

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

FRANK MILLER,  
                            Claimant/Respondent,  
  
v.  
  
YELLOWSTONE PLASTICS, INC.,  
  
                            Employer,  
  
and  
  
TWIN CITY FIRE INSURANCE,  
  
                            Surety,  
                            Defendants/Petitioners  
  
and  
  
STATE OF IDAHO, INDUSTRIAL  
SPECIAL INDEMNITY FUND,  
  
                            Defendant

**IC 2019-024650**

**ORDER ON PETITION FOR  
DECLARATORY RULING**

**FILED**

**OCT 07 2022**

**INDUSTRIAL COMMISSION**

On or about August 30, 2022, Yellowstone Plastics, Inc., and its surety, Twin City Fire Insurance (“Petitioners” herein), filed their JRP 15 petition for declaratory relief, along with supporting memoranda and declaration of counsel. Frank Miller, (“Respondent” herein), filed an untimely response on September 14, 2022. Petitioner filed a reply on or about September 23, 2022. Petitioner has not raised the timeliness of Respondent’s response to the petition, and any such objection is deemed waived.

JRP 15 provides a mechanism by which an aggrieved party may request Commission review of the construction, validity or applicability of any worker’s compensation statute, rule, or

order. A petitioner must allege that an actual controversy exists over the statute, rule or order and must specify the nature of the controversy. Further, the petitioner must have an interest which is directly affected by the statute, rule, or order. The Commission may hold a hearing on the petition, issue a written ruling providing guidance on the controversy or decline to make a ruling when it determines that there is no controversy or that the issue at hand is better suited through resolution in some other venue, or by some other administrative means.

For the reasons set forth below, the Commission denies the petition for declaratory relief and refers to the referee assigned to this case the issue of whether the hearing scheduled for December 9, 2022 should be vacated.

#### **Statement of Facts**

This matter arises from an industrial accident occurring on or about August 25, 2019. It appears to be undisputed that on that date Respondent was assaulted by a co-worker, in fact his immediate supervisor, who tripped Respondent, causing him to fall to the floor and suffer certain unspecified injuries to his low back. Respondent evidently has a significant history of pre-existing low back injuries and surgeries. A notice of injury and claim for benefits was filed with the Commission on August 30, 2019. A worker's compensation complaint was filed on December 23, 2019. A hearing on the following eight issues is set for December 9, 2022:

1. Whether Claimant sustained an injury from an accident arising out of and in the course of employment;
2. Whether Claimant's condition is due in whole or in part to a pre-existing and/or subsequent injury/condition;
3. Whether and to what extent Claimant is entitled to the following benefits:
  - a. Medical care;
  - b. Temporary partial and/or Temporary total disability (TPD/TTD);
  - c. Permanent partial impairment (PPI); and
  - d. Permanent partial disability (PPD)

4. Whether Claimant is entitled to permanent total disability pursuant to the odd lot doctrine or otherwise;
5. Whether the Industrial Special Indemnity Fund is liable under Idaho Code § 72-332;
6. Apportionment under the *Carey* formula;
7. Whether Claimant is entitled to attorney fees pursuant to Idaho Code § 72-804;
8. Whether Claimant's condition resolved following the August 25, 2019 accident.

Based on the occurrences of August 25, 2019, the Respondent also filed his complaint in District Court on August 25, 2021, a copy of which is attached to the Declaration of Mr. Gardner. Among other claims, the complaint states a claim against Respondent's supervisor, Matt Knutson, for intentional battery and negligence. Further, the complaint states a claim against Employer under the provisions of Idaho Code § 72-209(3), alleging that Respondent's injuries were the result of a willful or unprovoked act of physical aggression on the part of Employer. A jury trial in the civil matter is set for January 17, 2023.

#### **Arguments of the Parties**

Petitioner contends that it would be uneconomical, if not unworkable, to proceed with the December 9, 2022, workers' compensation hearing prior to the scheduled January 2023 jury trial. Petitioner rightly points out that even though the workers' compensation hearing will be held on December 9 of 2022, December 9 is really only the beginning of a process that includes post-hearing depositions and briefing. Consequently, a final decision from the Commission on Respondent's claim for workers' compensation benefits would not be expected until sometime after the January 2023 jury trial. There may be a danger of conflicting findings inherent in such a process. For example, a jury may find that Respondent has failed to meet his burden of proving that he suffered a permanent injury as a result of the accident. Would such a jury finding affect the

Industrial Commission proceeding in which a hearing has been held but other evidence is yet to be adduced? Petitioner suggests that this problem can be avoided by the Commission's dismissal of the workers' compensation claim. Petitioner reasons that anything Respondent might be awarded in the workers' compensation case is a subset of potential damages recoverable in the civil action, thus making pursuit of the workers' compensation claim superfluous.

In response, Respondent argues that workers' compensation provides a claimant's exclusive remedy for work related injuries. Notwithstanding that the actions of his supervisor and Employer may implicate a cause of action in District Court pursuant to the provisions of Idaho Code § 72-209(3), Respondent is nevertheless entitled to pursue his claim for workers' compensation benefits before the Industrial Commission. Even though Respondent may have been injured by the intentional acts of his supervisor and Employer, from Respondent's perspective, the injury that befell him was nevertheless the result of an "accident" entitling him to the protections of the Workers' Compensation Act. *Dominguez v. Evergreen Resources, Inc.*, 142 Idaho 7, 121 P.3d 938 (2005).

### **Discussion**

In *Anderson v. Gailey*, 97 Idaho 813, 555 P.2d 144 (1976), the Court ruled that the Industrial Commission and the District Courts have concurrent jurisdiction to determine whether they have jurisdiction to consider a claim or hear a case. If the notice of injury and claim for benefits is filed prior to the District Court complaint, the Industrial Commission is vested with the first right to determine a jurisdictional issue, and its determination will be *res judicata* of the jurisdictional question. In *Anderson*, the threshold jurisdictional question turned on whether the decedent was an employee, or instead, an independent contractor. Of necessity, in order to make a judgment concerning a claimant's entitlement to workers' compensation benefits, the Industrial

Commission would first need to determine whether the claimant was an employee entitled to the protections of the Act, versus an independent contractor whose claim for redress does not fall within the ambit of the Act. Here, the Commission need not determine whether Respondent's injuries were caused by acts of willful or unprovoked physical aggression. In order to support his claim for benefits, it will be sufficient to determine that, from the perspective of Respondent, the accident was one arising out of and in the course of his employment. Even if it is, Respondent is not foreclosed from pursuing his claim in District Court that the acts of Knutson and Employer are actionable under the provisions of Idaho Code § 72-209(3).

Addressing Petitioner's argument that the workers compensation case should be dismissed because it is superfluous, we agree that there may be some commonality between the benefits awardable in the workers' compensation case and the damages payable at trial; for example wage loss and medical expenses may be recoverable in both venues. However, this does not diminish the importance of Respondent's access to his exclusive remedy for workplace injuries. For one reason or another, it is possible that Respondent may not prevail in his District Court action. From the pleadings we discern that there may be some question as to the extent and degree of the injuries suffered by Respondent as a consequence of the subject accident. Under our workers' compensation laws, Respondent bears the burden of proving, to a reasonable degree of medical probability, that a causal relationship exists between the subject accident and the claimed injuries. This is a relaxed standard of proof as compared to the burden of establishing medical causation that Respondent faces in a District Court action. Moreover, in order to recover workers' compensation benefits, a claimant need not prove that an employer or its agents were at fault, much less that employer and its agents engaged in willful or unprovoked acts of physical aggression. It is possible that Respondent may fail to prove the elements of his civil action, yet still be able to

prove entitlement to workers' compensation benefits. In such case, Respondent's only remedy would be the benefits available under the Workers' Compensation laws, thus making access to that remedy of paramount importance. If Respondent is successful in both forums, any concerns over double recovery can be addressed by reducing a claimant's civil award by the amount he received under the Workers' Compensation Act. For these reasons we decline to dismiss the workers' compensation claim as Petitioner has suggested. To do so would deny Respondent his fundamental right to pursue his guaranteed remedy for workplace injuries.

We appreciate, however, that owing to the peculiar posture of this matter, certain procedural and legal issues may be needlessly created by holding the civil trial in the middle of the hearing and post-hearing process that must be followed in connection with the Workers' Compensation claim. We defer to the referee assigned to this case to consider whether it is appropriate, upon motion of the parties, to vacate the hearing in the workers' compensation case in light of the pending January 2023 District Court trial.

DATED this 7th day of October, 2022.

INDUSTRIAL COMMISSION



  
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Aaron White, Chairman

  
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Thomas E. Limbaugh, Commissioner

  
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Thomas P. Baskin, Commissioner

ATTEST:

Kamerron Slay  
Commission Secretary

**CERTIFICATE OF SERVICE**

I hereby certify that on the 7th day of October, 2022, a true and correct copy of the foregoing **ORDER ON PETITION FOR DECLARATORY RULING** was served by regular United States Mail and Electronic Mail upon each of the following:

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