

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

GARY DAVIS,
Claimant,
Petitioner herein,
v.
HAMMACK MANAGEMENT INC.,
Employer,
and
STATE INSURANCE FUND,
Surety,
and
STATE OF IDAHO, INDUSTRIAL SPECIAL
INDEMNITY FUND,
Respondents herein.

**IC 15-000107
(2005-501080)**

**ORDER DENYING
PETITIONER'S MOTION
FOR RECONSIDERATION**

Filed November 25, 2015

On October 6, 2015, the Commission entered its Order on Petition for Declaratory Ruling. On October 23, 2015, Petitioner filed his timely motion for reconsideration, with supporting memoranda. Defendants Employer/Surety and ISIF filed timely responses. For the reasons set forth in more detail below, the Commission declines to reconsider its October 6, 2015 Order.

In its October 6, 2015 Decision, the Commission observed that while the provisions of Idaho Code § 72-719 do afford limited opportunities to re-visit an award of the Commission, that section was not relevant to resolution of the instant matter since the provisions of Idaho Code § 72-719 do not apply where there has been a settlement pursuant to the provisions of Idaho Code § 72-404. (*See* Idaho Code § 72-719(4)). Idaho Code § 72-404 provides:

Whenever the commission determines that it is for the best interest of all parties, the liability of the employer for compensation may, on application to the commission by any party interested, be discharged in whole or in part by the

payment of one or more lump sums to be determined, with the approval of the commission.

Such agreements, commonly referred to as lump sum settlement agreements, contemplate the compromise of a claim by the payment of “one or more lump sums”. Here, the agreement at issue does not contemplate the payment of one or more lump sums in compromise of Defendants’ liability. Rather, the agreement contemplates the payment of all benefits to which Claimant would be entitled as though adjudged permanently and totally disabled by the Commission. The issue resolved by the agreement was not whether Claimant is totally and permanently disabled, and not whether the ISIF bears some responsibility for the payment of total and permanent disability benefits. Rather, the issue resolved by the agreement was how that responsibility should be apportioned between the Employer and the ISIF. The agreement is silent as to whether it is submitted to the Industrial Commission pursuant to the provisions of Idaho Code § 72-404 or Idaho Code § 72-711. Likewise, the Commission’s order approving the settlement is silent as to whether it is approved pursuant to Idaho Code § 72-404, Idaho Code § 72-711, or some other authority. Petitioner argues that since the agreement does not call for the payment of a lump sum or sums, the agreement is more appropriately characterized as a “compensation agreement” under Idaho Code § 72-711. Assuming, without deciding, that Petitioner is correct in this characterization, the Commission concludes that this would not change the outcome in this matter.

First, even though Idaho Code § 72-711 compensation agreements may be re-visited pursuant to the provisions of Idaho Code § 72-719(c) (*Sines v. Appel*, 103 Idaho 9, 644 P.2d 311 (1982); *Banzhaf v. Carnation Co.*, 104 Idaho 700, 662 P.2d 1144 (1983)), the fact remains that the limited review afforded by the provisions of Idaho Code § 72-719 is only available within five years following the date of the accident giving rise to the claim. The stipulation of the

parties reflects that the subject accident occurred on November 9, 2004. Therefore, per Idaho Code § 72-719, the time within which to challenge an award of the Commission for change of condition, fraud, or to correct a manifest injustice, has long passed. Idaho Code § 72-719 cannot disturb the finality of the Commission's June 26, 2014 Order approving the settlement agreement, even if that agreement is characterized as a "compensation agreement" under Idaho Code § 72-711.

Next, the Commission concludes that even if it be assumed that the settlement agreement is best characterized as an Idaho Code § 72-711 compensation agreement, the agreement would not receive different treatment under the provisions of Idaho Code § 72-318 than it would if it is more appropriately characterized as an Idaho Code § 72-404 agreement. The agreement does not waive Petitioner's rights to compensation under the Act. Rather, by the subject agreement, Defendants and Petitioner merely agreed to resolve the specific claim for benefits at issue in this case. *See Emery v. J.R. Simplot Co.*, 141 Idaho 407, 111 P.3d 92 (2005). Further, we find that if the agreement is best characterized as an Idaho Code § 72-711 agreement, it still passes muster under *Wernecke v. St. Maries Joint School Dist. No. 401*, 147 Idaho 277, 207 P.3d 1008 (2009), vis-à-vis the ISIF.

Finally, Petitioner argues that there is specific statutory language in Idaho Code § 72-711 which imposes an additional obligation on the Commission which is not imposed by the provisions of Idaho Code § 72-404. Idaho Code § 72-711 provides:

If the employer and the afflicted employee reach an agreement in regard to compensation under this law, a memorandum of the agreement shall be filed with the commission, and, if approved by it, thereupon the memorandum shall for all purposes be an award by the commission and be enforceable under the provisions of section 72-735, unless modified as provided in section 72-719. An agreement shall be approved by the commission only when the terms conform to the provisions of this law.

Therefore, where the terms of the compensation agreement do not “conform to the provisions of this law”, the Commission is without authority to approve such a settlement. Petitioner argues that as illustrated by *Corgatelli v. Steel West, Inc.*, 157 Idaho 287, 335 P.3d 1150 (2014) the “credit” taken in the agreement is illegal under Idaho workers’ compensation law and has been illegal ever since the statutory scheme was enacted. Therefore, the Commission was not authorized to approve the settlement in question, even though the settlement was approved prior the issuance of *Corgatelli, supra*. We disagree with the premise that it has always been contrary to Idaho law to allow the type of credit at issue in this case. As the Commission went to some lengths to explain in the Order on Petition for Declaratory Ruling, it is implicit in the landmark decision of *Carey v. Clearwater Road Dep’t*, 107 Idaho 109, 686 P.2d 54 (1984) that the type of credit at issue in this case, is not only allowed, but anticipated by the apportionment scheme adopted by the Court in that decision. While the Court has now ruled that such “credits” are inapposite to its construction of the statutory scheme, and while we are constrained to apply that construction prospectively, we decline to do so retroactively. Nor has Petitioner cited the Commission to any authority which would support the retroactive application of the *Corgatelli* Court’s construction of the statutory scheme. Finally, it is possible that the *Corgatelli* Court did not intend the broad interpretation that the Commission has given to that case. For this reason as well, we decline to apply it in the fashion urged by Petitioner, without receiving further direction from the Court. An appeal of this decision would afford Petitioner the opportunity to test whether the Commission’s interpretation of *Corgatelli* is correct, and if so, whether the Commission has erred in failing to retroactively apply that rule not only to this settlement agreement, but to all past settlement agreements and decisions of the Commission which endorse the taking of a similar credit.

For the reasons stated above the Commission continues to adhere to its original decision.

DATED this 25th day of November, 2015.

INDUSTRIAL COMMISSION

_____/s/_____
R.D. Maynard, Chairman

_____/s/_____
Thomas E. Limbaugh, Commissioner

_____/s/_____
Thomas P. Baskin, Commissioner

ATTEST:

_____/s/_____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 25th day of November, 2015, a true and correct copy of the foregoing Order Denying Petitioner's Motion for Reconsideration was served by regular United States Mail upon each of the following:

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ka _____/s/_____