

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

SALVADOR BECERRA,

Claimant,

v.

JIMMIE SCARROW, dba SCARROW

DAIRY FARMS,

Employer,

and

LIBERTY NORTHWEST INSURANCE

CORP.,

Surety,

Defendants.

IC 2011-022751

**ORDER ON PETITION
FOR DECLARATORY RULING**

April 18, 2013

On March 18, 2013, Claimant, Petitioner herein, Salvador Becerra, filed his Petition for Declaratory Ruling pursuant to JRP 15, along with supporting memorandum, affidavit and exhibits. Petitioner seeks guidance from the Industrial Commission on the following issue:

Are unenumerated “reply” briefs prohibited or otherwise precluded as a matter of law and/or procedure under the Judicial Rules of Practice and Procedure?

(JRP 15 Petition for Declaratory Ruling on Unenumerated Reply Briefs, p. 1).

Defendants objected to Claimant’s petition on March 25, 2013. Claimant filed his reply on April 2, 2013.

For the reasons explained below, the Commission declines to rule on the Petition.

JRP 15, on Declaratory Rulings, provides a mechanism by which an interested party may apply to the Industrial Commission for rulings “on the construction, validity, or applicability of

any workers' compensation statute, rule, regulation or order.” (See, JRP 15(A)). The petitioner must demonstrate that an “actual controversy” exists over the construction, validity, or applicability of the rule or statute in question. (See, JRP 15(C)). The Commission is free to decline to make a ruling on a petition when it appears that there is no actual controversy or there exists some other good cause why a declaratory ruling should not be made. (See, JRP 15(F)(4)).

We decline to rule on the petition because we believe it fails to articulate an actual controversy over the construction or validity of the Judicial Rules of Practice and Procedure, specifically J.R.P. Rule 3 (E).

As noted above, Petitioner has framed the issue as being whether unenumerated “reply” briefs are prohibited or otherwise precluded as a matter of law and/or procedure under the Judicial Rules of Practice and Procedure. This question is succinctly answered by the provisions of J.R.P. 3(E), 3(F), and 11(A) which provide, in pertinent part:

3(E). Motions Generally.

1. 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.
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.
3. All motions and other pleadings shall be served on any other party.

3(F). Motions to Reconsider.

A motion to reconsider pursuant to Idaho Code § 72-718 shall be made within 20 days from the date the final decision is filed and shall be supported by a brief filed with the motion. All responses to a motion to reconsider shall be filed within 14

days of the date of filing of the motion. Any reply brief shall be filed no later than 10 days from the date of filing the response.

11(A). Time for Filing.

The Commission shall grant a request by any party to submit argument by written brief. Unless there appears good cause for establishing an alternate briefing schedule and the Commission so orders, the claimant shall file an opening brief no later than 56 days after the hearing, each defendant shall file a response brief no later than 73 days after the hearing, and the claimant may file a reply brief no later than 83 days after the hearing. As continuances are not favored, the Commission will not grant requests for additional time for filing briefs unless made by motion within the original time allowed and a showing of good cause. No brief in excess of 30 pages, exclusive of any addendum or exhibit, shall be filed without the Commission's prior approval.

Therefore, the Judicial Rules of Practice and Procedure unambiguously anticipates that in general motion practice, the Referee or Commission may issue an order after a response is filed. J.R.P. Rules 3(F) and 11(A) permit reply briefs for motions to reconsider and post-hearing briefing. The Judicial Rules of Practice and Procedure 3(E), 3(F) and 11(A) are not ambiguous, and are not in need of construction by the Industrial Commission.

Claimant's issue is not one of statutory construction, but appears to be one of practice, namely the factual question of whether or not Claimant may make additional filings for the Referee to consider before issuing an order. The Commission notes that most general motions do not warrant the additional time delay of a reply brief, and the general practice is to facilitate prompt resolution of the matter. Parties should be attentive in motion and response drafting to include all relevant arguments prior to filing. The Referee or other hearing officer has discretion to allow additional briefing on a more complicated matter, as reply briefs are not specifically prohibited. However, parties should seek Referee or Commission permission before deviating from the general rule. We believe that this matter is more properly handled as one of the issues

to be decided by the Referee assigned to this case, and in the normal course of a proceeding before the Industrial Commission.

THEREFORE, for these reasons we decline to entertain Claimant's petition for declaratory ruling, and dismiss the same.

DATED this 18th day of April, 2013.

INDUSTRIAL COMMISSION

/s/
Thomas P. Baskin, Chairman

/s/
R.D. Maynard, Commissioner

/s/
Thomas E. Limbaugh, Commissioner

ATTEST:

/s/
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of April, 2013 a true and correct copy of **ORDER ON PETITION FOR DECLARATORY RULING** was sent by regular United States Mail upon each of the following:

JERRY J GOICOECHEA
PO BOX 6190
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KENT DAY
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/s/