

## Summary of Current Options for Emergency & Expedited Hearings

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**Question Presented:** What is the current outlook for workers' compensation parties seeking an emergency hearing before the Idaho Industrial Commission?

**Short Answer:** Emergency hearings will be considered for urgent medical care and financial hardship related to denial of temporary disability benefits. Bifurcated hearings may be held to expedite hearing of other urgent issues. Commission availability and legal requirements reasonably permit an emergency hearing within a minimum of 14 to 31 days of the request, although practically a hearing will more likely be months out. Separate rules apply to hearings for change of physician and suspension of benefits, which will not be discussed here. Most delays come from accommodating mutual party readiness and the need for expert testimony. Other frustrations may arise from the lack of defined timelines in the rules, or variance in referee discretion when determining what qualifies as an emergency.

### Obtaining An Emergency Hearing:

Emergency hearings are authorized under JRP 8(D). Caselaw recognizes three general types of emergencies, and attorney fees will often be raised as an accompanying issue.

**Medical Emergencies:** Emergencies may be recognized where there is a need for urgent medical care to avoid permanent harm. For instance, emergency hearings have been granted to review the need for a neurosurgery consult where development of weakness and nerve damage was at risk, surgical spinal intervention where the spinal cord was being compressed, and a spinal surgery where there was a risk of permanent nerve damage.<sup>1</sup> Evidence should include a medical record with a physician's opinion that the care is urgently necessary to avoid long term damage. Hearings have also been granted on issues such as reimbursement of travel expenses for authorized medical care.<sup>2</sup>

**Financial Emergencies:** Emergencies may be recognized where temporary disability benefits are at issue<sup>3</sup> and the injured worker faces financial deprivation, such as an upcoming eviction, mortgage foreclosure, or inability to pay child support.

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<sup>1</sup> *Cavazos v. Diamond Peak Provisions*, 122623 IDWC, IC 2021-000314 (Idaho Industrial Commission Decisions, 2023) (granting emergency hearing to decide the period of recovery, medical treatment to cervical spine, TPD and TTD, and attorney fees. Dr. Lawler requested an 'urgent' neurosurgery consult; "he elaborated that the risk of not getting timely intervention was developing significant weakness, injury to the nerve, and 'just not fully recover[ing.]'"); *Keele v. Citibank*, 022423 IDWC, IC 2013-034253 (Idaho Industrial Commission Decisions, 2023) (granting emergency hearing on issue of entitlement to surgery in the form of a fusion and decompression. Dr. Montalbano recommended urgent surgical intervention, because Claimant's progressive disc herniation or disc protrusion was causing spinal cord compression.) *Razwick v. MDM Construction, Inc.*, 111219 IDWC, IC 2016-032272 (Idaho Industrial Commission Decisions, 2019) ("In this case, Claimant's counsel requested an emergency hearing on September 24, 2018 due to the danger of permanent nerve damage caused by the Surety's refusal to authorize the lumbar fusion surgery as requested in June of 2017 by Dirks.")

<sup>2</sup> *Sotelo v. The Pillsbury Co.*, 011604 IDWC, IC 97-006770 (Idaho Industrial Commission Decisions, 2004) (considering Claimant's request to be "reimbursed for reasonable travel expenses, including transportation, lodging, and per diem associated with the authorized fusion of his left ankle").

<sup>3</sup> *Stryker v. Idaho Pacific Holdings, Inc.*, 121123 IDWC, IC 2023-012738 (Idaho Industrial Commission Decisions, 2023) (granting emergency hearing on issues of medical care, TPD, TTD, attorney fees, injurious practices, and light duty work).

**Small Claims:** An emergency hearing is authorized where mediation has failed and the value of the case is under \$2,000. JRP 8(E).

**Considerations:** There is some variance between referees when applying these principles, and outcome for the same case may vary depending on which referee hears the case. A random selection of six IRIS files containing emergency hearing requests, provided by adjudicative staff, only turned up requests that had been denied for various reasons.

#### Alternative of Expedited Hearing

If a situation does not qualify as an emergency, but the matter is recognized as urgent by the referee, it is common to deny the emergency hearing but grant a bifurcated hearing on the limited issues to be held on an expedited basis. For instance, a referee denied an emergency hearing to determine if a spinal fusion was necessary where two doctors provided conflicting opinions, but provided a calendar setting within 60 days of the request.<sup>4</sup> This has occurred in a more recent pending case as well.

#### Procedure for Scheduling A Hearing

**Emergency Hearings:** A party must specifically request an emergency hearing or bifurcated hearing, as the case otherwise may be dismissed as unripe.<sup>5</sup> When the request is submitted, Commission intake staff will attempt to identify emergency hearing requests to promptly route to a referee for review. As a practical matter, staff relies on captions and delay in routing may result where the caption appears to be a standard hearing request, and the emergency nature of the request is only noted in the body.

After waiting for an answer to the complaint has been received or the deadline has elapsed – 21 days<sup>6</sup> – the Commission must hold a telephone conference to evaluate the request. If the hearing is granted, the parties must be prepared to proceed to hearing within 30 days of the Commission's scheduling order. Statute requires 10 days advance notice of the hearing.<sup>7</sup>

The rule contains no other deadline. Per a Commission memorandum on another IDAPA rule, this may leave the parties free to craft a procedure to best fit their needs.<sup>8</sup>

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<sup>4</sup> A referee will not necessarily be persuaded that an emergency exists. *Adamson v. Lowe's HIW*, 022124 IDWC, IC 2018-024690 (Idaho Industrial Commission Decisions, 2024) (Claimant requested an emergency hearing on July 28, 2021, due to Dr. Montalbano's then pending recommendation for an extension of her fusion. The defense objected that this was not an emergency hearing case but a case wherein two doctors differed on whether surgery was related to the accident and necessary. A telephone conference was conducted and the request for emergency hearing was denied but a hearing was set for September 21, 2021.)

<sup>5</sup> *Miklos v. L&W Supply Corp.*, 050824 IDWC, IC 2019-033631 (Idaho Industrial Commission Decisions, 2024) (Referee denied request as unripe, later noting that no request for an emergency hearing or hearing on a limited issue such as Claimant's entitlement to the MRI was made.)

<sup>6</sup> See JRP 8(D) (telephone conference must wait until time for answer has expired), JRP 4(C)(1) (deadline to file answer)

<sup>7</sup> I.C. § 72-713.

<sup>8</sup> "Guidance memorandum on IDAPA 17.01.01.402, Averaging Impairment Ratings, 100322 IDWC, 100322 (Idaho Industrial Commission Decisions, 2022) ("After a response or an answer is due, either party is free to request an emergency hearing

**Expedited Hearings:** Expedited hearings have no special rules regarding calendaring.

*Calendar Outlook Where An Emergency or Expedited Hearing is Granted:*

**Possible Calendar Outlook:** Accounting for legal concerns and calendar availability, the Commission would theoretically be able to provide an emergency hearing within 31 days of a request being filed, or even less if a complaint and answer had already been filed.<sup>9</sup> However, as a practical matter, recent cases have taken 14 days to a month for a request for an emergency hearing to be denied. Additionally, it is virtually unheard of for parties to request that a hearing be scheduled only two weeks out. The majority of cases are continued past their first setting at least once. Occasionally, this reflects underlying attempts at settlement.<sup>10</sup>

**Considerations:** The JRP rules do not contain any truly fixed deadlines that parties may rely upon when seeking an emergency or expedited hearing. Many emergency hearings will be delayed to permit settlement negotiations or hearing preparations. One of the more dramatic cases illustrating how the reliance on good faith can be abused in the process was presented in 2018 in *Hackman v. CHS, Inc.*<sup>11</sup> There, the Claimant sought surgery in an emergency hearing. The surety had initially denied the surgery by relying upon a “questionable” opinion as to causation, then apparently in good faith agreed to cover it after hearing was sought, only to deny the surgery referencing Claimant’s smoking habits. When the Commission awarded attorney fees, it held that “the situation as it developed amounted to a bait and switch.”

**Need for Expert Evidence:** Where the parties are granted an emergency hearing, cases are often delayed – either before hearing or in obtaining resolution post hearing – due to the need to obtain medical or vocational expertise. Burdens of proof remain the same despite the emergency nature of the hearing.<sup>12</sup>

**Accommodating Party Availability and Readiness:** The most common delay in proceeding to hearing is party availability, which can be driven by discovery needs, the need for expertise, or attorney availability. It is not uncommon for the party requesting the expedited hearing to be ready to go to hearing months before the

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pursuant to JRP 8(D). Nothing in the rule prohibits the parties and the Referee from crafting a procedure which best suits the needs of the parties to resolve the matter.”)

<sup>9</sup> If a complaint has just been filed and an answer is needed, this will require 21 days, and then after the telephone conference, I.C. § 72-713 requires ten days notice of hearing. Unless the parties stipulate otherwise, this results in a legal minimum of 31 days notice. If a complaint and answer have already been filed, the minimum notice would be ten days. The Commission’s hearing schedule typically contains openings within an immediate thirty-day window as a result of the fact that most hearings are scheduled months or years in advance, but are cancelled shortly before.

<sup>10</sup> *Clark v. Agricultural Products Corp.*, 112519 IDWC, IC 1974-094714 (Idaho Industrial Commission Decisions, 2019) ( The Commission believes Defendants had been providing 24-hour skilled nursing services until a recent interruption that was resolved following a request for emergency hearing.)

<sup>11</sup> *Hackman v. CHS, Inc.*, 081318 IDWC, IC 2016-029879 (Idaho Industrial Commission Decisions, 2018).

<sup>12</sup> *Gomez v. Dura Mark, Inc.*, 152 Idaho 597, 272 P.3d 569 (Idaho 2012): Claimant proceeded to an emergency hearing under JRP rules on the issue of entitlement to reasonable and necessary medical care. The claim was denied on grounds of causation, and the Supreme Court affirmed. “[W]ithout a specific stipulation that causation will be a contested issue at the hearing pursuant to I.C. § 72-713, and especially if there is a difference of opinion as to causation by opposing parties and their experts, claimant’s attorneys should no longer be lulled by anything other than a stipulation to all legal prerequisites and elements for recovery and be prepared to present evidence of a causal connection between the industrial injury or sickness and the required treatment.”

opposition. If the grant of an expedited hearing accommodates the slower party's schedule, the requesting party may perceive this as a de facto denial of the request for an expedited hearing.

### Considerations for Discussion

The Commission's legislative efforts for the 2025 session restored the appropriation for a Referee position. The Commission intends to recruit for this position shortly, and views this position as necessary to manage caseload demands and issue timely decisions.

- Where are the pain points for practitioners and injured workers on this topic? How should we use this position to meet the needs of our stakeholders? Do our stakeholders perceive a need to allocate emergency or expedited hearing matters to this new Referee position?