

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

JENNIFER CULLINANE,

Petitioner/Claimant,

v.

AIRCO AVIATION SERVICES, LLC,

Employer,

and

ARCH INSURANCE CO.,

Surety,

Respondents/Defendants.

IC 2020-006118

**ORDER GRANTING PETITION FOR
DECLARATORY RULING**

**FILED MARCH 10, 2026
IDAHO INDUSTRIAL
COMMISSION**

This matter is before the Idaho Industrial Commission (“Commission”) upon Petitioner’s *Petition for Declaratory Ruling Pursuant to JRP Rule 15*, filed on December 3, 2025 (“Petition”). The Petition was accompanied by a memorandum in support of the petition and a Declaration of Randall L. Schmitz with attached Petitioner’s Exhibit 1. Respondents filed their response on December 17, 2025, with attached Exhibits 1 through 2. Petitioner filed her reply on December 23, 2025.

Petitioner is represented by Matthew C. Andrew and Randall L. Schmitz. Respondents are represented by H. Chad Walker.

For the reasons discussed below we find that: (1) the Commission has jurisdiction over this matter; (2) the standards required for the Commission to issue a declaratory ruling have been met; (2) Idaho Code § 72-804 does not require the forfeiture of subrogation rights under Idaho Code § 72-223.

ISSUES

1. Whether the Commission has jurisdiction over the issues presented in Petitioners' petition.
2. Whether the standards required for the Commission to issue a declaratory ruling have been met.
3. Whether a finding of unreasonable denial or delay of worker's compensation benefits under Idaho Code § 72-804 precludes the right of subrogation under Idaho Code § 72-223.

ARGUMENTS OF THE PARTIES

Petitioner seeks a declaratory ruling that the Defendants have no right of subrogation under Idaho Code § 72-223. Defendants should have no subrogation lien against the proceeds of Claimant's recovery in a third-party medical malpractice case because of Surety's unreasonable denial/discontinuation of Claimant's medical care under Idaho Code § 72-804.

Respondent argues that Surety has an enforceable subrogation right in the Claimant's third-party recovery, and that neither Idaho Code § 72-223 nor case law supports the theory that the Surety's denial of benefits equates to employer negligence. Response Brief, pp. 4-6.

In reply, Petitioner argues that public policy provides support for Claimant's position. Otherwise, the Defense unfairly benefits from their unreasonable denial of worker's compensation benefits. Allowing Defendants to recoup from Claimant's third-party settlement would negate the legal consequences of the Surety's unreasonable denial/discontinuance of Claimant's worker's compensation benefits.

FINDINGS OF FACTS

1. Claimant sustained an industrial accident on January 14, 2020, and underwent left ankle surgery on July 23, 2020. *Cullinane v. Airco Aviation Servs., LLC*, IC 2020-006118, 2024 WL 3740691, at 3 (Idaho Indus. Comm. July 24, 2024). Finding no improvement to the ankle

post-surgery, Claimant continued to seek care and was ultimately denied continued medical care by Surety in August 2021. Claimant proceeded with a medical malpractice claim against Dr. Clark's employer, St. Luke's, settling for an undisclosed amount in 2025.

2. On July 24, 2025, the Commission ruled on Claimant's worker's compensation matter, awarding her reimbursement for all medical care received after the discontinuation of benefits, and awarding attorney's fees under Idaho Code § 72-804 for the unreasonable discontinuation of medical benefits.

3. Based on the parties' agreement and the factors outlined in *Hogaboom v. Economy Mattress*, 107 Idaho 13, 684 P.2d 990 (Idaho 1984), the Commission approved attorney's fees in the amount of 30% of the compensation award. Order Adopting Stipulation on Attorney Fees, August 22, 2024.

4. On July 15, 2025, Claimant's medical malpractice attorney Randall Schmitz emailed Defendant's counsel Chad Walker informing him that a settlement had been reached and requesting that Defendants waive their right to subrogation. Declaration of Randall L. Schmitz in Support of Claimant's Petition for Declaratory Ruling, p. 2.

5. After numerous communications between the parties, Defense counsel reconfirmed on August 11, 2025, that they intended to pursue subrogation, and shortly afterwards Claimant's Petition for Declaratory Ruling was filed with the Commission. Defendants' Response to Claimant's Petition for JRP 15 Declaratory Ruling and Counter Claim, p.4.

DISCUSSION

Jurisdiction

6. For the following reasons, the Commission has jurisdiction over this matter. Idaho Code § 72-707 vests the Commission with exclusive jurisdiction over all questions arising under

worker's compensation law. Whether an employer/surety is "entitled to subrogation pursuant to [Idaho Code] § 72-223(3) is a question arising under the worker's compensation law which is within the exclusive jurisdiction of the Industrial Commission." *Idaho State Ins. Fund by and Through Forney v. Turner*, 130 Idaho 190, 191, 938 P.2d 1228, 1229 (1997); *see also Van Tine v. Idaho State Ins. Fund*, 126 Idaho 688, 690, 889 P.2d 717, 719 (1994). Likewise, Idaho Code § 72-804 attorney's fee awards fall within the Commission's exclusive jurisdiction. *Page v. McCain Foods, Inc.*, 155 Idaho 755, 761, 316 P.3d 671 (2013).

Standards for Ruling on Petition for Declaratory Ruling

7. Pursuant to the Commission's Judicial Rules of Practice and Procedure under the Idaho Workers' Compensation Law, effective July 9, 2025, ("JRP") Rule 15, a party may request a declaratory judgment to resolve a dispute with a written petition when there is "an actual controversy over the construction, validity or applicability of a statute, rule, or order." JRP 15(C).

The following requirements must be met:

1. The petitioner must expressly seek a declaratory ruling and must identify the statute, rule, or order on which a ruling is requested and state the issue or issues to be decided;
2. The petitioner must allege that an actual controversy exists over the construction, validity or applicability of the statute, rule, or order and must state with specificity the nature of the controversy;
3. The petitioner must have an interest which is directly affected by the statute, rule, or order in which a ruling is requested and must plainly state that interest in the petition; and
4. The petition shall be accompanied by a memorandum setting forth all relevant facts and law in support thereof.

JRP 15(C). The Commission "may hold a hearing on the petition, issue a written ruling providing guidance on the controversy or decline to make a ruling when it determines that there is no controversy or that the issue at hand is better suited through resolution in some other venue, or by

some other administrative means.” *Miller v. Yellowstone Plastics, Inc.*, IC 2019-024650 (Idaho Ind. Comm. October 7, 2022).

8. Here, Petitioner has expressly sought a declaratory ruling and identified the relevant statutes. The issue is whether the unreasonable denial and/or discontinuation of medical benefits under Idaho Code § 72-804 precludes an employer or surety from exercising their statutory right of subrogation under Idaho Code § 72-223. There is an actual controversy between the parties over the construction of the statutes, and the Petitioner has an interest which is directly affected by these statutes as they interact in this case. For the reasons set forth below, we conclude that this is the proper subject of a petition for declaratory relief, and we believe it is appropriate to take up the issues raised in this matter.

Subrogation Rights Are Established Under Idaho Code § 72-223, and Allow a Surety to Recover Money from a Third-Party Settlement

9. It is well-established that an injured worker may receive worker’s compensation benefits and bring a negligence action against a third-party tortfeasor. *Izaguirre v. R&L Carriers Shared Servs., LLC*, 155 Idaho 229, 234, 308 P.3d 929, 934 (2013). Idaho Code § 72-223 outlines the respective rights and responsibilities of the employee and employer/surety in this instance. Under Idaho Code § 72-223, an employer/surety that has paid benefits to/for an injured employee has the right to recover those monies from a third-party settlement or award granted to the injured worker. The statute states, in pertinent part:

(3) If compensation has been claimed and awarded, the employer having paid such compensation or having become liable therefor, shall be subrogated to the rights of the employee, to recover against such third party to the extent of the employer’s compensation liability.

(4) Unless otherwise agreed, upon any recovery by the employee against the third party, the employer shall pay or have deducted from its subrogated portion thereof, a proportionate share of the costs and attorney’s fees incurred by the employee in

obtaining such recovery unless one (1) or more of the following circumstances exist:

(a) If prior to the date of a written retention agreement between the employee and an attorney, the employer has reached an agreement with the third party, in writing, agreeing to pay in full the employer's subrogated interest;

(b) If the employee alleges or asserts a position in the third party claim adverse to the employer, then the commission shall have jurisdiction to determine a reasonable fee, if any, for services rendered to the employer;

(c) If there is a joint effort between the employee and employer to pursue a recovery from the third party, then the commission shall have jurisdiction to determine a reasonable fee, if any, and apportion the costs and attorney's fees between the employee and employer.

Idaho Code § 72-223.

10. Under the statute, an employer/surety has a right of subrogation in the proceeds of an injured worker's recovery from a third-party tortfeasor, but under subsection (4), that right is subject to a reduction of the proportionate share of the costs and attorney's fees incurred by the injured worker in obtaining its recovery from a third-party tortfeasor. *See also, Cameron v. Minidoka County Highway Dist.*, 125 Idaho 801, 803, 874 P.2d 1108, 1110 (1994) (holding that the logic and fairness of such reduction is "obvious" because "[t]he employer should have to pay for the litigation expenses incurred in obtaining the third party recovery to the extent that the third party recovery benefits the employer.")

11. In *Maravilla v. J.R. Simplot Company*, 161 Idaho 455, 387 P.3d 123 (2016), the Court affirmed the *Liberty Mutual* rule, and ruled that its rationale remained good law, that is—where the employer is concurrently at fault for the worker's injury it should not be allowed the benefits of subrogation because it runs counter to the policy of law to allow someone to "take advantage of his own wrong." *Maravilla* at 463, referencing *Liberty Mutual Ins. Co. v. Adams*, 91 Idaho 151, 417 P.2d 417 (1966). *Maravilla* did not address whether an employer/surety's

unreasonable denial or delay under Idaho Code § 72-804 amounted to negligence. The circumstances are factually distinct from the circumstances of Cullinane, as described below:

On October 16, 2011, Maravilla, while working at Simplot, tripped on a hose that had been placed across a walkway to transport a water/acid mix to a nearby pump. The water/acid mixture was being transported because repairs were being performed on a nearby sulfuric acid pad. The repairs were being performed by [Idaho Industrial Contractors, Inc.], however, the hose had been placed by Simplot. On the day of the accident, a rainstorm had caused a power outage at the sulfuric acid pad causing acid to pool on the pad. Upon tripping, Maravilla's foot went through a plastic barrier erected by IIC and into the pooling acid. Maravilla suffered chemical burns to his right foot and leg, which later required skin grafts and surgery. Maravilla then filed a worker's compensation claim. Simplot, in its capacity as a self-insured employer, paid out an undisclosed amount of worker's compensation benefits

Maravilla v. J.R. Simplot Co., 161 Idaho 455, 457, 387 P.3d 123, 125 (2016).

Ultimately, the Court ruled that the employee could proceed with the claim that the defendant's right of subrogation could be barred by contributory negligence. *Id.* at 460-463.

12. Here, Claimant has been awarded by the Commission worker's compensation benefits, including past medical benefits, attorney's fees under Idaho Code § 72-804, and interest. Thereafter, Surety was put on notice that Claimant had settled her claim with St. Lukes for an undisclosed amount, thus triggering the requirement found in Idaho Code § 72-223 that an award of benefits plus recovery "by the employee against the third party" creates a right of subrogation.

13. In the absence of any ambiguity, a well-settled rule of statutory construction is that words of a statute must be given their plain, usual and ordinary meaning. *Walker v. Hensley Trucking*, 107 Idaho 572, 573, 691 P.2d 1187, 1188 (1984). Idaho Code § 72-223 does not state that a finding of an Idaho Code § 72-804 unreasonable denial or delay causes the forfeiture of an employer/surety's subrogation rights. Based on the plain language of Idaho Code § 72-223, the Commission declines to inject this requirement into Idaho Code § 72-223.

Idaho Code § 72-804 Does Not Require the Forfeiture of Subrogation Rights under Idaho Code § 72-223

14. Our analysis continues with Idaho Code § 72-804. Under Idaho Code § 72-804, an employer must pay reasonable attorney's fees in addition to compensation if the Commission or Court determines that the employer or surety unreasonably denied or delayed the payment of worker's compensation benefits. The Commission has the authority to determine the penalty imposed against an employer or surety who "without reasonable grounds discontinued payment of compensation" or who "neglected or refused within a reasonable time after receipt of a written claim for compensation to pay to the injured employee or his dependents the compensation provided by law". Idaho Code § 72-804. The Commission considers the factors outlined by the Court in *Hogaboom v. Economy Mattress*, 107 Idaho 13, 17-18, 684 P.2d 990, 994-95 (1984), and the decision must be supported by substantial and competent evidence.

15. Nothing in Idaho Code § 72-804 or Idaho Code § 72-223 suggests the Legislature intended loss of subrogation rights as an additional sanction. Idaho Code § 72-223 does not contemplate such a sanction, and Idaho Code § 72-804 does not go so far as to bar subrogation rights for an unreasonable denial/discontinuation of benefits. Furthermore, case precedent does not support equating an employer/surety's unreasonable denial or denial under Idaho Code § 72-804 with negligence. The elements required under each of the two legal theories are distinct. Reading such a penalty into Idaho Code § 72-804 improperly expands the statute beyond its text, and is unwarranted. Therefore, the Commission finds that unreasonable denial or delay under Idaho Code § 72-804 does not require the forfeiture of subrogation rights under Idaho Code § 72-223.

The Commission Does Not Reach the Issue of Claim Preclusion.

16. Although the Commission bases its conclusion on other grounds, this petition raises concerns with claim preclusion. The Commission fully adjudicated the issue of Surety's unreasonable discontinuation of Claimant's medical benefits when it ruled on the matter in July 24, 2024. We have the same parties (Petitioner and Employer). We have substantial overlap between the events supporting Petitioner's Idaho Code § 72-804 claims against Employer and Petitioner's present negligence claims against Employer. Finally, there was a final order on the measure of the Idaho Code § 72-804 award. It would be judicially inefficient and legally problematic to re-visit the final Idaho Code § 72-804 award at this juncture, and the Commission declines to do so.

CONCLUSIONS OF LAW AND ORDER

For the foregoing reasons, the Commission concludes the following:

1. The Commission has jurisdiction over the issues presented.
2. The standards required for the Commission to issue a declaratory ruling have been met.
3. Idaho Code § 72-804 does not require the forfeiture of subrogation rights under Idaho Code § 72-223.
4. Pursuant to Idaho Code § 72-718, this decision is final and conclusive as to all matters adjudicated.

DATED this ___10th___ day of ___March_____, 2026.

INDUSTRIAL COMMISSION



Claire Sharp, Chair



Aaron White, Commissioner

ATTEST:

Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of March, 2026, a true and correct copy of the foregoing **ORDER GRANTING PETITION FOR DECLARATORY RULING** was served by mail and email upon each of the following:

Matthew C. Andrew
ANDREW INJURY LAW, PC
PO Box 170
Melba, Idaho 83641
Phone: (208) 517-7670
Facsimile: (208) 205-9535
mandrew@andrewinjurylaw.com

Randall L. Schmitz
SCHMITZ LAW
487 Highway 93 N
Carmen, ID 83462
Phone: (208) 756-7704
Facsimile: (877) 719-8704
randy@schmitz-law.com

H. Chad Walker
BOWEN & BAILEY, LLP
1311 West Jefferson
PO Box 1007
Boise, ID 83701-1007
info@bowen-bailey.com
cwalker@bowen-bailey.com