

**BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO**

MICHAEL WATKINS,

Claimant,

v.

CITY OF PONDERAY,

Employer,

and

IDAHO STATE INSURANCE FUND,

Surety,

Defendants.

**IC 2018-023549**

**ORDER GRANTING  
RECONSIDERATION  
RE: IDAHO CODE § 72-1104**

**FILED**

**DEC 15 2023**

**INDUSTRIAL COMMISSION**

On October 18, 2023, Claimant Officer Michael Watkins filed a Motion to Reconsider the Commission's September 29, 2023, Order to Comply with Idaho Code § 72-1104. The Motion to Reconsider is timely filed pursuant to Idaho Code § 72-718 and Rule 3G of the Judicial Rules of Practice and Procedure ("JRP"). Employer City of Ponderay made no response.

**DISCUSSION**

Claimant asserts the Commission's September 29, 2023, Order "...does not provide the Parties with any additional material information as contemplated by the Court and does not establish the dollar amount Defendant Employer owes Officer Watkins." Therefore, Claimant requests that the Commission investigate pursuant to Idaho Code § 72-714(3) and/or hold a hearing pursuant to Idaho Code § 72-718 and make findings "... setting forth the dollar amount of Officer Watkins' full rate of base salary, less income tax deductions." Cl. Br. in Support of Mo. to Recon. p. 4. In this matter, Claimant seeks payment of his "full rate of base salary" from Employer during a period of temporary disability, as contemplated by Idaho Code § 72-1104. In support of his

claim he filed a complaint with the Commission. Employer did not answer, and its default was eventually taken. Pursuant to JRP 6(c), Claimant is required to establish a prima facie case to support an award. Claimant filed a brief in support of his prima facie case, along with five exhibits. The only proof Claimant put on in support of the calculation of his “full rate of base salary,” was his “average weekly wage” as calculated by the SIF pursuant to Idaho Code § 72-419. Claimant’s “average weekly wage” is the basis for the calculation of TTD benefits payable by SIF to Claimant during his period of recovery, but there is nothing in statute to suggest that an injured worker’s “average weekly wage” figures into the calculation of his “full rate of base salary.” In his prima facie showing Claimant did not articulate what he believes his “full rate of base salary” to be under Idaho Code § 72-1104, except to say that he is unaware of a definition of the term as used in Idaho Code § 72-1104. The Commission declined to make a finding on the matter, ruling that the evidence was insufficient to allow it to calculate Claimant’s “full rate of base salary.” The decision was appealed to the Idaho Supreme Court, but the Court did not treat the issue of calculating Claimant’s “full rate of base salary.” Instead, the Court ruled that the Commission failed to comply with the Act in “...fashioning a remedy which ordered the City to comply with the Act and to pay Watkins his full rate of base salary, but offset that amount by crediting the City with the worker’s compensation benefits Watkins already received from SIF.” The Court ordered the Commission to order Employer to pay claimant his full rate of base salary and Claimant to remit to Employer the workers’ compensation payments he had received.

We go through this history to illustrate that the lack of a finding on Claimant’s “full rate of base salary” is due only to the fact that Claimant has put on neither argument nor evidence sufficient to meet his prima facie case on this element of his claim. Claimant states that he is unaware of a definition of the term, and there leaves the matter, but it is Claimant, not the

Commission, who bears responsibility to prove the elements of Claimant's case.

Turning to Claimant's Motion for Reconsideration, Claimant recognizes the need to determine Claimant's full rate of base salary, but as noted, the record is insufficient to allow the Commission to reach any conclusion on this matter. The definition of the term is obscure, making it impossible for the Commission to calculate the sum that is payable to Claimant per the Court's order. Therefore, we accept Claimant's invitation to hold a hearing pursuant to Idaho Code § 72-718 for the purpose of adducing further evidence and legal argument on the determination of Claimant's "full rate of base salary." However, we reiterate that Claimant bears the burden of proving this element of his case, to include persuading the Commission as to the legal meaning of the term, and the application of that definition to the facts of this case. We recognize that the City of Ponderay may possess information or expertise relevant to the meaning of the term at issue and calculation of the amounts owing. (Per Idaho Code § 72-1104(1)(c), the salary that a qualifying employee shall be paid is his "full rate of base salary as fixed by the state or by applicable ordinance or resolution...." From this amount, Employer shall withhold and pay income tax on the salary paid to the employee.) However, merely because default has been taken against the City, does not mean that discovery cannot be initiated against the City or that City employees cannot be called as witnesses by Claimant to give testimony on the issue before the Commission. Other municipalities, counties or the State of Idaho may have arrived at their own understanding of what the term means. The Industrial Commission fiscal department administers the Peace Officer and Detention Officer Disability Fund, and is responsible for making payments to public entities that qualify for reimbursement under the Act. Therefore, the Commission fiscal department may have knowledge of how public entities calculate an injured officer's "full rate of base salary." Suffice it to say, there are likely several avenues of investigation that could be exploited to help inform a

Commission decision.

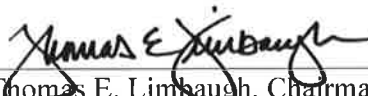
**ORDER**


Pursuant to Idaho Code § 72-718, Claimant's Motion for Reconsideration is hereby GRANTED. A hearing shall be held for the limited purpose of determining Claimant's "full rate of base salary less income tax deductions." A status conference will be initiated by Commission staff to schedule a hearing on this issue.

DATED this 15th day of December, 2023.



INDUSTRIAL COMMISSION

  
Thomas E. Limbaugh, Chairman

  
Thomas P. Baskin, Commissioner

  
Aaron White, Commissioner

ATTEST:

  
Commission Secretary

**CERTIFICATE OF SERVICE**

I hereby certify that on 15<sup>th</sup> day of December, 2023 a true and correct copy of the foregoing **ORDER GRANTING RECONSIDERATION RE: IDAHO CODE § 72-1104** was served by Electronic Mail upon each of the following:

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