

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

LACEY MARK SIVAK,
Claimant,

v.
IDAHO STATE PENITENTIARY,
Employer,

and
IDAHO STATE INSURANCE FUND,
Surety,

Defendants.

IC No. 2023-059527

**FINDINGS OF FACT,
CONCLUSION OF LAW AND
RECOMMENDATION**

**FILED
6-3-24
IDAHO INDUSTRIAL COMMISSION**

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee John C. Hummel, who conducted a hearing via Zoom, on February 22, 2024. Claimant, Lacey Mark Sivak, was present via Zoom from the Idaho State Penitentiary; he represented himself *pro se*. Paul J. Augustine, of Boise, was present via Zoom from his office and represented Employer Idaho State Penitentiary and Surety Idaho State Insurance Fund. The parties presented oral and documentary evidence and later submitted briefs.¹ The matter came under advisement on May 21, 2024.

ISSUE

The noticed issue was as follows: Whether Claimant’s claim for workers’ compensation benefits is compensable.

¹ Claimant’s Opening Brief exceeded the 30-page limitation specified by J.R.P. § 11(A). Furthermore, it was accompanied by lengthy attachments. Defendants moved to strike the brief and its attachments for exceeding the page limitations. JRP § 11(A) provides in pertinent part as follows: “Any brief that exceeds the page limits without prior approval may be stricken by the Commission.” Accordingly, to the extent that Claimant’s Opening Brief exceeded the 30-page limitation, the excess pages and attachments are hereby stricken.

CONTENTIONS OF THE PARTIES

Claimant contends that he was a covered employee of Employer when he was allegedly injured from breathing mold while painting in a bathroom on Employer's premises and incurred an alleged occupational disease on September 9 and 10, 2023. He contends that his employment was subject to the Idaho Workers' Compensation Law. He admits, however, that he was not a community service worker.

Defendants deny that Claimant was an employee of Employer and further contend that only an inmate who is a community service worker, as that term is defined under the Idaho Workers' Compensation Law, can qualify for workers' compensation coverage, but Claimant was not a community service worker at the time that he was performing services at the penitentiary.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The Industrial Commission legal file;
2. The transcripts of hearing of February 22, 2024; and
3. Defendants' Exhibit No. 1.²

FINDINGS OF FACT

1. At all relevant times Claimant was an inmate serving a life sentence for the crime of murder at the Idaho State Penitentiary. Defendants' Ex. 1; Tr., 22:19-23:7.

2. On September 9 and 10, 2023, Claimant was painting in a bathroom at the Idaho State Penitentiary. He alleges that he breathed in black mold spores which injured him, causing an

² Claimant offered into evidence eleven (11) sealed envelopes containing documents at hearing. These documents were received by the Industrial Commission the day before the hearing, on February 21, 2024. Claimant did not serve on the opposing parties copies of these documents at least ten (10) days prior to the hearing. Furthermore, the exhibits did not conform to the requirements of J.R.P. § 10(C) in that they were not bound by a spiral, three ring or similarly secure binder, and they were not paginated in consecutive order or arranged in chronological order. For these reasons, the Referee excluded the proposed eleven (11) exhibits from the record.

occupational disease. Tr., 27:6-28:17.

3. Claimant admitted that he was not a community service worker when he was performing the services referenced above in paragraph 2 but rather that he was a paid inmate janitor. Tr., 19:18-19; 26:7-9; *and* 29:16-21.

DISCUSSION AND FURTHER FINDINGS

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

5. "All persons convicted of crimes against the laws of this state, and sentenced to confinement in the state prison shall be committed to the custody of the state board of correction, and *must, during the term of their confinement, perform such labor* under such rules and regulations as may be prescribed by the state board of correction." Idaho Code § 20-101 [emphasis added]. Defendant Idaho State Penitentiary has the authority to use the labor of inmates "within or without the walls of the penitentiary." Idaho Code § 20-245.

6. The evidence shows that Claimant was a prisoner confined in the state prison under the custody of the board of correction, and that he was performing services as a janitor pursuant to that confinement.

7. 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." Idaho Code § 72-102(5) provides that the term "community service worker"

under the Idaho Workers' Compensation Law means the following:

- (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
- (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.

8. Idaho Code § 72-205(7) provides as follows:

A community service worker, as that 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 service worker's exclusive remedy for all injuries and occupational diseases as provided under chapters 1 through 8, title 72, Idaho Code.

9. In *Crawford v. Department of Correction*, 133 Idaho 633, 991 P.2d 358 (1999), the Idaho Supreme Court affirmed a declaratory ruling of the Industrial Commission that an inmate who was injured while performing general maintenance work cleaning rain gutters while she was serving her sentence at a correctional facility did not fall within the definition of "community service worker," so as to be entitled to workers' compensation benefits under Idaho Code § 72-102(5) and Idaho Code § 72-205(7).

10. It is undisputed that Claimant was not a community service worker, as that term is defined in Idaho Code § 72-102(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.

CONCLUSION OF LAW

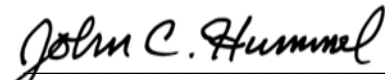
1. Claimant's claim for workers' compensation benefits is not compensable because he was not a community service worker at the time he was performing services.

RECOMMENDATION

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

DATED this 23rd day of May 2024.

INDUSTRIAL COMMISSION



John C. Hummel, Referee

CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of June 2024, a true and correct copy of the foregoing **FINDINGS OF FACT, CONCLUSION OF LAW AND RECOMMENDATION** was served by regular United States Mail and electronic mail upon each of the following:

LACEY MARK SIVAK
Inmate 18114 ISCD, Unit 13
P.O. Box 14
Boise, ID 83707

PAUL J. AUGUSTINE
Augustine Law Offices, PLLC
1004 W. Fort Street
P.O. Box 1521
Boise, ID 83701
pja@augustinelaw.com
taw@augustinelaw.com

RK

Racquel Kotte

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

LACEY MARK SIVAK,
Claimant,

v.
IDAHO STATE PENITENTIARY,
Employer,

and
IDAHO STATE INSURANCE FUND,
Surety,
Defendants.

I.C No. 2023-059527

ORDER

FILED

JUN 03 2024

INDUSTRIAL COMMISSION

Pursuant to Idaho Code § 72-717, Referee John Hummel submitted the record in the above-entitled matter, together with his 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 recommendations 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's claim for workers' compensation benefits is not compensable because he was not a community service worker at the time he was performing services
2. Pursuant to Idaho Code § 72-718, this decision is final and conclusive as to all matters adjudicated.

DATED this 31st day of May, 2024.

INDUSTRIAL COMMISSION




Thomas E. Limbaugh, Chairman


Claire Sharp, Commissioner


Aaron White, Commissioner

ATTEST:


Kamerron Slay
Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of June, 2024, a true and correct copy of the foregoing **ORDER** was served by regular United States Mail upon each of the following:

LACEY MARK SIVAK
Inmate 18114 ISCD, Unit 13
P.O. Box 14
Boise, ID 83707

PAUL J. AUGUSTINE
Augustine Law Offices, PLLC
1004 W. Fort Street
P.O. Box 1521
Boise, ID 83701
pja@augustinelaw.com
taw@augustinelaw.com

RK

Racquel Kotte