

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

JESSICA RODRIGUEZ,

Claimant,

v.

WALMART ASSOCIATES, INC.,

Employer,

and

AIU INSURANCE COMPANY,

Surety,
Defendants.

IC 2023-014279

**ORDER DISMISSING CLAIMANT'S
MOTION TO RECONSIDER
INTERLOCUTORY SUSPENSION OF
BENEFITS**

**FILED AUGUST 30, 2024
IDAHO INDUSTRIAL COMMISSION**

Dismissal of Claimant's appeal/motion to reconsider the orders of the Referee denying Claimant's motion for extension of time, denying Claimant's motions to dismiss or delay the suspension hearing, denying Claimant's motions related to the admission of evidence at the suspension hearing, and granting Defendants' motion for suspension of benefits under Idaho Code § 72-434.

INTRODUCTION

Claimant seeks reconsideration of several orders of the Referee issued on May 30, 2024, June 5, 2024, June 6, 2024, and June 14, 2024. These relate to granting Defendants authorization for suspending her benefits under I.C. § 72-434 after she failed to attend an independent medical examination ("IME"). Claimant has not yet filed a complaint asserting any right to benefits, nor has there been a recommended decision from the Referee. Under these circumstances, the Commission finds that the motion for reconsideration is a request for prehearing or interlocutory review. Claimant's dispute does not present a controlling question of law nor will the resolution materially advance the orderly resolution of the litigation. As such, it does not qualify for prehearing review. Additionally, interlocutory appeal of an I.C. § 72-434 suspension is specifically barred by JRP 22(6).

For these reasons, Claimant's request is dismissed and will not be considered.

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FACTS

I. Benefits suspension under I.C. § 72-434.

1. Defendants filed a motion to suspend Claimant's worker's compensation benefits under I.C. § 72-434 and JRP 22 on May 13, 2024. To support their request, Defendants presented that Claimant had an accepted claim for a right knee injury dated May 21, 2023. *Defendants' Memorandum In Support of Defendants' JRP 22 Motion to Suspend Benefits*. To evaluate whether Claimant would see an orthopedic specialist, Defendants discussed the possibility of an IME with Claimant. *Id.* at Exhibits B, C. Defendants assured Claimant that transportation would be provided. *Id.* at Exhibit B. No IME was scheduled through these discussions however, and Defendants finally sent Claimant a notice of an IME on March 27, 2024. *Id.* at Exhibit D. The exam was set about three weeks out, for April 17, 2024, with Dr. Linder. *Id.* The notice included the date, time, and address, and referenced that Claimant had the option of obtaining travel assistance or reimbursement for costs from Defendants. *Id.*

2. Claimant was sent a reminder email two days before the exam that informed Claimant that Defendants had arranged transportation for her through Pro Care Transport (although the reminder incorrectly identified the month of the exam as 3/17/24 rather than 4/17/24). *See id.* at Exhibit E. The Commission takes judicial notice that Claimant's address of record is in Boise, Idaho, and is within three miles of the IME location.

3. Claimant stated in an email that she would not attend the IME. *Id.* at Exhibit F. Claimant failed to show at her appointment, a fact Dr. Linder recorded in his IME report. *Id.* at Exhibit A.

II. Procedural History

4. Approximately four weeks after Claimant failed to appear for her IME appointment, on May 13, 2024, Defendants filed for a suspension of benefits for failure to attend

an IME. Defendants cited current law such as I.C. § 72-434, JRP 22, and *Coray v. Idaho Regional Hand & Upper Extremity Center*, No. IC 2018-034888 (Idaho Ind. Comm. 2023). Defendants acknowledged that the reasonableness of an exam includes not only “reasonable times and places” but also “such things as the structure, design, and purpose of the exam.” *Id.* at 3.

5. On May 22, 2024, Claimant requested she be given 30 days to respond to the motion rather than the 10 days provided by JRP 22. She explained she needed time to obtain counsel, she had disabilities, and Dr. Linder’s report was unreliable for a number of reasons. She argued she needed time to compile medical discovery and needed time to address a number of issues.

6. The Referee issued a notice of intent to rule early, and indicated if Defendants did not object, the motion would likely be granted. Defendants objected. The Referee denied the motion for extension of time on May 30, 2024, and set a hearing for June 7, 2024.

7. Claimant submitted a seventeen-page filing listing eight motions. These objected to the IME exam as biased, moved to exclude IME report from evidence, moved to strike Dr. Linder’s reports from the record, moved to bar Dr. Linder’s report from the exhibits, requested discovery, stated Claimant was entitled to a prima facie hearing, moved to dismiss the suspension hearing, and moved to dismiss the IME examination appointment. Considering Claimant’s arguments as a whole, it appears Claimant partially misunderstood the nature of the proceedings; she seems to have assumed the suspension hearing was a worker’s compensation claim hearing.

8. On June 6, 2024, the Referee denied Claimant’s motions. Claimant moved to dismiss the hearing. The Referee denied this motion.

9. On June 7, 2024, Claimant and Defendants appeared at the scheduled suspension hearing. Claimant and Defendants both presented oral argument, no sworn testimony was presented from Defendants; Claimant was sworn in. Claimant admitted receiving notice of the

IME exam two weeks prior to the scheduled date. Among other arguments, she presented that the examination was inherently unreasonable due to Dr. Linder's bias and the fact he was not her treating physician. Claimant did not contest that she failed to appear at the exam.

10. On June 14, 2024, the Referee denied Claimant's motions in a written opinion that was well explained and granted Defendants' motion for a suspension of benefits under I.C. § 72-434.

11. Claimant has now moved to appeal to the Industrial Commission or reconsider the order of the Referee. Claimant's arguments largely reiterate those raised previously, with additional commentary on several issues. For instance, she has added arguments alleging the Referee was biased in his decision, and that due process was violated when defendants' counsel was not sworn in at hearing but Claimant was. She asserts that the Referee's order did not fully or properly address her arguments. Claimant stated she was disadvantaged by lack of time to obtain transport. Claimant's motion includes a number of unsupported assertions such as that an IME is "only scheduled when a Claimant decides to get their own doctor and disagree with the Primary Doctor." (*Claimant's Notice of Appeal and Request to Order of Stay*, 6).

12. Claimant is self-represented and does not currently have an attorney.

13. Claimant has not filed a worker's compensation complaint for her May 21, 2023, injury.

DISCUSSION

14. Claimant's motion is titled as an Appeal to the Industrial Commission, which will be construed as a motion for reconsideration because the Commission's rules of procedure offer no direct appeal to the Commissioners from an interlocutory order of the Referee.

I. The Referee's decision regarding the suspension is a prehearing or interlocutory matter.

15. Motions for reconsideration are authorized by I.C. § 72-718, which permits any party to move for the reconsideration or rehearing of any “decision of the Commission.” Commission referees are empowered and authorized to conduct hearings, prehearings proceedings and post-hearing proceedings pursuant to Idaho Code §§ 72-506, 72-714, and 72-717. Under Idaho Code § 72-506(2), an order made by a referee is not an order of the Commission until it is approved or confirmed by the Commission. *Simpson v. Louisiana-Pacific Corp.*, 134 Idaho 209, 998 P.2d 1122, 1124 (2000); *also see Wheaton v. ISIF*, 129 Idaho 538, 928 P.2d 42 (1996). The referee does not typically submit a recommendation to the Commission until such time as the entirety of the claim is presented for decision-making. Until the Commission issues its corresponding order, the case is considered to be in a pre-hearing or interlocutory stage, and there is no final order of the Commission to reconsider or appeal.

16. Here, the decisions Claimant contests are interlocutory. Claimant appears to have thought the suspension hearing was a worker's compensation claim hearing deciding her whole entitlement to benefits. However, Claimant has not yet filed a complaint asserting any right to worker's compensation benefits. The Referee has, consequently, not yet held a hearing on a worker's compensation complaint or submitted a recommendation for decision on the case under I.C. §§ 72-506 and 72-717. The suspension hearing was limited to the issue of whether Employer's responsibility to continue paying Claimant's worker's compensation benefits would be suspended for an unreasonable failure to attend the IME. As such, the Referee's decisions regarding the IME suspension and the suspension hearing are considered interlocutory and must wait to be reviewed unless pre-hearing interlocutory review is deemed justified.

II. Prehearing interlocutory review is not justified here.

17. Ordinarily, to seek review of a referee's interlocutory order, a party must preserve the issue and raise it in post-hearing briefing submitted after the worker's compensation claim hearing. *See Harvath v. Idaho Food Bank*, 120211 IDWC, IC 2010-020646 (Idaho Industrial Commission Decisions, 2011). If the Commission's decision does not address the pre-hearing matters, review may then be sought by filing a motion for reconsideration. *See Wheaton v. ISIF*, 129 Idaho 538, 928 P.2d 42 (1996), *Simpson v. Louisiana-Pacific Corp.*, 134 Idaho 209, 998 P.2d 1122 (2000).

18. Prehearing challenges to a referee's order are only permitted under circumstances similar to those permitting interlocutory appeals, where the challenge "involves a controlling question of law as to which there is substantial grounds for difference of opinion," and when immediate consideration of the challenge "may materially advance the orderly resolution of the litigation." *See Ayala v. Robert J. Meyers Farms, Inc.*, 012921 IDWC, IC 2009-029533 (Idaho Industrial Commission Decisions, 2021), *Harvath v. Idaho Food Bank*, 120211 IDWC, IC 2010-020646 (Idaho Industrial Commission Decisions, 2011)(citing *Kindred v. Amalgamated Sugar Co.*, 118 Idaho 147, 149, 795 P.2d 309, 311 (1990)). The Commission does not encourage the practice of filing motions for reconsideration by the full Commission for referee orders on interlocutory procedural matters, except in rare and exceptional circumstances. *See Bloom v. ISIF*, 031092 IDWC, 90-696718 (Idaho Ind. Comm. 1992).

19. Claimant's motion for reconsideration does not present grounds for prehearing review. The issues argued pertain to application of established worker's compensation law under standards laid out in I.C. § 72-434, JRP 22, *Arreola v. Scentsy, Inc.*, 531 P.3d 1148 (Idaho 2023), and *Coray v. Idaho Regional Hand & Upper Extremity Center PLLC*, 020223 IDWC, IC 2018-034888 (Idaho Ind. Comm. 2023) (affirmed in *Coray v. Idaho Regional Hand & Upper Extremity*
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Ctr., Docket No. 50570 (Idaho Jun 27, 2024)). The disagreement in Claimant's case is whether those standards were correctly applied to Claimant. For instance, Claimant argues her rights were violated because Dr. Linder was biased. Whether Dr. Linder was unethically biased or bribed is a factual question, not a legal question. Similarly, Claimant's assertions that due process was violated are based on Claimant's unique circumstances and the validity of evidence, not disputes over the correct standards of law. Claimant has also made some legal assertions contrary to the legal standards known to the Commission. For instance, Claimant has asserted that Defendants are not permitted to disagree with a treating physician or may only obtain an IME opinion from a treating physician. However, these statements were unsupported by legal authority and will not be considered.

20. The Commission has not been presented with any legal authority indicating there are substantial grounds for difference of opinion. Claimant's case does not present any question of law where immediate consideration of the challenge "may materially advance the orderly resolution of the litigation." Therefore, prehearing review of the Referee's decision is not justified.

III. Interlocutory review of IME suspensions under I.C. § 72-434 is barred by JRP 22(6).

21. Claimant's request is also barred by JRP 22. This rule provides that after the Commission approves or denies a suspension under I.C. § 72-434, "[t]he decision of the Commission shall not be subject to review on appeal until all issues relating to the claim have been decided by the Commission." JRP 22(6). Claimant's request concerns the suspension of benefits under I.C. § 72-434. As discussed above, Claimant's case is still in a prehearing stage and appeal at this time would be interlocutory. Therefore, Claimant's appeal is barred until all issues relating to the claim have been resolved.

IV. Claimant's arguments do not provide authority for an exception.

22. Claimant has made a number of arguments related to her unfamiliarity with law, her disabilities, and the difficulty she has had framing and making her arguments. However, these difficulties do not constitute legal grounds for an exception. As stated by the Idaho Supreme Court, "[p]ro se litigants are held to the same standards and rules as those represented by an attorney," *Harper v. Idaho Dep't of Labor*, 161 Idaho 114, 116, 384 P.3d 361, 363 (Idaho 2016). Self-represented individuals are "not excused from adhering to procedural rules." *Nelson v. Nelson*, 170 P.3d 375, 383, 144 Idaho 710 (Idaho 2007). Although Claimant's frustration is understandable, there is no legal authority to grant Claimant an exception to the rules based on these obstacles.

V. The Referee may decide any further disputes related to the I.C. § 72-434 suspension and IME.

23. The Referee's order on June 14, 2024, directed Defendants to proceed with rescheduling the IME. Defendants have requested the Referee provide further direction at this point to prevent Defendants being caught between not scheduling an IME which violates the Referee's order, or scheduling the IME and possibly facing harassment claims. Since the Commission is declining to provide interlocutory review, a motion may properly be presented before the Referee to deal with this issue.

CONCLUSION

Accordingly, the Commission determines that Claimant's motion for reconsideration by the Industrial Commission of the Referee's orders issued in the above-entitled matter is hereby DISMISSED. Claimant must attend an IME examination for the suspension of her benefits to be lifted.

DATED this 30th day of August, 2024.



Attest:

Kamerron Slay
Commission Secretary

INDUSTRIAL COMMISSION

Thomas E. Limbaugh
Thomas E. Limbaugh, Chairman

Claire Sharp
Claire Sharp, Commissioner

Aaron White
Aaron White, Commissioner

CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of August, 2024, a true and correct copy of the foregoing **ORDER DISMISSING CLAIMANT'S MOTION TO RECONSIDER INTERLOCUTORY SUSPENSION OF BENEFITS** was served by regular United States mail and Electronic Mail upon each of the following:

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