

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

MICHAEL WATKINS,

Claimant,

v.

CITY OF PONDERAY,

Employer, and

IDAHO STATE INSURANCE FUND,

Surety,

Defendants.

IC 2018-023549

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

FILED

APR 06 2022

INDUSTRIAL COMMISSION

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee John Hummel. Michael T. Kessinger, of Lewiston, represented Claimant, Michael Watkins. The Commission issued an Order of Default, and a hearing was not held. The matter came under advisement on February 25, 2022.

ISSUES

The issue to be decided by the Commission as the result of the Default is as follows:

1. Whether and to what extent Claimant is entitled to payment of his “full rate of base salary” pursuant to I.C. § 72-1104.

CONTENTIONS OF THE PARTIES

Claimant argues that he sustained an accident and injury in the employment of Employer on August 18, 2018, that required medical care and disabled him from working. Claimant, a police officer, injured his knee while chasing a criminal suspect. He now seeks payment of his

full base salary during his period of recovery from the injury to his knee.

Employer did not file an Answer to the Complaint or otherwise appear or defend this action prior to the entry of Default.

COURSE OF THE PROCEEDINGS

Claimant filed an Officer's Complaint for Continuation of Salary Benefit under Peace Officer & Detention Officer Temporary Disability Act on October 4, 2019. On November 1, 2019, Claimant served a Notice of Intent to Take Default within twenty-one (21) days if Defendants did not answer or otherwise respond to the Complaint. On November 27, 2019, Claimant filed a Motion for Entry of Default. On November 27, 2019, the Referee entered an Order of Default. On December 6, 2019, Defendants filed an Answer together with a Motion to Set Aside Default. On December 11, 2019, Defendants filed an Amended Motion to Set Aside Default. On December 11, 2019, Claimant filed a Response to Motion to Set Aside Default. On December 12, 2019, the Referee entered an Order Denying Defendants' Motion to Set Aside Default. On February 24, 2022, Claimant filed a *Prima Facie* Case Supporting Award Pursuant to JRP 6, together with five (5) exhibits.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The Industrial Commission legal file;
2. Claimant's *Prima Facie* Case Supporting Award Pursuant to JRP 6; and
3. Claimant's Exhibits 1 through 5.

After having considered the above evidence and the arguments of the parties, the Referee submitted a proposed decision. 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.

FINDINGS OF FACT

1. **Employer.** Administrative notice is taken that at all relevant times, Employer operated a municipal government in Ponderay, Idaho.

2. **Employment of Claimant.** At all relevant times, Employer employed Claimant as a police officer. CE 1.

3. **Industrial Accident and Injury; Immediate Medical Care.** On or about August 18, 2019, Claimant was pursuing a criminal suspect on foot when he hyperextended his left knee. Claimant was running and stepped into an unseen hole and that is when the hyperextension of his left knee occurred. Claimant fell and when he stood up he experienced a sharp pain in the left and center of his left knee. He was able to ambulate, however with any twisting of the left knee, he felt a sharp stabbing pain. Claimant received an assessment of left knee pain and strain of AC joint with suspicion of tear. He received directions to use Naproxen, cold compresses, elevation of the affected area as much as possible, and wearing of a splint. He further received restrictions of no bending, twisting, squatting/stooping, or running. Claimant was to follow up in one week and have an MRI of the left knee. CE 1.

4. **Period of Recovery.** Claimant remained on restricted duty and/or "no work" restrictions from August 19, 2018 until December 9, 2020, when Jeffrey Lyman, M.D., opined that he had reached maximum medical improvement, and assigned Claimant a 25% lower extremity impairment to his left knee. CE 2.

5. **Temporary Disability Benefits.** Surety accepted Claimant's claim for benefits and paid him temporary total and temporary partial disability benefits for the period of August 19, 2018 through November 19, 2020. CE 3.

6. **Claimant's "Base Salary."** In a wage verification form response to Surety, Employer documented Claimant's wages for the four quarters preceding the industrial accident. Claimant's best quarter totaled wages of \$14,828.80, or \$1,140.68. per week. CE 4. In the Answer that Defendants filed after the Order of Default was entered, Defendants alleged that Claimant's average weekly wage was \$896.00, minus withholding per code. CE 5.

7. There is no evidence that Claimant remitted his TTD/TPD payment checks to Surety. In its Answer, Defendants conceded that Employer did not pay Claimant his salary after the industrial accident. CE 5.

DISCUSSION AND FURTHER FINDINGS

8. The provisions of the Idaho Workers' Compensation Law are to be liberally construed in favor of the employee. *Haldiman v. American Fine Foods*, 117 Idaho 955, 956, 793 P.2d 187, 188 (1990). The humane purposes which it serves leave no room for narrow, technical construction. *Ogden v. Thompson*, 128 Idaho 87, 88, 910 P.2d 759, 760 (1996). Facts, however, need not be construed liberally in favor of the worker when evidence is conflicting. *Aldrich v. Lamb-Weston, Inc.*, 122 Idaho 361, 363, 834 P.2d 878, 880 (1992).

9. **Peace Officer and Detention Officer Temporary Disability Act.** The purpose of this Act is to "provide a full salary to employees in certain dangerous occupations." I.C. § 72-1101. On or after July 1, 2008, a peace officer or detention officer "who is injured in the performance of his or her duties" when responding to an emergency, in actual pursuit of a criminal suspect, or when the injury is caused by the actions of a third person and is temporarily

disabled or incapacitated from performing his or her job, and qualifies for workers compensation, “shall be paid his or her full rate of base salary.” I.C. § 72-1104(1). Nevertheless, during the period for which such base salary is paid, “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 treasurer thereof.” I.C. § 72-1104(2).

10. In his application for default judgement (“Prima Facie Case”), Claimant asked the Commission to order Employer to pay him his base salary applicable to the period of recovery, however Claimant did not acknowledge a corresponding duty to remit the TTD/TPD payments he already received.

11. Such a resolution is not cognizable under the Act. To abide by the unambiguous requirements of I.C. § 72-1104, Employer must pay Claimant his “full rate of base salary”, minus income tax deductions, for the entire period of recovery. Further, payments made to Claimant by surety for temporary disability must be remitted by Claimant to employer. Here, we assume that Claimant has applied the TTD/TPD payments he received from surety to expenses incurred as a result of living without his customary salary. Employer should receive a credit for TTD/TPD payments received by Claimant. This complies with the intent of I.C. § 72-1104(2).

12. Claimant’s “full rate of base salary” is unknown. There is no proof of this number in the record. Claimant’s average weekly wage, calculated by surety pursuant to I.C. § 72-419, appears to be \$1140.68. However, we have no reason to believe that Claimant’s average weekly wage is the equivalent of his “full rate of base salary” as that term is used in I.C. § 72-1104. From the foregoing, we are only able to say that for the period August 19, 2018 through November 19, 2020, Claimant is entitled to the payment by Employer of his full base salary, less

appropriate deductions, and this amount, whatever it may be, must be further reduced by the amount of TTD/TPD benefits Claimant received for the same period.

CONCLUSIONS OF LAW AND ORDER

1. Pursuant to the Peace Officer and Detention Officer Temporary Disability Act, Claimant is entitled to receive from Employer his full rate of base salary, whatever it may be, less income tax deductions, for his recovery period of August 19, 2018 through November 19, 2020.

2. In making the payment provided for in Conclusion of Law Number One, Defendant Employer shall be entitled to a credit consisting of the total of the TTD/TPD payments made to Claimant by Defendant Surety.

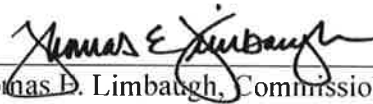
Pursuant to Idaho Code § 72-718, this decision is final and conclusive as to all matters adjudicated.

DATED this 5th day of April, 2022.

INDUSTRIAL COMMISSION



Aaron White, Chairman



Thomas E. Limbaugh, Commissioner



Thomas P. Baskin, Commissioner



ATTEST:



Assistant Commission Secretary

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER - 6

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of April, 2022, a true and correct copy of the foregoing **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER** was served by email and regular United States Mail upon each of the following:

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