BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

EARL A. KESSLER, Claimant, v. PAYETTE COUNTY, Employer, and IDAHO STATE INSURANCE FUND, Surety, Defendants.	**IC 2019-016490** **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER** FILED APR 07 2021 INDUSTRIAL COMMISSION

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee John C. Hummel. Anthony C. Anegon represented Claimant, Earl A. Kessler. Bentley G. Stromberg represented Employer, Payette County, and Surety, Idaho State Insurance Fund. The parties submitted a Stipulation of Facts in lieu of a hearing and thereafter submitted briefs. The matter came under advisement on February 10, 2021.

ISSUE

The sole issue to be decided by the Commission is whether Claimant was an employee of Payette County at the time of his injuries of December 22, 2018, such that he is entitled to the protections of the worker's compensation laws of the State.

CONTENTIONS OF THE PARTIES

Claimant contends that he was in covered employment for purposes of coverage of the

Idaho Worker's Compensation Act when he was injured while performing services as an Inmate Worker for Employer.

Defendants deny that Claimant was in covered employment when the injury occurred.

EVIDENCE CONSIDERED

The record in this matter consists of the Stipulation of Facts submitted by the parties on July 23, 2020. The Commission will not consider Exhibit A to Claimant's Opening Brief; the parties stipulated to the facts to be considered by the Commission, and the case will be decided on those facts only. The stipulation provides:

> 1. Between August 2, 2018 and January 23, 2019, [Claimant] was incarcerated in the Payette County Jail, in Payette, Idaho. During that time, Payette County was insured for its obligations under the Idaho Workers' [sic] Compensation Act by the Idaho State Insurance Fund.
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> 2. Inmates at the Payette County Jail are charged a $25.00 per day incarceration fee, up to a cap of $500.00 per incarceration.
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> 3. Payette County Jail inmates are allowed to, but are not required to, apply to be Inmate Workers. Inmate Workers assist in the day to day operations of the Jail such as assisting with kitchen duties, cleaning, laundry and facility upkeep.
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> 4. Inmates who are accepted as Inmate Workers are credited $25.00 per day against their $500.00 maximum incarceration fee for each calendar day they perform work as an Inmate Worker. Inmate Workers are not paid monetary consideration in the form of cash, checks, credit to their commissary account or otherwise.
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> 5. Inmate Workers are also granted privileges, such as more free time outside of the housing unit, limited access to the kitchen facility, and access to additional workout equipment.
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> 6. Between December 13, 2018 and December 22, 2018, Claimant worked three to five hours per day as an Inmate Worker at the Payette County Jail performing laundry work.
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> 7. On December 22, 2018, Claimant's eyes, face and arms were exposed to laundry chemicals while performing laundry work as an Inmate Worker for the Payette County Jail.

8. Payette County Jail personnel conducted initial first aid measures and then contacted EMS personnel. Claimant was subsequently transported to St. Luke's Clinic in Fruitland, Idaho, for emergency medical treatment. Claimant was then transferred to St. Luke's Meridian Medical Center for further medical treatment and monitoring.

9. Claimant's injuries were diagnosed as acid chemical burns to his arms and eyes.

10. On December 24, 2018, Claimant was discharged from St. Luke's Meridian to the custody of Payette County Jail.

11. At the time he was injured, Claimant was not in the custody of the Idaho Department of Corrections. At the time of his injury on December 22, 2018, Claimant was held on two pending matters: an unadjudicated charge in Payette County Case No. CR38-18-1781, and an unadjudicated allegation of a probation violation in Payette County Case No. CR15-514. It was not until 12 days after his injury that Claimant was sentenced on January 3, 2019 by District Judge Susan Weibe to the Idaho Department of Corrections in both cases.

12. On January 23, 2019, Claimant was transferred from the Payette County Jail to the custody of the Idaho Department of Corrections in Boise, Idaho.

13. June 1, 2019, Claimant filed the instant Workers' [sic] Compensation Complaint against Payette County with the Idaho Industrial Commission through which he is seeking workers compensation benefits related to the December 22, 2018 incident.

14. Defendants by and through their attorney of record filed an Answer to the Complaint on June 25, 2019, denying that Claimant is entitled to worker's compensation benefits related to the December 22, 2018 incident.

Stipulation of Facts pp. 1 - 4.

The Commission has reviewed the proposed Findings of Fact, Conclusions of Law and Recommendation authored by Referee Hummel. The Commission disagrees with Referee Hummel's conclusion that Claimant has failed to demonstrate the existence of an employer-employee relationship and therefore adopts its own Findings of Fact, Conclusions of Law and Order.

DISCUSSION AND FURTHER FINDINGS

1. The provisions of the Idaho Worker's 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 that it serves leave no room for narrow, technical construction. *Ogden v. Thompson*, 128 Idaho 87, 88, 910 P.2d 759, 760 (1996).

2. As noted, the issue in this case is whether, on the stipulated facts, Claimant has met his burden of proving that at the time of the accident giving rise to this claim, he was an employee of Payette County such that he is entitled to worker's compensation benefits for the injuries he suffered as the result of the subject chemical exposure.

3. Idaho law provides that inmates committed to the custody of the State Board of Correction must, during the term of their confinement, perform such labor under such rules and regulations as may be prescribed by the board. Idaho Code § 20-101. The board of correction is given authority to use the labor of inmates "within or without the walls of the penitentiary." Idaho Code § 20-245. Under Idaho Code § 20-412, inmates who perform work for Idaho state correctional industries are entitled to such compensation as may be determined by the board, but they are not considered employees of the state and are not entitled to worker's compensation. Similar provisions apply to inmates who perform work at the direction of the board of correction in jobs not associated with correctional industries. Idaho Code § 20-242A. A narrow exception to this general prohibition exists for inmates in the custody of the board of corrections who are "community service workers," as that term is defined at Idaho Code § 72-102(6). *See* Idaho Code § 72-205(7). As developed below, the parties generally concede that under *Crawford v. Department of Correction*, 133 Idaho 633, 991 P.2d 358 (1999), Claimant does not qualify as a community service worker, although further examination of that case is worthwhile in light of

amendments to Idaho Code §§ 72-102 and 20-245 that have been made since *Crawford* was decided. However, a more pertinent inquiry is whether the provisions of Idaho Code §§ 20-242A and 20-412 have any application to Claimant in the first place.

4. As Defendants have noted, the version of Idaho Code § 72-102 that was considered by the *Crawford* Court defined "community service worker" as follows:

> [A]ny person who has been convicted of a criminal offense, any juvenile who has been found to be within the purview of chapter 5, title 20, Idaho Code, and who has been informally diverted under the provisions of section 20-511, Idaho Code, or any person or youth who has been diverted from the criminal or juvenile justice system and who performs a public service for any department, institution, office, college, university, authority, division, board, bureau, commission, council, or other entity of the state, or any city, county, school district, irrigation district or other taxing district authorized to levy a tax or an assessment or any other political subdivision or any private not-for-profit agency which has elected worker's compensation insurance coverage for such person.

Crawford, 133 Idaho at 635 (citing Idaho Code § 72-102(5) [now codified as Idaho Code § 72-102(6)(a)]). As construed in *Crawford*, community service work is public service "ordered by a sentencing court, as distinguished from any public work otherwise performed by prisoners but which benefits the state." *Id.* at 637. Under this interpretation, the work performed by Claimant cannot qualify as community service work because its performance was not ordered by a sentencing court.

5. By the time of the accident giving rise to this claim, the definition of community service work had been amended to read as follows:

> (6) "Community service worker" means:
>
> (a) Any person who has been convicted of a criminal offense, any juvenile who has been found to be within the purview of chapter 5, title 20, Idaho Code, and who has been informally diverted under the provisions of section 20-511, Idaho Code, or any person or youth who has been diverted from the criminal or juvenile justice system and who performs a public service for any department, institution, office, college, university, authority, division, board, bureau, commission, council, or other entity of the state, or any city, county, school district, irrigation district or

> other taxing district authorized to levy a tax or an assessment or any other political subdivision or any private not-for-profit agency which has elected worker's compensation insurance coverage for such person; or
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> (b) Parolees under department of correction supervision, probationers under court order or department of correction supervision and offender residents of community work centers under the direction or order of the board of correction who are performing public service or community service work for any of the entities specified in paragraph (a) of this subsection other than the department of correction.

Idaho Code § 72-102(6). The expansion of community service work to include such work performed by "probationers under court order or department of correction supervision" seems to admit the possibility that Claimant might qualify as a community service worker, notwithstanding that the work he performed was not undertaken pursuant to court order; at the time of his arrest he may have been under department of correction supervision as an individual on probation.

6. However, we conclude that at the time of the accident giving rise to this claim Claimant was not a probationer, because on the day of his incarceration his status changed from probationer to inmate of the Payette County jail. Idaho Code § 18-101A defines probationer as follows:

> **18-101A. Definitions.** – As used in titles 18, 19, and 20, Idaho Code, and elsewhere in the Idaho Code, unless otherwise specifically provided or unless the context clearly indicates or requires otherwise, the following terms shall be defined as follows:
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> ...
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> (9) "Probationer" means a person who has been placed on felony probation by an Idaho court, or a court of another state, the United States, or a foreign jurisdiction, **who is not incarcerated in any state, local or private correctional facility**, and who is being supervised by employees of the Idaho department of correction.

Idaho Code § 18-101A(9) (emphasis added). In turn, Idaho Code § 18-101A(3) defines "local correctional facility" as follows:

> (3) "Local correctional facility" means a facility for the confinement of prisoners operated by or under the control of a county or city. The term shall include references to "county jail," or "jail." The term shall also include a private

> correctional facility housing prisoners under the custody of the state board of correction, the county sheriff or other local law enforcement agency.

Idaho Code § 18-101A(3). Therefore, because Claimant was incarcerated at the Payette County jail at the time of the accident giving rise to this claim he was no longer a probationer, as he might have been prior to his arrest. From this we conclude that, as of the date of injury, Claimant was not a probationer and, therefore, could not be a community service worker as defined at Idaho Code § 72-102(6)(b). Based on the stipulated facts, we conclude that Claimant is not a community service worker entitled to the protections of the worker's compensation laws pursuant to Idaho Code § 72-205(7).

7. Since Claimant does not qualify for the narrow opportunity to obtain coverage as a community service worker, the argument would be that, as an inmate, it follows that he is foreclosed from receiving worker's compensation benefits under the provisions of Idaho Code §§ 20-242A and 20-412. However, the general prohibition against worker's compensation coverage for inmates who perform correctional industries and other prison work only applies to inmates under the control of the board of corrections. Idaho Code § 20-412 of the Correctional Industries Act applies to the work of inmates employed by Idaho correctional industries. *See* Idaho Code § 20-402. Claimant is not such a worker. Idaho Code § 20-242A authorizes incentive pay for "inmates performing work at the direction of the board of correction" in jobs other than those associated with correctional industry employment. Claimant is not such a worker. The provisions of Idaho Code §§ 20-242A and 20-412 do not apply to inmates, like Claimant, who are incarcerated at a county jail.

8. In summary, we conclude that although Claimant is not a community service worker, neither is he an inmate who should be denied the benefits of the worker's compensation laws by operation of Idaho Code §§ 20-242A or 20-412. However, this conclusion does not end

our inquiry. Even though the aforementioned statutes do not bar Claimant from receipt of benefits, he must still prove that he is otherwise entitled to the protections of the worker's compensation laws in order to receive benefits.

9. Unlike the case of an inmate in the custody of the board of correction, there is no statutory prohibition against the extension of the protections of the worker's compensation laws of this state to inmates held in the county jails of the state per the provisions of Idaho Code § 20-601, *et seq.*, so long as such inmate otherwise qualifies for the payment of benefits under the Act.

10. Claimant argues that while incarcerated at the Payette County jail he became an employee of Payette County and that the County is his employer under the provisions of Idaho Code § 72-102(12) and (13). Further, Claimant argues that his was public employment and that under the provisions of Idaho Code § 72-205(1) and (2) he was employed by Payette County under a contract of hire such that he is entitled to worker's compensation benefits for his injuries.

11. Therefore, the inquiry is whether Claimant qualifies for coverage under the provisions of Title 72. Coverage under the worker's compensation laws generally depends upon the existence of an employer-employee relationship. *Anderson v. Gailey*, 97 Idaho 813, 555 P.2d 144 (1976). Idaho Code § 72-102(12) defines "employee" as any person who has entered into the employment of, or who works under a contract of service or apprenticeship with, an employer. Idaho Code § 72-102(13)(a) defines "employer" as one who expressly or impliedly hires or contracts the services of another. Both public and private employment is covered by the Act. Idaho Code § 72-205 specifies that the following public employments are subject to the provisions of the worker's compensation laws:

> The following shall constitute employees in public employment and their employers subject to the provisions of this law:

> (1) Every person in the service of the state or of any political subdivision thereof, under any contract of hire, express or implied, and every official or officer thereof, whether elected or appointed, while performing his official duties, except officials of athletic contests involving secondary schools, as defined by section 33-119, Idaho Code.
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> (2) Every person in the service of a county, city, or any political subdivision thereof, or of any municipal corporation.
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> . . . .

Idaho Code § 72-205.

12. From these provisions, it is clear that one of the foundational elements of coverage is the existence of a contract of hire, express or implied, between an employer, and an ostensible employee. It is noted that under the provisions of Idaho Code § 72-205(2), the Act applies to persons "in the service of a county," without specific reference to the need to also demonstrate the existence of a contract of hire. Therefore, the argument might be made that a contract of hire need not be demonstrated for an individual otherwise "in the service of" a county. This argument was made, but rejected, in *Daleiden v. Jefferson County Joint School District #251*, 139 Idaho 466, 80 P.3d 1067 (2003). In *Daleiden*, the Court concluded that under both Idaho Code § 72-205(1) and (2) the existence of a contract of hire must be proven in order to demonstrate the existence of an employer-employee relationship. The reason for requiring proof on this point before worker's compensation benefits are payable lies in the additional liabilities imposed by a true employer-employee relationship, as compared to the vicarious liability created by other master-servant relationships. As the commentators have noted: "The end product of a vicarious liability case is not an adjustment of the rights between employer and employee on the strength of their mutual arrangement, but a unilateral liability of the master to a stranger." Arthur Larson et al. *Larson's Workers' Compensation Law* § 64.01 (2007). Because worker's compensation imposes an obligation on an employer to pay benefits to an employee, and because employees gave up their

right to a common law remedy in exchange for a sure-and-certain (but lesser) statutory remedy, it is necessary to be assured that these reciprocal rights arise out of the mutual agreement of the parties. Hence the need to demonstrate the existence of a contract of hire, express or implied, before an employer-employee relationship implicating rights under worker's compensation can be said to exist.

13. *Daleiden* also imposes a second requirement that must be satisfied before an ostensible employee can be found to be an employee under the Act; it must be demonstrated that the contract of hire is "gainful" for the employee, i.e. that Claimant received something of value for his services. This requirement is imposed because the underlying purpose of worker's compensation is to compensate injured workers for wages lost due to an industrial injury.

14. Turning first to the requirement of demonstrating the existence of a contract of hire, the record before the Commission contains no evidence to prove the terms of an express written or oral contract between Payette County and Claimant. However, the absence of evidence of an express contract is not fatal to the claim that a contract of employment existed between Claimant and Payette County, for the existence of a contract may be implied by the conduct of the parties. A contract implied-in-fact is a true contract whose existence and terms are inferred from the conduct of the parties. Such a contract is grounded in the parties' agreement and tacit understanding. *Kennedy v. Forest*, 129 Idaho 584, 930 P.2d 1026 (1997). An implied contract is one, the existence in terms of which are manifested by the conduct of the parties, with the request of one party, and the performance by the other party often being inferred from the circumstances attending the performance. *Clements v. Jungert*, 90 Idaho 143, 408 P.2d 810 (1965).

15. Therefore, the question becomes what can be discerned from the conduct of the parties that points to the existence of an agreement that Claimant become the employee of Payette County?

16. From the stipulation of the parties, it appears that Claimant is required to reimburse Payette County for the cost associated with his incarceration, at the rate of $25 per day, up to a maximum of $500. Claimant's incarceration ran from August 2, 2018 to January 23, 2019. Therefore, Claimant would be responsible for the maximum reimbursement of $500. Payette County afforded such inmates the opportunity to work-down this obligation. Inmates were allowed, but not required, to "apply" to become Inmate Workers. Inmate Workers assist with the day-to-day operations of the jail. An inmate whose application is accepted by the County is allowed to work and receive a credit of $25 per day against his incarceration fee for each calendar day the inmate performs work as an Inmate Worker. Stipulation of Facts at ¶4. No money changes hands; the $25 per day credit can only be applied to reduce the incarceration fee. Inmate Workers are also granted certain other privileges not granted to non-working inmates. Although the stipulation of the parties speaks only generally to the application of an inmate and his acceptance by the County as an Inmate Worker, we see nothing in the stipulation that would lead us to believe that a different process was followed in Claimant's case. He was allowed to work as an Inmate Worker, and we assume that this status arose from his application and acceptance by the County.

17. The record reflects that between December 13 and December 22, 2018, Claimant worked three to five hours per day as an Inmate Worker. For this work he received a $25 credit for each day worked, regardless of whether he worked three hours or five hours per day. At the time of the December 22, 2018 accident giving rise to this claim, Claimant had not yet paid off his incarceration fee. From the foregoing, it should be clear that absent his labor as an Inmate Worker,

Claimant would have to come up with $500 out of his pocket to pay his $500 incarceration fee. The facts reflect that Claimant worked for at least nine days, and therefore obtained a credit in the amount of $225 against his $500 obligation, meaning that as of the date of the accident, he would be required to pay an additional $275 to retire his obligation to Payette County. At least temporarily, Claimant's injuries prevented him from performing his work in the laundry. Stipulation of Facts at ¶¶ 7-10.

18. While Claimant's application and Defendants' acceptance of the same are consistent with what might be expected as part of a process leading to the creation of a contract of hire, it is equally consistent with the establishment of a purely gratuitous relationship. Many kinds of volunteer relationships commence with an application and acceptance of the volunteer's services. Not all volunteers are suitable to perform the type of work that might be at issue. An application process works as a screening mechanism to identify volunteers suited to perform the activity in question. For example, Habitat for Humanity likely seeks volunteers who possess rudimentary carpentry skills and who are fit enough to endure the rigors of homebuilding. An application process might be used to vet suitable volunteers. Therefore, standing alone, the fact that Claimant applied to become an Inmate Worker and that Payette County accepted him for such work is, at most, consistent with the creation of an employer-employee relationship.

19. There is no evidence of record which addresses whether Payette County exercised control over the method and manner by which Claimant conducted his work. However, even if such evidence existed, that evidence, standing alone, might not be particularly probative of the existence of an employer-employee relationship; Claimant was an inmate. We assume that every aspect of his life, whether he was working or not, was subject to the control of Payette County.

20. Finally, we come to the matter of whether Claimant was compensated for his services. This aspect of Claimant's relationship with Payette County is important for two reasons.

21. First, payment for services rendered is evidence of a type of conduct from which a contract of employment may be implied. In *Miller v. City of Boise*, 70 Idaho 137, 212 P.2d 654 (1949), Miller, a prisoner at the Boise City jail, was pressed into service to move office furniture to the new city hall. While being transported to a café to be fed, he suffered an injury. He applied for worker's compensation benefits, and such were awarded by the Industrial Accident Board. The award was overturned on appeal on the basis that it was not shown that Miller was an employee of the City at the time of the accident:

> Furthermore, the above facts conclusively show Miller was not *employed* by the city of Boise, and, moreover, that he never *received* any *compensation* whatever from, nor was he ever *paid any compensation* by, Boise City. Hence, the relationship of employer and employee never existed between respondent and appellant.

Miller, 70 Idaho at 139 (emphasis in original).

22. In *Shain v. Idaho State Penitentiary*, 77 Idaho 292, 291 P.2d 870 (1955), the claimant, who was incarcerated in the Idaho State Penitentiary, suffered an injury to his hand while operating a defective license plate embosser press. The Court cited *Miller*, *supra*, for the proposition that a prisoner who is injured while performing work required by law is not an employee subject to the protections of the worker's compensation laws. However, Shain argued that for his work he enjoyed certain privileges not extended to other prisoners and that these privileges amounted to compensation sufficient to make him an employee of the prison. The Court rejected this argument, stating:

> Appellant makes the suggestion that as compensation for his labor appellant received certain privileges as a prisoner and that his work record would be considered on his application for parole. These rewards to the prisoner are a matter of grace and are at the discretion of the Board of Correction [sic]. They are not

> wages paid by the state to the prisoner giving rise to the relationship of employer and employee. ...We are of the opinion that at the time of the accident appellant was not working under any contract of hire either express or implied but was performing labor required of him by law; and that he was not an employee entitled to compensation under the Workmen's Compensation law.

Shain, 77 Idaho at 293-294.

23. Both *Shain* and *Miller* demonstrate that the presence or lack of compensation to a prisoner is material to determining whether a contract of hire exists between an inmate and his jailor. The facts of those cases, however, did not support a finding of compensation.

24. Second, if Claimant received compensation for his work, this would be evidence that the work was gainful to Claimant, thus addressing the second part of the two-part test referenced in *Daleiden*.

25. For both these reasons, it is particularly important to understand whether it can be said that Claimant was compensated for his work at the laundry.

26. At intervals, Defendants assert that Claimant was a volunteer and that his work was provided gratuitously:

> Instead, Claimant clearly volunteered for work duty to receive the benefits afforded to participants in the Jail's Inmate Worker program-e.g., additional privileges, and credit to offset incarceration fees. Routine, voluntarily undertaken work of this sort cannot support a finding that an inmate is a community worker and covered by the Idaho worker's compensation laws.
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> ...
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> Claimant asserts that he was an employee, but his assertion is contrary to the undisputed, stipulated facts here. Simply put, the Jail did not accept Claimant's services pursuant to a "contract of hire," or otherwise agree or consent to "hiring" him as an employee. Instead, it is undisputed that Claimant volunteered to participate in the Jail's Inmate Worker program. Participants in that program do not receive a wage, and have never been considered Jail employees.
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> ...

> The Jail allowed Claimant to participate in its Inmate Worker program, but in doing so it did not agree to hire him as an employee; it agreed to allow him to perform work (whether in the laundry room or on some other detail) in the limited, uncompensated capacity contemplated by the Inmate Worker program.
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> ...
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> The undisputed facts make clear that Claimant's "services" were accepted on the specific understanding that they were not provided pursuant to an employment relationship, or for a wage. Instead, they were accepted on the understanding that Claimant was providing them pursuant to the Jail's voluntary, unpaid Inmate Worker program.

Def. Response Br. p. 5-6, 11, 12, and 14 (emphasis in original). These assertions, though stated as fact, are actually conclusions which Defendants wish us to draw from the facts of record.

27. What constitutes "wages" prior to the occurrence of an industrial accident is defined at Idaho Code § 72-102(33) as follows:

> "Wages" and "wage-earning capacity" prior to the injury or disablement from occupational disease mean the employee's money payments for services as calculated under section 72-419, Idaho Code, and shall additionally include the reasonable market value of board, rent, housing, lodging, fuel, and other advantages which can be estimated in money which the employee receives from the employer as part of his remuneration, and gratuities received in the course of employment from others than the employer. "Wages" shall not include sums which the employer has paid to the employee to cover any special expenses entailed on him by the nature of his employment.

28. Therefore, wages include, of course, the money-in-hand one might receive for services rendered, but also such "other advantages which can be estimated in money which the employee receives from the employer as part of his remuneration. ..." Idaho Code § 72-102(33). Claimant received no money-in-hand for his services, but he did receive another advantage that can be estimated in money, and which is very nearly the equivalent of money. Absent the ability to work-off his obligation to the County, Claimant would, at some point, be required to pay $500 to the County to satisfy his incarceration fee. By working as an Inmate Worker, Claimant was afforded the ability to reduce this obligation by $25 per day worked. Although Claimant did not

have the ability to apply these monies towards anything but the retirement of his debt, it is difficult to argue that this is not an advantage to Claimant which is capable of being estimated in money. It is perhaps analogous to receipt of payment via a gift card which can only be redeemed at one store.

29. From the foregoing, we conclude that the evidence altogether fails to demonstrate facts consistent with the proposition that Claimant volunteered his services to Payette County. Assuredly, Claimant did volunteer in the sense that he exercised the discretion given to him to apply or not to be an Inmate Worker. However, he was not a volunteer in the sense that, having been accepted as an Inmate Worker, he worked gratuitously, without compensation. To the contrary, the evidence demonstrates that Claimant received "wages" for the work he performed as an Inmate Worker. Moreover, these wages were not de minimis. Per the Stipulation of Facts, Claimant received a credit of $25 for every day worked, and he appeared to have received this credit regardless of whether he worked three hours or five hours per day. Therefore, Claimant's equivalent hourly wage might range from $5.00 to $8.33 per hour. One can well imagine why Claimant was incentivized to perform this work. Twenty days of work would yield complete relief from his $500 obligation. These facts are altogether different than the facts of *Shain* and *Miller*. Claimant was not compelled to work as an Inmate Worker. He was paid wages for his services, and there is no evidence that these payments could be withheld at the discretion of Payette County.

30. Having determined that Claimant was paid wages by Payette County for his services, it is worth considering other elements of a contract of employment that might be suggested by the simple fact that Claimant was paid for his work in a certain manner. Although there is no direct evidence before us relating to whether Payette County retained the right of direction and control, the manner in which wages were paid to Claimant for his services is consistent with Employer's retention of the right to direct and control of the method and manner

about which Claimant conducted his work. Claimant was not paid for the completion of a contracted-for project as might be the case in a principal/independent contractor arrangement. Nor was he paid on a piecework basis, e.g., so much for a shirt washed and ironed. Rather, he was paid by the day. This type of payment is more consistent with the existence of an employer-employee relationship; such a mode of compensation ordinarily invites control by an employer in order to be satisfied that the labor it is paying for is in fact being provided by the employee.

31. Based on the facts of record, we conclude that an implied contract of hire existed between Claimant and Payette County. This conclusion follows from what the stipulation reveals about the conduct of the parties, and rests primarily on the fact that Claimant was paid wages for his work. Taken together, the fact that Claimant had the discretion to apply to become an Inmate Worker, the fact that his application was accepted by Payette County, and the fact that Claimant was paid for his services, is sufficient to imply the mutual agreement of the parties to create a contract of hire. Apply these facts to any other work relationship existing outside the walls of a county jail, and one would be hard pressed not to find the existence of a contract of hire. The parties have not brought to our attention any additional fact or legal principle which applies in this case to warrant a different result. As we have explained, the fact that Claimant was incarcerated by Payette County at all times relevant hereto does not prohibit the creation of a contract of hire under Title 72.

32. As noted, *Daleiden* establishes that in order to demonstrate the existence of an employer-employee relationship, the mutual agreement of the parties to create such a relationship must first be demonstrated. Second, because one of the purposes underlying worker's compensation is to compensate injured workers for their lost wages following an industrial injury, it must be demonstrated that the work performed by the worker is, in fact, a gainful activity, i.e.,

that the employee is compensated for his efforts. The stipulated facts relating to payment satisfy this second element of *Daleiden* as well. The credit Claimant received against his incarceration fee amounts to "wages" under Idaho Code § 72-102(33). The work was gainful to Claimant. His accident resulted in a temporary loss of these wages, exactly the type of loss the worker's compensation laws are intended to mitigate.

33. Accordingly, the Commission concludes that an implied contract of hire is created by the conduct of the parties, and that Claimant was engaged in work which was gainful to him at the time of the accident. No statute prohibits the application of the worker's compensation law to these facts. We conclude that Claimant has demonstrated the existence of an employer-employee relationship and that he falls under the protection of the Act.

CONCLUSIONS OF LAW AND ORDER

1. At the time of the accident giving rise to this claim, Claimant was not an inmate in the custody of the Idaho State Board of Correction, and was therefore not subject to the provisions of Idaho Code §§ 20-242A or 20-412.

2. At the time of the accident giving rise to this claim, Claimant was an inmate subject to the control of Payette County.

3. There is no statutory prohibition against the application of the worker's compensation laws to county jail inmates.

4. That Claimant was employed by Payette County pursuant to a contract of hire implied by the conduct of the parties. Specifically, Claimant applied for, and was accepted into, the Inmate Worker program, and for his services as an Inmate Worker was paid wages as defined at Idaho Code § 72-102(33). As such, Claimant qualifies as a public employee pursuant to the

provisions of Idaho Code § 72-205(1) or (2) such that he is entitled to benefits under the Idaho Worker's Compensation Laws.

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

DATED this 6th day of April, 2021.

INDUSTRIAL COMMISSION

Aaron White, Chairman

Thomas P. Baskin, Commissioner

ATTEST:

Kamerron Slay
Commission Secretary

For the following reasons, I respectfully dissent.

I respectfully dissent from the majority's decision finding that Claimant qualifies as a public employee pursuant to the provisions of Idaho Code § 72-205(1) or (2) such that he is entitled to benefits under the Idaho Worker's Compensation Laws.

I agree with the Referee's findings that:

> Here there is insufficient evidence of an employer/employee relationship by mutual consent. … The Payette County Jail did not receive Claimant's services pursuant to a contract of hire, or otherwise consent or agree to hiring him as an employee. In *Daleiden*, there was consent to a relationship, like here, but the consented to relationship was not one of employment. … Mutual consent is not merely consent to a relationship, but consent to a specific type of relationship, namely the employee/employer relationship.

Despite the fact that Claimant applied to work as a jail inmate worker, was accepted, and received reduced fines for the work he performed, these facts do not suffice to establish an employer-employee relationship. Although at first blush Claimant's argument appears to have merit, there are not enough factors in support of his position to conclude that an employer-employee relationship was formed.

Several considerations inhibit Claimant from being defined as an employee. Principally, there was neither intent nor consent to form an employer-employee relationship. Claimant was not extended the benefits traditionally afforded to those in an employer-employee relationship. There was no mutual (nor unilateral) understanding that Claimant would receive the common non-wage benefits (such as insurance, retirement plans, or paid time off) that accompany many full-time employer-employee relationships.

The discussion surrounding "wages" does not mirror what one would expect to find in a typical employer-employee relationship. While Claimant received a flat fee for each day he worked, this allowance operated as a reduction of fees associated with the term of his incarceration. This flat fee did not amount to an hourly wage, nor is there any indication from the stipulated facts that it was output-based. Claimant worked between three and five hours for each of the days he worked. He received the same payment regardless of his time spent working. Generally, formal employer-employee relationships and "wages" do not arise under such indefinite terms. Further, Payette County was not required to pay Claimant at all.

In this sense, there are many similarities between inmates of county jails and inmates of state correctional facilities. Those who undertake to work while under the control of the Idaho Department of Correction are discussed in Idaho Code §§ 20-242A and 20-412. However, the Legislature has not addressed the differences that arise between inmate workers of state

correctional facilities and inmate workers of county jails. Those who undertake to work as an inmate of a county jail, like Claimant, are not addressed under Idaho Code.

The majority submits that the provisions of Idaho Code §§ 20-242A and 20-412 do not apply to inmates who are incarcerated at a county jail. Rather, these statutory provisions only apply to inmates of state correctional facilities. Yet, these provisions may nonetheless suggest the need for a similar provision to include inmates of county jails.

The Idaho Supreme Court has held that in the context of Idaho Code § 20-209, "employment" means: (1) labor prescribed by the Board; and (2) specific legislative work programs managed by the Board. These forms of prisoner employment are addressed in turn." *In re Ord. Certifying Question to Idaho Supreme Ct.*, 167 Idaho 280, 469 P.3d 608, 613 (2020). The Court further addressed prison workers as follows:

> These provisions make clear that – even where the Board is authorized to create prisoner employment opportunities, including paid employment – prisoners are not employees. Because prisoners are not considered employees, they also do not have a typical employer-employee relationship and are not extended the same benefits as employees outside of the correctional setting. For example, section 20-242A specifies that prisoners employed in these programs are not eligible for worker's compensation benefits even though employees outside of the correctional setting are afforded such benefits. See, e.g., I.C. §§ 72-102(12), 72-201.

Id.

Given the hesitancy the Legislature has shown in treating inmates of state correctional facilities as employees, I find no reason that this characterization should be conferred upon inmates of county jails. While there is undoubtedly a difference between inmates of county jails and inmates of state penitentiaries, there is an absence in the provisions of Idaho Code regarding how county jail inmate workers should be treated.

Notwithstanding the humane treatment of employees mandated by the workers' compensation scheme, there are simply other remedies in place for those in Claimant's position.

These remedies exist without bestowing the benefits of workers' compensation upon those who are not part of the ordinary workforce covered by workers' compensation within the state of Idaho. Thus, I see no reason or need to treat a county jail inmate worker as a public employee pursuant to the provisions of Idaho Code § 72-205(1) or (2) For the foregoing reasons, I respectfully dissent.

DATED this 6th day of April, 2021.

INDUSTRIAL COMMISSION

Thomas E. Limbaugh, Commissioner

ATTEST:

Kamerron Slay
Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of April, 2021, 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:

ANTHONY C. ANEGON
AHERIN, RICE & ANEGON
PO DRAWER 698
LEWISTON ID 83501-0698
Email: tonegon@aralawoffice.com

BENTLEY G. STROMBERG
CLEMENT, BROWN & MCNICHOLS
PO BOX 1510
LEWISTON ID 83501-1510
Email: bstromberg@clbrmc.com

sc

M. Moore