

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

GABRIEL CHAPEK,

Petitioner,

v.

EARTH ENERGY, INC.,

Employer,

and

IDAHO STATE INSURANCE FUND,

Surety,

Defendants.

**IC 15000112  
(2010-016531)**

**ORDER ON PETITION FOR  
DECLARATORY RELIEF**

Filed April 14, 2016

On or about February 19, 2016, Gabriel Chapek, Petitioner herein, moved the Commission pursuant to JRP 15 for its order clarifying Petitioner's rights to the proceeds of a proposed lump sum settlement. Specifically, Petitioner seeks guidance from the Commission as to whether a prior decree of divorce between Petitioner and his ex-wife dividing "settlement funds" from a work related accident creates an interest in Petitioner's ex-wife to the proceeds of a proposed lump sum settlement. From the Petition, and supporting documents, it appears that Petitioner's ex-wife, now known as Nakel Archibald (hereinafter Nakel), was appropriately served with a copy of the Petition and supporting documents. Nakel has not appeared or otherwise responded to the Petition as allowed pursuant to JRP 15(e).

**FACTS**

At all times relevant hereto, Petitioner was an employee of Earth Energy, Inc., which insured its workers compensation risk with the State Insurance Fund. On or about June 11, 2010, Petitioner suffered a compensable accident/injury under the workers' compensation laws of this

State. On that date, Petitioner was involved in a single motor vehicle accident which resulted in severe injuries to Petitioner. Petitioner's claim was accepted by employer/surety, and Petitioner received indemnity and medical benefits. Petitioner was not pronounced medically stable from his injuries until on or about October 14, 2014. In the interim, Nakel filed for and was granted a divorce pursuant to stipulation for entry of judgment and decree of divorce approved by Judge Comstock on or about February 24, 2012. Pursuant to the stipulation of the parties, Judge Comstock ordered, *inter alia*:

Each party is awarded 50% of all settlement funds received by Defendant for the accident in which Defendant suffered in July of 2010.  
Paragraph 12 Defendant's Settlement Funds

As of the date of medical stability it was determined that Petitioner was entitled to a 60% whole person impairment rating for the effects of the subject accident.

On or about December 9, 2015, Petitioner and employer/surety reached a tentative settlement of the underlying workers' compensation claim, pursuant to the terms of which Petitioner would receive the sum of \$250,000, new money. This sum included unpaid and uncontested impairment still owed as of the date of mediation. The proposed lump sum settlement has not yet been approved by the Industrial Commission pending a determination of whether, pursuant to paragraph 12 of the judgment and decree of divorce, quoted above, the proposed settlement is subject to Nakel's claim to 50% of the proceeds of settlement.

### **ISSUES**

The following matters are at issue:

1. Whether there is an actual controversy over the application of Idaho Code § 72-802 to the proposed lump sum settlement;

2. Whether the Industrial Commission has jurisdiction to consider Nakel's claim to 50% of the proceeds of the proposed lump sum settlement;

3. Whether Idaho Code § 72-802 prohibits the assignment by Petitioner of a portion of the anticipated proceeds of the proposed settlement to Nakel;

4. Whether the provisions of Idaho Code § 72-802 prohibit Nakel's claim to the anticipated proceeds of the proposed settlement;

5. If Nakel has a legitimate claim to a portion of the proceeds of settlement, whether she must bear a portion of the pro-rated costs and attorneys' fees incurred in connection with the procurement of the proposed lump sum settlement.

#### **DISCUSSION AND FURTHER FINDINGS**

Petitioner has reached a proposed settlement with employer/surety pursuant to the terms which he will be paid \$250,000.00, consisting of the unpaid balance of his 60% PPI rating and additional consideration to resolve his entitlement to additional indemnity benefits. However, per the stipulation of Petitioner and Nakel, Judge Comstock entered judgment and decree of divorce on or about February 24, 2012, pursuant to the terms of which Nakel is entitled to a 50% share of any settlement received by Petitioner as a consequence of the subject accident. Petitioner argues that notwithstanding the stipulation he reached with Nakel, a stipulation which forms the basis for the judgment and decree of divorce, the provisions of Idaho Code § 72-802 clearly specify that Petitioner did not have authority to assign any rights he had to workers' compensation benefits to Nakel, and that the award he expects to receive as a consequence of the proposed settlement is exempt from any claim Nakel might make against the settlement pursuant to the judgment and decree of divorce.

We perceive that these facts create an actual controversy over the construction of the validity or applicability of the provisions of Idaho Code § 72-802 to these facts, and conclude that the issues raised by Petitioner are appropriate for consideration by the Commission under JRP 15.

We further conclude that the Commission has jurisdiction to consider the issues implicated by the provisions of Idaho Code § 72-802. However, as explained below, we conclude that the Commission does not have jurisdiction over matters incident to the dissolution of the marriage. Under Idaho Code § 72-707, the Industrial Commission is vested with jurisdiction to consider all questions arising under the workers' compensation laws of this State. *See Williams v. Blue Cross of Idaho*, 151 Idaho 515, 260 P.3d 1186 (2011); *Van Tine v. Idaho State Ins. Fund*, 126 Idaho 688, 889 P.2d 717 (1984); *Owsley v. Idaho Indus. Comm'n*, 141 Idaho 129, 106 P.3d 455 (2005). Idaho Code § 72-802 prohibits the assignment of a claim for compensation by an injured worker and also exempts the proceeds of a Commission award from the claims of creditors. Pursuant to Idaho Code § 72-404, the Commission is responsible for approving lump sum settlement agreements, and in so doing, must be satisfied that the settlement is in the best interests of the parties. Therefore, we conclude that the Commission has jurisdiction to consider whether Petitioner made an invalid assignment of his claim to compensation when he entered into the stipulation which underlies the judgment and decree of divorce and whether Nakel may assert a claim against the proceeds of the proposed lump sum settlement. However, the Commission does not have jurisdiction over controversies between a husband and wife, the characterization of marital property as separate or community or how property should be equitably divided between husband and wife in connection with the dissolution of the marital estate. (*See Newell v. Sunshine Mining Co.*, 70 Idaho 429, 220 P.2d

685 (1950)). Petitioner suggests that it is first necessary for the Commission to make some determination as to whether or not the award described in the proposed lump sum settlement constitutes community property versus separate property. Citing to *Cook v. Cook*, 102 Idaho 651, 637 P.2d 799 (1981), Petitioner urges the Commission to conclude that the proposed settlement constitutes separate property against which Nakel has no legitimate claim. While we might be inclined to agree with Petitioner's argument, we do not believe we have jurisdiction to make such a determination, nor do we believe that it is necessary that we make such determination in dealing with the matter over which the Commission does have jurisdiction, i.e. the impact of Idaho Code § 72-802 to the peculiar facts of this case. We conclude that it is possible for us to say that the proposed lump sum settlement award is exempt from any claim by Nakel, and is payable exclusively to Petitioner without treading on the jurisdiction of the District Court over the dissolution of the marriage; should the Commission conclude that the provisions of Idaho Code § 72-802 prohibit the Petitioner's assignment of the proceeds of settlement, the District Court is nevertheless empowered to take this fact into account in modifying the judgment and decree of divorce to effect a just and equitable property distribution. Our inquiry into the applicability of Idaho Code §72-802 to the proposed lump sum settlement does not depend on whether the proceeds of settlement are properly characterized as community property or separate property.

Finally, as noted by Petitioner, Idaho Code § 72-707 confers jurisdiction in the Commission over all questions arising under the workers' compensation laws "if not settled by agreement or stipulation of the interested parties". It might be argued that since the judgment and decree of divorce is founded on a stipulation for entry of judgment and decree of divorce executed by Petitioner and Nakel, that the Industrial Commission does not have jurisdiction over

this dispute. However, Idaho Code § 72-707 contains the important caveat that such settlement by agreement or stipulation must be “with the approval of the Commission”. Here, Petitioner and his ex-wife did not seek the approval of the Commission at the time they entered into their stipulation concerning the assignment of a portion of Petitioner’s claim to Nakel. Therefore, we conclude that even though the parties may have stipulated to this result, the Industrial Commission nevertheless has jurisdiction to consider the propriety of the assignment, since there was no contemporaneous application to the Commission for approval of the same.

Idaho Code § 72-802 provides:

No claims for compensation under this law shall be assignable, and all compensation and claims therefor shall be exempt from all claims of creditors, except the restrictions under this section shall not apply to enforcement of an order of any court for the support of any person by execution, garnishment or wage withholding under chapter 12, title 7, Idaho Code.

This statute was recently interpreted by the court in *Williams v. Blue Cross of Idaho*, 151 Idaho 515, 260 P.3d 1186 (2011). The Court noted that where the language of a statute is plain and unambiguous, the Court is required to give effect to the statute as written. Per the plain language of Idaho Code § 72-802, the Court concluded that it “prohibits (1) a workers’ compensation claimant from assigning workers’ compensation proceeds to a third party, and (2) a creditor, other than one seeking to recover child support, from asserting a claim against workers’ compensation proceeds paid to a claimant.” The agreement made by Petitioner as part of the stipulation for entry of judgment and decree of divorce to assign 50% of his interest in a potential settlement to Nakel is expressly prohibited by the plain language of the statute. By the same token, any claim made against the proceeds of the proposed lump sum settlement by Nakel as a judgment creditor is expressly prohibited by the plain language of the statute. Therefore, a proposed settlement, in the form previously submitted to the Commission by employer/surety



/s/  
Thomas P. Baskin, Commissioner

ATTEST:

/s/  
Assistant Commission Secretary

**CERTIFICATE OF SERVICE**

I hereby certify that on the 14<sup>th</sup> day of April, 2016, a true and correct copy of the foregoing ORDER ON PETITION FOR DECLARATORY RELIEF was served by regular United States Mail upon each of the following:

DANIEL J LUKER  
PO BOX 6190  
BOISE ID 83707-6190

NEIL D MCFEELEY  
PO BOX 1368  
BOISE ID 83701-1368

ka

/s/