industries and Idaho Code § 20-413A*, Idaho Correctional Industries, petitioner, 2015 DR0001 (2015), the Commission had the opportunity to consider the impact of the provisions of Idaho Code § 20-412 on the act as a whole, concluding that the version of the statute that was in effect as of the date of Claimant's accident made it clear that no inmate compensated pursuant to "the act", in its entirety, was entitled to the protections of the Idaho Workers' Compensation Law.

25. Claimant has failed to prove he is entitled to worker's compensation benefits from any entity.

CONCLUSIONS OF LAW AND ORDER

1. Claimant has failed to prove he was a covered employee of H&W and thus entitled to worker's compensation benefits from Defendants.

2. As an inmate-laborer under Idaho Code § 20-413, Claimant has failed to prove he is eligible for worker's compensation benefits for his accident of October 23, 2014 from any entity.

3. Pursuant to Idaho Code § 72-718, this decision is final and conclusive as to all matters adjudicated.

DATED this 16th day of August, 2016.

INDUSTRIAL COMMISSION

_____/s/_____
R.D. Maynard, Chairman

_____/s/_____
Thomas E. Limbaugh, Commissioner

_____/s/_____
Thomas P. Baskin, Commissioner

ATTEST:

_____/s/_____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of August, 2016, 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:

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_____/s/_____