

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

TALEETHA FUENTES,

Claimant,

v.

CAVOCO INDUSTRIES, INC.,

Employer,

and

SENTRY CASUALTY COMPANY,

Surety,

Defendants.

**IC 2018-018229**

**ORDER DENYING PETITION FOR  
DECLARATORY RULING**

**Filed September 8, 2020**

On June 23, 2020, Claimant filed a petition for declaratory ruling under Judicial Rules of Practice and Procedure (JRP) 15, along with supporting memorandum. Defendants filed a response on June 30, 2020. On July 13, 2020, outside the 10-day period permitted by JRP 15(E), Claimant filed a reply. In her petition for declaratory ruling, Claimant requests the Commission to rule that the December 19, 2019 Order Dismissing Complaint is void and must therefore be vacated. Defendants contend the Commission acted within its power under JRP 16 because Claimant failed to file any responses, and as such the petition should be denied.

**FACTS**

On July 9, 2019, Claimant filed a Workers' Compensation Complaint alleging a date of injury and/or manifestation of July 9, 2018. Defendants denied the claim and did not pay any benefits. Defendants served Claimant with interrogatories and requests for production of documents on July 29, 2019. Claimant failed to respond within the 30 days required by Idaho Rules of Civil Procedure (I.R.C.P.) 33(b)(2) and 34(b)(2)(A). Defendants granted a 10-day

extension on September 3, 2019, and the Parties later agreed Claimant would have until September 30, 2019, to file the required responses. However, Claimant failed to provide responses within the agreed upon period.

On October 7, 2019, Defendants moved the Commission for its “Order compelling Claimant to answer the Interrogatories and Request for Production of Documents propounded to her on or about the 29<sup>th</sup> day of July, 2019, pursuant to the rules and regulations of the Idaho Industrial Commission.” Defs’ Motion to Compel, p. 1. Claimant did not respond, and the Commission entered its Order Compelling Discovery dated October 29, 2019. Under that Order, Claimant was “directed to file a Notice of Service of discovery responses with the Industrial Commission no later than 15 days from the date of this Order.” Order Compelling Disc., p. 1. Claimant made no response to the Order. On November 14, 2019, Defendants filed their motion for sanctions, to include dismissal. Claimant did not respond to the motion, and the Commission dismissed the complaint without prejudice on December 19, 2019 (“Dismissal Order”). Order Dismissing Compl., p.1. Claimant filed neither a timely motion for reconsideration under Idaho Code (I.C.) § 72-718, nor an appeal to the Idaho Supreme Court under I.C. § 72-724<sup>1</sup>.

### **DISCUSSION**

Rule 15 of the JRP 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:

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<sup>1</sup> On May 15, 2020, Claimant filed Motion to Retain Case on Active Calendar and Notice of Service of answers and responses to Defendants’ first set of interrogatories. On May 19, 2020, Claimant filed a Motion to Reconsider the Commission’s December 19, 2019 Order Dismissing the Complaint without prejudice.

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 JPR 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 other good cause why a declaratory ruling should not be made.

JRP 15(F)(4).

Citing *Wernecke v. St. Maries Joint School Dist. No. 401*, 147 Idaho 277, 207 P.3d 1008 (Idaho 2009), Claimant asserts the Order dismissing her complaint without prejudice violates the Workers' Compensation Act ("Act") and is thus void. Cl. Mem. in Supp., p. 4. However, the present facts are unlike those at issue in *Wernecke*. There, a 1990 settlement agreement between

claimant and ISIF purported to bar future claims by claimant against the ISIF. The Court ruled that such agreements are void unless the Commission expressly finds that all elements of ISIF liability have been satisfied. Absent such findings the Commission lacks statutory authority to approve such a settlement.

The Court has limited and narrowly construed what constitutes a void order or judgment. *Hartman v. United Heritage Property and Cas. Co.*, 141 Idaho 193, 197, 108 P.3d 340, 344 (2005).

The Court has held that:

In order for a judgment to be void, there must generally be some jurisdictional defect in the court's authority to enter the judgment, either because the court lacks personal jurisdiction or because it lacks jurisdiction over the subject matter of the suit. *Puphal v. Puphal*, 105 Idaho 302, 669 P.2d 191 (1983). A judgment is also void where it is entered in violation of due process because the party was not given notice and an opportunity to be heard. *Prather v. Loyd*, 86 Idaho 45, 382 P.2d 910 (1963) (judgment void where trial court entered judgment against makers of note without giving makers an opportunity to present evidence regarding their affirmative defense of lack of consideration). *See also, Wright v. Wright*, 130 Idaho 918, 950 P.2d 1257 (1998) (default judgment void where parties whose attorney had withdrawn did not serve upon them a copy of the order which contained notice that judgment by default could be entered if they did not appear in action within twenty-one days).

*McGrew v. McGrew*, 139 Idaho 551, 558, 82 P.3d 833, 840 (2003).

Here, as Defendants correctly note, the Commission acted within the authority granted under the JRP. Def. Resp. to Cl. JRP 15 Pet. Further, the Court recognizes the Commission's statutory authority to adopt and apply the JRP under I.C. § 72-508. *Ayala v. Robert J. Meyers Farm*, 165 Idaho 355, 360, 445 P.3d 164, 169 (2019). Under JRP 7(C), all "[p]rocedural matters relating to discovery, *except sanctions*, shall be controlled by the appropriate provisions of the Idaho Rules of Civil Procedure." JRP 7(C) (emphasis added). Accordingly, I.R.C.P. 33 and 34 govern the time within which parties must respond to interrogatories and requests for production, and other technical matters. However, JRP 16 peculiarly governs sanctions relating to discovery

matters. The section provides that “[t]he Commission retains power to impose appropriate sanctions for any violation or abuse of its rules or procedures.” Here, the Commission determined that an “appropriate sanction” for Claimant’s apparent disinterest in responding to discovery requests, and previous Commission orders, was dismissal of her complaint without prejudice. The Commission acted within the authority granted to it by the Judicial Rules of Practice and Procedure.

However, Claimant argues that the Commission’s order dismissing the Complaint without prejudice is void because she was not afforded the prior notice to which she was entitled before the dismissal of her complaint under JRP 12(B). Although dismissal without prejudice was clearly ordered as a discovery sanction, as requested by defendants in their motion, it was erroneously described by the Commission as having been entered pursuant to JRP 12(B). JRP 12 treats dismissals generally, and provides specific rules for dismissals entered for non-prosecution:

**B. Non-Prosecution.**

The Commission may dismiss a complaint without prejudice if no action has been taken on the case for a period of six (6) months. Prior to dismissal, the Commission shall give written notice to the parties of the Commission’s intent to dismiss the complaint. Any party may, within 21 days of the date of service of the Commission’s notice, show cause in writing why the Commission should not dismiss the complaint.

JRP 12(B).

Therefore, under JRP 12(B), before the Commission is authorized to enter an order of dismissal for non-prosecution, it must first give written notice to the parties of the Commission’s intention to dismiss. That was not done in this case. Per Claimant, this failure proves that the Dismissal Order is void because the Commission did not honor its own due process protections. The answer to this assertion is that the dismissal was not prompted by non-prosecution under JRP 12(B). Rather, it was prompted by Claimant’s several failures to respond to discovery and related

orders of the Commission, failures which warrant appropriate sanctions under JRP 7 and 16. Claimant should not be heard to raise due process violations ostensibly related to the Commission's incorrect citation to Rule 12(B), when the actual reason for dismissal of the Complaint without prejudice was Claimant's persistent discovery violations. The Commission did not sua sponte interject JRP 12(B) as the reason for dismissal, as should be obvious from a casual review of the facts and pleadings leading to the Dismissal Order. The Commission's Order was not issued in response to a motion to dismiss for lack of prosecution, but in response to a motion for sanctions, including dismissal, for Claimant's failure to respond to discovery.

Claimant further asserts the Dismissal Order is void because "Defendants' October 2, 2019, Motion to Compel and November 13, 2019, Motion for Sanctions were both wholly devoid of citation to any applicable or otherwise controlling legal or procedural authority, and therefore without any stated requisite 'legal basis,'" in accordance with JRP 3(F)(1). Cl. Mem. in Supp., p.

5. That Rule provides:

An application to the Commission for an order shall be made by filing a motion which, unless made during a hearing, shall be made in writing, state the legal and factual basis for the motion, and set forth the relief or order sought.

JRP 3(F)(1).

In their Motion to Compel, filed October 7, 2019, Defendants identified the facts supporting the motion and asked that Claimant be required to comply pursuant to the rules and regulations of the Commission. While no specific rule justifying the requested order was cited, we believe that the spirit of JRP 3(F)(1) was honored, and that no recipient of such a motion could reasonably argue that she did not have notice of what was being requested, and the basis of the same. The motion reflects, inter alia, that there had been an informal dialogue ongoing between the parties; Defendants had granted two extensions of time to Claimant in the hope that answers

would be forthcoming. On receipt of the formal motion, Claimant should have immediately recognized that Defendant's patience had been exhausted, and that the assistance of the Commission was at last being requested to obtain the promised answers. We are not persuaded by Claimant's JRP 3 argument.

Claimant makes the same argument about Defendant's Motion for Sanctions, filed on November 14, 2019, after Claimant failed to provide discovery responses as ordered by the Commission on October 29, 2019. We are equally unpersuaded that Defendant's failure to identify a specific rule or statute pursuant to which the motion was brought is fatal to the Dismissal Order. Claimant cannot reasonably argue surprise, misdirection or ignorance about the relief Defendants were requesting.

Finally, if Claimant believed that the above referenced motions were fatally flawed, the time to raise her objections was within 14 days from the filing of each motion under JRP 3(F)(2).

That subsection provides:

2. If, after 14 days from the filing of a motion, no brief, affidavit, or other response is filed, the Commission may act on the motion. The Commission may act on the motion sooner after giving actual notice, or attempting to give actual notice by telephone or by facsimile transmission, to all parties. If the motion is opposed by any party, the Commission may base its ruling on written argument or may conduct such conference or hearing as may be necessary, in the Commission's judgment, to rule on the motion.

JRP 3(F)(2). Claimant, having failed to articulate objections, or respond within the time prescribed, left the Commission free to act on the motions. Why should Claimant be allowed to raise her objections at this late date, having failed to avail herself of the remedy provided by the JRP?

Within 20 days after the entry of the Order of Dismissal, Claimant could have filed a motion for reconsideration pursuant to I.C. § 72-718, and asked the Commission to reconsider its

Order in view of the actual impact of an order of dismissal without prejudice in this particular case. As Claimant has pointed out, since no benefits were paid in this case, an order dismissing the case without prejudice is tantamount to an order of dismissal with prejudice, because, by December 19, 2019, no time remained within which to refile the Complaint. In such circumstances the Commission liberally grants reconsideration. *See Amezquita v. King*, IC 2018-000004 (Idaho Ind. Comm. March 4, 2019) (granting a timely motion for reconsideration when, due to a misunderstanding, Claimant's counsel failed to respond to Notice of Intent to Dismiss. In a footnote, the Commission noted that the limitation provisions of I.C. § 72-706 would likely prohibit the Claimant from refiling the Complaint); *see also Robertson v. Vernon Steel, Inc.*, IC 2018-001726 (Idaho Ind. Comm. October 11, 2019) (granting a timely motion for reconsideration when Claimant's apparent failure to respond to Notice of Intent to Dismiss was likely due to a mail error, was an isolated incident, and Claimant promptly acted to mitigate the consequences of such); *Whitney v. Sysco Corp.*, IC 2017-003966 (Idaho Ind. Comm. July 5, 2018) (granting a timely motion for reconsideration when, due to Claimant's counsel's oversight, a response to a Notice of Intent to Dismiss was not filed and counsel promptly acted to mitigate the consequences of such); *Padilla v. Prestige Fence & Landscape Co.*, IC 2012-031446 (Idaho Ind. Comm. December 10, 2018) (granting a timely motion for reconsideration when Claimant's counsel, through inadvertence or mistake, did not follow established office procedure and was unaware of Notice of Intent to Dismiss and failed to file a response). Instead, Claimant took no action within the 20 day time period anticipated by I.C. 72-718.

Absent a motion for reconsideration, the Dismissal Order was a final order of the Commission, and as such, could have been appealed to Idaho Supreme Court pursuant to I.C. §



72-718 and I.C. § 72-724. Again, no action was taken to challenge the Commission's decision by this route.

The Commission recognizes that the dismissal of this claim is a de facto dismissal with prejudice, due to the applicability of I.C. § 72-706(1). Although this is regrettable, JRP 15 is not a substitute, or additional, remedy to be employed to excuse Claimant's disregard of rule and statute.

Therefore, the Commission declines the invitation to act on the Petition because these issues were better suited to be addressed through the normal course of proceedings and/or appeal. To do otherwise would permit Claimant an end run around the statutory scheme, when she failed to do any of the things contemplated by statute and rule that would have allowed her to avoid her current dilemma.

Finally, we find no basis to the argument that in dismissing the Complaint the Commission denied Claimant due process. The Court set forth the balancing test to determine the adequacy of a particular process as follows:

Due process ... is not a technical conception with a fixed content unrelated to time, place and circumstances ... Due process is flexible and calls for such procedural protections as the particular situation demands ... Identification of the specific dictates of due process generally requires consideration of three distinct factors: first, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

*Ayala*, 165 Idaho at 362, 445 P.3d at 171 (quoting *Mathews v. Eldridge*, 424 U.S. 319, 334-35, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976) (internal citations omitted)).

Applying the balancing test of *Mathews* in this case, we conclude that the due process rights of Claimant were not violated. Although the sanction of dismissing the Complaint without prejudice may have harsh consequences, Claimant repeatedly failed to respond to discovery

requests within the prescribed timeframe despite multiple extensions and disregarded the Commission's Order compelling a response to said requests. Furthermore, Claimant did not use the opportunities available to her under statute and the JRP to timely contest, challenge, respond, or object to Defendant's Motion to Compel; Defendant's Motion for Sanctions; or the Commission's Dismissal Order.

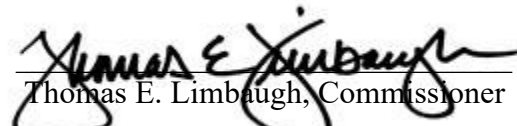
Based on the foregoing, Claimant's petition for declaratory ruling is DENIED.

DATED this 8<sup>th</sup> day of September, 2020.


INDUSTRIAL COMMISSION

  
Thomas P. Baskin, Chairman

  
Aaron White, Commissioner

  
Thomas E. Limbaugh, Commissioner

ATTEST:

  
Commission Secretary



**CERTIFICATE OF SERVICE**

I hereby certify that on the 8<sup>th</sup> day of September, 2020, a true and correct copy of the foregoing **ORDER DENYING PETITION FOR DECLARATORY RULING** was served by email upon each of the following:

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A handwritten signature in black ink, appearing to read "Michael G. McPeck", written over a horizontal line. The signature is stylized and cursive.