

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

STEVEN ALAN COX,)
)
 Claimant,)
)
 v.)
)
 DEPARTMENT OF CORRECTION,)
)
 Employer,)
 Defendant.)
 _____)

IC 2011-006375

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

Filed October 7, 2011

INTRODUCTION

This matter came for hearing before the Industrial Commission on August 3, 2011, on Claimant’s application for benefits under the Peace Officer and Detention Officer Temporary Disability Act. See Idaho Code § 72-1101, *et seq.* Claimant appeared pro se. Defendant, Idaho Department of Corrections, appeared through Mark Kubinski, Esq.

By agreement of the parties, the following matters are at issue:

1. Whether Claimant is a “peace officer” or “detention officer” within the meaning of Idaho Code § 72-1103;
2. Whether Claimant was injured while responding to an emergency or in pursuit of an actual or suspected violator of the law, as anticipated by Idaho Code § 72-1104; and
3. Whether, following the subject accident, Claimant was in a period of entitlement to temporary total disability benefits, such as to invoke the provisions of Idaho Code § 72-1101 *et seq.*

At hearing, Claimant’s Exhibits 1 through 2, and 4 through 11, were admitted. Likewise, Defendant’s A, B, D, and E were admitted into evidence. At hearing, Claimant testified in support of his claim. Defendant offered the testimony of Rodney Schlien and Teresa Jones.

CONTENTIONS OF THE PARTIES

Claimant acknowledges that he is not a “detention officer” under Idaho Code § 72-1103(1). However, Claimant contends that he is a “peace officer,” as that term is defined at Idaho Code § 72-1103(2). Claimant contends that while performing his duties on February 11, 2011, he was involved in breaking up an altercation between two inmates, and while applying hand restraints to one of the inmates, twisted his left knee and suffered the injuries which he contends give rise to his entitlement under the provisions of the Peace Officer and Detention Officer Temporary Disability Act. Claimant contends that at the time of the accident giving rise to his claim, he was “responding to an emergency” within the meaning of Idaho Code § 72-1104.

Defendant contends that Claimant is not a “peace officer,” as that term is defined at Idaho Code § 72-1103, and is not, therefore, entitled to benefits under the Act.

FINDINGS OF FACT

1. Claimant was hired as a correctional officer by Employer effective June 10, 2010. The conditional offer of employment accepted by Claimant reflects that as a condition of his employment, Claimant was required to become certified through the Idaho Peace Officers Standards and Training (P.O.S.T.) Academy. (See, Exh. 10).

2. On or about June 1, 2011, Claimant obtained his “Basic Correction Certificate” through the P.O.S.T. Academy. (See, Exh. 1). Notably, neither the conditional offer of employment, nor the certificate from the P.O.S.T. Academy, reflects that Claimant was certified as a “peace officer.” Rather, the conditional offer of employment merely required Claimant to become “certified,” and the certificate Claimant received from the P.O.S.T. Academy reflects that he obtained the “Basic Correction” certification. Therefore, Claimant cannot be considered

to be a “peace officer” by operation of the provisions of Idaho Code § 20-209(C) or Idaho Code § 19-510(A).

3. Commencing January 2, 2011, Claimant was assigned by Employer to the Behavioral Health Unit at the Idaho State Correctional Institution.

4. On February 11, 2011, Claimant and another correctional officer observed two inmates engaged in an altercation. Claimant and the other officer instructed the inmates to cease and desist and lay down on the ground. The inmates complied. While Claimant was applying hand restraints to one of the inmates, Claimant twisted his left knee while kneeling to the ground.

5. A timely Notice of Injury and Claim for Benefits for the accident of February 11, 2011, was made with Employer, and Claimant received medical treatment for a suspected left medial meniscus tear.

6. A left knee medial menisectomy was recommended for Claimant by his treating physician, and was approved by Employer’s surety on or about April 20, 2011. Claimant began to receive the payment of temporary total disability benefits on or about March 25, 2011.

7. Claimant is unsure whether his job duties as a correctional officer include the duty to arrest people breaking the law. He readily concedes, however, that in connection with his work as a correctional officer he has never arrested any person, nor issued a criminal citation to any person. Claimant posits, however, that he has the obligation to “arrest” offenders in his custody during transport outside of the Idaho State Correctional Institution. (Hrg. Tr. 23/13-24/12). Claimant acknowledged that he has never undertaken to enforce the traffic or highway laws of the state while performing his job. However, he contends that he does have the authority and responsibility to enforce the laws of the State on state property, and that may include the enforcement of traffic laws on Idaho State Correctional Institution property. (Hrg. Tr. 24/13-20).

8. Rodney Schlienzen is currently employed as a Captain at ISCI. He has oversight responsibilities over security operations and practices within the facility at which Claimant is employed. He is familiar with the duties and responsibilities of correctional officers. As part of their duties, correctional officers typically have responsibility to restrain inmates. However, a correctional officer's duty to restrain inmates when required is distinguishable from a right or duty to arrest inmates. Reviewing Defendant's Exhibit E, the model job description for correctional officers, Schlienzen testified that correctional officers have no duty to prefect arrest. (Hrg. Tr. 33/14-34/17). If a correctional officer believes that a crime has been committed by an inmate in State custody, that matter is referred to other authorities who have the power to arrest and/or issue a criminal citation. Similarly, Schlienzen testified that correctional officers have no duty to enforce penal, traffic or highway laws of the State. (Hrg. Tr. 33/4-8).

DISCUSSION AND FURTHER FINDINGS

9. Effective July 1, 2007, the Legislature adopted the Peace Officer and Detention Officer Temporary Disability Act ("Hereinafter the "Act"). See, Idaho Code § 72-1101, *et seq.* Under the Act, Detention Officers and Peace Officers who suffer work related injuries while responding to an emergency or pursuing suspects, are entitled to receive their full rate of base salary during a period of temporary total disability. Idaho Code § 72-1103, defines the class of employees entitled to the protections of the Act. Specifically, the Act applies only to "detention officers" and "peace officers." It is conceded that Claimant is not a "detention officer," since he is employed by the State of Idaho, as opposed to an Idaho county. The instant dispute centers on whether Claimant qualifies as a "peace officer," as defined at Idaho Code § 72-1103(2). That Section provides:

(2) "Peace officer" means any employee of a police or other law enforcement agency that is a part of or administered by the state or any political subdivision

thereof who has the duty to arrest and whose duties include the prevention and detection of crime and the enforcement of the penal, traffic or highway laws of this state or any political subdivision of this state and shall include, but not be limited to, appointed chiefs, elected sheriffs, and fish and game officers.

Therefore, a peace officer is an employee of the State or a political subdivision thereof, whose duties include: (1) the duty to arrest, and (2) the prevention and detection of crime and the enforcement of penal, traffic or highway laws of the State or political subdivision. It is important to note that the above-stated requirements are not in the disjunctive. In order to qualify as a “peace officer” for purposes of the Act, it must be demonstrated that all elements of the provisions of Idaho Code § 72-1103(2) are satisfied.

10. Here, although Claimant concedes that he has never arrested anyone, he believes that his duty to restrain inmates when required is just another way of saying that as a correctional officer, Claimant has a duty to arrest malefactors in his care. As well, Claimant contends that he has a duty to arrest inmates when they try to engage in illegal activity in the course of transport. The Commission is not persuaded that Claimant has met his burden of establishing that his job responsibility as a correctional officer includes, *inter alia*, the duty to perfect arrest. The job description for a correctional officer does not reflect that correctional officers have the power or authority to perfect arrests. (See, D. Exh. E). Although correctional officers assuredly have the obligation to restrain inmates in appropriate circumstances, the right to restrain, as developed by Mr. Schlien, is to be distinguished from the duty to arrest. Per Mr. Schlien, correctional officers do not have the authority or duty to arrest. Rather, suspected crimes must be referred to appropriate authorities who may, in turn, perfect an arrest or issue a citation. Claimant offered no proof, other than his own supposition, that his job responsibilities included the duty to make and perfect arrests.

11. Arguably, the job description of correctional officer does include the obligation to prevent and detect crimes among the inmate population. (See, D. Exh. E; Hrg. Tr. 34/2-14). However, the record contains no evidence suggesting that correctional officers have the authority or duty to enforce, i.e. compel observance of or obedience to, any of the penal, traffic or highway laws of the State, or political subdivision thereof.

CONCLUSION OF LAW AND ORDER

12. In accordance with the foregoing, we find that Claimant has failed to establish that he is among the class of professions contemplated for protection under the Peace Officer and Detention Officer Temporary Disability Act. Having found that Claimant is not a “peace officer” within the meaning of the statute, we do not reach the other noticed issues.

IT IS SO ORDERED.

DATED this __7th____ day of October, 2011.

INDUSTRIAL COMMISSION

/s/
Thomas E. Limbaugh, Chairman

/s/
Thomas P. Baskin, Commissioner

/s/
R.D. Maynard, Commissioner

ATTEST:

/s/
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of October, 2011, 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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EAGLE ID 83616

IDAHO DEPARTMENT OF CORRECTION
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amw

 /s/ _____