BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

JAMES WINDREM, Claimant, v. CITY OF SPIRIT LAKE, Employer, and STATE INSURANCE FUND, Surety, Defendants.	**PO 2024-000999** **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** **FILED NOVEMBER 3, 2026** **INDUSTRIAL COMMISSION**

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Industrial Commission assigned the above-entitled matter to Referee Sonnet Robinson. A hearing was conducted in Coeur D'Alene on March 26, 2026. The parties presented oral and documentary evidence. Brad Eidam represented Claimant. Susan Weeks represented Defendant/Employer. The case came under advisement on July 8, 2026, and is now ready for decision.

ISSUES

The issues to be decided and clarified at hearing are:

1. Whether Employer is responsible for payment of Claimant's salary pursuant to Idaho Code § 72-1101, et seq., during the period of his temporary disability;

2. Whether Employer is responsible for making contributions to Claimant's PERSI retirement during the period that such continuation of salary is paid; and,

3. Whether Employer has unreasonably denied this claim for continuation of

Claimant's salary and is responsible for attorney's fees per Idaho Code § 72-804.

CONTENTIONS OF THE PARTIES

Claimant contends he did not resign on December 17, 2023, and the testimony and evidence offered by Defendants lacks credibility. In the alternative, even if Claimant did resign, he is entitled to his full base salary and PERSI contributions.

Defendants contend the plain language and prior case law support that entitlement to Claimant's salary is dependent on his continued employment, and he quit. There is evidence that Employer thought Claimant resigned, and it is more persuasive. Lastly, the Commission does not have jurisdiction to mandate the city continue contributing to Claimant's PERSI benefits and attorney's fees are not appropriate.

Claimant responds that the contemporaneous evidence supports that he did not resign, including the text messages and administrative actions taken by Employer. In the alternative, Claimant is entitled to his full base salary even if he quit under the plain language of the statute and *Sloan v. Payette County*, IC 2011-025673 (January 31, 2014) was wrongly decided.

EVIDENCE CONSIDERED

The record in the instant case included the following:

1. The Industrial Commission legal file;
2. Claimant's Exhibits (CE) A, B, C, E, F, G, J, M, O, P;
3. Defendants' Exhibits (DE) 1-20;
4. The testimony of Claimant, James Windrem, and the testimony of Michelle Wharton, Fred Groover, Eric Reade, and Michael Morlan taken at hearing;
5. The pre-hearing deposition testimony of Kevin Ward, taken March 18, 2026.

All outstanding objections are OVERRULED.

After having considered the above evidence and the arguments of the parties, the Referee submits the following findings of fact and conclusions of law for review by the Commission.

FINDINGS OF FACT

1. Claimant was employed by Spirit Lake Police from February 2021 to September 2022, when he resigned. HT 26:10-13.

2. Claimant resumed employment with Spirit Lake Police on August 28, 2023. CE B:2.

3. All five Spirit Lake Police members who testified, Claimant, former officer Kevin Ward, former training coordinator Al Groover, police chief Mike Morlan, and former lieutenant Eric Reade agreed there were recent difficulties with the Spirit Lake Police Department. In particular, the Department had only one employee, Kevin Ward, in the summer of 2023. That summer the Department hired Mike Morlan as chief, Eric Reade as lieutenant, and Claimant and Mr. Groover shortly thereafter. In addition to being short-staffed, there was a possibility of Spirit Lake choosing to subcontract their law enforcement to the county sheriff's office, effectively doing away with the Department. The Sheriff's office had recently removed cross-deputization, allegedly as retaliation over the City's decision not to subcontract with the Sheriff's office for law enforcement services. HT 227:13-228:10. There was also tension and difficulty around leadership, conflicting directives, and training protocols.

4. On November 1, 2023, Claimant and Mike Morlan, the chief of police, responded to a suicide threat call. HT 28:21-29:2. Claimant and Chief Morlan broke down the door to make contact with the suicidal subject, who subsequently open fired on the officers; they returned fire and Claimant killed the subject. *Id.* at 29:13-24. Claimant was subsequently diagnosed with PTSD and taken completely off work until December 10, 2023. CE J:102-103.

5. Claimant resumed his regular duties on December 11, 2023. HT 39:3-4.

6. On December 17, 2023, Claimant, Kevin Ward, and Al Groover had a training meeting, which was called by Mr. Groover, the department's then training coordinator, to discuss procedures prior to new hires starting at the department. HT 41:17-23; Ward Depo. 9:13-18. The meeting was heated and tense per all three attendees' testimony, though when and why the tension started is disputed. See Ward Depo. and HT, generally. Claimant was in a hurry to conclude the meeting because his wife was going out of town and he wanted to spend time with her before she left. HT 45:3-17; 44:5-6.

7. What occurred at the conclusion of the meeting is disputed and the subject of this litigation. Claimant testified:

> A: So I said -- I said, guys, listen. We're running short on time. And I said, I really need to get home. My wife's leaving soon. I said, but there's three points on here that I'd like to try to address. If we can just get to some of the stuff about the note taking and some of the things here about the documentation and the daily observation reports, I think we can move forward and work on some of this other stuff next time. And that's when he exploded at me.
>
> …
>
> And he screamed at me, you're going to be the reason this department gets shut down. And I was shocked. I mean, his face was red. He was -
>
> Q: What was the tone of his voice?
>
> A: He was shouting. He was screaming. And I backed away from him in my chair -- because I'm a police officer. I've had people throw punches at me before. I know what it looks like. And I said to him, what the hell are you talking about? And he said, you're going to be the reason this place gets shut down. And in my mind I was thinking he was referring to the shooting. Like he's like something I did during the shooting. Maybe my shooting was going to come back as a bad -- a bad shoot or I violated some policy or something. And so my response to him was, if that's what you think, you don't have to worry about it. I quit. You know, like I was -- and I did it with my hands in the air like this. Like, what are you talking about? My intention was to say if you think that my behavior is going to shut this place down, I'll leave. I don't want my colleagues losing their jobs.

Q: Did you say that you quit or you would quit?

A: I said, I'd quit.

Q: You what?

A: I'd. I-D. I apostrophe D.

Q: Apostrophe. Okay.

A: I said, you don't have to worry about that. I'd quit.

HT 47:19-49:15.

8. Al Groover testified:

> I told them -- this wasn't the first time I had mentioned this. I said, we're going to mess around and lose this department, because if we can't get a firm footing and work together on this and work with the city council and mayor's office, the sheriff's department could end up taking over.
>
> …
>
> Q: And you've got in quotes that he said, "What did you say?"
>
> A: Yeah, he yelled at me, "What did you say?" And I said, you're going to lose the department or we could lose the department.
>
> Q: And did you, again, explain why you had made that statement?
>
> A: Not at that time, no.
>
> Q: And then what was his response to that?
>
> A: He says that we don't have to worry about that because I quit.

HT 163:24-164:25.

9. Kevin Ward testified: "[Mr. Groover] - - man, he really lost his marbles on that and he got really heated and he started yelling at us and he said "you're going to lose this department." Jim stood up and said "I would quit before that would happen."" Ward Depo. 12:5-10.

10. Claimant explained why he said that as follows:

Q. How would your quitting assist in the sheriff's department not successfully talking council into contracting with them for the service and discontinuing the police department?

A. A lot of the fretting that was going on in the Spirit Lake department management was about the sheriff's office kind of just being this onerous presence over the department. And I thought if my -- my thought was, if for some reason I'm found -- I didn't think I had any issue from a criminal standpoint with my shooting. That shooting met the Graham versus Connor criteria. But from an administrative standpoint, if it was found that I had violated policies or something along those lines, in the moment, listening to the way Groover was yelling at me like that, that's what I thought he was assailing me for. Like if this shooting does not come back clean, the sheriff's office is going to use this to put a lever on us.

Q. Isn't it true that day nothing was said about the shooting in this training meeting?

A. No, it was not. I made the assumption, when he said, you're going to be the reason this place gets shut down. That was my assumption, was he referring to my shooting.

HT 119:17-120:15.

11. Claimant testified he called the Chief after this meeting and said "I'm done with this…there are too many egos and too many personalities here… If you don't get this figured out, I'm not staying here… I will give you six months [to train new officers] but I'm not staying here past six months if this stuff doesn't get fixed." HT 51:21-52:16. Chief Morlan recalled the conversation as follows: "I fucking quit. I've had it with these "A" personalities… I'll give you 60 days to find a replacement if you like." HT 239:6-17.

12. Mr. Reade testified Al Groover called him and told him that the meeting had gone poorly and Claimant had quit. HT 188:8-24. Mr. Reade testified Claimant called him and relayed the same. HT 189:16-21. Mr. Reade and Chief Morlan both testified they talked on the phone that night about Claimant quitting.

13. Claimant called his provider the next morning and was taken off work again for his PTSD. HT 59:10-60:11.

14. Discussions began between Chief Morlan and Eric Reade about rehiring Claimant. HT 196:9-20. Per Mr. Reade, the discussion outlined requirements for Claimant to be rehired as follows:

> One, we were going to extend his probation because he had been off for almost 2 1/2, 3 months, … And, secondly, he was going to have to go through a fitness for -- fitness for duty requirement, which was going to then verify if he was even -- he was medically able to do that because of the fact we had known, by his own conversations and exposing his own medical conditions, which he was very vocal about doing multiple times, is that he had high blood pressure concerns. He didn't work for -- he worked for Shoshone County but he left them because of sleep study issues. Couldn't work night watch. There was a litany of things that he had brought to my attention. Not to mention he was telling me this whole time he was unable to get his blood pressure under control.
>
> Q: So let's turn to when you first learned he wanted to be rehired. Do you know the date?
>
> A: I don't know. I didn't have conversation with him directly, so I don't know the date.
>
> Q: Who had the conversation with him?
>
> A: I would -- well, you're asking me to speculate. I would presume –
>
> Q: Well, do you know?
>
> A: I don't know.
>
> Q: Okay.
>
> A: I would presume it would be the chief.

HT 195:11-196:20. (emphasis supplied). Mr. Reade never informed Claimant of any of these requirements to be rehired "because we're the leadership. And so we have very, very detailed conversations about how the organization is going to run, and it's not - - when it's time for an employee to know we'll let them know. If it's not for them to know, they'll never know." HT 201:1-5. However, Mr. Reade affirmed that at no time after December 17 did he want Claimant to be reinstated. HT 219:25-220:3.

15. Chief Morlan testified that he never discussed with Claimant returning to work after December 17, that all those conversations would have been through Mr. Reade. HT 247:1-23.

16. On December 20, 2023, Eric Reade texted Claimant: "Can you give me a call when you get a chance. It's about coming to work tomorrow." CE P:1. Mr. Reade could not recall the phone conversation that occurred. HT 220:12-14. Claimant and Reade texted about other concerns before Claimant suggested helping sight new agency rifles, which Reade declined since each officer needed to sight them for themselves since everyone's eyes were different. CE P:3.

17. On December 31, 2023, Eric Reade texted again in relevant part: "wanted to see if you had an update when you were coming back to work." CE P:7. When Claimant updated him, Reade replied "OK just keep us informed so we know how to deploy for the rest of the week." *Id.* Claimant said he was good to start the next day. *Id.* Mr. Reade then texted "Ok, I will talk with the chief about it. I believe we are doing tues-sat now to ensure we have more coverage. Chief and I will cover Mondays. I will let you know for sure though." *Id.* at 8. Mr. Reade followed-up with "I spoke with the Chief and you come in on Tuesday starting at 4pm to midnight…" *Id.*

18. Mr. Reade testified these texts were about rehiring Claimant and his required medical documentation that he was good to return to work, as explained above in paragraph 14.

19. However, the next morning Claimant had the "worst panic attack I've ever had in my life" and was taken off work again by his provider; Claimant has not been cleared to work since that date. HT 71:25-72:2; 77:7-12; See CE J.

20. That same day Claimant texted Eric Reade:

> I had an appointment with my provider today. It's her opinion I may not be fit to return to duty tomorrow. She is going to begin preparing worker's comp documentation and her recommendations for treatment going forward. I know this is not the news anyone there wants to hear and it's very difficult for me to deliver it. I'm available to talk about this with you and Mike. My provider is willing to work with you both to move forward with a plan.

CE A:1.

21. Claimant filed his first report of injury which was received January 8, 2024. CE B. That same day, Ms. Wharton, the city treasurer, emailed Claimant confirming that the claim had been filed and that because of the claim "you will be on leave without pay status and not on administrative leave." DE 13:37.

22. Claimant was paid for 56 hours of work for the pay period beginning December 17 and ending December 30. DE 1:8-9. Defendants' exhibit one was prepared by Stephanie Orlando, an employee who did not testify. Chief Morlan testified that handwritten notations were in her handwriting and the notation that Claimant had given a verbal resignation was "because she and I had a conversation that he had quit." HT 246:6-12. There is no testimony or evidence of when this handwritten notation was added. Further, Chief Morlan confirmed that notation that Claimant had given notice of his verbal resignation was in a different colored pen than the other notations in that exhibit. *Id.* at 259:3-260:3.

23. On January 9, 2024, Claimant emailed Michelle Wharton to inform her about the Peace Officer and Detention Officer Program and that the City could be reimbursed 100% of his base salary. DE 16:44. However, Claimant's claim had not yet been accepted by the State Insurance Fund and Ms. Wharton reached out to the Industrial Commission's fiscal department to clarify what the City's obligation was and how reimbursement worked. HT 145:2-20; DE 16:42. On February 23, 2024, Ms. Wharton emailed April at the State Insurance Fund to inquire about reimbursement because Claimant had asked his payroll be resumed so he could receive his PERSI benefits; Mr. Wharton noted she was also going to reach out to PERSI. CE C:6. Ms. Wharton testified that she discussed Claimant's resignation, but there is no mention of his resignation in any contemporaneous emails. Ms. Wharton also testified she did not know who told her Claimant

resigned or when she found out he resigned. See HT. Ms. Wharton did not notify PERSI Claimant had allegedly resigned until June of 2025. HT 141:7-9.

24. On January 19, 2024, Claimant fetched some personal items from the Department and picked up his custom body armor to make sure it fit. On January 22, 2024, Claimant returned custom body armor to the department and spoke to Al Groover. HT 77:23-80:24. Claimant and the Chief then went out to eat together and discussed the shooting investigation. HT 82:20-83:8. Chief Morlan initially did not recall going out to eat, but then recalled they did go out to lunch and discussed the shooting investigation. *Id.* at 253:13-254:14.

25. Al Groover prepared a memo which is dated December 18, 2023. DE 9. Claimant and Mr. Ward mostly concurred with the memo's contents regarding the time, place, and purpose of the meeting and its progression towards a tense and hostile conclusion. At the end of the memo, Mr. Groover wrote: "Since the meeting I spoke to Officer Windrem once when he returned to the police station to turn in equipment pending his workers compensation leave of absence from the department. I have not spoken to officer Windrem since that time." Mr. Groover then testified as follows:

> A: That's the memorandum that I wrote referencing a meeting that was held with Officer Ward, Officer Windrem, and me.
>
> Q: And do you recall when you prepared this?
>
> A: It was approximately a day to two days after the meeting, I believe. I do not recall the exact dates. I may be off a little bit on that.
>
> …
>
> Q: There's a paragraph that references a later meeting. Did you supplement this memorandum at some point?
>
> A: No, I -- not to my recollection, no, I did not.
>
> …

Q: Did you prepare that within 24 hours of the meeting?

A: I do not recall the exact date that I -- but this is the date that the memorandum was started. I do not recall the exact date that I completed it.

HT 157:16-22; 158:7-11; 159:21-25. Mr. Groover testified that once he prepared the report, he submitted it to the Chief. *Id.* at 165:14-16. He also testified he prepared and signed it the same day, and that he prepared the memo at Chief Morlan's request, but he did not recall the date he turned it in. *Id.* at 169:20-170:3. He did agree it was at least past January 22, the date Claimant turned in his equipment. *Id.* at 172:17-19.

26. Chief Morlan recalled Groover's memo was completed a few days after December 17, approximately December 20, and that he had the memo in Claimant's file ever since. HT 261:5-18. Chief Morlan testified the file has been locked in his drawer since approximately December 20, 2023. *Id.* at 261:7-24.

27. Kevin Ward testified he overheard Chief Morlan and Eric Reade discussing Claimant, with Chief Morlan commenting that they needed to find a way to get him off the books so they could hire someone else around early January. Ward Depo. 14:17- 38:8-39:13.

28. Defendants' exhibit 20 is composed of three complaints against Kevin Ward. On January 10, 2024, Mr. Ward was disciplined for complaining on January 3, 2024 about how the Department was not treating Claimant fairly and other negative comments about command staff. On March 4, 2024, a second complaint for insubordination was written for talking back to Eric Reade when attempting to change his schedule to attend his son's "sporting event." DE 20:50. The third complaint is a citizen's complaint by the Mayor for Mr. Ward speaking badly of elected officials at a church event. DE 20:51. Mr. Ward was terminated by the Department sometime around April 2024. Ward Depo. 16:4-12. After Mr. Ward was terminated, a copy of Mr. Groover's

memo was forwarded to Mr. Ward anonymously from a Spirit Lake employee. *Id.* at 17:22-19:3. He provided that copy to Claimant.

29. On March 1, 2024, Claimant was interviewed by Dianna Cartwright, a rehabilitation consultant with the Idaho Industrial Commission. CE G:10. Claimant reported he was still employed. *Id.* at 11. Claimant's vocational goal was to return to work with his employer. *Id.* at 12. On March 4, 2024, Ms. Cartwright met with Chief Morlan to conduct the job site evaluation (JSE), which he signed that day. *Id.* at 14, 16. Chief Morlan testified he recalled meeting "some female that was there" regarding whether a position would be available if Claimant was cleared to work, but testified he did not sign the JSE. HT 271:5-272:12.

30. On March 5, 2024, the City wrote a letter inquiring of the Industrial Commission's fiscal department whether Claimant/the City qualified for reimbursement in the circumstances of this case. DE 17:45. This is the first dated contemporaneous notation that Claimant had resigned. This is around the time Claimant testified he became aware the city was alleging he quit on December 17, 2023. HT 98:15-21.

31. On July 24, 2024, Chief Morlan wrote a memo. DE 18:47. Chief Morlan wrote that Claimant called him after the December 17, 2023 meeting and resigned; further, that Reade and Groover also told him Claimant had resigned. *Id.* Chief Morlan added that there was a follow-up conversation sometime in December wherein he told Claimant that would consider hiring him back if they all had a sit down and "I reminded him he had never been cleared by his health provider to come back, either." *Id.* When confronted with his earlier testimony that all those conversations would have been through Mr. Reade and he never discussed a return to work with Claimant, Chief Morlan said that conversation may have happened around Christmas. HT 274:16-24.

32. On July 25, 2024, Eric Reade wrote a memo. DE 19:48. Mr. Reade relayed

Claimant and Al Groover had both called him on December 17, 2023 and relayed Claimant had quit. *Id.* Mr. Reade then wrote:

> Since that day [Claimant] texted me as if he had never resigned and asked if we could take the new rival optics and go site them in on the department issued rifles. I advised [Claimant] "no." Shortly after December 17th [Claimant] attempted to come back to work but you, Al, and I said we would have to seriously consider him returning to the workplace due to his continuous insubordination towards the command staff. At no time did I want [Claimant] to be reinstated and believed his resignation was final.

DE 19:48.

DISCUSSION

33. 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 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). Uncontradicted testimony of a credible witness must be accepted as true, unless that testimony is inherently improbable, or rendered so by facts and circumstances, or is impeached. *Pierstorff v. Gray's Auto Shop*, 58 Idaho 438, 447−48, 74 P.2d 171, 175 (1937).

34. Idaho Code § 72-1104 provides:

> (1) Any peace officer or detention officer employed by the state of Idaho or any city or county thereof who is injured in the performance of his or her duties:
> (a) When responding to an emergency; or
> (b) When in the pursuit of an actual or suspected violator of the law; or
> (c) When the injury is caused by the actions of another person, and by reason thereof is temporarily incapacitated from performing his or her duties and qualifies for worker's compensation wage loss benefits under title 72, Idaho Code, shall be paid his or her full rate of base salary, as fixed by the state or by applicable ordinance or resolution, until the temporary disability arising from such injury has ceased.

35. The parties agree Claimant was a qualifying employee who was injured in a qualifying event.

36. **Credibility.** The outcome of this case hinges on whether Claimant quit on December 17, 2023. Therefore, whose version of events is the most credible must be addressed first.[1]

37. The Commission's findings on credibility are bifurcated into two categories, "observational credibility" and "substantive credibility." As stated in *Painter v. Potlatch Corp.*, 138 Idaho 309, 63 P.3d 435 (2003):

> Observational credibility goes to the demeanor of the appellant on the witness stand and it requires that the Commission actually be present for the hearing in order to judge it. Substantive credibility, on the other hand, may be judged on the grounds of numerous inaccuracies or conflicting facts and does not require the presence of the Commission at the hearing.

This unusual case hinges on credibility and contemporaneous documentation vs. after the fact explanations, two years later at hearing. The great weight of the evidence favors Claimant's and Mr. Ward's version of events, despite the testimony of Mr. Groover, Mr. Reade, and Chief Morlan, as explained below. Both in terms of observational and substantiative credibility, Claimant's version of events is more credible.

38. *The Texts*. The texts from Mr. Reade to Claimant do not demonstrate that Claimant

[1] A point of clarity regarding Defendants' arguments. In line with plain language and *Sloan v. Payette County*, IC 2011-025673 (January 31, 2014), if Claimant was no longer an employee, he would not receive his base salary but would still receive temporary disability benefits while in his period of recovery. Severing the employment relationship does not relieve employers of their burden to provide wage replacement due to a work-related incapacity. An employer is relieved of their responsibility to pay temporary disability when the claimant's period of recovery ends or the claimant is released to some work while in a period of recovery and fails to search for or accept reasonable employment. See Idaho Code § 72-403, 72-408.

quit. Mr. Reade repeatedly asked when Claimant was coming back to work, with no indication that Claimant had quit: "can you give me call … it's about coming to work tomorrow; wanted to see if you had an update when you were coming back to work…" and several other texts coordinating shift scheduling. See ‖ 16, 17.[2] One text read: "I spoke with the Chief and you come in on Tuesday." CE P:8.

39. Mr. Reade's explanation for these texts does not make sense when compared to the texts themselves. Mr. Reade testified that these texts were because he and Chief Morlan were discussing the potential that Claimant would be rehired. However, Mr. Reade never shared with Claimant that they were planning to rehire Claimant if he completed certain tasks. Mr. Reade did not know who had talked to Claimant about being rehired. Moreover, Claimant had clearly not completed those tasks which were allegedly required before he could be rehired, so why would he be allowed to return that Tuesday per Mr. Reade's own explanation.

40. On the other hand, Claimant's explanation and the texts themselves support Claimant's version of events: that he was off work and keeping his employer updated on when he might be released to return to duty and how to schedule him when he came back. There is simply no support for the proposition that Claimant quit within the four corners of these texts.

41. *The Memo.* Al Groover's testimony regarding the December 18th memo's preparation was difficult to parse. He testified he prepared it within a couple days; that he prepared it and signed it the same day; that he prepared it and later turned it after January 22.

42. Chief Morlan's testimony further calls into question the origin and preparation of the December 18th memo. Chief Morlan recalled that it was prepared by Mr. Groover within a few

[2] The texts provided by Defendants are conspicuously shorter when compared to Claimant's exhibit of the same text exchanges. Notably missing from Mr. Reade's screenshots are any texts which support Claimant's version of events. Compare DE 5 and CE P.

days of the meeting and that he kept the memo locked in his desk since that date. How Mr. Groover would add in the January 22, 2024 meeting to a memo locked within Chief Morlan's desk is unexplained by the testimony at hearing.

43. *The Return-to-Work Requirements.* Mr. Reade and Chief Morlan testified that they discussed certain requirements for Claimant to return to work after he allegedly quit on December 17. The exact parameters differed between Mr. Reade's and Chief Morlan's description, but essentially Claimant would have to be medically cleared, undergo a fitness exam, and have a sit-down discussion with leadership before he would be rehired. Several inconsistencies arose in this testimony. First, Chief Morlan and Mr. Reade both testified that the other one had discussed the requirements to be rehired with Claimant. Chief Morlan was reminded that his memo stated he had discussed it with Claimant and he testified the conversation may have happened around Christmas, contradicting his previously clear testimony that Mr. Reade had discussed the return to work with Claimant. Second, Mr. Reade testified and wrote that at no time did he want Claimant to be rehired, so why the discussion was even happening at all about rehiring Claimant is unexplained; especially in light of the third return to work requirement that they all have a sit down (meaning Reade, Morlan, Groover, and Claimant) and all agree he should return. Presumably, based on all his testimony, Mr. Reade would not agree to have him return. Thirdly, as noted above, the text exchanges do not support this version of events and no documentation supports this version of events until July of 2024.

44. *All Other Contemporaneous Evidence.* Ms. Wharton's emails do not mention that Claimant has quit in contexts where it would be relevant, i.e., emailing Claimant that he would be leave without pay status vs. that he quit.

45. The notation that Claimant gave his verbal resignation on December 17 was made

at a different time than the rest of the notations. Chief Morlan testified that Ms. Orlando wrote that note at his direction.

46. Claimant was allowed to pick up his custom body armor while allegedly fired, meaning he still had access to the department *and* believed he would be returning to wear the armor.

47. On March 1, 2024, Claimant told the ICRD consultant that he was still employed and wanted to return to work with his Employer.

48. Claimant has shown on a more probable than not basis that he was and still is an employee of the Spirit Lake Police Department and that he did not quit employment on December 17, 2023. Claimant is entitled to benefits under Idaho Code § 72-1101, et seq.

49. **PERSI Contributions**. Claimant requests the Commission order Defendants to continue contributing to his PERSI retirement accounts. Defendants argue that PERSI benefits are not the jurisdiction of the Commission and Claimant must pursue his entitlement to PERSI contributions in another forum.

50. Idaho Code § 72-1104(1)(c) provides that Claimant will be entitled to his "full rate of base salary as fixed by the state or by applicable ordinance or resolution" and is silent with regard to any other benefits an employer under that section may be providing. The Commission does not have jurisdiction outside of workers' compensation and Claimant's PERSI benefits are not workers compensation benefits, therefore, Defendants are correct and Claimant must pursue his PERSI contributions in another forum.

51. **Attorney's Fees.** Attorney fees are not granted as a matter of right under the Idaho Workers Compensation Law, but may be recovered only under the circumstances set forth in Idaho Code § 72-804 which provides:

> 72-804. ATTORNEY'S FEES — PUNITIVE COSTS IN CERTAIN CASES. If the commission or any court before whom any proceedings are brought under this law determines that the employer or his surety contested a claim for compensation made by an injured employee or dependent of a deceased employee without reasonable ground, or that an employer or his surety neglected or refused within a reasonable time after receipt of a written claim for compensation to pay to the injured employee or his dependents the compensation provided by law, or without reasonable grounds discontinued payment of compensation as provided by law justly due and owing to the employee or his dependents, the employer shall pay reasonable attorney fees in addition to the compensation provided by this law. In all such cases the fees of attorneys employed by injured employees or their dependents shall be fixed by the commission.

The decision that grounds exist for awarding attorney fees is a factual determination which rests with the Commission. *Troutner v. Traffic Control Company*, 97 Idaho 525, 528, 547 P.2d 1130, 1133(1976). It is axiomatic that a surety has a duty to investigate a claim in order to make a well-founded decision regarding accepting or denying the same. *Akers v. Circle A Construction, Inc.*, IIC 1998-007887 (Issued May 26, 1999). Defendants' grounds for denying a claim must be reasonable both at the time of the denial and in hindsight. *Bostock v. GBR Restaurants*, IIC 2018-008125 (Issued November 9, 2020).

52. This is a difficult case for attorney's fees. In the normal workers' compensation case, it is usually the adjustor's failure to act or unreasonable actions which form the basis for attorney fee awards. Here, the City failed to accept the responsibility to pay Claimant his full base salary based on the reliance of then-current employees alleging Claimant had quit. The City had no reason to believe Claimant over Reade/Morlan/Groover that Claimant did not resign. If a surety had three witness statements that an accident did not happen and a claimant insisting it did happen, the surety would not be unreasonable in denying the claim by relying on those witness statements. This is similar. The City conducted a reasonable investigation and relied on three witnesses and even wrote the Industrial Commission to gain clarity on what their responsibilities were with regard to this claim. See DE 17.

53. Further, the most compelling evidence that Claimant did not quit was not available to Defendants (the City) until past the Rule 10 deadline for hearing in this case, namely the complete text exchange between Reade and Claimant, admitted as Claimant's Exhibit P. The contradictory testimony regarding the memo and the return-to-work requirements between the three witnesses only became obvious at hearing. The red flags were not apparent at the time of the investigation, or in hindsight, but were revealed at hearing.

54. Claimant has not proven he is entitled to attorney's fees.

CONCLUSIONS

1. Claimant is entitled to his full base salary during the period of his temporary disability pursuant to Idaho Code § 72-1101, et seq;

2. Claimant is ordered to remit his workers' compensation benefits to his Employer per Idaho Code § 72-1104(2);

3. The Commission does not have jurisdiction to decide whether Employer is responsible for making contributions to Claimant's PERSI retirement account;

4. Claimant is not entitled to attorney fees.

RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law, the Referee recommends that the Commission adopt such findings and conclusions as its own and issue an appropriate final order.

DATED this 25th day of August, 2026.

INDUSTRIAL COMMISSION

Sonnet Robinson

Sonnet Robinson, Referee

CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of November, 2026, a true and correct copy of the foregoing **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** was served by regular United States Mail and *E-mail transmission* upon each of the following:

BRAD EIDAM
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ge Gina Espinosa

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

JAMES WINDREM, Claimant, v. CITY OF SPIRIT LAKE, Employer, and STATE INSURANCE FUND, Surety, Defendants	**PO 2024-000999** **ORDER** **FILED NOVEMBER 3, 2026** **INDUSTRIAL COMMISSION**

Pursuant to Idaho Code § 72-717, Referee Sonnet Robinson submitted the record in the above-entitled matter, together with her recommended findings of fact and conclusions of law, to the members of the Idaho Industrial Commission for their review. Each of the undersigned Commissioners has reviewed the record and the recommendation of the Referee. The Commission concurs with these recommendations. Therefore, the Commission approves, confirms, and adopts the Referee's proposed findings of fact and conclusions of law as its own.

Based upon the foregoing reasons, IT IS HEREBY ORDERED that:

1. Claimant is entitled to his full base salary during the period of his temporary disability pursuant to Idaho Code § 72-1101, et seq;

2. Claimant is ordered to remit his workers' compensation benefits to his Employer per Idaho Code § 72-1104(2);

3. The Commission does not have jurisdiction to decide whether Employer is responsible for making contributions to Claimant's PERSI retirement account;

4. Claimant is not entitled to attorney fees.

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

DATED this __3rd____ day of __November__, 2026.

INDUSTRIAL COMMISSION

Claire Sharp

Claire Sharp, Chair

Aaron White, Commissioner

George Gutierrez, Commissioner

ATTEST: Mary McMenomey

Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of November, 2026, a true and correct copy of the foregoing **ORDER** was served by *E-mail transmission* and by regular United States Mail upon each of the following:

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