

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

CATHY CHANDLER,  
Claimant,

v.

RMD MANAGEMENT,  
Employer,

and

WCF NATIONAL INSURANCE  
COMPANY,  
Surety,  
Defendants.

**IC 2023-011409**

**ORDER GRANTING DEFENDANTS  
REQUEST FOR RECONSIDERATION  
AND VACATING THE MARCH 31, 2026,  
HEARING**

**FILED MARCH 24, 2026  
IDAHO INDUSTRIAL  
COMMISSION**

Defendants move for reconsideration of an Interlocutory order issued by Referee John Hummel (“Referee”) in the above-captioned case filed on January 26, 2026. Claimants failed to file a response on the set deadline and filed a response a week later. Defendants assert they lacked adequate notice that permanent total disability would be addressed at hearing and argue they require additional time to pursue joinder of ISIF. Defendant’s request that the hearing be vacated and reset six to nine months out. Claimants oppose any continuance and assert that the issues were properly noticed, Defendants have had ample opportunity to prepare, and that further delay would prejudice Claimant. This case is currently pending before Referee Hummel subject to the Reconsideration request.

Under Idaho Code I.C. § 72-506, “Every finding, order, decision or award made by... referee... when approved and confirmed by the Commission...is an order of the Commission.” This statute establishes the Commission’s authority to review the orders of a referee; otherwise, the Commission would not be able to approve and confirm such orders. The process by which a party may seek Commission review of a referee’s order is not expressly outlined by statute or rule. Review may be sought by means of a motion for reconsideration filed after the Commission has

issued its decision in the case. *See Wheaton v. ISIF*, 129 Idaho 538, 928 P.2d 42 (1996) and *Simpson v. Louisiana-Pacific Corp.*, 134 Idaho 209, 998 P.2d 1122 (2000). Generally, however, the Commission prefers that challenges to interlocutory orders of a referee be made in the parties' post-hearing briefs, before the final decision has been issued.

There are some circumstances that justify earlier consideration of a challenge to a referee's order. These circumstances are like those that would compel the Idaho Supreme Court to consider an interlocutory appeal. Pre-hearing review is appropriate 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 Kindred v. Amalgamated Sugar Co.*, 118 Idaho 147, 149, 795 P.2d 309, 311 (1990). The Commission has authority to consider Claimant's motion under Idaho Code § 72-506(2) and Judicial Rules of Practice and Procedures, effective July 9, 2025, 3(E)(1) (J.R.P.), which permits an "application to the Commission for an order." J.R.P. 3(E)(1).

Under J.R.P. 3(F)(2), "If, after 14 days from the filing of a motion, no brief, affidavit, or other response is file, the Commission may act on the motion." The Commission emphasizes the importance of adhering to the established filing and response deadlines so that motions can be addressed in an orderly manner and the Commission can provide timely and meaningful decisions to the parties.

Here, the interim Order of January 26, 2026, clarified the issues for hearing and set this matter for hearing on March 31, 2026, on all issues, including permanent total disability. Claimant received notice of Defendants' request for reconsideration of that interlocutory ruling but did not file a response within the time allowed; claimants reply was not submitted until March 12, 2026.

After reviewing the Motion and the record, the Commission finds good cause to grant the

request for reconsideration. This matter turns on whether there was sufficient notice for Defendants to prepare for the additional issue of permanent total disability following the January 26, 2026, Amended Notice of Hearing. The prior notices of hearing in this matter did not include permanent total disability as a hearing issue. In Amanda Fomichev, No. IC 2005-522775, 2012 WL 5398866 (Idaho Ind. Com. Oct. 17, 2012), the Commission explained that the issue of total and permanent disability is not subsumed in the issue of partial disability less than total:

In the workers' compensation arena, many issues raised in a Complaint or an Answer are resolved or partially resolved before hearing, leaving only the remaining disputed issues to be decided. Thus, the parties are required to specify unresolved issues at the time a request for calendaring or a response thereto is filed. The Notice of Hearing sets forth the issues to be decided at hearing. *A major purpose of providing a Notice of Hearing is to give the parties an opportunity to confirm that all issues to be decided have been identified. This procedure affords due process to all parties through notice of the issues to be decided. The parties have an opportunity well before hearing to add or modify the issues so identified.* (citing Garcia v. State of Idaho, Industrial Special Indemnity Fund, 2007 IIC 0668.7 (09/12/2007) (emphasis added)).

Here, the pleadings reflect that a claim of total permanent disability as an odd-lot worker was made at the outset of the proceedings but dropped prior to hearing. Claimant did not include the odd-lot issue in her request for calendaring, and this issue was not among the issues discussed and agreed upon at hearing. (Tr., pp. 9-10.) Consequently, the issue of whether Claimant is totally and permanently disabled pursuant to the odd-lot doctrine is not properly before the Commission and will not be addressed below.

Accordingly, the prior hearing notices did not alert Defendants that total and permanent disability remained in dispute, and it is unknown whether the discovery process was sufficient for their preparation on this issue. Therefore, Claimant's discovery of the omission was fortuitous, but the 11<sup>th</sup> hour additional of total and permanent disability as a hearing issue requires a reasonable extension of time for Defendants' preparation. The Commission is not persuaded that the hearing must be re-set to include ISIF liability.

Based on the foregoing, Defendants' motion for reconsideration on the Referee's Interim

Order is hereby GRANTED, and the March 31, 2026, hearing is VACATED. The parties are directed to re-schedule the matter before the Referee at a mutually agreeable time.

IT IS SO ORDERED.

DATED this 24<sup>th</sup> day of March, 2026



*Claire Sharp*

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Claire Sharp, Chairman

*Aaron White*

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Aaron White, Commissioner

ATTEST:

*Mary McMenomey*

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Assistant Commission Secretary

## CERTIFICATE OF SERVICE

I hereby certify that on the 24<sup>th</sup> day of March, 2026, a true and correct copy of the foregoing **ORDER GRANTING REQUEST FOR RECONSIDERATION** was served by **Electronic Mail** upon each of the following:

Bryan Storer  
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*Mary McMenomey*