

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

JULIE YATES,

Claimant,

v.

ENCODER PRODUCTS COMPANY, INC.,

Employer,

and

TRAVELERS PROPERTY CASUALTY
COMPANY OF AMERICA,

Surety,

Defendants.

IC 2022-004939

ORDER ON ATTORNEY'S FEES

**FILED JULY 21, 2025
IDAHO INDUSTRIAL COMMISSION**

Order on Idaho Code § 72-804 Attorney's Fees.

INTRODUCTION

On March 28, 2025, Julie Yates (Claimant) filed an Attorney Fee Memorandum (Cl.'s Mem. In Supp.), an Affidavit in support of Attorney's Fees, and Exhibits A-D. On April 10, 2025, Encoder Products and Travels Property Casualty Company of America (Defendants) filed a Memorandum in Response to Claimant's Attorney Fee Memorandum (D. Res. to Cl.'s Atty Fee Req.). On April 16, 2025, Claimant filed a Reply to Defendant's Response (Cl.'s Reply in Support of Atty Fee Req.).

OVERVIEW OF COMMISSION DECISION

On March 3, 2025, the Idaho Industrial Commission (Commission) issued a decision holding that Claimant's interstitial lung disease (ILD) was a compensable occupational disease caused by exposure to epoxy resins and soldering fumes in her workplace environment. FOF, ¶¶ 60-63. The Commission adopts and incorporates the findings of fact written in that opinion. The

Commission held Claimant was entitled to past medical care for diagnoses and treatment of her disease, and temporary disability benefits from the date of disablement to the date of maximum medical improvement (MMI). *Id.* at ¶ 68. Because Claimant’s illness had not yet reached maximum medical improvement, the Commission deferred issues of permanent physical impairment (PPI) and permanent physical disability (PPD) as premature. *Id.* at ¶ 70, 73.

Although the Commission acknowledged that the question of causation was ultimately a difficult one, the Commission determined the Defendants’ reasons for denying the claim were not reasonable. *Id.* at ¶ 60; 78-79. Claimant filed for worker’s compensation after Claimant’s physician opined the disease was occupationally caused, and another doctor opined it was “possibly” related. Defendants felt unpersuaded and denied the claim on grounds of timeliness and medical causation. The Referee criticized the Defendants’ reasons for denying the claim and the lack of timely investigation.

The Commission issued its Order Denying Reconsideration in which the Commission affirmed the award of attorney fees due to Defendants’ investigation and handling of Claimant’s claim. *See* FOF, p. 71; Order Denying Defendants’ Motion for Reconsideration.

The underlying Recommendation did not specify the amount awarded in Idaho Code § 72-804 attorney fees. The Commission standardly allows parties to attempt compromise on the issue before issuing an order on the Idaho Code § 72-804 award. Here, the parties were unable to reach agreement, and submitted their respective arguments for consideration.

ATTORNEY FEES UNDER IDAHO CODE § 72-804

Claimant argues that attorney fees were appropriately awarded under Idaho Code § 72-804 because Defendants denied her claim without a reasonable basis. Claimant’s Memorandum in Support of Attorney Fees. Based on the incurred medical expenses, Claimant requests fees of 30% on the \$567,539.48 medical expenses, as well as 30% on the total temporary disability (TTD)

benefits from the date of March 8, 2021, continuing through the date of maximum medical improvement (MMI). *Id.* at 6-7. The request for fees on the medical expenses is calculated using the full invoiced amount, consistent with *Neel v. Western Construction, Inc.*, 147 Idaho 146 (2008).

Claimant requests ongoing attorney fees of 30% on “any and all TTD benefits moving forward” and “any additional benefits paid under this claim.” Following the anticipated appeal with the Idaho Supreme Court, Claimant requests 40% attorney fees with statutory interest of 10.125% until the decision amount is paid in full. *Id.* at 7. In total, Claimant requests an award of attorney fees in the amount of \$227,166.55, for recovery of medical and back-due indemnity benefits due and owing, with statutory interest. *Id.* at 7.

Claimant argues the fee is presumptively reasonable under IDAPA 17.01.01.802.02.b and consistent with *Hogaboom v. Economy Mattress*, 107 Idaho 13, 684 P.2d 990 (1984). *Id.* at 2. She emphasizes the novel and medically complex nature of the case, her Counsel’s 42 years of experience, and the extensive time spent by her experienced Counsel to pursue the underlying claim. Affidavit of Richard Whitehead in Support of Attorney Fees Julia Yates, No. 2022-004939 (Idaho Indus. Comm’n Mar. 28, 2025).

Claimant’s Exhibits include a copy of the Attorney/Client Contract and Disclosure Statement, signed by both Claimant’s Counsel and Claimant on January 3, 2023 (“Fee Agreement”). The Fee Agreement provides Claimant’s Counsel a contingent fee of 30% of any amounts recovered if a hearing is held, and a contingent fee of 40% in the event of an appeal. Exh. A, p. 1.

Defendants challenge the amount of fees requested as excessive. D. Res. to C.’s Atty Fee Mem. While there is no question that the 30% contingency agreement exists, Defendants contend that relying on the full-invoiced *Neel* medical fee amount for the attorney fee award creates an

unreasonable, disproportionate award. *Id.* at 2; *Neel*, 147 Idaho at 146, 206 P.3d at 852. They also object to including future medical and disability benefits in the attorney fee calculation as these amounts are not finalized and speculative. D. Res. to C.'s Atty Fee Mem at 2. Defendants maintain that the overall fee sought is unsupportable, and ask the Commission to limit or deny the requested award. *Id.* at 4.

Here, Defendants reiterate that the case does not warrant attorney's fees under Idaho Code § 72-804, because of the complexity around medical causation. Defendants have argued that any lack of investigation was immaterial to an award of attorney fees, additional investigation would not have changed the outcome, and when additional investigation was done, it supported a denial. Cl.'s Mem. In Supp. at 17. In essence, Defendants feel they are being unfairly penalized for rejecting Dr. Snyder's opinion when the Commission later also rejected Dr. Snyder's opinion by assigning it no weight. FOF, p. 20.

While the Commission upheld the award of attorney fees in its Order on Reconsideration, Defendants' arguments moderated the Commission's perception of Defendants' behavior. Claimant's arguments on the Idaho Code § 72-804 award carry the day, but the margins of Claimant's victory are ultimately slimmer than the parties might have imagined from the broad language of the Commission Decision.

When attorney fees are awarded under Idaho Code § 72-804, the parties may either stipulate to an amount, or submit their arguments for the Commission to resolve the dispute. In the latter circumstance, the Commission directs the parties to discuss the factors identified in *Hogaboom*, in connection with the award of attorney fees. *Hogaboom*, 107at 13, P.2d 990. These factors are to be considered by the Commission in making its determination of reasonable compensation once the determination to award attorney fees has been made. These relevant, non-

exhaustive factors are:

(1) the anticipated time and labor required to perform the legal services properly; (2) the novelty and difficulty of the legal issues involved in the matter; (3) the fees customarily charged for similar legal services; (4) the possible total recovery if successful; (5) the time limitations imposed by the client or circumstances of the case; (6) the nature and length of the attorney-client relationship; (7) the experience, skill, and reputation of the attorney; (8) the ability of the client to pay for the legal services to be rendered; and (9) the risk of no recovery.

Hogaboom, 107 Idaho at 15, 684 P.2d at 992 (citing *Clark v. Sage*, 102 Idaho 261, 265, 629 P.2d 657, 661 (1981)).

The Commission is not, however, required to specifically address each factor, nor is it required to make specific findings showing how each factor entered into its decision. *Swett v. St. Alphonsus Regional Medical Center*, 136 Idaho 74, 29 P.3d 585 (2001).

The fees of attorneys are not to be kept artificially low, “i.e., below market value on a per hour basis, the result would be a migration of legal talent away from this crucial area and a chilling effect on the ability of claimants to obtain representation.” *Hogaboom*, 107 Idaho at 17, 684 P.2d at 994. Policies guiding the application of these factors include the legislative intent to encourage attorneys to represent claimants whose cases may not otherwise prove financially lucrative, while also discouraging employers and sureties from delaying or denying their obligations to an injured worker. *See Id.* (citing *Clark v. Sage*, 102 Idaho 261, 265, 629 P.2d 657, 661 (1981)).

Hogaboom Factors

Of those many *Hogaboom* factors, Claimant emphasized the anticipated time and labor required to perform the legal services properly; the fees customarily charged for similar legal services, the possible total recovery if successful, and the risk of no recovery. (Claimant’s Atty. Fee Memorandum, at pp. 5-6, Counsel’s Affidavit).

The anticipated time and labor required to perform the legal services properly.

Counsel represented Claimant from initial litigation through hearing and post-hearing

briefing. Counsel dedicated time to understanding complex medical issues including chemical exposure mechanisms and pulmonary toxicology. According to Counsel's affidavit, he spent a significant amount of time learning the medical background of the case in order to effectively understand the evidence. This preparation was made more urgent by the time sensitive nature of the Claimant's condition, including her need for a lung transplant. The Commission acknowledges that while the legal issues were not novel, the time sensitivity and the medical subject matter was outside the scope of routine litigation. Claimant's Counsel was indeed required to devote substantial time to specialized preparation to effectively represent the Claimant.

The Commission agrees with Counsel's description of the efforts needed for this case. Claimant's Counsel has over four decades of experience. Counsel has earned a reputation as a subject matter expert in workers' compensation issues, and as a competent advocate for his clients. While the legal questions concerning notice and manifestation were grounded in well-established law, the difficulties arose from the medically complex fact pattern. The time commitment for the hearing, related motion practice and discovery appears within the expected range. While we agree that an appeal increases the demands on Counsel, no appeal has yet been made. Overall, this factor weighs in Claimant's favor.

The fees customarily charged for similar legal services.

Claimant's Counsel bases his medical benefit attorney fee request on *Neel* and the customary contingency fee of 30% on recovered benefits for a hearing with briefing, and the customary fee of 40% on recovered benefits if an appeal is filed. Claimant also submitted the contingent fee agreement made between her counsel.

In a typical workers' compensation case, certain charges are presumed reasonable: a twenty-five percent (25%) contingent fee in a case without a hearing on the merits, thirty percent

(30%) contingent fee in a case with a hearing on the merits and briefs have been submitted (or waived) under JRP 10 and 11, and fifteen percent (15%) of total permanent disability payments for ten years after the payments commence. IDAPA 17.01.01.802.02. The proponent of a fee which is greater than these presumed reasonable fees “shall have the burden of establishing by clear and convincing evidence entitlement to the greater fee.” IDAPA 17.01.01.802.04(d).

The Commission is not constrained by the contingent fee agreement between a claimant and his attorney in the presence of a clause providing for the alternative of awarded attorney fees. *Hogaboom*, 107 Idaho at 18, 684 P.2d at 995. Rather, the Commission must arrive at a reasonable award considering both the factors listed above and the legislative intent behind worker’s compensation laws and Idaho Code § 72-804. *See id.*

In this case, a contingent fee agreement exists, and the agreement terms are consistent with regulations. Claimant’s Counsel undertook the case without guaranteed payment, advanced costs, and represented a medically vulnerable claimant with no ability to pay. The risk of nonpayment, particularly in a case involving a denial and complex medical treatment, supports a meaningful attorney fee award. This factor weighs in favor of the Claimant, but must still be balanced against the overall reasonableness of the amount requested.

The possible total recovery if successful.

Claimant argues that the possible total recovery is not ascertainable because this claim was denied at the onset and no benefits have been paid. C’s Atty Fee Mem., at p. 6.

Claimant’s Counsel’s possible total recovery on medical expenses is the *Neel* amount. The parties did not stipulate on the indemnity benefit calculations. Given the lengthy time period and extensive course of medical treatment, this factor weighs in favor of a substantial attorney fee for Claimant.

The risk of no recovery.

Claimant contends that the risk of no recovery was high because Claimant could not afford to advance the costs necessary to pay the expert witnesses needed to establish her claim. Claimant's Counsel represented that he has never sought those costs from a client when a loss occurs. Attorney Fee Mem., 6.

We believe Claimant's Counsel. Claimant's Counsel has performed admirably for Claimant. This factor supports Claimant receiving an Idaho Code § 72-804 fees award that the efforts of Claimant's Counsel to study the medical intricacies of an unusual lung disease, as this was necessary to advance the claim. As Claimant requested the award based on a contingency basis, the exact calculation of the value of these benefits to Claimant is not available.

Neel v. Western Construction and Idaho Code § 72-804 attorney fees.

The Commission recognizes that *Neel* heightens the risk placed on Defendants' initial investigation of a claim, because when a surety denies a claim and is later found liable, it must reimburse the full invoiced value of medical expenses, rather than the reduced workers' compensation fee-scheduled amounts. *Neel*, 147 Idaho at 146, 206 P.3d 852. The Idaho Supreme Court recently reaffirmed *Neel*, emphasizing that its purpose is to hold employers and sureties accountable for the adequacy of their initial claim evaluations. *Thompson v. Burley Inn, Inc.*, 173 Idaho 637, 546 P.3d 649 (2024). Per *Neel*, an employer must pay the full invoiced amount of Claimant's medical expenses if the employer denies a claim which the Commission subsequently finds compensable. *Neel*, 147 Idaho at 146, 206 P.3d 852. This affirmation reinforces the expectation that sureties undertake a thorough and reasonable investigation before rejecting a claim. *Id.* In *Thompson*, the Court declined to create an exception to the *Neel* doctrine in Medicaid cases. *Thompson*, 173 Idaho at 644, 546 P.3d at 656. The exception was requested because

Medicaid providers are “prohibited from balance billing (charging Medicaid recipients the difference between the Medicaid payment amount and the full invoice amount),” meaning that claimant may receive a windfall or unearned incentive in those cases. *Id.* at 649. The Court rejected this requested exception, reasoning that it would undermine the workers’ compensation system. *Id.* at 651-653. Idaho Code § 72-804 attorney fees were not awarded in *Thompson*. *Id.* at 652-653.

The *Neel* doctrine applies in this case. Defendants denied medical care that was subsequently found compensable by the Commission. Defendants have been ordered to pay Claimant the full-invoiced amount of the denied medical care subsequently found compensable.

The issues here are whether the Commission has discretion to depart from a black-and-white calculation of the Idaho Code § 72-804 fee award; and if so, how to measure a reasonable attorney fee award. Based on the Commission’s review of *Neel* and Idaho Code § 72-804 precedent, the Commission concludes that it has discretion to determine a reasonable Idaho Code § 72-804 award, and is not constrained to a black-and-white calculation of the Idaho Code § 72-804 fee award. First, *Neel* did not overrule *Hogaboom*, and the case holdings are not at odds. The plain language of Idaho Code § 72-804 grants the Commission the authority to make this determination. “[I]n all such cases the fees of attorneys . . . shall be fixed by the Commission.” *Hogaboom* incorporates the *Neel* full invoiced medical fee amount through its “customary fee” factor. In *Vawter v. United Parcel Service, Inc.*, 155 Idaho 903, 914, 318 P.3d 893 (2014), the Court affirmed the Commission’s limitation of the attorney fee award to the employer’s “post January 30, 2012, refusal to pay the 12% PPI award made by Dr. Frizzell.” Notably, the Court did not require the Idaho Code § 72-804 fee award to be applied against *all* benefits obtained. *Id.*

Here, the *Neel* full-invoiced amount of medical fees (*Neel* amount) alone is a staggering \$576,539.48. C. Exh. B. If a 30% contingency fee award is granted against all the benefits

recovered in this case, the attorney fees award becomes untenable. That would result in a presumptive 30% fee of around \$170,000 to Claimant's Counsel *in addition* to the full invoiced amount of medical bills to Claimant. If an appeal is made, the presumptive fee increases to 40%, or around \$227,000. According to the Fee Agreement, Counsel may also seek from Claimant the litigation costs in addition to his fees. Defendants argue that Claimant's expense summary has increased more than \$250,000 since the Commission hearing. D. Res. Atty Fee.

The Commission does not exercise any control over what is entered as the "full invoiced amount" on denied medical care, and the workers' compensation medical fee schedule does not apply to denied care. Because Claimant utilized a non-industrial carrier for the denied medical care and prohibitions against balance billing exist, there is a substantial gap between the "full-invoiced amount" and the amount a provider can accept in exchange for the medical services provided. Claimant will receive an amount under *Neel* which exceeds her liability for those services. The potential "windfall," described in *Aspiazu v. Homedale Tire Service*, 2012 WL 369793 (Industrial Commission 2012) occurs, and applied here, that windfall is easily six figures in Claimant's favor.

We are not inclined to increase this substantial windfall by assessing the Idaho Code § 72-804 award on the full-invoiced *Neel* amount. This *Neel* amount would not accurately reflect Claimant's exposure "in the wilderness" of being denied coverage by her worker's compensation carrier. It also overwhelms any distinction between a *Neel* amount awarded for denied medical benefits and an Idaho Code § 72-804 award of attorney fees against those same medical benefits. The award of attorney fees under Idaho Code § 72-804 is separate from reimbursement of medical benefits at the *Neel* rate. *Lienhard v. Sodexo, Inc.*, IC 2011-002489 (Industrial Commission Decision, 2014). We are also aware that prior case law confirms that the attorney fees may still be awarded even where medical benefits are paid at full invoice so long as the claim denial was

unreasonable. *Cullinane v. Airco Aviation Servs.*, IC 2020-006118; *Miller v. Enlivant.*, IC 2018-018070 (Industrial Commission Decision, 2020).

While *Neel* supports the full valuation of medical benefits, it does not control the measure of attorney fees awarded under Idaho Code § 72-804. *Lienhard*, supra at 6-7. In another case, the Commission denied attorney fees, reasoning that “[t]he award of medical benefits at the *Neel* rate has compensated Claimant for the hardship of the surety's denial in this case. ‘Sure and certain relief has been afforded.’” *Wells v. DFA Dairy Brands Distributing West, LLC*, 010125 IDWC, IC 2023-000747 (Idaho Industrial Commission Decisions, 2025). This approach shows the Commission’s inclination to tailor the penalty award as needed to avoid unearned incentives or windfalls to sureties or claimants. As in *Wells*, the *Neel* award here is enough to compensate Claimant for the hardship of the unreasonable denial of the medical benefits. *Wells*, 010125 IDWC, IC 2024-000747.

It is helpful to bear in mind that the attorney fee awarded under Idaho Code § 72-804 is an amount paid by employer in addition to any compensation owed. The Court anticipated the possibility that an attorney may be awarded fees under both Idaho Code § 72-804 and Idaho Code § 72-803. *Page v. McCain Foods, Inc.*, 155 Idaho 755, 763-764 (2014). This case is a good example of the possibility anticipated by *Page*. Claimant’s Counsel is entitled to fees from the Idaho Code § 72-804 award to Claimant, and separate fees for benefits obtained outside of the Idaho Code § 72-804 award. In addition, the parties have not stipulated to an attorney fee award, and no “double-dipping” from Claimant’s Counsel has occurred. Finally, there is ample room in the full-invoiced *Neel* amount to fairly compensate Claimant and her Counsel, and deter unreasonable behavior by sureties.

We recognize that there may be situations where the *Neel* amount is not enough for the

Idaho Code § 72-804 penalty. In *Aspiazu*, supra, the full invoiced amount of the denied medical care was minimal—only a few thousand dollars. The strict application of the customary fee in *Aspiazu* would not fairly compensate the claimant for the cost of legal efforts expended to overturn the denial. *Aspiazu*, 2012 WL 369793 at 3. In those situations, the Commission will measure the Idaho Code § 72-804 attorney fee award on an attorney’s hourly rate, or weigh the case circumstances and *Hogaboom* factors to arrive at a reasonable fee.

Overall Hogaboom Factors Analysis

After considering the *Hogaboom* factors, Defendants’ arguments that *Neel* creates an excessive fee, the factual complexities of the case, and the limitations of Claimant’s initial expert opinion, the Commission finds a 30% contingency fee on all the awarded benefits is not warranted in this case. Rather, Idaho Code § 72-804 award shall be based on the indemnity benefits and the efforts of Claimant’s Counsel to advance medical expert evidence.

Claimant’s best estimate of the indemnity benefits due and owing from 2021 through 2025 is \$189,682.35. Claimant’s Attorney Fee Memorandum at 7-8; Claimant’s Exhibit D. While 30% of that best estimate is \$56,904.70, we adjust the fee award upward to \$80,000.00, to account for calculation errors or omissions, as well as the extra time Claimant’s Counsel spent studying the medical intricacies of an unusual lung disease case.

Accordingly, we find that an award of Idaho Code § 72-804 attorney fees to Claimant in the amount of \$80,000.00 is reasonable. We deny Claimant’s request for an ongoing award of Idaho Code § 72-804 attorney fees.

Statutory Interest Accrual

Claimant requests statutory interest of 10.125% on his attorney fee award. The Commission has jurisdiction to determine whether Claimant is entitled to interest under Idaho

Code § 72-734. *Hendrix v. Kodiak America, LLC*, IC No. 2020-016090 (Industrial Commission Decision, 2023). Under Idaho Code § 72-734, interest accrues on all benefits due and owing from the date of the decision at the interest rate set by Idaho Code § 28-22-104(2). In *Hendrix*, the claimant requested interest after waiting thirty-nine days from the settlement agreement and the service of dismissal on the parties without receipt of the agreed upon settlement payment. Idaho Code § 72-735 allows thirty (30) days for the payment of compensation due before enforcement, and the Commission applies that same waiting period to interest accrual here. Defendants shall be allowed thirty (30) days from this order to submit the compensation due before interest will accrue. If an appeal is made, the award, including interest accrual, will be stayed during the pendency of the appeal. Idaho Code § 72-731.

ORDER

Accordingly, the Commission awards \$80,000.00 in Idaho Code § 72-804 attorney fees for Defendants’ unreasonable denial. The Commission denies Claimant’s request for ongoing Idaho Code § 72-804 attorney fees. Pursuant to Idaho Code § 72-718, this order is final and conclusive as to all matters adjudicated.

DATED this 21st day of July , 2025.



INDUSTRIAL COMMISSION

Claire Sharp
Claire Sharp, Chair

Thomas E. Limbaugh
Thomas E. Limbaugh, Commissioner

ATTEST:

Kameron Slay
Commission Secretary

COMMISSIONER AARON WHITE, DISSENTING:

I respectfully dissent from the majority's decision calculating the award of attorney fees. The majority rejects the requested fee, a standard 30% fee of all benefits as is presumed reasonable under IDAPA regulation, and instead grants \$80,000. The remaining portion of attorney fees to which counsel is presumptively entitled amount to are in the area of \$147,000, as well as additional amounts when future benefits are paid. Unless the Commission denies those fees in part or in whole, all sums must necessarily be withdrawn from Claimant's benefits.

The Commission has extensive discretion when awarding attorney fees. However, the minimal size of the majority's award fails to accomplish the purpose of attorney fees under I.C. § 72-804:

The award is said to be compensatory, the underlying rationale being that the **claimant should not have his benefits lessened by legal expenses** incurred as a result of the employer's and his surety's unwarranted conduct in refusing or delaying compensation of an otherwise compensable claim. *Mayo v. Safeway Stores, Inc.*, 93 Idaho 161, 457 P.2d 400 (1969).

Clark v. Sage, 102 Idaho 261, 263, 629 P.2d 657, 659 (1981)(emphasis added).

Although the majority does not analyze counsel's entitlement to any fee apart from the award, there is a significant risk Claimant remains liable for nearly double the amount of fees as Defendants are now being asked to pay. Rather than addressing this issue, the majority reduces the award based on the overall value of Claimant's benefits. The reduction is also concerning to the extent it sets a precedent that the Commission may simply cut fee awards whenever it feels the award is too high, regardless of relation to the actual case value.

I appreciate the requested fee of \$227,166.55, plus 30% of future benefits, appears like a windfall compared to the typical value of a worker's compensation case. Still, the majority's decision fails to provide any fees for the medical benefits obtained, and leaves Claimant

responsible for a larger sum of attorney fees than Defendants. I cannot agree with the reduction, and therefore dissent.



Aaron White, Commissioner

ATTEST:

Kamerron Slay
Commission Secretary



CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of July , 2025, a true and correct copy of the foregoing **ORDER ON ATTORNEY'S FEES** was served by electronic mail and regular United States mail upon each of the following:

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