

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

MARTINE ERSKINE,

Claimant,

v.

IDAHO DEPARTMENT OF HEALTH &
WELFARE,

Employer,

and

IDAHO STATE INSURANCE FUND,

Surety,
Defendants.

IC 2023-050549

**ORDER DECLINING TO
RULE ON PETITION FOR
DECLARATORY RULING**

**FILED JULY 17, 2026
IDAHO INDUSTRIAL
COMMISSION**

Before the Commission is Claimant, Martine Erskine's May 29, 2026, Petition for Declaratory Ruling. Surety, Idaho State Insurance Fund (SIF), timely responded on June 11, 2026. Claimant's reply was filed on June 22, 2026. The Commission does not reach any of the issues raised by claimant in her Petition because a Petition for Declaratory Ruling is not the proper procedure for such issues. For this reason, the Commission DECLINES to rule on Claimant's Petition for Declaratory Ruling.

BACKGROUND

Claimant was injured at her place of employment in early September of 2023, when a patient beat her about the head and face. (Climnt. Memo. in Supp. of Pet. at 2.) As a result, she was diagnosed with a head injury and a probable concussion. *Id.* Claimant was later diagnosed with PTSD. *Id.* The physician recommended a twelve-week course of weekly treatments. *Id.* Her initial intake appointment was scheduled for March 19, 2025. *Id.* at 3; Ex. 3.

In the intervening time, Claimant received benefits including TTD. (*See* Clmnt. Memo. in Supp. of Pet. at 4.) During this period, due to financial difficulties, Claimant lost her housing and relocated to Oregon, where she resided with a family member. *Id.* at 3; Ex. 4. This relocation prevented Claimant from attending the scheduled appointment. (Clmnt. Memo in Supp. of Pet. at 3; Ex. 4.) Claimant notified Surety of these events. (Clmnt. Memo in Supp. of Pet. at 3; Ex. 4.) Because Claimant missed the appointment, Surety informed its retained IME Consultant, Dr. Ernst, that Claimant was no longer seeking treatment. Ex. 8. In response, Dr. Ernst stated that Claimant required further treatment and would be unlikely to see medical improvement without such treatment. Ex. 9. Surety then refused to disburse TTD benefits initially set for disbursement on April 7, 2025. (Clmnt. Memo in Supp. of Pet. at 4; Ex. 10.) Only later did Surety issue a Notice of Claim Status to Claimant on April 11, 2025. (Clmnt. Memo in Supp. of Pet. at 4; Ex. 10.) Claimant contacted Surety on April 12, 2025, informing Surety that she was obtaining treatment from a provider that refused to bill worker's compensation insurance companies. (Clmnt. Memo in Supp. of Pet. at 4; Ex. 11.) Claimant also requested assistance from Surety in finding an appropriate facility for treatment. (Clmnt. Memo in Supp. of Pet. at 4; Ex. 11.)

Claimant was able to secure an appointment for further treatment, which was scheduled on August 11, 2025, and notified Surety of such on April 14, 2025. (Clmnt. Memo in Supp. of Pet. at 5; Ex. 12.) However, Surety did not reinstate Claimant's benefits until the date of her treatment, August 11, 2025. Ex. 19-20.

STANDARD OF REVIEW

The Commission may issue a decision on a petition for a declaratory ruling after the time for filing all responses has passed. JRP 15(F). However, the Commission may also decline to issue a declaratory ruling when there is a more appropriate procedure for resolving a dispute. JRP 15(F)(4)(e).

DISCUSSION

The Commission declines to grant Claimant's Petition for a Declaratory Ruling because an order on the Petition is not an appropriate procedure for resolving the issues Claimant brings. Claimant brings three issues. (Clnmt. Memo in Supp. of Pet. at 8, 16, 20.) Claimant asks the Commission to decide (1) that Surety didn't have the authority to deny benefits to her and (2) that Surety improperly did so despite lacking such authority. *Id.* at 8, 16. These first two issues will be considered together. Then, (3) Claimant requests attorney fees. *Id.* at 20-26. The Commission does not find appropriate grounds to issue a decision on any portion of the Petition. For the following reasons, the Commission DECLINES to rule on Claimant's Petition for Declaratory Ruling.

The Commission declines to rule on Claimant's Petition because it is brought in an attempt to sidestep the proper litigation process. The Commission will not grant a petition for declaratory ruling when such a petition is made only to avoid the appropriate process. JRP 15(F)(4)(e). "[W]hen there is such an unresolved dispute . . . the Commission must adjudicate the dispute through a hearing." *Arreola v. Scentsy, Inc.*, 172 Idaho 251, 255, 531 P.3d 1148, 1155 (2023); Idaho Code § 72-712.

The instant issues demand a hearing. Here, Claimant brings forth issues that were not settled by pre-hearing procedures. Accordingly, it must be subject to a hearing before the

Commission can provide the relief of a final judgement. § 72-712. Claimant even acknowledges that filing a complaint is the appropriate procedure for remedying this injury. (Clnmt. Memo. in Supp. of Pet. at 7.) The Commission is not convinced that filing a complaint is somehow less “economically feasible” or “humane” than hiring an attorney to instead file the instant Petition. *Id.* The Commission will not render a final judgement on these matters until such matters are brought as a complaint and they have been subject to a hearing. All parties must be given an opportunity to engage in the discovery process, to negotiate a settlement, and to sufficiently prepare and raise arguments and defenses. The Commission will not entertain Claimant’s attempts to avoid that process.

Claimant is not entitled to sanctions. Claimant argues that she is entitled to sanctions against Surety. *Id.* at 20. The only sanction that is clearly requested is attorney fees. *Id.* at 21-22. The Claimant argues an award of attorney fees is appropriate because Surety denied Claimant’s benefits despite having notice that such a denial unlawful. *Id.* at 20-26. However, the Commission does not reach these issues and so will not award attorney fees on these grounds. Attorney fees are not granted as a matter of right, but may only be awarded in specific circumstances. *See e.g.* §§72-210,-804. Claimant has not shown that such circumstances are present here. Additionally, the Commission is reluctant to award attorney fees to an unsuccessful party. For these reasons, the Commission will not award attorney fees or other sanctions.

All issues raised by Claimant are unsuccessful. Claimant has attempted to sidestep the appropriate hearing process by improperly bringing this argument as a petition for a declaratory ruling instead of properly filing a complaint to resolve these issues. Claimant has conceded as much. (Clnmt. Memo. in Supp. of Pet. at 7.) Given that we reach no findings as to the issues

raised, the Commission will not award sanctions to an unsuccessful party. Therefore, the Commission DECLINES to rule on Claimant's Petition for Declaratory Ruling.

ORDER

Claimant's Petition for Declaratory Ruling is DECLINED. Pursuant to Idaho Code § 72-718, this decision is final and conclusive as to all matters adjudicated.

DATED this 17th day of July, 2026.

INDUSTRIAL COMMISSION

Claire Sharp

Claire Sharp, Chair



Aaron White

Aaron White, Commissioner

ATTEST:

M. Womer

Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on 17th day of July, 2026, a true and correct copy of the foregoing **ORDER DECLINING TO RULE ON PETITION FOR DECLARATORY RULING** was served upon the following:

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A handwritten signature in dark ink, appearing to read "M. Warner", with a long, sweeping horizontal line extending to the right.

Commission Secretary