

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

VERONICA ARREOLA,

Claimant,

v.

SCENTSY, INC.,

Employer,

and

GRANITE STATE INSURANCE CO.,

Surety,

Defendants.

IC 2021-014093

**ORDER DENYING CLAIMANT'S
MOTION FOR REINSTATEMENT OF
DISABILITY (TTD) BENEFITS AND
DENYING JRP 15 PETITION FOR
DECLARATORY RULING**

FILED January 14, 2022

On November 5, 2021, Claimant filed a Motion for Reinstatement of Disability (TTD) benefits, or in the alternative, a petition for declaratory ruling under Judicial Rules of Practice and Procedure (JRP) 15, along with a supporting memorandum. Defendants filed a response objecting to said filings on November 18, 2021, along with supporting memorandum. Claimant filed a reply on November 24, 2021. Claimant argues that Defendant unreasonably scheduled an IME that Claimant could not attend due to a scheduling conflict, and then unreasonably suspended TTD benefits under Idaho Code § 72-434 without affording Claimant due process. In the alternative, Claimant seeks a declaratory ruling as follows:

1. Whether Adjuster Butler's August 20, 2021, NOCS is a factual, procedural, administrative, legal and/or Constitutional nullity, which must therefore be vacated as a matter of law, with retroactive reinstatement of Petitioner's disability (TTD) benefits?
2. **Alternatively**, whether Petitioner's due process were violated, thereby nullifying Adjuster Butler's August 20, 2021, NOCS, with a commensurate retroactive reinstatement of Petitioner's disability (TTD) benefits?

3. Whether sanctions against Adjuster Butler (Surety) are warranted?

Claimant's Motion and Pet. for Dec. Ruling, p. 2 (emphasis in original). Defendants contend that Claimant's Motion is improper because a Complaint has not yet been filed in this matter. Further, Defendants argue that the Petition for Declaratory Ruling should be denied because JRP 15 is not designed for determinations of factual issues and that the Commission does not have jurisdiction to consider the constitutional arguments that Claimant raised in his petition.

Background

On May 12, 2021, Claimant suffered a workplace injury and made a claim. This claim was accepted as compensable by Defendants on June 3, 2021 and benefits commenced. Claimant underwent an MRI and saw Dr. Jared Tadge, who recommended surgery.

On July 21, 2021, Defendants (through Surety's Adjuster, Courtney Butler) sent Claimant a letter informing her to submit to an Independent Medical Examination (IME) with Dr. Jeffrey Hessing scheduled for August 10, 2021 at 1:00 p.m.

On August 4, 2021, Claimant's attorney responded to this notice, stating that Claimant had obligations to care for a disabled relative and therefore, could not attend the IME at the scheduled time. Claimant's counsel further requested that Defendants coordinate the scheduling of the IME with his office.

On August 9, 2021, Defendants sent Claimant and Claimant's counsel notice of an IME with Dr. Hessing scheduled for August 17, 2021 at 2:00 p.m. On August 13, 2021, Claimant's counsel responded that Claimant would be unable to attend the IME due to her obligation to care for her disabled relative. Ms. Butler sent an email to counsel stating that if Claimant did not attend the IME, her benefits would be suspended.

Claimant did not attend the August 17, 2021 IME. Subsequently, Defendants filed a Notice of Claim Status suspending Claimant's TTD benefits due to her failure to attend the IME pursuant to Idaho Code § 72-434. A complaint has not yet been filed in this matter.

Discussion

I. Claimant's Motion for Reinstatement of Disability Benefits

Claimant contends that the Surety acted unreasonably in this matter by unilaterally scheduling the August 17, 2021 IME and then suspending benefits when Claimant failed to attend said IME. Claimant moves the Commission to reinstate Claimant's benefits.

Claimant's Motion is not properly before the Commission. Idaho Code § 72-706(2) states as follows:

When compensation discontinued. When payments of compensation have been made and thereafter discontinued, the claimant shall have five (5) years from the date of accident causing the injury or date of first manifestation of an occupational disease within which to make and file with the commission an application requesting a hearing for further compensation and award.

Idaho Code § 72-706(2). As stated above, an application requesting a hearing, or a complaint, has not yet been filed in this matter. The Commission cannot entertain Claimant's motion until a complaint has been filed. Once a complaint has been filed, Claimant may move the Commission for a hearing or an emergency hearing to reinstate benefits under JRP 8. Accordingly, Claimant's Motion to Reinstate Disability Benefits is DENIED.

II. Claimant's Petition for Declaratory Ruling

In the alternative, Claimant petitions the Commission for a declaratory ruling that, as a matter of law, Adjuster Butler's unilateral scheduling of the IME was *per se* unreasonable, and therefore, it is a legal impossibility for Claimant to have unreasonably failed to submit or obstruct the IME under Idaho Code § 72-434. Further, Claimant contends that Defendants unilateral

suspension of benefits, without first obtaining an order from the Commission, denied Claimant's due process rights. Finally, Claimant requests the Commission to award Claimant attorney's fees due to Defendant's unreasonable actions under Idaho Code § 72-804.

JRP 15 provides the option for a Declaratory Ruling as a mechanism to address the construction, validity, or applicability of any worker's compensation statute, rule, or order. The Rule provides, in pertinent part:

Whenever any person has an actual controversy over the construction, validity or applicability of a statute, rule, or order, that person may file a written petition with the Commission, subject to the following requirements:

1. The petitioner must expressly seek a declaratory ruling and must identify the statute, rule, or order on which a ruling is requested and state the issue or issues to be decided;
2. The petitioner must allege that an actual controversy exists over the construction, validity or applicability of the statute, rule, or order and must state with specificity the nature of the controversy;
3. The petitioner must have an interest which is directly affected by the statute, rule, or order in which a ruling is requested and must plainly state that interest in the petition; and
4. The petition shall be accompanied by a memorandum setting forth all relevant facts and law in support thereof.

JRP 15(C).

Upon receipt of a JRP 15 petition, the Commission may hold hearings, conduct investigations, issue written rulings, but also decline to make a ruling where:

- a. The Commission lacks jurisdiction over the issue or issues presented;
- b. There is no actual controversy;
- c. The petitioner would not be directly affected by a resolution of the issue presented;
- d. The petitioner does not provide sufficient facts or other information on which the Commission may base a ruling;

- e. The issue on which a determination is sought is or should be the subject of other administrative or civil litigation or appeal; or
- f. It appears to the Commission that there is good cause why a declaratory ruling should not be made.

JRP 15(F)(4). Claimant cites to *Cox v. City of Boise*, IC 2014-022773 (Idaho Ind. Comm. May 20, 2019), in which the Commission determined that a surety's action in setting the IME without first consulting the claimant was unreasonable. Claimant contends that the holding in *Cox* necessitates that the Commission must determine Defendant's similar action, in scheduling the August 17, 2021 IME without first consulting and coordinating with Claimant and her attorney, to be unreasonable under Idaho Code § 72-433. The Commission does not agree with Claimant that *Cox* requires us to declare that Defendant's actions were *per se* unreasonable. *Cox* explicitly stated that it was not creating a bright-line rule. Rather, the reasonableness of the parties' actions must be determined on a case-by-case basis. The Commission held that "[g]iven the complexities of the IME procedure it is not proper to declare a *per se* rule, as each case must be determined by the facts presented therein." *Cox*, IC 2014-022773 at *4 (emphasis in original). The Commission further stated:

It is acknowledged the practice of setting an IME without consulting the opposing party is not uncommon, and this ruling should not be construed as grounds to cancel, without good cause, all IMEs set without prior consultation, or refusal to attend such IMEs when there is no reason the date and time will not work. The better procedure, and one encouraged by the Commission, is for the surety to attempt to work with the claimant from the outset in setting IMEs. Such procedure could help eliminate situations such as the current one. **However, this Order does not establish a hard-and-fast rule for all cases.**

Id. at *5 (emphasis added). Although the Commission may hold a hearing to make a determination on the issues raised in Claimant's Petition for Declaratory Ruling, the more appropriate course of action, for the reasons stated above, is for Claimant to file a complaint and then move the

Commission to reinstate benefits and/or move for an emergency hearing to determine the reasonableness of the parties' conduct under Idaho Code §§ 72-433 and 434. Accordingly, we decline to issue a declaratory ruling because we believe that the resolution of the issues raised by Claimant are better suited to hearing or emergency hearing following the filing of a complaint. See JRP 15(F)(4)(e).

Claimant also petitions the Commission to make a declaratory ruling that Claimant's due process rights were violated when Defendant suspended her benefits under the guise of Idaho Code § 72-434 without first obtaining an order from the Commission. Claimant argues that she is entitled to some manner of pre-deprivation process prior to suspension of benefits under Idaho Code § 72-434. Claimant Reply Memo., p. 4-11.

The Supreme Court has ruled that, under Idaho Code § 72-434, an employer/surety is not required to first obtain an order of the Commission prior to suspending benefits. *Brewer v. La Crosse Health & Rehab*, 138 Idaho 859, 863-64, 71 P.3d 458, 462-63 (2003). Under *Brewer*, the Commission cannot conclude that Defendant's action of suspending benefits under Idaho Code § 72-434 without first obtaining an order of the Commission denied Claimant due process. In effect, Claimant argues that Idaho Code § 72-434 is unconstitutional in that it denies a claimant's due process rights to a hearing before benefits can be suspended. The Commission does not have jurisdiction to entertain the constitutional arguments raised in Claimant's Motion and Petition. See, e.g., *Owsley v. Idaho Industrial Commission*, 141 Idaho 129, 134, 106 P.3d 455, 460 (2005). Accordingly, we decline to issue a declaratory ruling under JRP 15(F)(4)(a) and (e).

Claimant also petitions the Commission for a declaratory ruling to determine whether Defendant's suspension of benefits warrants sanctions under Idaho Code § 72-804. Claimant's Memo. in Support of Motion and Pet. for Dec. Ruling, p. 23-25. Idaho Code § 72-804 allows for

an award of attorney's fees if the employer/surety "without reasonable grounds discontinued payment of compensation as provided by law justly due and owing to the employee or his dependents." This is a determination the Commission makes on a factual, case-by-case basis. Again, the proper avenue for Claimant is to file a complaint and apply for a hearing under JRP 8(C), or for an emergency hearing under JRP 8(D), to determine whether Claimant's actions warrant punitive action under Idaho Code § 72-804. Accordingly, we decline to issue a declaratory ruling under JRP 15(F)(4)(e).

Conclusion

Based on the foregoing reasons, the Claimant's Motion for Reinstatement of Disability (TTD) benefits and JRP 15 Petition for Declaratory Ruling is DENIED.

IT IS SO ORDERED.

DATED this 14th day of January, 2022.

INDUSTRIAL COMMISSION



Aaron White, Chairman

Thomas E. Limbaugh, Commissioner

Thomas P. Baskin, Commissioner

ATTEST:

Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of January, 2022, a true and correct copy of the foregoing **ORDER DENYING CLAIMANT'S MOTION FOR REINSTATEMENT OF DISABILITY (TTD) BENEFITS AND DENYING JRP 15 PETITION FOR DECLARATORY RULING** was served by email upon each of the following:

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