

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

ALLYSON RHODES HARDY,

Claimant,

v.

WALMART ASSOCIATES, INC.,

Employer,

and

NEW HAMPSHIRE INSURANCE CO.,

Surety,

Defendants.

IC 2018-003685

**ORDER GRANTING CLAIMANT'S
MOTION TO RECONSIDER
ORDER ON STAY AND
SANCTIONS**

**FILED MARCH 19, 2025
IDAHO INDUSTRIAL COMMISSION**

Approval of Claimant's motion to reconsider the January 22, 2025, order of the referee imposing a sanction against Claimant's counsel pursuant to JRP 16.

INTRODUCTION

Claimant seeks reconsideration of the order of the referee issued on January 22, 2025, imposing a sanction of \$300 against Claimant's counsel for delayed supplemental disclosure of discovery.

At this time, Claimant's case has not yet been resolved by a final order of the Commission and Claimant's motion is a request for interlocutory review. Interlocutory review is granted as Claimant's argument presents a controlling question of law such that resolution will materially advance the orderly resolution of the litigation.

As discussed below, the Commission vacates the sanction against Claimant's counsel. Counsel delayed in supplementing discovery, but the error has already been addressed, is unlikely to reoccur, and a \$300 sanction is unnecessary to address the severity of the incident.

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FACTS

1. This case was initiated upon the filing of Claimant's worker's compensation complaint on January 30, 2023. Pursuant to the authority of Idaho Code § 72-506, the Commission assigned the case to a referee for all proceedings pending the recommendation of a final decision, including hearing.

2. While the case was pending, the parties conducted discovery and, as is procedure, Defendants requested discovery of related documents. Claimant's initial discovery responses dated March 20, 2023, indicated that "additional information related to this Request [...] will be supplemented." (Declaration of Melanie Anderson in Support of Defendants' Objection to Claimant's Motion to Vacate Hearing and Motion for Sanctions, December 31, 2024, ("Anderson Dec.") ¶ 9). Claimant's counsel later obtained a functional capacity evaluation which included recommended work restrictions, implicating the need for a vocational expert. *Id.* at Ex. I. The evaluation was dated September 11, 2024. *Id.* Claimant's counsel then obtained a letter from a medical doctor with a notation it was faxed October 9, 2024. *Id.*

3. Claimant's counsel did not disclose the evaluation or the letter until December 18, 2024, after an email from defense counsel specifically requested supplementation. *Id.*

4. Claimant's counsel had agreed to a hearing date of January 15, 2025. *Id.* at Ex. E. Approximately three weeks before the January hearing date, Claimant submitted a motion to vacate. Claimant explained that an opportunity had arisen to obtain a vocational expert's opinion. Defendants objected and requested sanctions based on the delayed disclosure of the evaluation and doctor's letter, including exclusion of the evidence or any other fit sanction. If the new evidence was admitted, Defendants indicated they would not be prepared to proceed to hearing as scheduled.

During the proceedings to address sanctions, Claimant's counsel acknowledged the delay.

5. The referee declined to exclude the evidence and vacated the hearing but imposed a \$300 sanction against Claimant's counsel. (Order on Stay and Sanction, January 22, 2025). Citing JRP 16, the referee found Claimant's counsel possessed the evaluation and letter no later than October 9, 2024, yet did not disclose them until December 18, 2024, less than a month prior to hearing. *Id.*

6. Claimant has now submitted a motion to reconsider to the Commission. Claimant contends that the sanctions exceed the Commission's authority or, alternatively, are premature given the procedural history of the matter.

7. Defense counsel has objected, arguing Claimant's counsel failed to timely supplement discovery as required by I.R.C.P. 26(e), which is sanctionable under JRP 7(C) and JRP 16.

STANDARDS FOR MOTION TO RECONSIDER

8. 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 [the] 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 is not compelled to make findings on the facts of the case during reconsideration. *Escobedo v. Hidden Valley Dairy, LLC*, 012725 IDWC, IC 2022-003635 (Idaho Industrial Commission Decisions, January 27, 2025) (citing *Davidson v. H.H. Keim Co., Ltd.*, 110 Idaho 758, 718 P.2d 1196 (1986)). A motion for reconsideration must be properly supported by a recitation of the factual findings

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and/or legal conclusions with which the moving party takes issue. *Id.* 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. *Id.*

DISCUSSION

I. The referee's order of sanctions is a prehearing or interlocutory matter, but is appropriately reviewed as it presents a controlling question of law that will materially advance resolution of the case.

9. Motions for reconsideration are authorized by Idaho Code § 72-718, which permits any party to move for the reconsideration or rehearing of any “decision of the Commission.” Under Idaho Code § 72-506(2), an order of the referee is not an order of the Commission until it is approved and 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). Until confirmation, the case is considered to be in a pre-hearing or interlocutory stage.

10. Orders of the referee are not generally subject to immediate review by the Commission. To obtain Commission review of a referee's interlocutory order, a party must ordinarily preserve the issue and raise it in post-hearing briefing submitted after the worker's compensation claim hearing. *See Harvath v. Idaho Food Bank*, IIC 2010-020646 (December 2, 2011). However, prehearing challenges to a referee's order are permitted 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.” *Ayala v. Robert J. Meyers Farms, Inc.*, IIC 2009-029533 (January 29, 2021) (citing *Kindred v. Amalgamated Sugar Co.*, 118 Idaho 147, 149, 795 P.2d 309, 311 (1990)); *also see Harvath v. Idaho Food Bank*, IIC 2010-020646 (December 2, 2011).

11. Claimant's motion for reconsideration qualifies for immediate review. The issue argued is whether sanctions were appropriately ordered under JRP 16, JRP 7, and the Idaho Rules of Civil Procedure. Claimant's counsel argues that JRP 16 does not apply to violations of the rules of civil procedure, and alternatively, that sanctions do not apply to the level of conduct sanctioned by the referee, which was based on conduct which was not intentional.

12. The Commission finds that it is appropriate to review what conduct is considered sanctionable under JRP 16. Little precedent elaborates on JRP 16 sanctions, and as a practical matter, sanctions are unlikely to be reviewed after post-hearing briefing. Given that the case is ongoing, that the referee is charged with the obligation to maintain orderly proceedings, and that the parties may have to navigate similar situations in the future, it would materially advance the resolution of the litigation to clarify whether the conduct at issue was appropriately subject to sanctions.

II. JRP 16 Sanctions Are Appropriately Issued for Violations of Discovery Rules

13. "The Commission retains power to impose appropriate sanctions for any violation or abuse of its rules or procedures." JRP 16. Sanctions may be imposed by the Commission for failure to timely supplement discovery.

J.R.P. 7(C) requires that parties adhere to the Idaho Rules of Civil Procedure in conducting discovery. J.R.P. 7(C). Idaho Rule of Civil Procedure (I.R.C.P.) 26(b)(1) and (b)(4) govern the scope of discovery and disclosure of expert opinions. In *Radmer v. Ford Motor Co.*, the Court stated that I.R.C.P. 26 "unambiguously imposes a continuing duty to supplement responses to discovery with respect to the substance and subject matter of an expert's testimony where the initial responses have been rejected, modified, expanded upon, or otherwise altered in some manner." 120 Idaho 86, 89, 813 P.2d 897, 900 (1991). "Typically, failure to meet the requirements of Rule 26 results in exclusion of the proffered evidence." *Radmer*, 120 Idaho at 89, 813 P.2d at 900.

Warren v. Williams & Parsons PC, 337 P.3d 1257, 1265, 157 Idaho 528 (Idaho 2014). In *Warrens*,

the Idaho Supreme Court upheld the Commission's decision to exclude medical records, upholding the Commission's reasoning that counsel did not provide "good cause" to explain why the exhibits were not timely supplemented or disclosed. I.R.C.P. 26(e)(2) requires that a party "supplement in a timely manner the identity of each person expected to be called as an expert witness at trial", including the expected subject matter and substance of testimony.

14. Here, Claimant's counsel was sanctioned for his delay in disclosing a medical letter and functional capacity evaluation. Failing to disclose the evidence despite the upcoming hearing date, and then only disclosed after Defense counsel made a pointed effort to obtain supplement discovery, violated discovery rules under IRCP 26, and therefore the Commission's rules under JRP 7.

15. Claimant's counsel is admonished for the delay in discovery. I.R.C.P. 26(e)(2) directly requires that expert witnesses for trial – or hearing – be timely supplemented, yet counsel delayed. Delaying disclosure of the evidence for months was negligent, and counsel admitted to delay on other occasions, stating that: "The reason we have not responded to [redacted by defendants] or to the request for mediation was that we were hopeful to have a vocational evaluation prior to our response." (Anderson Dec. Ex. G). This is not good cause under the circumstances of the case. Prompt disclosure of discovery is an essential part of good case management, and the evaluation and the doctor's opinion are significant pieces of evidence.

16. At this juncture, the Commission finds that admonishment for the delay is sufficient penalty for the offense and it is unnecessary to impose a \$300 sanction. Counsel's delay caused the expenditure of unnecessary effort, but does not appear to have led to any lasting prejudice to defendants. The Commission is not persuaded counsel intended to violate or push the boundaries

of discovery rules. The delay violated legal rules. Still, the worker's compensation bar is collegial and generally operates in good faith. Sanctions are rare, and counsel responded promptly when reminded by Defendants' request. Defendants' argument also overstates the evidence that the delay was intentional. While Claimant's counsel did err, the overall evidence indicates that counsel operated in good faith.

17. The delay in supplementing discovery has been sufficiently addressed by the admonishment issued in these proceedings, and the Commission anticipates similar problems are unlikely to reoccur. The Commission vacates the order of sanctions.

CONCLUSION

Accordingly, Claimant's motion for reconsideration of the referee's order issued in the above-entitled matter is hereby GRANTED. The \$300 sanction against Claimant's counsel is vacated and replaced with admonitions issued herein. Pursuant to Idaho Code § 72-718, this is a final and appealable order of the Commission.

DATED this 19th day of March, 2025.



INDUSTRIAL COMMISSION

Claire Sharp

Claire Sharp, Chair

Aaron White

Aaron White, Commissioner

Thomas E. Limbaugh

Thomas E. Limbaugh, Commissioner

ATTEST:

Kamerron Slay
Commission Secretary

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CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of March, 2025, a true and correct copy of the foregoing **ORDER GRANTING CLAIMANT'S MOTION TO RECONSIDER ORDER ON STAY AND SANCTIONS** was served by electronic mail upon each of the following:

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