Sivak v. Idaho State Penitentiary and the Idaho State Insurance Fund, I.C. No. 2023-059527, filed 06/03/24

Issue: Do prison workers receive worker's compensation benefits?

Short Answer: It depends on the type of work.

Sivak was serving a life sentence. He claims he was injured while breathing mold while painting a bathroom.

"There is an exception to the general rule that inmates are not covered employees for purposes of Idaho's Workers Compensation law. That exception is that of a "community service worker."

72-205 (7) provides as follows:

A community service, as term is defined in section 72-102. Idaho Code, is considered to be an employee in public employment for purposes of receiving worker's compensation benefits, which shall be the community worker's exclusive remedy for all injuries and occupational diseases provided under chapters 1 through 8, title 72, Idaho Code.

Decision: "It is undisputed that Claimant was not a community service worker, as that term is defined in Idaho Code §72-2012(5) or within the meaning of Idaho Code § 72-205 (7), at the time that he was performing janitorial services at the Idaho State Penitentiary. Claimant admitted at hearing that he was not a community service worker but rather was an inmate janitor. Like the inmate's claim for benefits in Crawford, 133 Idaho 633, 991, P.2d 358. Claimant's claim for workers' compensation benefits, therefore, is non-compensable because he was not a community service worker."

What I found interesting about this decision: It's short.

Winder v. Bingham Mechanical, Inc. and Idaho State Insurance Fund, I.C. 2022-002236, Aug 4, 2023,

Issue: Whether the Claimant suffered an injury caused by an accident arising out of and in the course of employment;

Short Answer: No. Claimant deviated from work.

Facts: Claimant lived in Idaho Falls. He was working for the employer in Caldwell. "After work on Wednesday Claimant drove his vehicle to locations South of Salt Lake City (the trip". He repeatedly testified that his reason for this trip was entirely personal. He repeat4dly gave false reasons for this trip. The trip. To and from Salt Lake City encompassed the entire night. Claimant testified that he fell asleep at the wheel. The September 16 accident was a one-care rollover accident. In deposition and at hearing, even when he was maintaining the fiction tthat he went to Idaho Falls instead of Salt Lake City, Claimant has consistently testified from the reason for taking the trip through the night on September 15 and 16 was wholly personal and completely unrelated to his work for Employer. Claimant ultimately admitted at hearing was the purpose of the trip was to obtain cocaine."

Decision: "The Idaho Supreme Court provided this restatement: When an employee's work requires the employee to travel away from the employer's place of business or the employee's normal place of work, the employee will be held to be within the course and scope of employment continuously during the trip, except when distinct departure for personal business occurs."

"Claimant suggests in briefing that if the fact had been different, if the extent of the deviation had been less or if the nature of the illegal activity had been different, Claimant would likely be found entitled to benefits under Idaho Worker's Compensation Law. However, the fact are what they are"

"This is not a close case. Claimant's wholly personal, extreme deviation, measured in both distance and purpose, shows the September 16 accident did not arise from nor in the cour of employment."

What I found interesting about this decision: Cocaine! and It wasn't Henmine.

Hendrix v. Kodiak and WCF National Insurance, IC. 2020-016090

Issue: Does the Industrial Commission have jurisdiction to award attorney fees for delays in payment from the surety after lump sums.

Short Answer: Yes.

Facts: The case was dismissed by Order on July 14, 2023. Check didn't show up until August 22, 2023. The Claimants requested a payment of interest for the gap in time.

Decision: "Whenever a decision shall have been entered by he commission awarding compensation of any kind to a claimant, such award shall accrue and the employer shall be liable for, and shall pay, interest thereon from the date of such decision pursuant to the rates established and existing as the of the date of such decision, pursuant to section 28-22-204(2), Idaho Code. Such interest shall accrue on all compensation then due and payable and on all compensation successively becoming due thereafter, from the respective due dat4es, regardless of whether an appeal shall be taken from the decision of he commission, until the time of payment."

"As we noted in Norris, the Commission has "no discretion under Section 72-734 Idaho Code with respect to whether or not an award of interest may be made, because the statute specifically provides that inter4es4t shall accrue from the date of the Commission's decision and award. Therefore, delays which may been occasioned by mailing and approved award or by mailing the payment check or by administrative delays encountered by the surety do not serve to mitigate the surety's liability under Sec. 72-734". 1986 Icc 0456, 84-483242.

Defendant's Motion for Reconsideration:

First, Lumps are not "Consideration" the statute says "of any kind. Lump Sums are contracts so the Commission.

Second, A lump sum "constitutes an adjudication and carries the same legal weight as a settlement approved by the Commission under the provisions of the prior statute."

Third, Lump Sums are not incorporated in 72-734 because it incorporates 28-22-204(2). Lump sums are adjudicated therefore the commission has authority.

Fourth, UCC applies and it's rules for getting checks. Idaho Worker's Compensation Act if the governing law.

What I found Interesting about this decision. Easy money.

Robert Nelson v. State of Idaho, Industrial Special Indemnity Fund, Docket No. 50485-2023, August 6, 2024

Issue: When do the rules of evidence apply in worker's compensation claims?

Short Answer: It's about to the Commission.

Facts: ISIF Claim. Claimant lost at the Commission level. Commission had placed a lot of weight on the fact the Claimant had a misdemeanor conviction for worker's compensation claim. Claimant had a work comp claim back in 1996. He had a shoulder injury and was told not to lift 10 pounds overhead. The treating physician saw the claimant at the horse track and saw the claimant at the horse track cheering on a horse with his arms above his head. He turned the worker into the state. He was charged with a felony but plead down to a misdemeanor and repay the $2,200 in fines. Claimant plead guilty and paid back the fines. Claimant argued that the Commission shouldn't have been included in their evaluation because according Rules of Evidence 609 it wasn't a felony within the last ten years. Claimant argued that including the conviction caused a domino effect and the commission viewed the case in way to find a lot of inaccurate factual determinations .

Factual Issues:

1) The FCE:

The Commission's finding regarding Nelson's effort on the FCE is not supported by substantial and competent evidence.

"so the Commission's suggestion that he gave minimal effort is clearly erroneous."

2) The Commission's findings that Nelson testified inconsistently regarding his preexisting injures are not supported by substantial and competent evidence.

"Because we concluded that Nelson's testimony, though not identical, was consistent between his two depositions and his hearing testimony, the Commission's finding that Nelson testified inconsistently regarding his prior injuries is not supported by substantial and competent evidence."

3) The Commission's finding that Nelson testified inconsistently regarding the arthritic condition in his back is not supported by substantial and competent evidence.

"Contrary to the Commission's finding, Nelson answered each of the questions he was asked and did not "waffle" in his responses. Instead, he answered that he had not been informed of an arthritic condition in his back until the hearing. Therefore, we hold that the Commission's finding that Nelson testified inconsistently on his arthritic back condition is not supported by substantial and competent evidence.

4) The Commission's finding that Nelson was not credible in his testimony concerning his prior management experience is supported by substantial and competent evidence.

"Therefore, we conclude that the Commission's finding that Nelson provided inconsistent testimony regarding his management experience is supported by substantial and competent evidence" .

5) The Commission's finding that Nelson was not credible in his testimony concerning his return to work after the March 2018 injury is sported by substantial and competent evidence.

"The Commission found that Nelson did not return to work after he became medically stable. That finding by the Commission is supported by substantial and competent evidence because there is not evidence in the record that Nelson returned to work after Dr. Chong declared him medically stable in August 2018 or after Dr. Blair declared him medically stable in January 2019."

6) The Commission did not err in considering Nelson's conviction for misdemeanor insurance fraud in determining his credibility.

Nelson's reliance on Idaho Rule of Evidence 609 is unpersuasive. "Strict adherence to the rules of evidence is not required in industrial Commission proceeding and admission of evidence is more relaxed." "Critically, however, Nelson's conviction for insurance fraud was not the only remaining evidence supporting the Commission's finding that nelson was not credible.

7: The Commission did not err in finding that Nelson was not totally and permanently disabled.

This finding was predicated on more than just credibility. There was substantial and competent evidence, we find no error in the Commission's evaluation of the evidence concerning total and permanent disability.

Why this interesting: cause I lost. I could and have whined about this decision to anyone that will listen.

Hickman v. Boomers, Docket No. 50543-2023, August 14, 2024

Issue: Exclusive Remedy, statute retro activity, Gomez, co-employees, reconsideration, new evidence on reconsideration, potential Maravilla issues, other subrogation issues,

Facts: Samuel Hickman was an employee for King Builders, LLC. They were framing and it was the day to set the trusses. The trusses had been delivered under a power line. Johnson was an employee at Boomers, LLC. He was licensed to operate a boom truck. By the time Johnson arrived on site, employees of King Builders had moved all but one of the trusses out from under the power lines by hand. The last truss was too heavy to move. Johnson decided to move the truss with the boom truck even though the truss was under the power line. Johnson was moving the truck and Hickman's job was to hook the cable from the boom to the truss. While Hickman was holding the cable, the boom crane either contacted the overhead power lines or came close enough that electricity arced from the power linens to the book=m crane and then to the metal cable, electrocuting Hickman. Hickman sustained severe injurie and received worker's compensation benefits."

Boomers filed a summary judgement and won. Hickman filed a motion for reconsideration with new evidence. Boomers won. Hickman appealed.

On appeal

What version of 72-209(3) applies:

"We recognize that, at different point, we have articulated the consciously disregarded standard differently. We first articulated the standard as whether one "actually knew or consciously disregarded knowledge that employee injury would result from the employer's action." Marek, 161 Idaho at 217, 384 P.3d at 981 (emphasis added). In Gomez, we described the standard in two different ways. We first described the standard as "consciously disregarding knowledge than an injury would result." 166 Idaho at 256, 457 P.3d at 908 (emphasis added). We later described the standard as when "the employer consciously disregarded the risk of injury. "Id. Att 258, 457 P.3d at 910 (emphasis added). And later still, we described it as when the employer "consciously disregarded knowledge than injury would occur to its employee." Gomez, 166 Idaho at 259, 457 P.3d at 911 (emphasis added).

"We now take this opportunity to reconcile these slight difference inn language. We hold that the best articulation of the "consciously disregarded" standard is the one first used in our decision in Gomez; unproved physical aggression is established by evidence indicating an employer, its officers, agents, servants, or employees" consciously disregard (ed) knowledge than an injury would result." See id. At 256, 457 P.3d at 908. The conscious disregard standard is implicated when there is knowledge of an "obvious and grave risk," "grave danger," "serious risk", or hazardous situation." Id. At 260, 457 P.3d at 912; Marek, 161 Idaho at 217, 384 P.3d at 981; Fulfer, 171 Idaho at 298, 520 P.3d at 710."

New evidence on reconsideration is up to the discretion of the judge and the judge did not abuse his discretion.

The new evidence created an issue of material fact:

1) All parties were involved were aware of the dangers the power lines presented to the workers on site and that the moving too close to the power lines could result in serious injury or death;
2) Johnson refused King's request to help drag the truss out from the power lines by hand;
3) Johnson did not hold a safety meeting with worker on site prior to operating the boom crane;
4) Johnson did not develop a plane with king, Hickmann, and other employees on site for moving the truss with the boom crane;
5) Johnson disregarded multiple NCCCO safety standards, including not checking the voltage of the power line, using a recommended safety equipment like a flagged line or using a device to limit the range of the boom crane, and failed stay the appropriate distance away from the power lines;
6) Johnson never asked King or anyone else to be his spotter.

"This evidence establishes a genuine issue of material fact concerning whether Johnson consciously disregarded a known risk that the power lines presented a serious risk of injury or death to others on site, including Hickman."

Does this open the door more or close the door on exclusive remedy cases?

If you pay an expert do you create a genuine issue of material fact?

If Hickman recovers does he owe subrogation? Does Maravilla apply? To statutory Co-employees? Employer?