

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

STEVE HENDRIX,

Claimant,

v.

KODIAK AMERICA, LLC,

Employer,

and

WCF NATIONAL INSURANCE COMPANY,

Surety,
Defendants.

IC No. 2020-016090

**ORDER DENYING DEFENDANTS'
MOTION FOR RECONSIDERATION**

FILED

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INDUSTRIAL COMMISSION

On September 22, 2023, the Idaho Industrial Commission granted the motion of Steve Hendrix (“Claimant”) requesting an award of statutory interest pursuant to I.C. § 72-734 for failure to timely tender the agreed upon settlement amount of \$60,000. Kodiak America, LLC, and WCF National Insurance Company (“Defendants”) were ordered to pay \$657.15 in interest. Defendants have now moved to reconsider the order of the Idaho Industrial Commission. For the reasons discussed below, the motion is denied.

BACKGROUND

On July 5, 2023, Claimant and Defendants entered into a settlement agreement to resolve a worker’s compensation claim for an injury related to Claimant’s left hand “pursuant to Section 72-404, Idaho Code.” Affidavit of Matthew J. Vook In Support of Motion for Award of Statutory Interest (“Aff.”), Exhibit A - Lump Sum Settlement Agreement. The parties agreed that there were “genuine and substantial disputes and differences” regarding impairment, disability, retraining,

and medical benefits. *Id.* In exchange for disposing of “any and all claims of any kind” related to the injury against Defendants on a “full and final basis,” the parties agreed that Surety would tender \$60,000 to Claimant, in addition to amounts previously paid. *Id.* Unlike many such contracts, the agreement did not provide a waiting period for the surety to process payment without accruing interest. The parties submitted a stipulation for dismissal to the Idaho Industrial Commission.

On July 14, 2023, the Idaho Industrial Commission dismissed the worker’s compensation case with prejudice based on the stipulation of the parties. Aff. Exhibits A, B. Due to an error, with no indication of bad faith, the surety did not pay the settlement amount within the next thirty days as is common practice. After informal interaction between counsel, payment was made on August 22, 2023. Aff. Exhibit D. This was a total of thirty-nine days after the settlement agreement and the dismissal were served upon the parties.

Claimant elected to file for an award of interest under I.C. § 72-734. The Industrial Commission granted the motion on September 22, 2023. As the settlement did not include a stipulation to stay accumulation of interest and an award under I.C. § 72-734 is not discretionary, Defendants were ordered to pay interest in the amount of \$657.15, calculated from the date of the dismissal as requested by Claimant.

Defendants have now moved to reconsider.

STANDARDS FOR MOTION TO RECONSIDER

A decision of the Commission, in the absence of fraud, shall be final and conclusive as to all matters adjudicated, provided that within 20 days from the date of the filing of the decision, any party may move for reconsideration. Idaho Code § 72-718. However, “[i]t is axiomatic that a [party] must present to the Commission new reasons factually and legally to support a hearing on [a] Motion for Rehearing/Reconsideration rather than rehashing evidence previously presented.”

Curtis v. M.H. King Co., 142 Idaho 383, 388, 128 P.3d 920 (2005). The Commission may reverse

its decision upon a motion for reconsideration, or rehear the decision in question, based on the arguments presented, or upon its own motion, provided that it acts within the time frame established in Idaho Code § 72-718. *See, Dennis v. School District No. 91*, 135 Idaho 94, 15 P.3d 329 (2000) (citing *Kindred v. Amalgamated Sugar Co.*, 114 Idaho 284, 756 P.2d 410 (1988)). A motion for reconsideration must be properly supported by a recitation of the factual findings and/or legal conclusions with which the moving party takes issue. *Whitmore v. Cabela's*, 021611 IDWC, IC 2007-033768 (Idaho Industrial Commission Decisions, 2011). However, the Commission is not inclined to re-weigh evidence and arguments during reconsideration simply because the case was not resolved in a party's favor.

DISCUSSION

The Commission previously awarded \$657.15 as interest under I.C. § 72-734, which provides as follows:

Whenever a decision shall have been entered by the commission awarding compensation of any kind to a claimant, such award shall accrue and the employer shall become liable for, and shall pay, interest thereon from the date of such decision pursuant to the rates established and existing as of the date of such decision, pursuant to section 28-22-104(2), Idaho Code. Such interest shall accrue on all compensation then due and payable, and on all compensation successively becoming due thereafter, from the respective due dates, regardless of whether an appeal shall be taken from the decision of the commission, until the time of payment thereof.

I.C. § 72-734.

The defendants have now argued that I.C. § 72-734 is not applicable to the underlying lump sum settlement agreement. Defendants have also argued that making an award of interest under I.C. § 72-734 is outside the jurisdiction of the Idaho Industrial Commission. As discussed below, these arguments are not found persuasive.

I. Idaho Code § 72-734 Is Applicable To The Lump Sum Settlement Agreement.

Defendants have argued that I.C. § 72-734 is not applicable to the settlement agreement for several reasons.

First, Defendants argue that “compensation” is limited to sums specifically identified as income benefits, medical benefits, and medical services. The settlement agreement itemized the \$60,000 as consideration for “this Lump Sum Agreement,” while itemizing impairment, disability, and medical benefits as “\$0.00.” Aff. Exhibit A. The sum is therefore not compensation for purposes of I.C. § 72-734.

The Commission does not find this characterization persuasive. As stated in the settlement, the lump sum was paid to resolve the disputes over the benefits owed under worker’s compensation law per I.C. § 72-404. Compensation is defined to include “any or all . . . income benefits,” which in turn are defined to include “payments provided for or made under the provisions of this law to the injured employee . . . excluding medical and related benefits.” I.C. § 72-102(6) & (15). As the lump sum payment was given under the authority of I.C. § 72-404, a worker’s compensation code provision, it meets this definition and constitutes compensation. Further, an award of interest under I.C. § 72-734 is based on a decision awarding compensation “of any kind.” Itemization of the lump sum is unnecessary.

Second, Defendants argue that as a result of the 2022 revision of I.C. § 72-404 a lump sum settlement agreement is not an award of the Commission, but rather a contract resulting from the agreement of the parties.

In 2022, the Idaho legislature amended I.C. § 72-404 so that, with respect to the type of settlement at issue here, the Idaho Industrial Commission is no longer responsible for approving a settlement after conducting a “best interests” review. Such settlements are now effective upon “filing” with the Commission, with limited review from the Commission to determine whether a

proffered settlement meets procedural requirements such that it can be deemed “filed.” A settlement that is deemed filed is effective at the time of filing, and “shall for all purposes constitute an adjudication of the claims resolved in the settlement agreement.” Idaho Code § 72-404(5). As such, prior caselaw interpreting a settlement as an award remains authoritative. “[O]nce a lump sum compensation agreement is approved by the commission, that agreement becomes an award and is final.” *Harmon v. Lute's Const. Co., Inc.*, 732 P.2d 260, 112 Idaho 291 (Idaho 1986). While the Commission’s role is now limited to ensuring proper filing, once “filed” the settlement constitutes an adjudication and carries the same legal weight as a settlement approved by the Commission under the provisions of the prior statute.¹

Third, Defendants have argued that I.C. § 72-734 expressly excludes lump sum settlements by incorporating I.C. § 28-22-104(2) as the applicable interest rate. I.C. § 72-734 states “the employer ... shall pay, interest thereon ... pursuant to the rates established and existing ... pursuant to section 28-22-104(2).” I.C. § 28-22-104(2) states the “legal rate of interest on money due on the judgment of any competent court or tribunal shall be the rate of five percent (5%) plus the base rate [and other details].” The plain language of I.C. § 72-734 merely incorporates the interest rate. It does not make the award of interest dependent on whether the principal sum is a judgment or would independently qualify for the interest rate under I.C. § 28-22-104(2). Further, as discussed above, a lump sum settlement is treated as an adjudication “for all purposes” and would qualify as a “judgment of any competent ... tribunal.” Therefore, I.C. § 28-22-104(2) does not render a lump sum settlement agreement outside the scope of I.C. § 72-734.

¹ Since a settlement is effective on filing, and constitutes an adjudication of the Commission as of that date, interest owed in this matter should be calculated as of the date of filing, not the date of the order of dismissal. I.C. § 72-404(5); JRP 18(A)(4). However, Claimant has only made a claim for interest calculated from the date of the order of dismissal.

Finally, Defendants have argued that the Uniform Commercial Code (“UCC”) is the applicable law in this situation, and the UCC does not provide for interest in absence of a contractual provision awarding it. However, the issues in this case stem from a worker’s injury. I.C. § 72-203 provides that the Worker’s Compensation Act, Idaho Code Title 72, “shall apply to all public employment and to all private employment . . . not expressly exempt.” The parties in this case properly submitted their settlement under I.C. § 72-404, which provides that “parties may compromise and settle claims by way of agreements for lump sum payments. . . under Idaho’s worker’s compensation laws.” Defendants argue that I.C. § 72-734 incorporates the UCC by incorporating the interest rate from I.C. § 72-22-104(2). However, the limited adoption of an interest rate does not render the entire UCC applicable. Therefore, the Idaho Worker’s Compensation Act is the governing law in this situation, including I.C. § 72-734, and the absence of a general provision awarding interest in the UCC is irrelevant.

II. The Idaho Industrial Commission Has Jurisdiction to Determine if I.C. § 72-734 Provides For An Award of Interest

Defendants have argued that entering an award under I.C. § 72-734 is beyond the jurisdiction of the Idaho Industrial Commission, and is an issue that must be taken up by the district court.

Under I.C. § 72-707, “[a]ll questions arising under this law, if not settled by agreement or stipulation of the interested parties with the approval of the commission, except as otherwise herein provided, shall be determined by the commission.” The phrase “this law” references the Worker’s Compensation Act found under Title 72 of Idaho Code. *See* I.C. § 72-101.

The question of whether Claimant is entitled to interest under I.C. § 72-734 falls within this general grant of jurisdiction to receive a claim and determine if Claimant is entitled to the relief provided under worker’s compensation law. Entitlement to such interest has been decided

by the Commission on a number of occasions. *See Barnes v. Noriyuki*, 072208 IDWC, IC 2004-010339 (Idaho Industrial Commission Decisions, 2008)(determining benefits, statutory penalties, attorney's fees, and interest under I.C. § 72-734 going forward); *Eberhart v. Howell*, 061606 IDWC, IC 04-002454 (Idaho Industrial Commission Decisions, 2006)(finding compensable accident, medical benefits, penalty for failure to carry insurance, and that interest would accrue under I.C. § 72-734 going forward); *Sotelo v. The Pillsbury Co.*, 011905 IDWC, IC 97-006770 (Idaho Industrial Commission Decisions, 2005)(interest owing under I.C. § 72-734 for untimely medical reimbursements); *Norris v. Caldwell Memorial Hospital*, 080686 IDWC, 84-483242 (Idaho Industrial Commission Decisions, 1986) (finding Commission lacked discretion to mitigate surety's liability under I.C. § 72-734 and interest was owing in amount of \$271.26).

Defendants have argued that I.C. § 72-734 falls within the enforcement mechanisms provided by I.C. § 72-735 that are given to the district court. However, the two statutes are distinct.

The first statute, I.C. § 72-734, provides for an award of interest when payment is delayed. This is an additional sum of money that is not part of the original award. Interest is only owing if there is delay in payment of an award, and immediately accrues beginning the date of the award. Determining if an additional award is owing to an employee is within the Commission's jurisdiction. *See Heese v. A & T Trucking*, 635 P.2d 962, 965, 102 Idaho 598, 601 (Idaho 1981) (upholding jurisdiction where the commission decided only whether, as between the injured employee and the employer, an additional award of compensation was to be made to the employee where employer failed to secure compensation).

In contrast, Idaho Code § 72-735(1) provides for enforcement of an award that has already been made, and is applicable only if there is no payment made within 30 days.

In the event of default in payment of compensation due under an award and on or after the 30th day from the date upon which compensation became due, any party . . . in interest may file in the district court . . . a certified copy of the decision of the commission awarding compensation . . . and thereupon the court without notice shall render a decree or judgment in accordance therewith and cause the parties to be notified thereof.

I.C. § 72-735(1). The district court may have concurrent jurisdiction to address interest as part of a default proceeding taken under I.C. § 72-735. However, the question of whether Claimant is entitled to an award of interest under I.C. § 72-734 is not equivalent to an enforcement action or taking a default under I.C. § 72-735.

Whether interest is owed under I.C. § 72-734 is a question of what relief Claimant is entitled to under the Idaho Worker's Compensation Act, which falls within the jurisdiction of the Commission. The prior order awarding \$657.15 of interest is within the Industrial Commission's jurisdiction and is affirmed.

ORDER

Based on the foregoing, Defendants' request for reconsideration is DENIED. Pursuant to Idaho Code § 72-718, this decision is final and conclusive as to all matters adjudicated.

DATED this 3rd day of November, 2023.



Attest:

Kamerron Slay
Commissioner Secretary

INDUSTRIAL COMMISSION

Thomas E. Limbaugh
Thomas E. Limbaugh, Chairman

Thomas P. Baskin
Thomas P. Baskin, Commissioner

Aaron White
Aaron White, Commissioner

CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of November, 2023, a true and correct copy of the foregoing **ORDER DENYING DEFENDANTS' MOTION FOR RECONSIDERATION** was served by Electronic Mail upon each of the following:

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